A.F.R.

Court No.1

Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Transferred Application No.1442 of 2010

Thursday this the 13th day of November, 2014

Hon'ble Mr. Justice S.C. Chaurasia, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

Upendra Kumar Singh
(Ex. Sep. M/T No.14808089-K)
Son of Shri Ram Raj Singh,
R/o Village Munghi
Post Office Sukhi Bazgarh,
District Sultanpur

By Legal Practitioner Shri V.P. Pandey, Advocate

.....Applicant

Versus

1. The Union of India, through the Secretary,
   Ministry of Defence, Central Secretariat,
   New Delhi.

2. Chief of the Army Staff, through (D.G.S.& T.)
   Q.M.G. Branch Army Headquarter,
   D.H.Q. P.O. New Delhi.

3. G.O.C., H.Q.7-Inf.Div.
   C/o 56 A.P.O.

By Legal Practitioner Shri D. S. Tiwari, Standing Counsel for the Central Government,

..... Respondents

ORDER

"Hon'ble Mr. Justice S.C. Chaurasia, Member (J)"

1. The Writ Petition No.2992 (S/S) of 2006 was filed under Articles 226 of the Constitution of India on behalf of the applicant in the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow and he has claimed the reliefs as under:

> *"(i) "issue a writ, order or direction in the nature of mandamus commanding the opposite parties to allow the petitioner to work as Sep. Dri. after quashing the impugned order of discharge/termination dated 20.7.2005, after summoning the same from the appropriate authority.*
>
> *(ii) issue a writ, order or direction in the nature of mandamus commanding the opposite parties further to allow the petitioner's salary and seniority in the rank of Sep. Dri. with effect from 4.8.2005 when has been S.S.O. from Army service, along with all other attaching service benefits to the post/rank.*
>
> *(iii) Such other writ, order or direction be also issued as the Hon'ble Court may deem just and proper in the circumstances of the case.*
>
> *(iv) award the cost of the writ petition to the petitioner"*

2. The Hon'ble High Court has transferred the said writ petition to this Tribunal under Section 34 of the Armed Forces Tribunal Act, 2007 and it has been registered as Transferred Application.

3. The applicant's case, in brief, is that he was enrolled in the Indian army on 29.10.1993 and was allotted A.S.C. as soldier. After completion of training, he was allotted M/T trade (Vehicle Driver). The applicant was mentally disturbed due to family problems from the year 1996 and he was charged since the year 1996 to 17.05.2005 on various occasions. The opposite party No.3, being the competent authority, issued show cause notice on 18.06.2005 for discharge/termination of the services of the applicant under Army Rule 13 (3) (III) (v) (read in conjunction with Army Rule 17) and 15 days' time was granted to furnish reply of the show cause notice. The applicant submitted reply to the show cause notice on 28.06.2005 and narrated family problems, on account of which, he was mentally disturbed. On the basis of the allegations made in the show cause notice, the applicant had already undergone the punishment awarded by the Commanding Officer, from time to time, the copy of the show cause notice is enclosed as Annexure No.1. The reply submitted by the applicant was not taken into consideration and no opportunity of personal hearing was provided before passing of the impugned order. The material furnished by the serving unit to the higher authority was not sufficient and the order of termination/discharge passed was not in accordance

with Rules. The applicant had been discharged from service with effect from 04.08.2005, without providing the copy of order dated 20.07.2005 to him and he had been struck off from service (S.O.S.). The applicant preferred a departmental appeal under statutory provisions of law before the appellate authority on 05.12.2005, copy of which is enclosed as Annexure No.2, but the said appeal is still pending. Under the conditions of service, the applicant was to serve at least 17 years in the rank of sepoy, but he has not been permitted to fulfill his colour service. Army Headquarters Letter dated 28.12.1988 has no statutory force of law and cannot supersede the provisions of law laid down in the Army Rules and Regulations, in which the conditions of service have been specified. The movement order dated 03.08.2005, to proceed from unit to his home, was provided and no other order was served upon him by the competent authority. On his request, the discharge certificate was issued to him.

