

AFR
Court No.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 125 of 2013

Friday, this the 21st day of July 2017

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Lt Gen Gyan Bhushan, Member (A)

794898-T Ex- Corporal Abhishek Pandey Radio Fitter of 708 SU AF Station, C/o 56 APO, son of Shri, M.P. Pandey, resident of House No. EWS- 2327, Awas Vikas Yojana – 3, Panki Road, Kalyanpur, Kanpur – 208017
....Applicant

Ld. Counsel for the : **Shri P.N. Chaturvedi, Advocate**
Applicant

Vs

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi – 110011.
2. Chief of the Air Staff, Air Headquarters, Vayu Bhawan, New Delhi - 110011.
3. Air Officer Commanding - in - Chief, Western Air Command, Subroto Park, New Delhi – 110010.
4. Air Officer - in-Charge Personnel Integrated HQ of Ministry of Defence (Air) Vayu Bhawan, New Delhi – 110011.
5. Commanding Officer, 708 Signal Unit, Air Force, C/o 56 APO, PIN - 937708.

...Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal**
Respondents
Sr. Central Govt Standing Counsel.
Assisted by Wg Cdr Sardul Singh,
OIC Legal Cell

Order (Oral)

1. Present petition under section 14 of the Armed Forces Tribunal Act, 2007 has been preferred by the applicant being aggrieved with the impugned order of discharge dated 17.01.2013.

2. Heard Ld. Counsel for the applicant Shri P.N. Chaturvedi as well as Ld. Counsel for the respondents Dr. Shailendra Sharma Atal, assisted by Wg Cdr Sardul Singh, OIC Legal Cell and perused the record.

3. The brief facts of the case are that the applicant was enrolled in the Indian Air Force on 28.09.2004 in the trade of Radio Fitter. However, while serving as Radio Fitter a warning letter dated 18.04.2012 on account of four red ink entries and four black ink entries was issued to him to mend his functioning to meet out the requirement of Air Force. After issuance of warning letter, one more red ink entry was awarded to him on 13.06.2012. Under these circumstances a show cause notice dated 11.07.2012 as contained in Annexure A-1 (i) was served on the applicant to show cause as to why his services may not be dispensed with. The applicant submitted his reply to the show cause notice on 05.08.2012 and was thereafter discharged from the service on 17.01.2013, hence the present petition before this Tribunal.

4. The solitary argument advanced by the Ld. Counsel for the applicant is that the services of the applicant could not have been dispensed with since the procedure prescribed by the Air Force, vide order dated 18.12.1996 has not been followed. As per Air Force Policy issuance of two warning letters are necessary before discharge; whereas in this case only one warning letter was issued and thereafter he was discharged from Air Force. Therefore, it is clear that procedure prescribed by Air Force policy letter has not been followed.

5. Attention has been invited to Air Force policy dated 18.12.1996, a copy of which has been brought on record as Annexure-A-2 of the O.A. It shall be appropriate to reproduce the relevant portion of the Policy dated 18.12.1996 (supra) as under :-

“5. Criteria for Habitual Offenders.- Airman or NC (E) who meets with any one of the following individual criteria is to be treated as Habitual Offender and his case is to be considered for discharge after issuing a show cause notice:-

(a) Total number of punishment entries six and above (including Red and Black Ink entries).

Or

(b) Four Red Ink punishment entries.

Or

(c) Four punishment entries (Red and Black Ink entries included) for repeated commission of any one specific type of offence, such as Disobedience, insubordination, AWL/Overstayal of Leave, Breaking Out of Camp, Offence involving alcohol, Mess Indiscipline, Theft or Service/Personal property belonging to others and use of abusive/threatening language etc.

6. Potential Habitual Offenders. Airman/NCs (E) who are on the threshold, i.e. only one entry (Red or Black Ink as the case may be) short of qualifying as Habitual Offender as per criteria laid down in Para-5 above are to be declared as potential habitual offenders and are to be issued with a Warning Letter.

