

(1996) 10 DEL CK 0076

In the Delhi High Court

Case No : Regular Second Appeal No. 32 of 1995 and Civil Miscellaneous Appeal No. 659 of 1995

Union of India

APPELLANT

Vs

Diwan Singh

RESPONDENT

Date of Decision : 01-10-1996

Acts Referred:

Army Act, 1950 — Section 140

Citation : (1996) 5 AD 566 : (1996) 39 DRJ 820

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : S.S. Sabharwal, Mona Aneja and B.K. Choudhry, for the Appellant;

Judgement

Usha Mehra, J.

(1) The Union of India felt aggrieved by the order of the Additional Senior Civil Judge whereby he accepted the appeal of the respondents thereby reversing the finding of the Sub Judge. The First Appellate Court decreed the suit by declaring that the form of discharge was not voluntary. It being illegal and without jurisdiction. Respondents were declared to be in continuous service through out. With further directions to pay all consequential benefits of service to them.

(2) It is against this order of the First Appellate Court that present appeal has been preferred, inter alia, on the ground that the respondents herein obtained voluntary discharge. Finding of fact arrived at by the Sub Judge could not have been reversed by misinterpreting the discharge order wrongly. The First Appellate Court ignored the evidence produced by the Union of India. Moreover, the ground of discharge given by the respondent as "domestic problem" was neither vague nor left for interpretation. In Army it is a common practice to seek discharge on "domestic problem" without specifying the exact nature of the domestic problem. Therefore, the reasoning given by the First Appellate Court is contrary to law, rules and also against the form of discharge placed on record.

(3) In order to appreciate the contention raised in this appeal, the brief facts of the case have to be mustered first. The respondents S/Shri Diwan Singh and Ranbir Singh were posted as Lance Naik to 20 Jat Regiment. Their Unit was deployed along Indo Pak Border in February,1991 to check infiltrators. They were posted as RD-77 and RD-78 on the deployment line. It was the case of the superiors of the respondents that respondents wrongfully detained a group of 47 Bangladeshi nationals Along with six others who were trying to cross over to Pakistan. This incident, according to the appellant, was not reported by these respondents to the Battalion Head Quarters without loss of time. They were tried summarily on 19th February,1991. As a punishment they were deprived of their rank of Lance Naik. They were further sentenced to pay fine equivalent to 14 days" salary. According to the appellant they were made to sign on blank papers which the superior officials used as Form of Discharge and inserted the ground of discharge as domestic problem. On the basis of this forged Form of Discharge they were discharged from service on 26th February,1991 under Army Rule 13 (3) (III) & (iv). Because of the illegal "discharge" they represented to the higher authorities clearly mentioning that the Form of Discharge was got signed when it was blank under threat of punishment of 12 years. Their signatures were obtained on blank papers. Those blank papers subsequently were converted with malafide intention by their superiors as Form of Discharge. In fact they never submitted the Form of Discharge nor wanted to be relieved from service particularly after having undergone punishment as awarded on 19th February,1991. There was no justification for their asking for the discharge on 26th February,1991". Their representation was rejected, Therefore, they filed the civil suit. The learned Sub Judge concluded that they could not have been threatened. The threat of sending them for 12 years imprisonment cannot be appreciated nor tenable because such threat was contrary to Section 64(f) and 69 of the Army Act,1950. Under those provisions for such an offence punishment could not have been more than seven years. Hence, there was no question of threat being held out to the present respondent (plaintiff before the Trial Court). Moreover, the respondents did not implead those officers as parties who according to them extended the said threat nor were those officers summoned as witnesses. As regards obtaining the signatures on blank papers that was also not accepted by the Trial Court. The Trial court drew presumption against the respondents herein u/s 140 and 142 of the Army Act and held that the Form of Discharge was signed by the respondents voluntarily . This finding was reversed in first appeal.