4. The applicant has challenged the impugned discharged order on the grounds; that there was no charge of misconduct, misappropriation, indiscipline and dishonesty against him; that he was late for few days due to family problems and the salary during the said period was not paid to him and thus, he cannot be punished for the same offence, for which

punishment has already been awarded; that he was recruited in the army to fulfill at least 17 years of colour service, but before completion of the said period, he has been discharged/terminated wrongly; that he was not provided further opportunity to improve his behaviour and conduct; that the Army Headquarters Letter dated 28.12.1988 has got no mandatory force and cannot supersede the provisions of the Army Act, Army Rules and Regulations; that the order of discharge/termination has been passed without providing opportunity of hearing to the applicant; that the proper material was not furnished by the Commanding Officer to the Headquarters for consideration of the applicant's case; that the impugned order is arbitrary and beyond jurisdiction, as the show cause notice was issued under Army Rule 13 (3) (III) (v) read with Army Rule 17 and the termination order has been passed under Army Rule 13 (3) (III) and it indicates that the punishment order was passed by an incompetent authority on the ground of disability, although the applicant had no case of any medical disability and hence, the impugned order deserves to be quashed.

5. The respondents have filed the counter affidavit and have asserted that the applicant was enrolled in the Army on 29.10.1993. He was taken on the strength of the Unit 507

ASC Battalion from 519 ASC Battalion with effect from 17.10.2004. The applicant was a habitual offender and was awarded punishment as per details given below:

Sl. No.	Date of punishment awarded	AA Sec.	Offence	Award of punishment.
01	23 Oct. 1996	39 (b)	OSL	07 days pay fine by OC 744 Tpt Coy.
02	03 Aug 1997	39 (a)	AWL	28 days rigorous imprisonment, 14 days Pay fine and 14 days detention by CO 529 ASC Bn.
03	02 June, 1998	63	An act prejudicial to good order and mil disc.	10 days rigorous imprisonment, by CO 529 ASC Bn.
04	16 Aug. 1999	39 (b)	OSL	14 days rigorous imprisonment, by CO 529 ASC Bn.
05	23 Apr. 2000	39 (b)	OSL	14 days rigorous imprisonment, by CO 523 ASC Bn.
06	24 March, 2001	39 (a)	AWL	28 days rigorous imprisonment, 14 days detention by CO 523 ASC Bn.
07	03 June, 2004	39 (b)	OSL	14 days rigorous imprisonment, by CO 519 ASC Bn.
08	17 May, 2005	36 (d)	Absent from guard post	14 days rigorous imprisonment, by CO 507 ASC Bn.

6. In view of the aforesaid offences committed by the applicant, a statement of case was forwarded to Headquarters, 7 Inf. Div. (A) vide letter dated 02.06.2005 for sanction of discharge order as the applicant's further retention in service was considered undesirable under the provisions of Army Rule 13 (3) (III) (v) and Army Rule 17, the photostat copy of the letter dated 02.06.2005 is enclosed as Annexure No. C.A.-1.

Thereafter, the H.Q. Infantry Division issued a show cause notice to the applicant vide letter No.1031/31/1/A1 dated 18.06.2005 (Annexure No. C.A.-2). The applicant submitted reply to the said show cause notice and the same was forwarded with recommendations of the Commanding Officer along with IAFZ-1948A to H.Q. 7 Infantry Division vide 507 ASC Bn. letter dated 06.07.2005 (Annexure No. C.A.-3). The GOC HQ 7 Infantry Division sanctioned his discharge order on IAFZ 1948A under the provisions of Army Rule 13 (3) (III) (v) and Army Rule 17 being an undesirable and the same was forwarded to 507 ASC Bn. vide letter dated 20.07.2005 (Annexure No. C.A.-4). On receipt of discharge Roll (IAFZ-1948A) from 7 Infantry Division, the applicant was discharged from service with effect from 04.08.2005 vide 507 ASC Bn. Movement Order No.3205/A/St-12 dated 03.08.2005, the Photostat copy of the order dated 04.08.2005 is enclosed as Annexure No. C.A. 5. The copy of the said order dated 04.08.2005 was forwarded to the applicant vide 507 ASC Bn. Letter dated 17.02.2006 (Annexure No. C.A. 6). The applicant's case was taken up with higher authorities/Headquarters for obtaining the Discharge Roll and the same was provided to the applicant on his request vide letter dated 18.05.2006 (AnnexureNo.C.A.-7).

