

Court No. 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 57 of 2016

Tuesday, this the 31st day of August, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Ex Sep Sudhir Kumar, No. 3189409L
S/o Shri Mahakar Singh
R/o Vill & PO – Debathva, Distt – Meerut (UP)

.... **Applicant**

Ld. Counsel for the Applicant : **Shri Ashok Singh &**
Shri Vikas Singh Chauhan, Advocate.

Versus

1. Union of India, its through Secretary, Govt. of India, Ministry of Defence, New Delhi – 110011.
2. Chief of the Army Staff, IHQ of MoD (Army), DHQ PO, New Delhi – 110011.
3. Officer-in-charge, Records, The JAT Regt. Pin – 900496, C/o 56 APO.
4. Commanding Officer, 19 JAT Battalion, C/o 56 APO.

... **Respondents**

Ld. Counsel for the Respondents : **Shri Yogesh Kesarwani,**
Central Govt Counsel

ORDER

1. The instant Original Application has been filed on behalf of the petitioner under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the petitioner has sought following reliefs:-

“8.1 Issue an order or direction quashing the effect of the basic impugned sanction of the commander, 170 Infantry Brigade dated 30 Aug 2007, discharge certificate dated 16

Jan 2008 as well as impugned order/letter dated 22 Dec 2015 passed by OIC, Records the JAT Regiment.

- 8.2 Issue an order or direction to the Respondent authorities to release all the due amount of the pensionary benefits along with interest and consequential benefits as available to him as calculated from the date of enrolment of the applicant.
- 8.3 Issue an order or direction directing the respondents to give the other service benefits, which is applicable under law.
- 8.4 Issue any order/direction in favour of the applicant as this Hon'ble Tribunal may deem fit in the circumstances of the case.
- 8.5 issue an order or direction awarding the cost of the application together with all legal expenses incurred by the applicant.”

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 28.06.1996 and was discharged from service on 17.01.2008 after rendering 11 years and 6 months of service being undesirable soldier under Army Rule 13 (3) III (v) and Army Headquarters letter dated 28.12.1988. During the entire service, the applicant was awarded five red ink entries punishments. Since the applicant had failed to show improvement in discipline and sense of devotion towards duty despite frequent counselling and punishment keeping in view the above facts, it was brought out that the applicant was not upto the acceptable limit of discipline of soldier in Indian Army where the discipline is the backbone. Therefore, applicant was issued a Show Cause Notice dated 16.08.2007 by Commander 170 Infantry Brigade. The notice was replied by the applicant on

22.08.2007. Reply of Show Cause Notice alongwith recommendation of Commanding Officer of 19 JAT were forwarded to Commander 170 Infantry Brigade for sanction of discharge order and accordingly, sanction of discharge was accorded and applicant was discharged from service w.e.f. 17.01.2008. Thereafter, applicant submitted an appeal on 14.11.2009 which was suitably replied by Records JAT Regiment. Thereafter, the applicant filed a mercy petition dated 09.03.2011 against illegal, arbitrary and irrational local discharge from service which was also replied by the Records JAT vide letter dated 23.03.2011 stating that discharge was as per Army Rules, 1954 and Army HQ policy letter dated 28.12.1988 as his service was no longer required. Thereafter, the applicant filed an appeal on 26.06.2015 before the Chief of the Army Staff which was disposed off. The applicant filed M.A. No. 1414 of 2015 before this Tribunal which was disposed of on 30.09.2015 giving certain directions to the respondents to decide the claim of the applicant which was decided by the respondents vide order dated 22.12.2015. The applicant being not satisfied with the procedure of discharge, has filed this Original Application to quash his discharge order and to allow him to join duty.

3. Learned counsel for the applicant submitted that applicant has been discharged from service in an illegal and arbitrary manner. The discharge order is based on presumption and surmises as it has been observed that no departmental/preliminary enquiry was conducted before passing the order of discharge from service, which is contrary to the service law as well as against the principal of natural justice.