(4) In the second appeal unless there is a substantial question of law, Court cannot interfere with the judgment particularly when it is basic facts. Mr.S.S.Sabharwal, appearing for the Union of India contended that . interpretation of the "Form of Discharge" raises a substantial question of law In this regard "he placed reliance on the decision of the Supreme Court in the cases of Jadu Gopal Chakravarty (Dead) by his Lrs. Vs. Pannalal Bhowmick and Others, , Bhusawal Borough Municipality Vs. Amalgamated Electricity Co. Ltd.

and Another, and Smt. Vidya Wati (deceased) through her L.Rs. Vs. Hans Raj (deceased) through his L.Rs., .

(5) There is no quarrel with the proposition of law laid down by the above authorities cited by the counsel for the appellant. But there the Courts were not concerned whether the document was forged or signatures were obtained on blank papers. In all those cases Courts were concerned with the interpretation of the document. In the case of *Jadu Gopal Chakravarty* (supra) the construction of the basic document was deed of trust. In that case the deed creating a religious trust came up for interpretation because that deed was capable of two possible constructions, namely, whether it created only a partial dedication and not an absolute debutter, the properties being charged for seva puja or other religious purposes to the extent specified therein, and secondly whether it created an absolute debuttar in favor of the deity. Therefore, the construction of the document. Since the deed of trust was capable of two interpretations, the Court opined that such an interpretation touches very important question of law hence appeal was maintainable. In the case of *Smt. Vidya Wati* (supra) the question of interpretation was the contract by virtue of which possession of the business or the shop was given. The question came up for consideration was whether it was a lease or not. I am afraid that is not the case in hand. In the present case respondents were punished. They underwent that punishment. Their case through out had been that under threat their signatures on blank papers were obtained which were ultimately used as Form of Discharge. Whether signatures were obtained on blank papers or on a filled form touches the merits of the case. It does not require any interpretation of the document. Even otherwise as per appellant the "Form of Discharge" was purported to have been signed by the respondents on 19th February, 1991. The perusal of the Form of Discharge shows that no opportunity was afforded to the respondents to withdraw as alleged by the appellant. The speed with which the discharge was recommended and accepted smacks the submissions of the appellant. On 19th February, 1991 the form was purported to have been signed by the respondents, it was recommended to the higher authority on the same day who in turn further recommended to his superiors for acceptance. The appropriate authority accepted the recommendation on 19th February, 1991 itself. This contradicts the assertion of the appellant that opportunity was given to the respondents to withdraw the request of discharge. In fact on 19th February, 1991 itself everything was completed. Respondents submitted the Form of Discharge and they stood discharged from the service on the same day. Had they sought for the discharge as put up by the appellant there was no question of them making representation immediately on being discharged from service. They alleged that they had been played upon them. In fact the assertion of the appellant that is signatures of respondents were not taken on blank papers could not be proved on record. On the contrary assertion of the respondents that their signatures were obtained on blank papers which were used as Form of Discharge remained un rebutted on record. The appellant Union of India was proceeded ex parte. It

never led any evidence to rebut the assertion of the respondents. In the absence of there being any rebuttal there was no question of drawing presumption against the present respondents or drawing any presumption u/s 140 and 142 of the Army Act. The appellant did not adduce any evidence nor the evidence of the commanding officer before whom it is alleged that the respondent filed the Form of Pre-mature Discharge from service nor evidence of those persons adduced who asked the respondents to re-consider their request of discharge and that the respondents persistently requested that they be discharged. In the absence of any such evidence having been adduced by the appellant, the First Appellate Court rightly concluded that discharge of the respondents from the service w.e.f. 23rd February, 1991 was not legal. This was a question of fact based on the documentary evidence placed on record that the Court concluded that the said discharge was not voluntary. In view of the fact that the First Appellate Court dealt with the fact at length, I see no reason to interfere with the same in this second appeal. To my mind, no question of law has been raised in this appeal. In the facts of this case it cannot be said that the learned First Appellate Court arrived at a perverse finding or the Form of Discharge was capable of two interpretations. In this appeal the appellant has alleged that findings of the First Appellate Court are contrary to the facts on record. In fact no evidence was adduced by the appellant before the Courts below, Therefore, there was no question of First Appellate Court not relying on the same nor his finding can be called perverted. The findings of the First Appellate Court which are based on documentary evidence cannot be interfered with.

(6) For the reasons stated above, I find no merits in the appeal Dismissed.