7. The respondents have further asserted that in the entire service of 11 years and 07 months, the applicant was awarded rigorous imprisonments (07 red ink entries and 01 black ink entry) under Sections, 39 (a), 39 (b), 36 (d) and 63 of the Army Act. He was punished by various Commanding Officers, under whom he had served and his retention in service was considered undesirable in the interest of the organization and he was discharged being as undesirable soldier under the provisions of Army Rule 13 (3) (III) (v) and Army Rule 17. The applicant's plea of being mentally disturbed due to his family circumstances since 1996 to 17.05.2005 is incorrect and an after-thought, because it was never informed by the applicant to his superiors either verbally or in writing. The applicant was discharged after issuing show cause notice and after following due procedure of law. The applicant having been awarded four red ink entries and one black entry till 23.04.2000, was not removed from service, but was provided a duration of 05 years to improve his discipline by various Commanding Officers under whom he had served, but he showed no improvement. The applicant has preferred an appeal and the same is still under consideration. It is clarified that the discharge certificate under Army Rule 13 (3) (III) has been given, which

includes all 5 sub-sections. The order of termination of service was not arbitrary and it was within the jurisdiction of the competent authority. The respondents have denied the other allegations made by the applicant and have pleaded that the writ petition (Transferred Application) is devoid of merit and is liable to be dismissed with costs.

8. The applicant has filed rejoinder affidavit and has asserted his previous version.

9. The counter affidavit and rejoinder affidavit have been exchanged between the parties.

10. We have heard Shri V.P. Pandey, learned counsel for the applicant, Shri D.S. Tiwari, learned counsel for the respondents and perused the record.

11. The learned counsel for the applicant has submitted that the impugned discharge order has not been passed by the competent authority and the procedure laid down by the Army HQ letter dated 28.12.1988 has not been followed before passing of the impugned discharge order and hence, the impugned discharge order deserves to be quashed. In support of his contentions, he has placed reliance on the following decisions of the Hon'ble High Courts and this Tribunal:-

(i) 2003 (2) All India Services Law Journal 154, Surinder Singh Sihag vs. Union of India and others;

(ii) 2009 (2) SCT 343, Ex Hav. Satbir Singh vs. The Chief of the Army Staff and others;

(iii) 2009 (4) SCT 645, Ex Rifleman Tilak Raj vs. Union of India and others;

(iv) Judgment dated 30.07.2010 delivered by this Tribunal in Transferred Application No.161 of 2010, Ram Narayan Singh vs. Union of India and another.

12. Contra to the above submissions, learned counsel for the respondents has drawn our attention towards Rule 13 (3) of the Army Rules, 1954 and has submitted that the impugned discharge order has been passed by the competent authority as mentioned in the said Rule and the procedure prescribed under the Rule has been followed. He has further submitted that the Army Headquarters Letter dated 28.12.1988 has got no statutory force and it cannot prevail over the Statutory Rules and Regulations. His contention is that it was not necessary to hold preliminary enquiry as provided in the said letter, because the relevant rule does not provide for holding of preliminary enquiry in such matters and the impugned discharge order has been passed on the basis of past service record of the applicant.

13. The relevant part of Rule 13 of the Army Rules, 1954 may be reproduced as under:

*"**13. Authorities empowered to authorise discharge.** (1) Each of the authorities specified in column 3 of the Table*

below, shall be the competent authority to discharge from service person subject to the Act specified in column 1 thereof on the grounds specified in column 2

(2) Any power conferred by this rule on any of the aforesaid authorities shall also be exercisable by any other authority superior to it.

(2A) .....

(3) In this table "Commanding Officer" means the officer commanding the corps or department to which the person to be discharged belongs except that in the case of junior commissioned officers and warrant officers of the Special Medical Section of the Army Medical Corps, the "commanding officer" means the Director of the Medical Services, Army, and in the case of junior commissioned officer and warrant officers of Remounts, Veterinary and Farms, Corps, the "Commanding Officer" means the Director Remounts, Veterinary and Farms.

