

**IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH,
GUWAHATI**

O.A. – 03/2014.

PRESENT

**HON`BLE MR. JUSTICE B.P.KATAKEY, MEMBER (J)
HON`BLE VICE ADMIRAL A.G.THAPLIYAL, AVSM & BAR, MEMBER (A)**

Shri Dhananjoy Gope

..... **Applicant.**

By legal practitioners for
Applicant.

Mr. Rajib Sarma,

Mr. M.K.Dutta.

-VERSUS-

1. Union of India,
Represented by the Secretary,
Govt. of India, Ministry of Defence (MoD),
Room No. 101, South Block, New Delhi –1.
2. The Chief of Army Staff,
New Delhi- 1.
3. The GOC-In-Chief,
Headquarters, Eastern Command,
Fortwilliam, Kolkata.
4. The Director,
Army Recruiting Office,
C/O 99 APO.
5. The Commandant,
58 Gurkha Training Centre,
C/O 99 APO,
Happy Valley, Shillong.
6. The Lieutenant General,
General Officer Commanding,
101 Area, Shillong.

..... **Respondents..**

Ms M.Bhattacharjee,
Proxy Counsel for
Mr. S.Bhattacharjee, CGSC

Date of Hearing : 29.03.2016

Date of Judgment & Order : 29.03.2016.

JUDGMENT & ORDER

(By B.P.Katakey,J.)

The applicant, who was recruited to the Indian Army on 17th September, 2009, and was discharged on 5th November, 2009, on his own request, has filed this present O.A. challenging the order dated 14th September, 2013 passed by the General Officer Commanding, 101 Area, rejecting his application challenging his order of discharge dated 5th November, 2009.

2. We have heard Mr. Rajib Sarma, learned Counsel appearing for the applicant and Ms M.Bhattacharjee, learned Proxy Counsel for Mr. S.Bhattacharjee, learned CGSC, assisted by Col Anand, OIC, AFT Legal Cell, Guwahati, appearing for the respondents.

3. Mr. Sarma, learned Counsel appearing for the applicant, referring to the application dated 5th November, 2009 filed by the applicant, which has been annexed as Annexure-B to the counter affidavit filed by the respondents, has submitted that as it is evident therefrom that the application dated 5th November, 2009 filed by the applicant was received only on 8th November, 2009, there could not have been any proceeding on 5th November, 2009 approving discharge of the applicant from service based on his application dated 5th November, 2009. Learned Counsel, therefore, submits that his discharge from service is contrary to the provisions of Army Act and the Rules framed thereunder and hence needs to be interfered with.

4. Per contra, Ms Bhattacharjee, learned Counsel appearing for the respondents referring to the records produced before this Tribunal, which also contains the original application dated 5th November, 2009 filed by the applicant, has submitted that the application filed by the applicant does not bear the signature of any authority with the date 8th November, 2009, which application in fact was filed by the applicant on 5th November, 2009 and was approved by the Commanding Officer in the proceeding dated 5th November, 2009. It has also been submitted that the document which has been annexed as Annexure-B to the counter affidavit filed by the respondents is a copy of the attested copy of the application dated 5th November, 2009 filed by the applicant and was attested by the concerned authority on 8.11.2009. Learned Counsel referring to the proceeding dated 5th November, 2009 has also submitted that it is evident therefrom that the request for release made by the applicant on 5th November, 2009 was taken up for consideration immediately as required under the Rules and the same was approved by the Commanding Officer, who is competent to do so, on that day itself and hence the applicant was discharged from service on 5th November, 2009. Learned Counsel, therefore, submits that the O.A. deserves to be dismissed.

5. The submissions advanced by the learned Counsel for the parties received our due consideration. We have also perused the pleadings of the parties, including the documents appended thereto. The original records produced by the learned Counsel for the respondents have also been perused.

6. It appears from the record that the applicant has filed the application on 5th November, 2009 seeking his release from service on the ground that he wants to go back home. The said application was taken up- for consideration immediately on the date of filing, i.e. 5th November, 2009, as required under Rule 18(2) of the Army Rules, 1954. The Commanding

Officer has approved the discharge of the applicant on his own request on 5th November, 2009. Annexure- B document, which has been annexed to the counter affidavit filed by the respondents, though bears the signature of an Officer with the date 8th November, 2009, the records produced reveals that the carbon copy of the application filed by the respondents only bears the date 8th November, 2009, which was nothing but the attestation on that date. The original application filed by the applicant does not bear any signature or date of any Officer, which was accepted by the authority and approved by the Commanding Officer on 5th November, 2009. The applicant has also not contended that he never filed any application on 5th November, 2009. It is, therefore, an admitted position of fact that the applicant in fact has filed the application for his discharge from Army on the ground stated by him in his application.

7. That being the position, we do not find any merit in the O.A. to interfere with the speaking order dated 14.09.2013 and hence the O.A. stands dismissed.

8. No costs.

MEMBER (A)

MEMBER (J)