

(2011) 12 KAR CK 0137

In the Karnataka High Court

Case No : Writ Petition No. 4567 of 2006 (S-RES)

Sri. Hukum Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-12-2011

Acts Referred:

Citation : (2011) 12 KAR CK 0137

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Pradeep Singh, for Pramila Associates, for the Appellant; R. Kothwal, CGC, for respondent - 1, 2 and 3 - served, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy

1. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

2. The petitioner had joined the Indian Army as a Sepoy in the year 1983 and was posted at Agra in the Para regiment Training Centre. It is the petitioner's case that after he served at Agra, he was posted to Manipur and according to him, he has been serving the army to the best of his ability and to the satisfaction of his seniors. In the year 1987, it was his case that he was posted to Dras at Jammu and Kashmir and after about a year, he was posted back to Agra. In the year 1995, he was promoted as a Naik and was posted to Bangalore at the Para Regiment. The petitioner submits that thereafter he was promoted as Havaladar and posted to Baramulla at Jammu & Kashmir. Subsequently, he was again posted to Agra in the year 2001 and he was serving there. The petitioner claims that he graduated, obtaining a Bachelor's Degree, while in service. Respondent No. 2 was the Commanding Officer of the petitioner and Respondent No. 3 was the Officer in charge of the records. Since he was a qualified Graduate, the petitioner claims he had an edge over his other colleagues and he informed

Respondent No. 2 that his wife was suffering from a mental condition and that she was keeping indifferent health. Respondent No. 2 had suggested that he voluntarily retire or seek a premature discharge from service. The petitioner was not ready to do so. However, he was ordered by one Capt. G.M. Khan, who was the Company Commander, to tender his papers for premature discharge from service. When he has further enquired as to why he should do so, he was informed that it was on the orders of Respondent No. 2. The petitioner felt that he had no choice but to submit his papers seeking premature discharge and the petitioner also put up his pension papers on the ground of premature discharge during the month of August 2005. The petitioner, however, had a guilt feeling that he was letting down his family by submitting his papers for premature discharge. It is the petitioner's case that his wife, as soon as she learnt about the petitioner's intention, had sent a telegram to Respondents 2 and 3, during August 2005 itself, requesting the authorities to cancel the request made by the petitioner towards discharge. She wrote a letter dated 9.9.2005 again requesting the said authorities to cancel the petitioner's application for premature discharge. She had stated that she believed that the petitioner may have been influenced to submit his papers for discharge. It transpires that one Lieutenant Colonel Yashpal Singh had replied to the wife of the petitioner stating that Respondent No.2 was the competent authority to decide the issue and therefore, she had written yet again to Respondents 2 and 3 requesting that they reconsider the intention of the petitioner seeking premature discharge. The petitioner was, however, directed to report at the Bangalore Para Regiment and accordingly, he had come to Bangalore from Agra to fulfil the formalities of the premature discharge. In the meanwhile, the petitioner, however, had changed his mind and wrote to Respondents 2 and 3 at New Delhi and also addressing other superior officers requesting cancellation of his intended discharge in terms of his letter dated 17.02.2006. However, the respondents having proceeded to process his application for discharge and having issued the impugned order, the petitioner is before this Court.

3. The learned counsel for the petitioner would point out that from the sequence of events, it is evident that the petitioner has withdrawn his request for discharge before the same was accepted and in spite of the same, the respondents having chosen to process the application for discharge notwithstanding the withdrawal of the same before its acceptance is opposed to principles of law and therefore seeks intervention of this Court.

4. The learned counsel for the respondents have entered appearance and filed Statement of objections to vehemently oppose the petition. Firstly, the learned counsel for the respondents would submit that the petition itself is not maintainable as this Court would have no jurisdiction in respect of the alleged cause of action. The learned counsel would point out that the petitioner was actually posted to Haryana and he had submitted his application seeking discharge while he was at Agra and the petitioner's application for such discharge having been accepted at Agra and the petitioner merely having come