TABLE

Category	Grounds of discharge	Competent authority to authorise discharge	Manner of Discharge
1	2	3	4
Persons enrolled under the Act who have been attested.	III.(v)All other classes of discharge	Brigade/ Sub-Area Commander	The Brigade or Sub-Area Commander before ordering the discharge shall, if the circumstances of the case permit give to the person whose discharge is contemplated an opportunity to show cause against the contemplated discharge.

14. From the perusal of record, it transpires that the show cause notice dated 18.06.2005 (Annexure No. C.A.-2) was issued to the applicant by Major General, General Officer Commanding, HQ 7 Infantry Division, C/o 56 APO. The applicant had given reply to the said show cause notice and English version of the reply to show cause notice (Annexure No. C.A. 3) was forwarded by the Commanding Officer to the competent authority along with his recommendation. The statement of case relating to the applicant along with the recommendations of the Commanding Officer was forwarded to the competent, as is evident from Annexure No. C.A.-1. The Commanding Officer had recommended that the applicant being a habitual offender and having incurred 07 red ink entries and 01 black ink entry is found to be unsuitable to be retained in service and hence, he be discharged from service under the provisions of Army Rule 13 (3) (III) and Army Rule 17, being an undesirable soldier. After considering the reply to show cause notice submitted by the applicant and the recommendations made by the Commanding Officer, Major General, G O C, 7 Infantry Division, had sanctioned the discharge of the applicant from service, being undesirable soldier, under the provisions of Army Rule 13 (3) (III) (v). Thus, it is clear that the show

cause notice was issued to the applicant by the competent authority and after following the procedure prescribed under Rule 13 (3) (III) (v) of the Army Rules, 1954, the applicant was discharged from service by the competent authority. The argument of the learned counsel for the applicant that the impugned discharge order was not passed by the competent authority is devoid of merit and it is rejected.

15. Now the point for determination is as to whether the preliminary enquiry, as mentioned in the Army Headquarters Letter dated 28.12.1988, was mandatory before sanctioning discharge from service?

16. The relevant part of the Army Headquarters Letter dated 28.12.1988 relating to procedure for the removal of undesirable and inefficient JCOs, WOs and OR may be reproduced as under:

"PROCEDURE FOR THE REMOVAL OF UNDESIRABLE AND INEFFICIENT JCOs. WOs. AND OR

1. .....
2. .....
3. .....
4. .....
5. Subject to the foregoing, the procedure to be followed for dismissal or discharge of a person under AR 13 or AR 17, as the case may be , is set out below:

*(a) **Preliminary Enquiry.** Before recommending discharge or dismissal of an individual the authority concerned will ensure:-*

(i) that an impartial enquiry (not necessarily a Court of Inquiry) has been made into the allegations

against him and that he has had adequate opportunity of putting up his defence or explanation and of adducing evidence in his defence.

(ii) that the allegations have been substantiated and that the extreme step of termination of the individual's service is warranted on the merits of the case.

(b) ***Forwarding of the Recommendations.*** *The recommendation for dismissal or discharge will be forwarded ,through normal channels, to the authority competent to authorise the dismissal or discharge, as the case may be, along with a copy of the proceedings of the enquiry referred to in (a) above.*

(c) ***Action by Intermediate Authorities.*** *Intermediate Authorities through whom the recommendations pass will consider the case in the light of what is stated in (ab) above and make their own recommendations as to the disposal of the case.*

(d) ***Action by Competent Authority.*** *The authority competent to authorize the dismissal or discharge of the individual will consider the case in the light of what is stated in (a) above. If he is satisfied that the termination of the individual's service is warranted, he should direct that show cause notice be issued to the individual in accordance with AR 13 or AR 17, as the case may be,. No lower authority will direct the issue of a show cause notice. The show cause notice should cover the full particulars of the cause of action against the individual. The allegations must be specific and supported by sufficient details to enable the individual to clearly understand and reply to them. A copy of the proceedings of the enquiry held in the case will also be supplied to the individual and he will be afforded reasonable time to*

state in writing any reason he may have to urge against the proposed dismissal or discharge.

