

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

OA- 02 OF 2015

P R E S E N T

HON'BLE MR. JUSTICE B.P.KATAKEY, MEMBER (J)

HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (A)

No.436985M Rank Sep Name Kaimuanlal,

S/O. Shri Soivom Vaiphei

Resident of Demtring, Madantring,

Block-II, Shillong,

East Khasi Hills District, Meghalaya.

.....Applicant

Mr.H.Nongkhlaw

Legal Practitioner

For Applicant.

-Versus-

1.The Union of India,

through the Secretary,

Ministry of Defence,

DHQ PO New Delhi-110011

2.The Commanding Officer,

3rd Bn the Assam Regiment

C/O. 99 APO..

3.The Commandant,

Assam Regiment Centre

Happy Valley, Shillong, Meghalaya.

4. The Senior Record Officer,

Assam Regiment Centre

Happy Valley, Shillong, Meghalaya.

..... Respondents

Mr.C.Baruah CGSC

Legal Practitioner

for Respondents.

Date of Hearing : 18.04.2016

Date of Judgment

& Order : 18.04.2016

JUDGMENT & ORDER(ORAL)

(B.P.Katakey,J)

The applicant, No.4369685M Sep Kaimuanlal, who was enrolled in the Indian Army on 12.05.2001 and was discharged w.e.f. 01.05.2013, has filed the present OA challenging the order of discharge, contending, *inter alia*, that though the respondents are required to follow the procedure laid down in the Army Rules, more particularly, Army Rule 13(3) III (v), he has been discharged without following the said procedure. The applicant has also contended that at

the time of grant of leave for 28 days w.e.f. 01.03.2013, his signature in a blank paper was obtained by the respondent which has subsequently been converted into the discharge letter, though he never filed any such application seeking his premature release from service. The applicant, therefore, contends his release from service based on such application is liable to be set aside and quashed.

[2] The respondents have filed their counter affidavit denying the allegations made by the applicant relating to obtaining signature of the applicant in blank paper, contending, inter alia, that since the eight red ink entries were made in his service record, the applicant desired to leave the Indian Army and accordingly, he filed his application for premature release, which was accepted by the authority and hence, he was discharged from service w.e.f. 01.05.2013. It has also been contended that since the applicant was discharged from service at his own request, the provisions contained in Army Rule 13(3)III(v) is not applicable and hence, there is no question of its compliance.

[3] We have heard Mr. H.Nongkhlaw, learned counsel appearing for the applicant and also Mr. C.Baruah, learned CGSC assisted by Col Anand, OIC,AFT,Legal Cell,Guwahati, appearing for the respondents.

[4] The learned counsel appearing for the applicant referring to the averments made in the OA has submitted that since the applicant never filed any application seeking his premature release from service and his signature having been obtained in blank paper, which was subsequently converted to an application seeking premature release,

the impugned order issued by the respondent authorities releasing the applicant from service cannot sustain in law. It has also been submitted that though there are eight red ink entries in his service records, if the authority decides to discharge him from service, the procedure laid down in Army Rules 13(3) III (v) has to be followed, which having not been done, the impugned order of discharge is liable to be set aside and a direction may be issued for reinstatement of the applicant in service with full service benefits.

[5] Per contra, the learned counsel appearing for the respondents producing the relevant records and also referring to the averments made in the counter affidavit filed, has submitted that since there were already eight red ink entries in the service book of the applicant, he filed an application on 19.05.2012 seeking voluntary release from service which was accepted by the authority on 26.05.2012 and thereafter, on being approved by the higher authority, he has been released from service at his own request w.e.f. 01.05.2013. The learned counsel submits that since the applicant has been released from service at his own request, the provisions of Army Rule 13(3)III (iv) is applicable and not Army Rule 13(3)III(v). It has also been submitted that the contention of the applicant that his signature was obtained in a blank paper cannot be accepted since the applicant in the OA has not stated when and who has obtained his signature in the blank paper. The further submission of the learned counsel is that admittedly the applicant after expiry of leave on 28.03.2013 did not report for duty, as the applicant himself has stated in the OA that he reported back to duty only on 30.04.2013. The

learned counsel further submits that the applicant has already accepted his release from service by accepting the benefits given to him i.e. retirement gratuity and other retiral benefits.

[6] We have considered the submissions advanced by the leaned counsel for the parties and also perused the pleadings. We have also perused the original records produced by Mr.C.Baruah, learned CGSC appearing for the respondents.

[7] The records reveal the existence of an application dated 19.05.2012 signed by the applicant giving his Army No. as well as his rank requesting his premature release from service due to domestic issue. The contention of the applicant is that he never filed such application and his signature was obtained in blank paper. In Para 4 of the OA, the applicant has stated that *while granting leave for 28 days and before he was sent home on leave he made to sign in a blank paper by the Respondents and subsequently he was informed that he has been discharged from service at his request which was totally false and baseless as the applicant had never requested to any of the Respondents to discharge him from service.*

[8] Such statement of the applicant in OA is very vague. The applicant has not disclosed when and who has obtained his signature. The applicant has also not impleaded the person who has allegedly obtained his signature in blank paper and also the person who has subsequently converted the same to an application for his release at his own request. That apart, the applicant in the OA has stated that

though he was granted leave upto 28.3.2013, he has reported to the authority more than a month thereafter i.e. on 30.04.2013 that too verbally. The applicant could not produce any documents or writing by which he has complained to any authority relating to obtaining his signature in the blank paper and conversion of the same to a letter requesting his release from service at his own request. Hence, the contention of the applicant that his signature was obtained in blank paper which has subsequently been converted to an application requesting his release at his own request cannot be accepted.

[9] In view of the aforesaid discussion, the contention of the applicant that he is entitled to a notice in view of Army Rule 13(3) III (v) cannot also be accepted as the applicant has been released at his own request

[10] For the aforesaid reasons, we do not find any merit in the present OA and hence, the same is dismissed. No costs.

MEMBER (A)

MEMBER (J)