

ARMED FORCES TRIBUNAL REGIONAL BENCH, LUCKNOW

Transfer Application No. 61 of 2013

Tuesday, the 5th day of April, 2016

Court No. 2

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

Satye Singh Rawat, son of late Shri Indre Singh Rawat, resident of village Garwal, P.O. Paldwari, P.C. Parkandi, Tahsil Ukhimith, District Rudraprayag.

..... Petitioner/applicant

By Shri Shailendra Kumar Singh, counsel for the petitioner

Versus

1. Union of India through Secretary, Defence, New Delhi.
2. Commandant, 15 Garh. Rif. Pin-910715 C/o 99 APO

.....Respondents.

By Maj Soma John, OIC Legal Cell for the respondents.

ORDER

1. We have heard Shri Shailendra Kumar Singh, learned counsel for the applicant. No counsel has appeared for the respondents. However, with the assistance of Maj Soma John, OIC Legal Cell, who is present

and is defending the cause of the respondents, we are disposing of this matter finally.

2. The petitioner had preferred a writ petition bearing No. 193 of 2009 in the High Court of Uttarakhand at Nainital being aggrieved with the impugned order of discharge from service on account of four red ink entries as per provisions of Army Rule 13(3) III(v). While assailing the impugned order, learned counsel for the applicant submits that neither a preliminary enquiry was held, nor the applicant was given any reasonable opportunity to defend his case in deemed enquiry, hence the impugned order suffers from the vice of arbitrariness. Our attention has been drawn to the final judgment of this Tribunal dated 15.10.2014, delivered in **Original Application No. 231 of 2014, *Basant Kumar Singh versus Union of India and others***, whereby it has been held that in view of Army Headquarter letter dated 28.12.1998 read with Article 14 of the Constitution, preliminary enquiry and active participation of the incumbent is a must. The relevant portion of the said judgment is quoted below:

*“74. While considering the mandatory nature of army Order 1988 (supra), in the case of **Nk Abhilash Singh Kushwah vs. Union of Inida** (supra) in paragraph-75, this Tribunal has culled out the law on the subject. For convenience sake, para-75 is reproduced as under:*

“75. In view of above, since the applicant has been discharged from Army without following the additional

*procedure provided by A.O. 1988 (supra) seems to suffer from vice of arbitrariness. **Finding with regard to applicability of Army Order 1988 (supra) is summarized and culled down as under:***

(i) *In view of provision contained in sub-rule 2A read with sub-rule 3 of Rule 13 of the Army Order (supra), in case the Chief of the Army Staff or the Government add certain additional conditions to the procedure provided by Rule 13 of the Army Rule 1954 (supra), it shall be statutory in nature, hence shall have binding effect and mandatory for the subordinate authorities of the Army or Chief of the Army Staff himself, and non compliance shall vitiate the punishment awarded thereon.*

(ii) *The Chief of the Army Staff as well as the Government in pursuance to Army Act, 1950 are statutory authorities and they have right to issue order or circular regulating service conditions in pursuance to provisions contained in Army Act, 1950 and Rule 2A of Rule 13 (supra). In case such statutory power is exercised, circular or order is issued thereon it shall be binding and mandatory in nature subject to limitations contained in the Army Act, 1950 itself and Article 33 of the Constitution of India.*

(iii) *The case of **Santra** (supra) does not settle the law with regard to applicability of Army Order of 1988 (supra), hence it lacks binding effect to the extent the Army Order of 1988 is concerned.*

(iv) *The judgment of Jammu & Kashmir High Court and Division Bench judgment of Delhi High Court as well as provisions contained in sub-rule 2A of Rule 13 of the Army Act,*

*1950 and the proposition of law flowing from the catena of judgments of Hon'ble Supreme Court and High Court (supra) relate to interpretative jurisprudence, hence order in **Ex Sepoy Arun Bali** (supra) is per incuriam to statutory provisions as well as judgments of Hon'ble Supreme Court and lacks binding effect.*

(v) The procedure contained in Army Order of 1988 (supra) to hold preliminary enquiry is a condition precedent to discharge an army personnel on account of red ink entries and non-compliance of it shall vitiate the order. Till the procedure in Army Order of 1988 (supra) continues and remain operative, its compliance is must. None compliance shall vitiate the punishment awarded to army personnel.

(iv) The procedure added by Army Order of 1988 is to effectuate and advances the protection provided by Part III of the Constitution of India, hence also it has binding effect.

(vii) Order of punishment must be passed by the authority empowered by Rules 13, otherwise it shall be an instance of exceeding of jurisdiction, be void and nullity in law.

75. In view of the above, since the procedure provided by Army Headquarter Order dated 28.12.1988 has not been followed, the impugned order seems to be not sustainable and suffers from vice of arbitrariness."

In view of above, this T.A. deserves to be allowed and is hereby allowed. The impugned order of termination dated 29.11.2008 passed by respondent no. 2 is set aside. However, the payment of back wages to the applicant is allowed to the extent of 25% of the salary payable under

the Rules. The petitioner shall be deemed to be in service in the rank which he held at the time of discharge, for the purposes of payment of pensionary benefits. All payments with regard to above shall be made to the applicant expeditiously, say within a period of four months from the date of receipt of a certified copy of this order by the respondents. No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

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

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