Appendix to Air HQ Letter

Air HQ/C 23406/685/PS

Dated 18 Dec 96

DISCIPLINE: AIRMEN / NCs (E)

PROCEDURE TO BE

FOLLOWED WHILE PROCESSING

THE CASES OF HABITUAL OFFENDERS

Annexures:

1. Warning: Potential Habitual Offenders-Airmen/NCs (E).
2. Second Time Warning when a chance was given by competent authority.
3. Second Time Warning when punishment awarded earlier is expunged.
4. Second Time Warning when Potential Habitual Offender fulfils the criterion of Habitual Offenders Policy second time.
5. Show Cause Notice.
6. Fresh Show Cause Notice.
7. Data Sheet.

1. Aim. This appendix lays down the procedural details of action required to be taken at various stages/levels to process a case under Habitual Offenders Policy as modified vide Para-5 to 8 of Air HQ Letter No. Air HQ/C 23406/685/PS dated 18 Dec 96.

2. Warning Letter.

- (a) Immediately after an airman/ NC (E) is declared as Potential Habitual Offender as per laid down criteria, the Commanding Officer of the individual is to issue him precautionary warning in writing. The warning letter is to be issued with reference to the criteria on the threshold of which the individual has reached. He is to be informed that he is getting another opportunity to mend himself and any addition of another punishment entry either Red or Black as the case may be, will result in his discharge from service. Receipt of the warning letter will be obtained on the duplicate copy. The receipted copy of the warning letter is to be retained in service documents and the copy thereof in the office/case file. A standard format to the warning letter is placed at Annexure-1 to this Appendix. It also bears the annotation required to be

obtained on the duplicate copy from the airman/ NC(E) concerned.

- (b) Whenever the case of an airman/ NC (E) is considered by the competent authority for final orders and he is afforded one more chance, a warning letter is required to be issued to him by his Commanding Officer again. His will be treated as second time warning. The standard format for such second time warning is placed at Annexure-2 to this Appendix.
- (c) In a case where an individual has been warned in accordance with this policy and subsequent a punishment awarded to him prior to the issue of warning is expunged a second time warning will be required to be issued when he again fulfils any of the criterion laid down for Potential Habitual Offender. Standard format for such second time warning is placed at Annexure-3 to the Appx.
- (d) The policy letter lays down three criterion under para-5(a) (b) & (c) namely, a total of six punishment entries (Red and/ or Black), four Red Ink entries and four punishment entries (Red and/ or Black) for repeated commission of any one offence. Therefore an individual who has acquired a total of five punishment entires or three Red Ink Entries or three entries for repeated offence reaches the threshold of criteria laid down at Para-5(a), (b) or (c) respectively and is declared to be a Potential Habitual Offender with reference thereto. However, there can be a case where an individual has been declared Potential Habitual Offender with reference to criteria at Para-5 (b) or / and 5(c) and he commits offences thereafter and is also punished but does not fulfil the criteria with reference to which he was warned (award of Black Ink entries or an entry for offences other than the one earlier repeated as the case may be). For such a case also an individual will be required to be

warned second time when he reaches the threshold of another criterion, i.e. Para-5(a). A standard form for such second time warning is placed at Annexure-4 to this Appendix.

3. Show Cause Notice.

(a) In all cases where an airman or NC (E) fulfills the laid down criteria of Habitual Offenders he will be served a Show Cause Notice calling upon him to explain reasons as to why the proposed action of discharge from service shall not be taken against him. A copy of the standard format of Show Cause Notice is placed at Annexure-5 to this Appendix. Copy of the warning letter and conduct sheet is to be attached along with the Show Cause Notice and a period of clear 10 days is to be given to the individual for submitting reply to the Show Cause Notice. In case an individual who are afforded a chance by the competent authority and issued with second time warning, subsequently commits another offence, he is to be issued with a Fresh Show Cause Notice. A standard format of a Fresh Show Cause Notice is placed as Annexure-6 to this Appx.

(b) A Show Cause Notice is required to be served immediately after it becomes due. It is to be issued by Command Judge Advocate of a Command HQ in respect to airmen/ NC (E) serving under their Command. In case of airmen/ N (E) serving in units directly under Air HQ, JAG (Air) at Air HQ will issue the Show Cause Notice and in the case of NCs (E) serving in units directly under Air HQ, the Commanding Officer concerned will issue the Show Cause Notice.

(c) In all cases the Commanding Officer of the individuals will serve the Show Cause Notice and obtain signature on the duplicate copy of the Show Cause Notice. The receipted copy is to be retained in the service documents and a copy thereof to be kept in the file.

