

(2012) 06 KAR CK 0002

In the Karnataka High Court

Case No : Writ Petition No"s. 9762-9763 of 2012 (S-Res)

Major Vikas Kumar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 18-06-2012

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14
Army Act, 1950 — Section 27

Citation : (2013) 1 SCT 190 : (2013) 2 SLJ 267

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : Adithya Sondhi, for the Appellant; S. Kalyan Basavaraj, ASG., for the Respondent

Final Decision : Allowed

Judgement

H.N. Nagamohan Das, J.—In these two writ petitions, the petitioners have prayed for a writ in the nature of certiorari to quash the order dated 24.02.2012 Annexure "Q", rejecting the request of the first petitioner for discharge from Indian Army. First petitioner was commissioned into Corps of Signals in the Indian Army on 24.06.2000. He desired and decided to marry the second petitioner, a citizen of Sri Lanka. Accordingly, the petitioner made a request to the respondents to permit him to marry the second petitioner. The respondents by their order dated 19.09.2011 rejected the request of the petitioner on the ground that the second petitioner refused to renounce her citizenship of Sri Lanka. Aggrieved by this order dated 19.09.2011, the petitioners approached this Court in W.P. No. 42998/2011 and W.P. No. 43760/2011. On contest, this Court vide Order dated 07.12.2011 allowed the writ petition, set-aside the order dated 19.09.2011 and remanded the matter to the respondents for reconsideration in accordance with law and also keeping in view, the observations made in the said order. On remand from this Court, the respondents have now passed the impugned order at Annexure "Q", again rejecting the request of the petitioners. Hence, this writ petition.

2. Heard the arguments on both side and perused the entire writ papers.
3. Sri. Kalyan Basavaraj, learned Additional Solicitor General for the respondents contend that under Armed Force Tribunal Act, 2007, there is a bar for this Court to entertain the impugned order Annexure "Q" which relates to service condition of first petitioner.
4. Firstly, in these writ petitions not only the service condition of first petitioner but also the individual right of second petitioner is involved. Further, this contention was taken in the earlier writ proceedings before this Court in W.P. No. 42998/2011. This Court by relying on the judgment of the Bombay High court in Major Yogesh Chandra Madhav Sayankar and Shruti Kulkarni v. the Chief of Army Staff Integrated Head Quarters (Army) Ministry of Defence and Others in W.P. No. 289/2011 disposed of on 25.03.2011, allowed the petition. Further, a reading of Section 14 of the Armed Force Tribunal Act, 2007 do not totally bar jurisdiction of this Court to entertain the writ petition in respect of the issues involved in this case. Therefore, I decline to accept the contention of learned Additional Solicitor General.
5. Secondly, it is contended that u/s 27 of the Armed Force Act, 1950, the petitioner has the remedy before the Government of India and without exhausting that remedy, the present petition is liable to be dismissed.
6. Having regard to the prayer made in this writ petition and the averment made therein, the petitioner is not expressing any grievance against any Officer of Indian Army. Therefore, the question of proceeding against any officer of Indian Army will not arise. On the other hand, the petitioners are before this court questioning impugned order Annexure "Q" wherein the request of first petitioner discharge from service came to be rejected. Therefore, Section 27 of the Army Act has no application to the facts of this case.
7. The reasons assigned in the impugned order as under:-
 - (i) The officer is Signal Offer Degree Engineering qualified and is yet to complete his mandatory service liability in respect of the ibid qualification.
 - (ii) Corps of Signals is presently deficient of 32% officers in the rank of Lt. Col and below, and maintaining the adequate strength of the cadre is necessary for proper functioning of the Army.
 - (iii) The officer's conduct is under investigation for making unauthorized contact with foreign national and failing to report the same as per relevant rules in the matter.
8. If for any reason, the petitioners have violated any of the relevant rules, then it is open for the respondents to investigate the matter and to take suitable action against them but that cannot be a ground to refuse the request of the first petitioner for discharge from service.
9. Since, the second respondent refused to renounce her citizenship of Sri Lanka

then, the petitioner cannot be permitted to marry her as per the provisions of Army Act, 1950. Therefore, the petitioner cannot continue in the Indian Army and marry the second petitioner who refused to renounce her citizenship. But, in the instant case, the first petitioner is requesting the respondents to discharge him from Army, so that, he can marry the second petitioner. This request of the first petitioner cannot be said illegal or contrary to the provisions of the Army Act. Therefore, there is no justification for the respondents to reject the request of the petitioner for discharge. For the reasons stated above, the following:-

ORDER

1. These writ petitions are hereby allowed.
2. Impugned order at Annexure "Q" dated 24.02.2012 is hereby quashed.
3. The claim of the first petitioner for discharge, subject to all other requirement under law, is hereby granted.
4. Liberty is reserved to the respondents to investigate and to take appropriate action against the petitioners in accordance with the Rules, Regulations and the Army Act, if they so desire.