

(2008) 03 P&H CK 0037

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Suresh Chandra Pandey

APPELLANT

Vs

The Union of India (UOI) and
Others

RESPONDENT

Date of Decision: March 14, 2008

Acts Referred:

- Army Act, 1950 - Section 63
- Constitution of India, 1950 - Article 311

Citation: (2008) 152 PLR 675 : (2009) 5 SLR 686

Hon'ble Judges: Permod Kohli, J

Bench: Single Bench

Judgement

Permod Kohli, J.

The petitioner has assailed the order dated 5.5.1994 discharging him from army service retrospectively with effect from 9.11.1993 from the post of Naik and also the orders of punishment (three red entries) awarded to him during his service.

2. The petitioner was enrolled as Recruit Sepoy in the Indian Army on 15.11.1980. On completion of the training, he was promoted to the rank of Lance Naik in the year 1987 and to Naik in the year 1990. During the period, he was serving as Sepoy, he was awarded punishments of 28 days Rigorous Imprisonment for overstaying leave on 28.5.1981 and another punishment came to be imposed upon him on 6.5.1992 for shouting during roll call. He also suffered another punishment on 5.6.1992 for absent from D.C.B. Post No. RD-20, for 30 minutes. Yet another punishment was imposed upon him on 28.6.1992 for directly representing to the authorities without following the official channel. A similar punishment was imposed upon him on 9.7.1993 for 10 days Rigorous Imprisonment for violation of Section 63 of the Army Act for representing higher authorities directly without following the prescribed channel.

3. One of the punishments dated 28.6.1992, however, came to be expunged from his service record on acceptance of his representation/appeal by the higher authorities. All the four punishments earned by him were duly recorded in his service record. On the basis of four red entries in his service record, a Show Cause Notice was issued to him.

4. A show cause notice dated 13.7.1993 was sent to him directing him to show cause why he should not be discharged from service vide item III(V) of Table Annexed to Army Rule 13 for having suffered four punishments referred to in the Show Cause Notice. It was also mentioned that on account of his persistent unsatisfactory record, he has proved himself undesirable and whose retention in service is considered inadvisable. This show cause notice was allegedly sought to be served upon him by the CEO on 17.7.1993, who has alleged that the petitioner refused to acknowledge the show cause Notice.

5. However, he was informed to reply to the show cause notice by 25.07.1993. It is alleged by the respondents that on failure of the petitioner to reply to the Show Cause Notice, he stands discharged from service as undesirable under the provisions of Item III(V) of Army Rule 13. The petitioner claims to have filed statutory complaint dated 13.1.1993, which is still pending with the respondent authorities. The petitioner has challenged this impugned order on the following grounds:

1. That the order has been passed due to inimical attitude of the CEO Lt. Col.

Y.N. Murthy, who has imposed three punishments in succession between 6.5.1992 to 28.6.1992.

2. No show cause notice was ever served upon him;

3. The order of discharge is stigmatic as he has been discharged from service as undesirable element, which has also deprived him of his future employment.

4. Retrospective discharge from service is itself illegal and impermissible.

6. I have heard the learned Counsel for the parties at length and perused the record of the case.

7. Though the petitioner has alleged that three punishments were imposed upon him by the CEO Lt. Col. Y.N. Murthy, was inimical to him, however, neither he has been impleaded as a party-respondent nor any specific allegations of mala fide have been made in the petition. The allegations are totally vague and deserve no cognizance.

8. The petitioner has denied service of Show Cause Notice. Respondents have stated that Show Cause Notice was sought to be served upon him but he refused to accept the Show Cause Notice. There is a specific averment that Show Cause Notice was tendered to him in the presence of a number of officers and a formal proceedings were also drawn in this regard. Copies of proceedings regarding

tendering of Show Cause Notice and Show Cause Notice Annexures R-3 and R-IV, respectively, have also been placed on record. There is no reason to disbelieve this averment.

9. It is lastly contended that the order of discharge is stigmatic in nature, particularly when the petitioner has been deprived of his future employment. There are two aspects of the matter. One is, whether the order is stigmatic in nature and second, whether the petitioner can be deprived from seeking future government employment. It is the admitted case of the petitioner that four punishments have been awarded to him. Rule 13(111)(V) of Army Rules, permit the authorities to discharge a person from the Army Service being undesirable person. Such a discharge is permissible where retention of such an Army Personnel in service is not found to be desirable. This neither, in any manner, cause a stigma on the personnel nor it amounts to misconduct. The order has been passed after due compliance of the rules. A Division Bench of this Court in the case of Raj Singh (Ex. Gunner) v. Union of India and Ors. 2003(2) S.L.R. 138, has held that where the order of discharge has been passed by the competent authority specified under Rule 13(111)(V) of the Army Rules, there is no violation of any provisions of law and such an order is valid. Learned Counsel for the appellant has referred to Jagdish Mitter v. The Union of India AIR 1964 Supreme Court 449, wherein an order of discharge of a temporary servant on the ground that he was undesirable to be retained in Government Service has been held to be an order of dismissal. This judgment has been passed on account of non-compliance of Article 311(2) of the Constitution of India. Admittedly, the petitioner is not entitled to protection under Article 311 of the Constitution of India and the rule itself permit discharge if the retention in service of an Army personnel is undesirable. This judgment is of no help to the petitioner.

10. However, there are other aspects of the matter (i) the petitioner has been debarred from seeking future employment, (ii) his discharge from service is retrospective. The condition incorporated in the impugned order with regard to future employment is not sustainable. The petitioner has not been removed from service or dismissed on account of any misconduct on any inquiry or conviction. Thus, the condition stipulation in the impugned order is impermissible under law. Even Rule 13(III)(V) of the Army Rules wherein the petitioner has been discharged do not provide for such a condition. Similarly, certificate of discharge is issued on 5.5.1994 but petitioner was discharged with effect from 9.11.1993 retrospectively. Once the discharge certificate is issued on 5.5.1994 and petitioner was allowed to continue in service till then, the condition in the certificate for retrospectively discharge deprives him of his emoluments etc. for the period 9.11.1993 to 5.5.1994. Otherwise, also discharge from service retrospectively is not permissible under the rules. Hence, this petition is partly allowed and the condition imposed in the impugned order debarring the petitioner from future employment and his discharge from 9.11.1993 are hereby quashed while upholding the rest of the order. No costs.