(d) Movement of airmen on posting after issue of Show Cause Notice is governed vide this HQ letter No.Air S/40302/PA-II dated 05 May 89. However, if such an airman is cleared to move to his next unit, then the new Command HQ is to be informed as he is required to be issued with another Show Cause Notice due to change of Command.

(e) In all cases whenever a Show Cause Notice/Fresh Show Cause Notice is served on the individual, a copy thereof should be forwarded to AFRO. ”

6. Ld. Counsel for the applicant has relied upon Para-2(a), 2(b) and Para 2(c) of the aforesaid policy letter dated 18.12.1996, which provide for second warning for improvement and in case there is no improvement in his service career only then he can be discharged. However, learned counsel for the respondents has vehemently argued that second warning was not required in this case and second warning is issued only in those cases when criteria is changed. However, objection raised by the respondents seems to be incorrect for the reason that Para-2(a) at the face of it indicates that the warning letter has been issued because of red and black entries, pointing out that in case there is no improvement in his services, he shall be discharged. It also provides that the warning letter shall be issued in the form as contained in Annexure-1 to the Appendix thereto.

7. Para-2 (b) further provides that whenever the case of an airman/ NC (E) is considered by the competent authority for final orders, he shall be afforded one more chance and a warning letter is required to be issued to him. This will be issued as second time warning. The standard format of such second time warning letter

has been provided in Annexure-2 to the appendix thereto. The framer of the policy used the word 'again' in the aforesaid Para-2 (b), which means a warning letter shall be issued to the delinquent after first warning. In the present case it has not been disputed that only one warning letter (supra) was issued. So far as the objection raised by the learned counsel for the respondents is concerned it deals with the situation where an individual has been warned in accordance with the policy and subsequent punishment awarded to him prior to issue of warning, expunged and a second time warning was required to be issued when he again fulfils any of the criterion laid down for potential habitual offender. The standard format for such second time warning has been given in Annexure-3 to the appendix.

8. We have gone through the Annexures-1, 2 and 3 to the Appendix. At the face of record it shows that the second warning letter is to be issued and third warning is subject to the condition, if earlier warning is expunged. So far as another second warning, which is actually third warning letter, is concerned, it shall be issued subsequent to expunction of earlier warning, as is evident from Annexure-3 quoted herein above. Requirements of Annexures-1, 2 and 3 are reproduced as under :-

***“Annexure-1 (Refers to Para -2(a) of
Appx to Air HQ letter No. Air HQ/C
23406/685/PS dated 18 Dec 96.***

Tele :-----

-----*(unit)*

Ref No.-----

----- *(Date)*

Full Particulars of Airman/NC (E)

Unit -----

WARNING: POTENTIAL HABITUAL

OFFENDERS – AIRMEN/ NCs (E)

1. A perusal of your service documents has revealed that there are a total of _____ entries of punishment(_____Red Ink and_____Black Ink) in your Conduct Sheet as on_____ (date of last punishment awarded).

2. In accordance with the policy, airmen who fall in any of the following categories shall be treated as Habitual Offenders and are to be considered for discharge from service under Rule 15(2) (g) (ii)/Rule 15(2) (k) read in conjunction with Rule 15(2)* of the Air Force Rules, 1969 under the clause **“His service No Longer Required-Unsuitable For Retention In The Air Force.”**
 - (a) Total No. of punishment entries six and above (including Red and Black ink entries)

Or
 - (b) Four Red ink punishment entries.

Or
 - (c) Four punishment entries (red and black ink entries included) for repeated commission of any specific type of offence.

3. It has been observed that you are on the threshold of falling in the category of Habitual Offender under para* 2(a) or (b) or/ and (c) above.

4. You are hereby cautioned and counseled to mend yourself and desist from acts of indiscipline and are also warned that addition of another punishment entry as required by the category of Habitual Offenders referred in Para 3 above will render you liable for discharge from service under Rule 15(2)(g)(ii)/Rule 15(2) (k) read in conjunction with Rule 15(2)* of the Air Force Rules, 1969.

Commanding Officer

Received the original copy of this Warning Letter.

