

**AFR**  
**Court No.2**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW**

**TRANSFERRED APPLICATION NO 744 of 2010**

Monday, this the 25<sup>th</sup> day of April 2016

**Hon'ble Mr. Justice D.P. Singh, Member (J)**  
**Hon'ble Air Marshal Anil Chopra, Member (A)**

No. 4256074-K L/Nk C.P. Bhagat, son of Late Roshan Bhagat, resident of village Bahadurpur Patori, district Samastipur

.....Petitioner

Ld. Counsel for the: **Shri Rohit Kumar, Advocate**  
Petitioner

Versus

1. Chief of the Army Staff, New Delhi - 110011.
2. Commandant-cum-CRO, DSC Centre and Records, Cannonore.
3. Commanding Officer, COD Chheoki, Allahabad
4. CCDA (Pensions) Draupadighat, Allahabad.
5. Union of India through Secretary, Ministry of Defence, New Delhi 110011.

...Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma, Atal, Central Govt Counsel assisted by Lt Col Subodh Verma, OIC, Legal Cell.**  
Respondents.

**ORDER (ORAL)**

1. We have heard Shri Rohit Kumar, Ld. Counsel for the petitioner and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents assisted by Lt Col Subodh Verma, OIC. Legal Cell.

2. Being aggrieved with order of discharge passed on account of red ink entries in pursuance of provisions contained in Rule 13 (3) iii (v) of the Army Rules, 1954, the petitioner approached the High Court of Judicature at Allahabad by preferring Writ Petition No. 8404 of 2005 which has been received by transfer in this Tribunal in pursuance to Section 34 of the Armed Forces Tribunal Act, 2007 and has been renumbered as Transferred Application No. 744 of 2010.

3. Admittedly, the petitioner was enrolled in the Army on 07.11.1977 and served till 30.06.1982. On 24.06.1983, the petitioner joined the Defence Security Corps (DSC). According to Ld. Counsel for the petitioner the petitioner was awarded Cash Reward of Rs. 50/- by Ministry of Defence in the year 1993.

4. A show cause notice dated 30.05.2001 was issued on the petitioner in response to which the petitioner submitted his reply on 04.06.2001. However, the respondents did not take any action in respect to reply to show cause notice dated 30.05.2001. Later on, another show cause notice dated 11.06.2002 was issued on the petitioner. In response to said

show cause notice, the petitioner submitted his reply dated 20.06.2002. A perusal of the show cause notice, as contained in Annexure-6 to the T.A., shows that show cause notice indicated proceeding of preliminary inquiry and copy of the preliminary inquiry report was alleged to be attached to it keeping in view Army Order dated 28.12.1988. According to show cause notice dated 11.06.2002, the petitioner was suffering from seven red and black ink entries, which are reproduced as under:-

SL No.	Punishment Awarded	Date of Award	AA Sec
(a)	4 days pay fine	01 Oct 85	AA 39 (b)
(b)	14 days RI and 07 days detention	21 Feb 90	AA 40 (a)
(c)	Deprived of L/Nk Appt	19 Mar 94	AA-63
(d)	07 days RI	21. Mar 94	AA-42
(e)	Severe Reprimand	19 Nov 94	AA-63
(f)	Severely Reprimanded	28 May 2001	AA-40 (a)
(g)	Severely Reprimanded	06 Nov 2001	AA-39 (a)

5. After reply to show cause notice, that petitioner has been discharged from Army. Statutory complaint submitted by the petitioner has been rejected by the competent authority. After receipt of the reply to show cause notice, order under the provisions of Army Rule 13 (3) iii (v) has been passed indicating therein that services of the petitioner are no longer required and his name is being struck off from the strength of Army (DSC).

6. Feeling aggrieved, the petitioner submitted complaint under Section 26 of the Army Act, 1950 on 16.12.2002 which, as per petitioner's averment, was not acted upon. Consequently, the petitioner filed Writ Petition No. 44358 of 2003 in the High Court of Judicature at Allahabad wherein by order dated 30.09.2003, the High Court directed the Chief of the Army Staff to decide the statutory complaint dated 16.12.2002 within three months. According to petitioner's Ld. Counsel, a contempt petition was also filed and only thereafter the Chief of the Army Staff rejected the statutory complaint of the petitioner. Feeling aggrieved, Writ Petition No. 8404 of 2005 (supra) was preferred by the petitioner which has been transferred to this Tribunal under Section 34 of the Armed Forces Tribunal Act, 2007.

