

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1166/92

New Delhi this the 25th Day of July 1997.

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)
Hon'ble Shri S.P. Biswas, Member (A)

Shri Tribhuwan Singh,
P-3/364-365 Sultan Puri,
New Delhi-110 041.

Petitioner

(By Advocate: Ms. S. Janani)

-Versus-

1. Union of India,
The Secretary,
Ministry of Defence,
New Delhi.
2. The Director General of Ordnance Services,
Army Ordnance Corps,
Army Headquarters,
New Delhi.
3. Army Ordnance Corps Records,
P.B. No. 3 Thimjulgherry Post,
Secunderabad-500 015.
4. The Commandant,
Central Vehicle Depot,
Delhi Cantt.
New Delhi-110 010.

Respondents

(By Advocate: Shri M.K. Gupta)

ORDER

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)

The petitioner was an ex-serviceman at the time when an interview to the post of Armourer was held on 10.1.1989. He had produced all the records including his discharge book at the time of his interview. He was declared successful and was appointed as Armourer HS II in the pay scale of Rs. 1200-1800 on a temporary basis with probation for two years.

2. The services of the petitioner was subsequently terminated by an order dated 29.3.1990 on the ground that the petitioner did not produce the original Army Discharge Certificate issued to him by

the Office of the EME Records Secunderabad till that date. The termination order was issued under proviso to sub Rule (1) of Rule 5 of CCS (Temporary Services) Rules, 1965. He filed an appeal on 5.4.1990 stating that even though he had produced the discharge certificate at the time of interview, the same was lost in the month of May 1989 while travelling in DTC bus and immediately thereafter an FIR was lodged with the police and moved an application through the EME Records for a duplicate discharge certificate on 1.6.1989. In the circumstances the notice given by the respondents to produce the discharge certificate within one month could not be complied with. It was also alleged that whatever documents he had, he had submitted, when duplicate discharge book is received by him, even though he was not be in a position to produce the same in time. But the respondents did not agree with the submissions made in the appeal and rejected the same by an order dated 2.5.1991, stating that the termination of the petitioner was in order and the same was in accordance with the rules.

3. The learned counsel for the petitioner submitted that the termination issued only on the ground of non production of his original discharge book is illegal since the photocopy of the same was already furnished and the duplicate copy had been applied for and it was not within his powers to obtain the same within the period stated by the respondents for submission of the original certificate. It was also submitted by the petitioner that in any event the

duplicate certificate was already in the custody of the respondents before the appeal was rejected and since the required certificate was with the respondents themselves during the pendency of the appeal, the rejection of the appeal is, therefore, illegal and one passed without application of mind. The learned counsel for the petitioner relied upon a letter of the Deputy Director, EME Secunderabad written on 15.4.1991 that is to say before the appellate order was passed."IAFY1964A (For Use In Substitution of A lost Discharge Certificate) bearing Serial No. 3291 in respect of Ex. No. 14675967 Cfn Tribhuwan Singh, is enclosed herewith in original for your further necessary action. The above document in original may please be returned to the individual at his address given below, after your verification". It was stated at the end of the said letter that one booklet is enclosed and the letter is addressed to the respondent's office. It was also stated in the said letter that the petitioner had personally visited the EME Headquarters and henceforth he need not to proceed to Secunderabad rather contact the respondents office at New Delhi. This letter clearly shows that the required certificate was already with the respondents before the appellate order was passed.

4. The learned counsel for the petitioner also brought to our notice the letter of the respondents written on 15.5.1991 addressed to the petitioner stating that the substitute for the lost discharge certificate is being forwarded to him: "IAFY - 1964 (For Use In Substitution of of A Lost Discharge

Certificate) bearing Serial No. 3291 in respect of Shri Tribhuwan Singh ex-Armourer HS-II of CVD Delhi Cantt is being forwarded herewith". The contention was that this letter issued by the respondents on 15.5.1991 was in fact an acknowledgement to the fact that the respondents had the duplicate discharge certificate in original in their custody at the time when the appellate order was passed.

5. We are satisfied that the sole ground of termination the service of the petitioner was that the original discharge book was not produced and in the circumstances whatever is within the capacity of the petitioner he had done and the actual production was delayed and the said delay is not attributable to the petitioner in the circumstances of the case. We are also satisfied that the appellate order was one passed without application of mind since in the meantime the duplicate of the discharge certificate in original was in their custody and the same was returned to the petitioner immediately after the appellate order.

6. The learned counsel for the respondents brought to our notice some of the correspondence between the respondents and the EME authorities in Secunderabad. One of the letters dated 21.5.1990 from EME Secunderabad indicated that the petitioner was in fact dismissed from service in accordance with the rules. Nothing more was stated in the said letter whether he was fit for employment or not. The learned counsel for the respondents heavily relied on this letter and stated that both the orders of termination

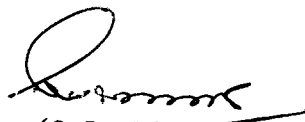
as well as the appellate order were both passed in accordance with the law. To this the reply was that the petitioner himself had annexed a certificate from Sq. Ldr. A.K. Mishra, the Assistant Director in the Director General of Resettlement issued on 19.1.1989 wherein the certificate on the face of it had indicated that the petitioner was discharged from service thereafter the same was converted into normal discharge and he is considered fit for civil appointment as applicable to ex-serviceman who are discharged under normal discharge. This certificate is available at Page 51 of the paper book and the photo copy of the discharge book at Page 2 also shows that the petitioner has been certified to be fit for civil employment. In view of these facts and circumstances the contention of the respondents in this regard merits rejection.


7. Accordingly, this OA is allowed. The order of termination dated 29.3.1990 as well as the appellate order dated 2.5.1991 are both quashed. We have further reverted to consider what further consequential relief can be granted to the petitioner since his removal from service was by an illegal order as stated above, and we are of the view that since the discharge certificate was available with the respondents at the time when the appellate order was passed, the reinstatement order shall be passed by the respondents from the date of appellate order namely w.e.f. 2.5.1991 and the petitioner will also be entitled to 50% of the salary payable to him from 2.5.1991 till the date of reinstatement. The payment

of 50% of such salary is being awarded on an equitable consideration since the petitioner had been kept out of employment, not for any fault of the petitioner, on the other hand, the petitioner was already willing to work in the respondents office. In the circumstances we consider that payment of arrears from 2.5.1991 to the extent of 50% till the date of reinstatement is sufficient to meet the ends of justice.

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8. The respondents shall pass appropriate orders of reinstatement within two months from the receipt of this order and thereafter all the dues granted by this order as consequential relief shall be paid to the petitioner within three months thereafter. With these, this OA is allowed.


(S. P. Biswas)
Member (A)


(Dr. Jose P. Verghese)
Vice Chairman (J)

Mittal