Signature _____

Full Particulars _____

Date : _____ Unit _____

Copy to :-

- (i) Service Documents - One copy (the duly receipted copy Of this Warning is to be kept in the service documents of airman/NC (E) as an Encl).
- (ii) File - One Copy
 - Strike out whichever is not applicable.”

“Annexure-2 (Refers to Para -2(b) of Appx to Air HQ letter No. Air HQ/C 23406/685/PS dated 18 Dec 96.

Tele -----

----- (Unit)

Ref No.

-----Date)

Full Particulars of Airman/NC(E)

Unit _____

SECOND WARNING: POTENTIAL HABITUAL OFFENDERS – AIRMEN/NCs(E)*

1. Reference is made to the following :-

- (a) Warning letter No. ----- dated issued by Commanding Officer ----- (unit) served on you on ----- (Date of receipt).
- (b) Show Cause Notice No. ----- dated ----- issued by ----- (Command HQ/Air HQ) served upon you on ----- (Date).
- (c) Reply to the Show Cause Notice dated ----- rendered by you.

2. Your case was considered by the competent authority for discharge from the IAF under Rule 15(2) (g) (ii) Rule 15(2) (K) read in conjunction with Rule 15(2) of the Air Force Rules, 1969 and after due consideration you have been given one more chance to improve yourself.

3. In view of the above you are hereby cautioned to be more careful in future and desist from acts of indiscipline and are also warned that addition of another punishment entry Red/ Black Ink will render you liable to be discharged from service under Rule 15(2) (g) (ii) Rule 15(2) (K) read in conjunction with Rule 15(2) of the Air Force Rules, 1969.

Commanding Officer
Received the original copy of this Second Time Warning Letter.

Signature-----

Full Particulars-----

Date-----

Unit -----

Copy to :-

(i) Serving Documents - One copy (the receipted copy of this 2nd time warning is to be kept in the service documents of airman /NC (E) as an Encl).

(ii) File - One Copy

Strike out whichever is not applicable”

“**Annexure-3** (Refers to Para - 2(c) of Appx to Air HQ letter No. Air HQ/C 23406/685/PS dated 18 Dec 96.

Tele :-----

----- (Unit)

Ref No.-----

----- (Date)

Full Particulars of Airman/NC (E)

Unit -----

**SECOND WARNING: POTENTIAL HABITUAL
OFFENDERS – AIRMEN/ NCs (E)**
(When punishment (s) awarded earlier is expunged)

1. Reference is made to the following:-

- (a) Warning letter No.----- dated-----
issued by Commanding Officer ----- (unit) served on
you on ----- (Date of receipt).
- (b) Show Cause Notice No.----- dated-----
issued by ----- (Command HQ./ Air HQ) served
upon you on ----- (Date).
- (c) Reply to the Show Cause Notice dated-----
rendered by you.

2. Your case was considered in the light of your application
dated----- and the punishment of -----
awarded to you on----- (date) by -----
has been expunged/set aside by ----- the
authority competent under Rule 33 of the Air Force Rules,
1969 on ----- (date).

3. Thereafter, you have again indulged in an act of/acts of
indiscipline on ----- (date) and incurred one more
Red/Black Ink punishment entry. Therefore, you are now on
the threshold of falling in category of Habitual Offenders as
given below :-

- (a) Total No. of punishment entries six and above (including
Red and Black ink entries)

Or

- (b) Four Red ink punishment entries.

Or

(c) *Four punishment entries (red and black ink entries included) for repeated commission of any specific type of offence.*

4. *In view of the foregoing, you are hereby given an opportunity to mend yourself and desist from acts of indiscipline and are also warned that addition of another punishment entry as required by the category of Habitual Offenders referred in Para 3 above will render you liable for discharge from service under Rule 15(2) (g) (ii)/ Rule 15(2) (K) read in conjunction with Rule 15(2) of the Air Force Rules, 1969.*

Commanding Officer

Received the original copy of this Second Time Warning Letter.