(e) ***Action on Receipt of the Reply to the show cause Notice.*** *The individual's reply to the show cause notice will be forwarded through normal channels to the authority competent to authorize his dismissal/discharge together with a copy of each of the show cause notice and the proceedings of the enquiry held in the case and recommendations of each forwarding authority as to the disposal of the case.*

(f) ***Final Orders by the Competent Authority.*** *The authority competent to sanction the dismissal/ discharge of the individual will before passing orders reconsider the case in the light of the individual's reply to the show cause notice. A person who has been served with the show cause notice for proposed dismissal may be ordered to be discharged if it is considered that discharge would meet the requirements of the case. If the competent authority considers that termination of the individual's service is not warranted but any of the actions referred to in (b) to (d) of para 2 above would meet the requirements of the case, he may pass orders accordingly. On the other hand, if the competent authority accepts the reply of the individual to the show cause notices entirely satisfactory, he will pass orders accordingly.*

1. *As far as possible, JCO, WO and OR awaiting dismissal orders will not be allowed to mix with other personnel.*
2. *Discharge from service consequent to four red ink entries is not a mandatory or legal requirement. In such cases, Commanding Officer must consider the nature of offences for which each red ink entry has been awarded and not be*

harsh with the individual's especially when they are about to complete the pensionable service. Due consideration should be given to the long service, hard stations and difficult living conditions that the OR has been exposed to during his service, and the discharge should be ordered only when it is absolutely necessary in the interest of service. Such discharge should be approved by the next higher Commander.

(g) Carrying Out Dismissal/Discharge. *On receipt of the orders of the competent authority for dismissal/Discharge, all action to effect dismissal/ discharge will be taken by the Regt Centre/Record Office, or the unit, as the case may be."*

17. In the case of ***Surinder Singh Sihag vs. Union of India and others (supra)***, it has been held by the Division Bench of the Hon'ble Delhi High Court that preliminary enquiry ought to have been held as provided in the Army Headquarters Letter dated 28.12.1988 and the order to discharge from service, without following the procedure prescribed, cannot be sustained.

18. In the case of ***Ex Havildar Satbir Singh vs. The Chief of the Army Staff and others (supra)***, it has been held by the Division Bench of the Hon'ble Delhi High Court that :-

"Constitution of India, 1950, Article 311-Army Act, 1950, Section 48-Army Rules 1954, Rule 13 (3) III (v)- Petitioner serving in Army – Four Red Ink Entries given on the basis of Charge of intoxication – Show cause notice served giving

detail of entries – Discharge order passed whereby service terminated without holding any enquiry – Action of discharge/termination from service on the basis of show cause notice is unsustainable - Termination order set aside. (2003) 1 SCT 697 (Surinder Singh Sihag vs. Union of India) relied."

19. In the case of ***Ex Rifleman Tilak Raj vs. Union of India and others (supra)***, Hon'ble Single Judge of Jammu & Kashmir High Court has held as under:-

"Army Rules, 1954, Rule 13 (3) III (v) – Four red ink entries in service book – Discharged from service- Before recommending discharge/dismissal preliminary enquiry be conducted – Adequate opportunity of adducing evidence in his defence be given to the person – Petitioner has overstayed leave or remained absent from duty – Not any offence of grave nature – Petitioner has put in more than 11 years of service – Commanding Officer is also required to ensure that punishment should not be harsh – Order of discharge, set aside –Petitioner reinstated with all consequential benefits."

20. In the case of ***Ram Narayan Singh vs. Union of India and another (supra),*** this Bench of the Armed Forces Tribunal has held that *"in view of the nature of the entries and the fact that the entries have been given by one Commanding Officer and the rest of the career of the applicant was without blemish and the applicant had already put in more than 13 years service as also the fact that the show cause notice is vague and does not conform to the requirement of the policy*

letter, the order of discharge passed against the applicant is arbitrary and cannot be sustained."