7. Ld. Counsel for the petitioner raised two fold arguments; firstly, that no inquiry was held nor the petitioner was permitted to participate in the inquiry and secondly, copy of the inquiry report was not served on him.

8. Coming to the first limb of arguments advanced by Ld. Counsel for the petitioner, it appears that during course of preliminary inquiry, the petitioner participated in the inquiry and he was questioned on several points. Obviously, from the copy of the preliminary report, a copy of which has been filed along with the supplementary counter affidavit dated 30.03.2015 it is

borne out that petitioner appeared in the inquiry as witness no. 5 and queries were made to him by the Presiding Officer with regard to certain facts. The petitioner admitted that he was suffering from several red ink entries though he denied that he hit one Hav Lala Ram on his face 28.05.2001, but admitted before the Presiding Officer that he wanted to take back his leave application which was held by Hav Lala Ram and in consequence thereto a scuffle took place between them and the petitioner's left elbow hit the face of Hav Lala Ram. Though the petitioner admits of hitting on the face of Hav Lala Ram by his elbow but said that it was due to mistake. However, the fact remains that according to the allegations, the petitioner intentionally hit Hav Lala Ram on account of certain dispute. On query being made by the Presiding Officer whether the petitioner was a habitual offender and he committed wrong on several occasions, he did not explain his conduct of any commission or omission during course of inquiry. Keeping in view the fact that the petitioner has not justified his conduct relying upon which inquiry was held and red ink entries were granted, the inference drawn by the Presiding Officer does not seem to be incorrect. The petitioner was given opportunity to explain his conduct and justify the incident but he failed to demonstrate or establish his conduct and even he has not come forward with a case that he is likely to improve his conduct in future course if he is permitted to continue in service.

9. The second limb of argument advanced by the Ld Counsel for the petitioner that copy of the inquiry report was not served is also incorrect. Show cause notice dated 11.06.2002 on the face of the record shows that preliminary inquiry report was served upon the petitioner. In reply to the show cause notice, the petitioner has not stated that the show cause notice is not appended with the inquiry report and he demanded copy of the charge sheet and details of inquiry report and details of punishment inflicted as also copy of the earlier show cause notice. Nowhere in his reply the petitioner stated that copy of the show cause notice was not annexed along with the show cause notice.

10. It may be noted that in view of law settled by this Tribunal in the case of Original Application No. 168 of 2013: **Abhilash Singh Kushwah vs. Union of India** (decided on 23.09.2015) and Civil Appeal D. No. 32135 of 2015 **Veerendra Kumar Dubey Vs. Chief of Army Staff and others**, preliminary inquiry done in pursuance of Army Order dated 28.12.1988 cannot be treated as regular inquiry or disciplinary proceedings where a person is to be granted opportunity at par with regular inquiry. In the present case, the petitioner appeared before the Inquiry Committee and was questioned to justify his conduct, but he failed to give satisfactory reply; rather half heartedly he admitted that he assaulted Hav Lala Ram. Such incident on the

part of the petitioner disentitles him to continue in Army service. Indiscipline soldier who assaulted his superior, in the present case Hav Lala Ram, for any reason, does not deserve to continue in Army service. Discipline is the root and minimum requirement of Army service. A person who is not disciplined while serving the Army shall not deserve to continue in Army service.

11. It may be noted that Additional Directorate General, Discipline and Vigilance, Adjutant General's Branch, Army Headquarter letter dated 07.04.2004 provided that red ink entries should be examined in accordance with rules in order to curb the tendency in the Army to indulge in malpractice and no leniency be shown to such person at initial stage who disturbs and disrupts the discipline of Army services. Several incidents have been cited in the letter of Additional Director General dated 07.04.2004 which has been filed as Annexure No. SCA-1 to the supplementary counter affidavit. Necessity shown by the Directorate General, Discipline and Vigilance makes it vividly evident that in no case any discipline should be tolerated and persons may be permitted to continue in Army service since it shall may break the command and control of the Army in due course of time.

12. While parting with the case, we may further point out that while approaching the Tribunal, the petitioner has concealed material facts with regard to appearance before the Inquiry

Committee and certain other factual matrix, discussed hereinabove. As such, ordinarily he should have been saddled with exemplary costs. However, we warn the applicants/petitioners, who are litigants of the Army, to approach the Tribunal with clean hands without concealing material facts.

13. Subject to above, we do not find any reason to interfere with the impugned order of discharge.

14. The T.A. lacks merits and is accordingly dismissed.

No order as to costs.

**(Air Marshal Anil Chopra)**  
**Member (A)**

anb

**(Justice D.P. Singh)**  
**Member (J)**