Signature-----

Full Particulars-----

Date : ----- Unit -----

Copy to :-

- (i) *Service Documents - One Copy (the duly receipted copy of this 2nd time warning is to be kept in the service documents of airman/ NC (E) as an Encl).*
- (ii) *File - One Copy.*

Strike out whichever is not applicable”

9. On a combined reading of aforesaid all three warnings, discussed herein above read with Paras-2(a) and 2(b), we are of the considered view that the second warning letter is must because a person is being deprived of his livelihood because in such a situation a thing should be done in accordance with the procedure prescribed by law and not otherwise. Now it is settled proposition of law that every order passed by the authorities, including judicial, quasi judicial or administrative order must be reasoned one. It is settled law that the reasoned order is the part of natural justice. Hon'ble Supreme Court has held in number of cases that

the authorities have to record reasons, otherwise it may become a tool of harassment of the delinquent in the hands of authorities, vide ***K.R. Deb vs. The Collector of Central Excise, Shillong***, AIR 1971 SC 1447; ***State of Assam & Anr vs. J.N. Roy Biswas***, AIR 1975 SC 2277; ***State of Punjab vs. Kashmir Singh***, 1997 SCC (L&C) 88; ***Union of India & Ors. Vs. P. Thayagaraan***, AIR 1999 SC 449; and ***Union of India vs. K.D. Pandey & Anr, (2002) 10 SCC 471***. Therefore, it is important and necessary that the procedure laid down in the policy must be strictly followed. Attention has also been invited to a judgment of Hon'ble Supreme Court in ***Union of India & Ors vs. Corporal A.K. Bakshi and another*** dated 23.02.1996, wherein their Lordships had considered and affirmed policy with regard to second warning, so that the delinquent officer may improve his conduct. For convenience the relevant portion of the aforesaid judgment is reproduced as under :-

“By paragraph 3 of the Procedure for Discharge habitual offenders who may not be found suitable for retention in service are initially placed in two categories. Viz....(a) habitual offenders who have already crossed the criteria as laid down vide paragraph 4 (a), (b) and (c) of the policy guidelines, and (b) offenders who are on the threshold. Under paragraph 7 Units/Stations are required to order Boards of Officers to scrutinize the service documents (conduct sheets) of all airmen with a view to identify and list out the habitual offenders and potential habitual offenders as per the criteria laid down in paragraph 4 (a), (b) and (c) of the policy guidelines. Copies of the proceedings of the Board of Officers are required to be forwarded to the Command Headquarters and Air Force Records. Under paragraph 9 airmen of both categories are to be warned in writing by The Commanding Officer personally about the implication of their persisting in acts of indiscipline and they are to be informed that firstly, they are getting another opportunity to mend themselves and an

addition of another punishment entry (either Red or Black) in their record will result in their discharge. Under paragraph 11 conduct sheet of the airman is required to be reviewed by the Adjutant of the unit concerned every time an airman put on charge is found guilty and punished to ascertain whether the offender falls in any of the categories and, if so, it initiate appropriate action where necessary. Under paragraph 13 it is required that whenever an airman of the above two categories is awarded another punishment, his case is to be immediately reported by the Unit to the Command concerned. In paragraph 14 it is provided that all cases of the two categories, i.e, those who have already crossed the criteria laid down for qualifying as habitual offenders and those on the threshold of doing the same, reported to Command Headquarters either by the initial Board of Officers of individually, are to be monitored by the command Headquarters and on receipt of intimation regarding award of another punishment in such cases the Command Headquarters are to issue show cause notice to the individual, By paragraph 15 it is required that all case of airmen who have been served with show cause notices are to be individually forwarded with all the relevant replies/details/documents/recommendations to Directorates of PS and PA at AIR Headquarter at the earliest. Paragraph 16 makes provision for scrutinizing of the case by the Directorate of PS and for forwarding the same to the Directorate of PA with their recommendations. Under paragraph 17, the Directorate of PA has to submit the cases to Air Officer Incharge Personnel for his approval and then to intimate follow up action with Air Force Records Officer.”

10. No other ground has been raised or pressed by the learned counsel for the applicant.

11. In view of the above, since the procedure prescribed in the policy has not been complied with, we are of the view that the impugned order of discharge does not stand to the test of Article 14 of the Constitution of India. The order of discharge seems to be vitiated. Accordingly, O.A. deserves to be allowed.

12. In view of the above, we allow the O.A. and set aside the impugned order of discharge dated 17.01.2013 with all consequential benefits. However, we confine the back wages to the extent of 25%, with liberty to the respondents to proceed afresh in case exigency so requires.

No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

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

Dated: 21st day of July, 2017

JPT