to Bangalore to submit his papers for pension and the order of discharge having been served upon the petitioner at Agra, this Court would hardly have the jurisdiction to entertain the present petition and would submit that the petition ought to be rejected on that ground alone and without prejudice to this preliminary objection, it is further contended that the petitioner of his own volition, submitted his application seeking premature discharge. Allegations made against his superior officers to the effect that they had influenced and compelled him to submit his resignation, is Utter falsehood and mischievous on the part of the petitioner. The petitioner's wife suffering from a mental condition was known to all in the regiment as the petitioner made it a point to broadcast this circumstance and it was of his own volition that he had submitted his application for discharge. The petitioner's wife having addressed the respondent - officers seeking to withdraw the discharge, is wholly irrelevant as the entire process was complete in addressing the petitioner's application for discharge and when it was in the final stage of the order being formally issued to the petitioner, the petitioner having chosen to withdraw the application for discharge, is therefore not binding on the respondents who had already taken a decision to discharge the petitioner and the formal act of serving the order of discharge on the petitioner was alone pending. Therefore, in the eye of law, it cannot be said that the petitioner's application for discharge was not accepted. Hence, it is not open for the petitioner to seek withdrawal of his application for discharge after the same was processed by the competent authority and he had been asked to report at Bangalore along with his papers for pension on account of his premature discharge. The petitioner had also filed his papers in respect of pension was concerned which would be the clinching circumstance as to whether or not the petitioner's application for discharge from service was accepted, if in fact he had submitted his papers for pension, it Would follow that the petitioner was acting clearly on the understanding that his application for discharge was accepted.

For otherwise, the question of submitting his pension papers would not arise. Therefore, he would submit that viewed from any angle, there is no substance in the present petition as there is a completed offer and acceptance of the petitioner's application for premature discharge from service and acceptance by the authorities. The same being sought to be questioned at this point of time, would not arise and therefore, would submit that the petition be dismissed.

5. The learned counsel for the respondents would also contend that the petitioner was discharged from service in the year 2006 and if the present petition is entertained and the petitioner is directed to be reinstated into service, which requires a high degree of physical fitness, the petitioner who has been out of service for a period of five years would hardly be eligible to be reinstated into service in the absence of the petitioner's continued service with the respondent and he would be ill suited for the service, and therefore, would submit, it would also cause a heavy burden on the respondents being required to meet Ms claim for all consequential benefits by virtue of any such reinstatement. In view of

these several grounds, the learned counsel for the respondents would submit that it would neither be just nor expedient to consider the case of the petitioner and that the same be dismissed as not maintainable and being without merit.

6. Given these rival contentions, it is not in dispute that though the petitioner was directed to report at Bangalore to submit his pension papers, the petitioner had, even before the communication of acceptance of the order of discharge, sought to withdraw the same. This was to the knowledge of the respondents. The respondents seeking to negate the same on the ground that it would have to be presupposed that the petitioner was aware of the acceptance of his discharge by virtue of the fact that he had come to Bangalore from Agra on the footing that his application for discharge was accepted and therefore, he was submitting his pension papers would not be tenable. As in law, it is necessary that the acceptance of the offer would necessarily have to be communicated and in the absence of any communication, it cannot be said that there is acceptance of the offer. Applying that principle, it may be said that the petitioner's offer was not accepted before the petitioner withdrew the same. The fact that he was at Bangalore to submit his pension papers is wholly irrelevant in this regard. Insofar as the contention that the petitioner would be entitled to a large amount of compensation by virtue of any order of reinstatement if the order of discharge is set-aside, is a tenable contention. The petitioner not having discharged any service with the respondents over the years, being conferred with any such benefit of backwages, would be an onerous burden on the respondents and a largesse which is conferred on the petitioner, which ought not to be. It is in the discretion of this Court the grant of any compensation which would have to be restricted, appropriately. Insofar as the question of jurisdiction is concerned, though the petitioner could have filed the writ petition at Haryana or Agra or wherever the alleged cause of action is said to have arisen, the fact that the petitioner was challenging an order of discharge while he was residing at Bangalore and since the respondents have their Centre at Bangalore as well, there was no impediment for the petitioner to have filed the petition at Bangalore as it causes no prejudice to the respondents who have the means to contest the same whether it is at Haryana or at Agra or at Bangalore. Since the respondents have a pan India presence, there is no substance in the contention as regards jurisdiction. In that view of the matter, the petition stands allowed. The respondents shall reinstate the petitioner. However, the backwages that shall be payable to the petitioner shall be at 30% of what the petitioner would have been entitled to if he had continued in service. The "petitioner's deemed services, however, shall be taken into account though he was out of service from the date of the impugned order upto the date of this order, for the purpose of his pension and other service benefits.

With that observation, the petition stands allowed. The petitioner shall be reinstated within four weeks from the date of receipt of a certified copy of this order.