

(2005) 10 PAT CK 0061
In the Patna High Court
Case No : CWJC No. 13025 of 1993

Indradip Rai

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 04-10-2005

Acts Referred:

Army Rules, 1954 — Rule 13(3)(iv)

Citation : (2006) 1 PLJR 89

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : K.N. Choubey, Subhash Chandra Dubey and Ashutosh Kumar, for the Appellant; S.N. Pathak, for the Respondent

Final Decision : Allowed

Judgement

Narayan Roy, J.—Heard learned counsel for the parties. The petitioner has challenged the order of discharge from Army Services, issued vide order, as contained in annexure 2 dated 26.7.1984.

2. It is submitted by Mr. K.N. Choubey, learned senior counsel for the petitioner, that the petitioner was inducted in Army services as a Sepoy with effect from 29.4.1982 and during his continuance a verification report was sent to the Army Headquarters showing his involvement in a criminal case and the authorities on the basis of the verification report discharged the petitioner from services with effect from 26.7.1984. Learned counsel further submitted that the petitioner was not the named accused in the first information report, and, therefore, at the time of his entry in services on 29.4.1982 he had not given a declaration as to whether he is facing a criminal charge and even assuming that on the basis of verification report, a criminal case was detected, the authorities could have given him a notice to explain as to why he should not be discharged from services for non-disclosure of the fact about his involvement in the criminal case. But, in the instant case, no opportunity, whatsoever, was given to the petitioner before passing of the order of discharge. It is also submitted that it would appear from

annexure 2 that the petitioner has been discharged under Rule 13(3)(iv) of the Army Rules, 1954 (hereinafter referred to as "Rules"), which, prima facie, shows that the aforesaid provision was not applicable in the case of the petitioner, as he had never requested the authority to discharge him. Mr. Choubey, learned senior counsel, further submitted that in the aforesaid criminal case, the petitioner was acquitted on 24.4.1992, and, accordingly, he represented his case before the respondent authorities for cancellation of the order of discharge, but his representation was rejected on the ground that he had suppressed the material fact about his involvement in the criminal case at the time of his entry.

3. Mr. S.N. Pathak, learned Additional Standing Counsel, Central Government, on the contrary, submitted that since it was a case of suppression of material fact, the authorities on the basis of the verification report found the petitioner guilty of misconduct, and, accordingly, he was discharged, but, so far the question as to whether any opportunity of hearing was given to the petitioner before passing of the order of discharge is concerned, Mr. Pathak could not reply satisfactorily.

4. Though a counter affidavit has been filed on behalf of the respondents, nowhere it is stated in reply to the statement made in the writ application that any sort of opportunity was given to the petitioner to explain his conduct before passing of the order of discharge.

5. From the materials on record, it appears that the order of discharge was issued by the authorities without affording sufficient opportunity to the petitioner. Had it been a case that a show-cause notice was given to the petitioner as to under what circumstances he suppressed the material fact of his involvement in the criminal case, the petitioner could have explained the same and only thereafter the respondents to their full satisfaction that the material fact was suppressed could have passed the order impugned.

6. It was the minimum requirement to give an opportunity of hearing to the petitioner, which, admittedly, was not done and on this score alone, the order impugned must be held to be violative of the principles of Natural Justice.

7. At the same time, it appears that the case of the petitioner is not covered under the provisions of Rule 13(3)(iv) of the Rules. Rule 13(3)(iv) of the Rules postulates that a person can be discharged from services at his own request before fulfilling the conditions of enrolment. It is not the case of the respondents that the petitioner had volunteered and had made a request for his discharge. The impugned order, in that view of the matter, does not fully cover the case of the petitioner.

8. For the findings and reasons, aforementioned, in my opinion, the order impugned, as contained in annexure 2, is not sustainable in law, as it is contrary to the provisions of law as also violative of the principles of Natural Justice. In the result, this application is allowed and the order impugned, as contained in annexure 2, is set aside. However, the authorities may proceed in the matter afresh, if so advised, in accordance with law.

No order as to costs.