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Babu Ram Vs. Union of India

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Court : Delhi

Decided On : Jul-08-1997

Reported in : 70(1997)DLT19

Judge : Dalveer Bhandari, J.

Acts : Constitution of India - Article 226; Army Rules, 1954 - Rule 13(3)

Appeal No. : Civil Writ Petition No. 2529 of 1996

Appellant : Babu Ram

Respondent : Union of India

Advocate for Pet/Ap. : H.K. Saxena and; Gaurav Duggal, Advs

Judgement :

Dalveer Bhandari, J.

(1) The petitioner was enrolled as a soldier in the army on 26.4.1994. He joined the -training in PL-7 Sakardu Training Company, at the Jammu and Kashmir Rifle Regimental Centre under the command of Major H.S. Bhagat, respondent No. 3.

(2) According to the petitioner, on 10.9.1994, L/Hav. Ashwani Patiyal under the threat of physical punishment, and mental torture forced him to sign some papers which were used as application for discharge. It is alleged that on 10.9.1994, Maj.

H.S. Bhagat recommended discharge under Rule 13(3) item Iv on compassionate ground although there was no provision of discharge the petitioner on compassionate ground in the Rules.

(3) On 16.9.1994, Battalion Commander Col. K.K. Chandal recommended discharge of the petitioner. The petitioner made representation to Hav. Rudra Khawas against his alleged request for discharge immediately after he had learnt about the same. It is the case of the petitioner that he was not given discharge certificate for quite some time and he had to send a number of representations.

(4) Ultimately, on 10.3.1995, the discharge certificate was delivered to the petitioner indicating that he w?s discharged under Army Rules 13(3)IV on compassionate ground.

(5) It is also the case of the petitioner that in his application he had never mentioned the words 'discharge at his own request' but these words were superimposed later on. The petitioner submitted that he had sent representation to the Secretary, Government of India, Ministry of defense against his illegal discharge. He also complained against the concerned Authorities for not returning his metriculation certificate.

(6) The Under Secretary to the Govt. of India, Ministry of defense rejected the representation on 26.2.1996, intimating the petitioner that the discharge was granted to him at his own request and no evidence has come to their notice by which it could be established that any force, coercion or inducement of any kind was used against the petitioner.

(7) The petitioner has approached this Court for quashing the order discharging him w.e.f. 28.10.1994. This Court issued a show cause notice to the respondents on the writ petition of the petitioner and in pursuance thereto a counter affidavit has been filed on behalf of the respondents. It is averred in the counter affidavit that the petitioner was discharged from the service on compassionate ground at his own request. It is submitted that the petitioner is a metriculate and the application submitted for discharge was written in Hindi. It is also submitted that the petitioner knew and understood the contents of application and its

consequences completely and now the petitioner cannot be heard to say that he did not understand the contents of the application and its consequences.

(8) It is mentioned in the counter affidavit that the petitioner did his training for about six weeks satisfactorily and thereafter he did not take interest in the military training. As a matter of fact, the petitioner could not withstand the strain and stress of the training after some time, thereforee, he had put up his application for discharge from the service willingly and not under any pressure.

(9) It was categorically denied on behalf of the respondents that any other words were superimposed at any point of time in the application of discharge. It is also mentioned in the counter affidavit that a proper enquiry has been conducted after recording of the statements of many concerned officials. Hav. Ashwani Patiyal in his statement mentioned that he was on duty at the relevant time and he has not made the petitioner to sign any papers. Similarly in the statements of other four officers who had done the training with the petitioner had stated that the petitioner Babu Ram had obtained discharge from the army and left for home town. After going to home town, he had leveled allegations against L/Hav. Ashwani Patiyal and eithers which are wholly unsustainable and without any foundation.

(10) I have heard the learned Counsel for the parties and perused the relevant documents. In my considered opinion, it is abundantly clear from the document on record that the petitioner has sought discharge at his own and the same was approved by the concerned Authorities. It seems that the petitioner could not cope with the stress and strain of the military training and in these circumstances he sought the discharge from the army voluntarily. The petitioner's application torn discharge has been considered by the concerned Authorities and they have come to the conclusion that the petitioner has sought the discharge at his own request and now the petitioner cannot be permitted to take a somersault that some words in the application were superimposed and by levelling indiscriminate and wholly unsustainable allegations against the concerned Authorities.

(11) In view of my aforesaid conclusion, I do not find any merit in the writ petition. The writ petition is accordingly rejected. But in the facts and circumstances of this case, I direct the parties to bear their own costs.

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