21. In the case of ***Pratap Singh vs. Chief of Army Staff and others, LPA 136/2013***, decided on 3rd June, 2011, Division Bench of the Hon'ble Delhi High Court has held that no enquiry is required to be conducted when a person is being discharged from service with reference to his past service record. The relevant paragraphs of the judgment may be reproduced as under :

> *"8.....Lastly it was urged that in view of the law laid down by a Division Bench of this Court in the decision reported as 100 (2002) DLT 705 Surender Singh Sihag Vs. UOI & Ors., without conducting an inquiry the services of the petitioner could not be discharged.*
>
> *14. The decision deals with the right of the competent authority to discharge a force personnel who has earned 5 red ink entries, a power under Rule 13 of the Army Rules. The Division Bench noted that the army authorities had issued an administrative instruction by way of a letter circular dated 28.12.1988 which contemplated an inquiry before discharging or dismissing a person concerned.*
>
> *15. The Division Bench took the view that no action could be taken under Rule 13 without an inquiry and since no inquiry was held against Surender Singh Sihag when his services were dispensed with by way of discharge pursuant to a show cause notice alleging against him that he had earned 5 red ink entries, the order was quashed.*
>
> *16. But we find that the Supreme Court, in the decision reported as 2009 (7) SCC 370 UOI & Ors. Vs. Deepak Kumar Santra,*

has taken a view contrary to the one taken by the Division Bench of this Court.

17. Pertaining to a discharge of an Army Officer exercising power under Rule 13 of the Army Rules, the Supreme Court held that once statutory Rules occupy the field, there is no place for a policy guideline and as long as the procedure prescribed by the statutory Rule is followed, it hardly matters whether a policy guideline is not followed.

18. Relevant would it be to state that where a Rule deals with subject matter and the procedure to be followed with respect to the subject matter is also prescribed by the Rule, there is no scope to issue a policy guideline with respect to the procedure to be followed.

19. The procedure under Rule 13 of the Army Rule simply contemplates a prior notice to the person concerned before exercising power under the Rule.

20. That apart, it escaped the notice of the Division Bench of this Court as to what was the scope of the inquiry to be conducted if the power to discharge a force personnel was being exercised with respect to the service profile which shows that the person concerned had earned 5 red ink entries and the requirement of the rule was to consider whether such a person is required to be discharged from service.

21. Inquiries have to be held if facts are in dispute or blameworthiness of a delinquent employee has to be ascertained.

22. We see no scope for any inquiry to be conducted where a person is being discharged from service with reference to his past service record.

24. Noting in the instant case that before taking the action a show cause notice was served upon the petitioner and after considering the reply filed by him the action was taken, meaning thereby procedures of the law were followed. We dismiss the appeal but refrain from imposing any costs."

22. The Transferred Application No. 592 of 2010, ***Ex Sep Ahibaran Singh vs. Union of India and others*** was decided on 08.02.2012 by the Armed Forces Tribunal, Principal Bench, New Delhi. It has been held by the Principal Bench that main object and aim behind the said inquiry is to find out the existence of the punishments, which has not been disputed by the applicant. Therefore, holding of inquiry was not necessary. It was also held that the applicant was in the zone of being declared habitual offender and he filed reply to the show cause notice and after considering his reply, the impugned order was passed. Thus, the proceedings are as per the rules and principles of natural justice have been maintained.

23. The Transferred Application No. 01 of 2009, ***Rajesh Kumar Awasthi vs. Chief of Army Staff and others*** was decided on 02.09.2013 by this Regional Bench of the Tribunal. The paragraphs 26 and 27 of the judgment may be reproduced as under:

> *"26. The competent authority (respondent No. 2) issued a show cause notice dated 10.11.1995 (Annexure 2) to the applicant, as per the provisions of Rule 13(3)III(v) of the Army Rules, 1954 and policy letter dated 28.12.1988 issued by respondent No.1.The applicant submitted a reply to the said show cause notice, and it was after due consideration of the reply given by the applicant that the competent authority discharged the applicant from service on 15.12.1995 under*

the provisions of Rule 13(3)III(v) of the Army Rules, 1954. Policy letter dated 28.12.1988 cannot override statutory rule. It is only to supplement and not to supplant.

