

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

LPASW no.37/2008.

Date of decision: 11.02.2011

Karnail Chand V. Union of India and others.

Coram:

**Hon'ble Mr. Justice Virender Singh-Judge
Hon'ble Mr. Justice Sunil Hali- Judge.**

Appearing counsel:

For the appellant(s) :Mr. H.C.Jalmeria, Advocate.

For the respondent(s) :Mr. K.K.Pangotra, ASGI.

i/ **Whether to be reported in : Yes/No.
Press, Journal/Media.**

ii/ **Whether to be reported in : Yes/No.
Digest/Journal.**

Per Sunil Hali-J.

The appellant-writ petitioner was enrolled in the Army on 19.04.1995. While being in service with Dogra Scouts, he came to be admitted in Section Hospital, 36 Sector on 23.03.1998 for an ailment diagnosed as Complete Deafness in both ears. After being examined in the Base Hospital by the Medical Board, he was downgraded to low Medical Category CEE (P) for two years w.e.f. 20.05.1998 for the disease "BILL SENSORI NEURAL DEAFNESS". He is stated to have gone on sanctioned leave for thirty days w.e.f. 10.01.1999 to 08.02.1999. He rejoined the duty on 20.03.1999 F.N. after

having overstayed for 39 days, for which he was awarded 28 days Rigorous Imprisonment and 14 days detention by the Commanding Officer, Dogra Scouts.

The application of the appellant-writ petitioner seeking voluntarily discharge from service on 14.08.1998 was not acceded by the Commanding Officer and recommended for his detention in the Army. The appellant-writ petitioner again applied for seeking discharge from the Army service on extreme compassionate grounds. This request of the appellant-writ petitioner found favour with the respondents when he was ordered to be discharged from service w.e.f. 31.10.1999. It is pertinent to mention herein that on 08.08.1999, the Medical Board had been conducted for assessing the medical status of the appellant-writ petitioner, and his disability was assessed at 40% for five years, which was attributable to the condition of service.

After his discharged from the army service, his case for disability pension was forwarded to PCDA (P), Allahabad, which came to be rejected on the ground that he was discharged from service on his own request, as such, was not eligible for disability pension. This order was questioned by the appellant-writ petitioner in writ

petition (SWP no. 1660/2000), in which following directions were issued on 20.08.2002:-

- (i) As to whether the petitioner is the author of the Annexure-A, referred to above, i.e. the letter written in Hindi;
- (ii) In case, the petitioner is not found to be the author of said Annexure, then his claims for disability pension and also his prayer that he be re-examined by the Medical Board would be considered;
- (iii) In case, the petitioner is found to be fit, then the respondents may also consider the desirability of re-engaging the petitioner by permitting him to withdraw Annexure A, in case it is found to be written by him. However, this is a matter on which discretion would be exercised by the respondents.
- (iv) Let a decision be taken within a period of four months from the date of appearance of the petitioner before the concerned authorities.

Twofold directions were issued by this Court in the aforesaid case that:-

- (a) In case, it is found that communication seeking voluntarily discharge is found to have not been signed by the appellant-writ petitioner then his claim for

disability pension was to be re-examined;

(b) In case, it is found that letter seeking voluntarily discharge was written by the appellant-writ petitioner, in that eventuality, in case he is found fit, his case for re-engagement was to be considered by the respondents.

It seems that the respondents after examining the case found that letter seeking voluntarily discharge has been written by the appellant-writ petitioner and his case for re-engagement as directed by the Court would depend upon the certificate granted by the Medical Board. Accordingly, Re-survey Medical Board was held on 01.02.2003, wherein the disability was assessed less than 20%. After the report of the medical board, the case of the appellant-writ petitioner was again taken up with the Army Headquarter by the Dogra Regiment vide their letter dated 20.09.2003 for seeking further course of action. On this, Army Headquarter vide its letter dated 11.12.2003 directed that since the appellant-writ petitioner had been found fit by the Medical Board, the possibility of re-engaging him into service be considered after obtaining suitable inputs from the Unit (Dogra Scouts). Accordingly, the case of the appellant-writ petitioner was taken up with the Dogra Scouts, and vide its letter dated

24.01.2004 forwarded the output from the Records of the Dogra Regiment and the Dogra Regiment in turn submitted the same to the Army Headquarter for seeking further advice. After perusal of the records, the Army Headquarter directed the Dogra Regiment to issue a speaking order in this regard. Accordingly, the same was issued vide letter dated 31.05.2004, whereby the claim of the appellant-writ petitioner for his re-engagement was declined. Vide order impugned, the claim of the appellant-writ petitioner for his re-engagement was rejected on the ground that he had overstayed leave by 39 days from 09.02.1999 to 19.03.1999 for which he was awarded 28 days Rigorous Imprisonment and 14 days detention, as such, it was not found desirable to re-engage him.

Aggrieved by the decision aforesaid, a writ petition came to be filed, which came to be dismissed on the ground that since the appellant-writ petitioner was discharged on his own request, therefore, he could not claim re-engagement as a matter of right. It is under these circumstances, the present appeal has been preferred.

We have heard learned counsel for the parties and perused the record.

The issue in this appeal relates to right of the appellant-writ petitioner for seeking re-

engagement in terms of the directions passed by this Court in SWP no.1660/2000 dated 20.08.2002 as discussed herein supra, which was a twofold direction.

For the purpose of determination of this appeal direction no.2 is only required to be considered as it provides that in case it is found that letter seeking voluntarily discharge was written by the appellant-writ petitioner, in that eventuality, his case for re-engagement be considered by the respondents, even otherwise found fit by the Medical Board.

The respondents have stated that letter of discharge was written by the appellant-writ petitioner and reasons for not re-engaging him as provided by this Court, relate to his conduct as a member of the armed force. While dealing with the impugned order, learned Single Judge has dismissed the petition only on the ground that the appellant-writ petitioner has sought discharge on his own request, as such, he is not entitled to seek his re-engagement.

Learned Single Judge in our view has not correctly appreciated the directions passed by the Co-ordinate Bench of this Court in the earlier writ petition (SWP no.1660/2000). Request for re-engagement was required to be considered only in the event, if, it is found that application of discharge was written by the appellant-writ petitioner himself. Learned Single Judge has not

examined the issue regarding the re-engagement of the appellant-writ petitioner as was directed by the Court in SWP No.1660/2000.

After having said so, it is to be seen as to whether reasons for not re-engaging the appellant-writ petitioner are justified in the facts and circumstance of the case. The only ground taken is that appellant-writ petitioner has already suffered detention on account of overstay of leave of 39 days. It is also revealed that the appellant-writ petitioner had shown casual attitude in discharging his duties while serving in CI Operation areas and found shirking responsibilities. This, in our view, would not be a ground for not re-engaging the appellant-writ petitioner. The appellant-writ petitioner has already served the punishment for over staying of leave. With reference to his conduct of being casual attitude in discharging his duties cannot be accepted unless some specific instances are brought to the notice of the Court.

We find that after having found the appellant-writ petitioner medically fit by the authority concerned, which alone could be an impediment for his re-engagement, the respondents were required to examine the case of his re-engagement strictly in accordance with the rules.

In view of the above, we, therefore, partly allow the appeal and direct the respondents to consider the case of the appellant-writ petitioner for his re-engagement within a period of two months in accordance with the rules from the date a copy of this order is served upon them. Judgment of the learned Single Judge to that extent shall stand modified.

Disposed of along with connected CMP(s).

(Sunil Hali)
Judge

(Virender Singh)
Judge

Jammu
11.02.2011
'Madan' PS