

(2016) 03 J&K CK 0051

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1505 of 2003

Manoj Kumar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 28-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 JKJ 509

Hon'ble Judges : Mr. Mohammad Yaqoob Mir, J.

Bench : Single Bench

Advocate : Ms. Sindhu Sharma, ASGI, for the Respondents; Mr. V R Wazir, Sr. Advocate with Ms. Monika, Advocates, for the Petitioner

Final Decision : Dismissed

Judgement

Mr. Mohammad Yaqoob Mir, J. - Petitioner admittedly on proper selection was enrolled in the Army on 20.10.2001 and had completed one

year as trained soldier. He had availed 14 days Casual Leave w.e.f 26.10.2002 to 08.11.2002 but over stayed on the ground that he had fallen

sick while at home, as such remained absent from the Unit.

2. A query has been forwarded vide Telegram dated 27.11.2002 addressed to the sarpanch with a request to contact and ask the petitioner to

rejoin for duty.

3. The Sarpanch on 21.12.2002 had reported that the petitioner stands informed to join immediately. He had mentioned that the petitioner had

fallen sick as such was under treatment in Doda Hospital.

4. The over staying leave by 45 days was not justified; still petitioner had been allowed to join duty. Finally petitioner on his request was

discharged on compassionate basis w.e.f 01.02.2003. Dis-satisfied therewith instant petition has been filed seeking quashment of the order of

discharge with further direction to respondents to allow him to rejoin and to release all dues.

5. According to the petitioner, on 27th and 28th of January, 2003, he was asked to go back to his home town and to report back to the Unit as

and when called. His identity card was taken. All other documents PRC, Educational Qualification Certificates in original are lying with the unit. He

had submitted representation on 28.02.2003 to respondent No.2 requesting him to allow the petitioner to continue in service. When there was no

response, he served notice under No.800/TM/03 dated 02.06.2003 requesting respondents to allow the petitioner to rejoin the duties.

6. The respondents vide communication No.4513/157/A dated 7.7.2003 have sent a reply to the notice signed by Shri P P Singh, Major Adj. for

officer Commanding wherein it has been conveyed that the petitioner had applied for discharge from service w.e.f 01.02.2003. The said

communication has been received by the petitioner at Jammu which is within the jurisdiction of this Court. Petitioner has further stated that he has

completed more than two years of regular service as constable, therefore acquires the status of regular and permanent employee of respondent

No.1, so could not be discharged even on his request.

7. The respondents in the reply has stated that the petitioner had filed an application on 26.12.2002 signed by him submitting therein that he desires

to proceed on premature discharge from service due to domestic problems as his parents are ill, there is no one to look after them as they are

staying with him. In addition he has some land which due to timely non maintenance has become barren. In the same background, the case of the

petitioner was processed based on which discharge was ordered. The claim of the petitioner that his signature on the application is forged is a false

and irresponsible statement. Why should respondent No.2 have done so when he had nothing to settle with the petitioner which is supported by

the fact that neither any grouse nor mala fide had been projected against respondent No.2 in the memo of the petition.

8. In the rejoinder filed by the petitioner, it is stated that respondent No.2 has some disliking for the petitioner but what is that disliking is not made

mention of. That is simply a bald assertion. Had there been any enmity or anything else to be settled with the petitioner then same would have been apparent and the petitioner would have specifically pleaded the same in his memo of the writ petition.

9. The records produced by the respondents also contains the original application of the petitioner dated 26.10.2002 which is written in Hindi

version but bears the signatures of the petitioner in English version. The signature of the petitioner as it exists on the application so filed before the

respondent authorities seeking premature discharge on compassionate grounds when compared with the signatures of the petitioner as it is on each

page of the memo of the writ petition and the affidavit, there is hardly any scope to the naked eye to say that the signature on the application so

filed before the respondent authority is not of the petitioner.

10. The contention of the learned counsel for the petitioner is that there is no any scope in Army Act or Rules for allowing discharge on

compassionate grounds even if applicant/petitioner would have move an application, same could not be allowed.