27. With regard to learned Counsel for the applicant's contention that the procedure laid down in the policy letter dated 28.12.1988 issued by respondent No.1 was not followed, Hon'ble Division Bench of Delhi High Court in Pratap Singh (Supra) in its judgment dated 03.06.2011 has held that it is the Commanding Officer who, based on his service record, has to be satisfied about the desirability to retain a person concerned on the strength of the unit in exercise of authority vested in him under Rule 13(3)III(v) and that not holding preliminary inquiry does not vitiate the discharge proceedings. Since Pratap Singh (Supra) has taken into consideration earlier judgment of Hon'ble Delhi High Court in the case of Surinder Singh Sihag (Supra), the decision in Surinder Singh Sihag (Supra) does not hold good law. Similar view has been held by Hon'ble Principal Bench of the Armed Forces Tribunal in Ex Nk Birendra Kumar Singh (Supra) and Ex Sep Ahibaran Singh (Supra)."

24. The show cause notice dated 18.06.2005 (Annexure No.1) indicates that the applicant was awarded 05 red ink entries and 01 black ink entry up to 24.03.2001 on different occasions under Sections 39 (a), 39 (b) and 63 of the Army Act, 1950. It appears that more than three years' time was provided to him for improving his conduct, but he was again awarded red ink entry on 03.06.2004. Thereafter also, he was awarded red ink entry on 17.05.2005. Thus, during his entire service of 11 years and 07 months, he was awarded 07 red ink

entries and one black ink entry. In the show cause notice, the grounds, on which action against the applicant was proposed, were mentioned clearly and there was no vagueness in the show cause notice. In response to show cause notice, the applicant had submitted a reply and the English version of his reply (Annexure No. C.A.-3) indicates that he had not disputed the punishment awarded to him on different occasions as mentioned in the said show cause notice. In fact, he had stated in his reply that "I am really very sorry that I have committed mistakes so many times."

25. The punishments awarded earlier to the applicant were not challenged and the same have attained finality. The preliminary enquiry is conducted in respect of disputed facts, but in the instant case, the facts are not disputed and under these circumstances, there was no scope for conducting preliminary enquiry before issuing show cause notice to the applicant. The administrative action under Rule 13 (3) (III) (v) of the Army Rules, 1954 has been taken by the competent authority on the basis of previous service record of the applicant and there was no need to hold preliminary enquiry as provided in Army Headquarters Letter dated 28.12.1988, particularly, when relevant statutory Rule does not provide for holding such preliminary enquiry.

26. The discipline is required to be maintained in the Indian Army. The past service record of the applicant indicates that he was a habitual offender. The competent authority, after considering the past service record of the applicant, came to the conclusion that he is an undesirable soldier and hence, he has taken appropriate action against him, after following the prescribed procedure.

27. After considering the record thoroughly, we are of the view that the competent authority had sanctioned the discharge of the applicant from service after following the prescribed procedure as provided in the relevant Army Rules. Relying upon the decisions rendered by the Division Bench of the Hon'ble Delhi High Court, Principal Bench of the Armed Forces Tribunal and this Regional Bench of the Tribunal, in the cases of ***Pratap Singh vs. Chief of Army Staff & others (supra), Ex Sep Ahibaran Singh vs. Union of India & others (Supra) and Rajesh Kumar Awasthi vs.Chief of Army Staff & others (supra)***, we hold that under the facts and circumstances of the case, preliminary enquiry was not mandatory before issuing show cause notice to the applicant and no interference is warranted in the impugned discharge order on the said ground. The applicant has himself alleged in the instant Transferred Application that the Army Headquarters Letter

dated 28.12.1988 has no statutory force of law and the said letter cannot supersede the provisions of law laid down in the Army Rules and Regulations.

28. For the reasons given above, with great respect, we find ourselves unable to place reliance on the decisions as mentioned above and relied upon on behalf of the applicant.

29. No other point was raised or pressed on behalf of the applicant.

30. In view of the aforesaid discussion, we are of the opinion that the Transferred Application No.1442 of 2010, Upendra Kumar Singh vs. Union of India and others, lacks merit and it is dismissed, accordingly. The parties shall bear their own costs.

(Air Marshal Anil Chopra)
Member (A)

(Justice S.C. Chaurasia)
Member (J)

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