11. Learned counsel for the respondents has also filed the photo-copy of the application of the petitioner which he had submitted on 26.12.2002

to respondent No.2 along with a translated copy in English so as to show as to what the petitioner had submitted and prayed for which clearly

reveals that he had stated that he has two brother living in different difficult places, his parents are ill, no one is to look after them, they are staying

with him, his land for want of maintenance had turned barren. He always remained mentally upset. He shall be grateful if he shall be released from

the Army. The photocopy application along with translated copy is taken on the records of the petition.

12. Learned ASGI would submit that the petitioner with all calculations had filed an application seeking discharge on compassionate grounds.

When same has been allowed, while changing his mind, he cannot turn around by saying that he had not filed any application for premature

discharge. On the basis of the application filed by the petitioner, all proceedings were completed. The respondents had no enmity with the

petitioner and have shown sympathy and passion in view of the grounds he had projected in his application. Now to say that respondent No.2 had

certain disliking is totally an afterthought, simply an attempt to bring the case within the purview of malafides. Had there been any such malafide or any disliking noticed by the petitioner, then in memo of the petition, same would have been made mention of and highlighted. It is only after reply is filed, therefore in the rejoinder filed, the petitioner had tried to create a situation that an application is a manipulation and product of fabrication, which is totally unacceptable. Taken his signature on the original application as available, on records, which had been produced, when compared with the signatures of the petitioner as exists on each page of the memo of the petition and the affidavit, hardly there is any scope to say that the signature is not of the petitioner.

13. The contention of the learned counsel for the petitioner that under Army Act or Rules, application for premature discharge and then discharge on compassionate grounds is permissible, is without substance because Section 22 of the Army Act provides for discharge from the service by such authority and in such manner as may be prescribed. Rule 13 of the Army Rules, 1954 prescribed the authorities competent to order discharge from service, on the grounds specified in the table to the said rule wherein it is clear that person enrolled under the Act who has been attested can be discharged at his own request before fulfilling the conditions of enrolment, by the commanding officer after satisfying himself as to the desirability of sanctioning the application and that the strength of the unit will not thereby be unduly reduced. It being so, the competent authority has exercised the discretion which is not open to question in the case on hand.

14. In fact he had rendered one year, 03 months and 11 days of service upto the date of discharge which position is clear from the booklet for service/disability pension of the petitioner"" and other documents available on the records as produced, in pursuance to which his all claims on discharge have been fulfilled and settled. Further in between 27th and 28th of January, 2003 as alleged he had been asked to go back to his home town and to come when called for, his identity card had been taken would clearly demonstrate that he was conscious of his discharge. Simply to hoodwink the same has tried to project the theory that on 27th and 28th of January, 2003, he was asked to go back home, then he had sent a legal notice to the respondents on 02.06.2003 means that he has been paving

the way for his act of retract so as to make a case because of his discharge and it is only thereafter, he has filed writ petition in the month of August, 2003.

15. The petition otherwise is also not maintainable because cause of action or any part of cause of action has not accrued at Jammu. He was

working as constable in the Army i.e. 7th Dogra Regiment, had allegedly applied for discharge at West Bengal, simple receipt of information of

discharge within the territorial jurisdiction of J&K will not constitute a part of cause of action to have accrued here. Similar position vis-a-vis cause

of action has been dealt with by the Co-ordinate Bench of this court in the judgment rendered in the case of Atal Bihari v. Union of India and

ors. 2007 Legal Eagle(J&K) 297 : Equivalent citation;2008 (1) JKJ 53. Para 32 is relevant to be quoted:

32. For all what has been said above, the communication of Director General's decision, to the petitioner in the State of Jammu and Kashmir

would not constitute an integral part of the cause of action entitling him to challenge the orders of the Commandant and the Director General, in this

Court.

16. Applying the same to the present case, admittedly application for discharge has been submitted in West Bengal before the respondent

authority. Decision has been taken there and simply in respect of legal notice issued by the counsel for the petitioner, the order is said to have been

received at Jammu not in any manner constitute any part of cause of action having accrued at Jammu.

17. For the stated reasons and circumstances, this petition does not survive for any further consideration, is accordingly dismissed.

18. The record as was produced by Id. ASGI be returned to her.