The order of discharge has been passed in a clear violation of Army Rules and Articles 14, 16 and 21 of the Constitution of India, as such the impugned order in question cannot be said to be just and proper and the same may liable to be quashed by this Tribunal and applicant should be given all due amount of the pensionary/consequential benefits. He also placed reliance on the judgment of the Hon'ble Apex Court in **Union of India & Ors vs. Corporal A.K. Bakshi & Anr**, decided on 23.02.1996 and the Hon'ble Delhi High Court in **Surinder Singh Sihag vs. Union of India and Ors**, decided on 11.09.2002 and pleaded that applicant's case is similar to aforesaid judgments and therefore, his discharge order to be quashed and applicant should be granted all pensionary/consequential benefits.

4. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in the Indian Army on 28.06.1996 and was discharged from service on 17.01.2008 after rendering 11 years and 6 months of service being undesirable soldier under Army Rule 13 (3) III (v) and Army HQ letter dated 28.12.1988. During the entire service, the applicant was awarded five red ink entries punishments as per following details:-

Ser No.	Date of Award of Punishment	Army Act Section	Offence	Punishment awarded
(a)	19.05.2001	63	On sentry duty negligently handled his AK-47 rifle which fired accidentally and sustained gunshot wound at his right thigh.	i – 7 days RI. ii – 7 days detention. iii-14 extra Gd duties.
(b)	02.08.2003	63	Consumed alcohol at a forward post on LOC, an act prejudicial to good order and military discipline.	14 days RI
(c)	22.11.2003	63	Causing disturbance in the lines by using	i – 7 days RI. ii – 7 days pay fine.

			unparliamentarily language, an act prejudicial to good order and military discipline.	
(d)	18.11.2004	48	Intoxication while on duty	14 days RI
(e)	04.08.2007	48	Intoxication while on duty	7 days RI

5. Ld. Counsel for the respondents further submitted that since the applicant had failed to show improvement in discipline and sense of devotion towards duty despite frequent counselling and punishment keeping in view the above facts, it was brought out that the applicant was not upto the acceptable limit of discipline of soldier in Indian Army where the discipline is the backbone. Therefore, applicant was issued a Show Cause Notice dated 16.08.2007 by Commander 170 Infantry Brigade. The notice was replied by the applicant on 22.08.2007. The reply was duly considered and being not found sufficient, the Commander 170 Infantry Brigade sanctioned discharge order of the applicant and accordingly, applicant was discharged from service w.e.f. 17.01.2008. The applicant had become a bad example in the unit due to his irresponsible attitude towards his duties and discipline and thereby failed to render an unblemished service which resulted his discharge from service as undesirable soldier.

6. Ld. Counsel for the respondents also relied on the judgment of the Hon'ble Apex Court in Civil Appeal No. 1857 of 2018, **Sep Satgur Singh vs. Union of India & Ors**, decided on 02.09.2019. Para 7 of the judgement being relevant is quoted below :-

"7) We do not find any merit in the present appeal. Para 5(a) of the Circular dated December 28, 1988 deals with an enquiry which is not a court of inquiry into the allegations against any army personnel. Such enquiry is not like departmental enquiry but semblance of the fair decision-making process keeping in view the reply filed. The court of inquiry stands specifically excluded. What

kind of enquiry is required to be conducted would depend upon facts of each case. The enquiry is not a regular enquiry as para 5(a) of the Army Instructions suggest that it is a preliminary enquiry. The test of preliminary enquiry will be satisfied if an explanation of a personnel is submitted and upon consideration, an order is passed thereon. In the present case, the appellant has not offered any explanation in the reply filed except giving vague family circumstance. Thus, he has been given adequate opportunity to put his defence. Therefore, the parameters laid down in para 5(a) of the Army Instructions dated December 28, 1988 stand satisfied.”

Learned counsel for the respondents pleaded that O.A. may be dismissed.

7. We have heard learned counsel for both sides and perused the material placed on record.

8. It is pertinent to mention that judgments relied upon by the applicant in Para 3 referred above are not relevant in the present case being based on different facts and circumstances of the case as illustrated below :-

(a) ***Union of India & Ors vs. Corporal A.K. Bakshi & Anr-***

In this case, respondents-applicants were discharged under Rule 15 (2) (g) (ii) of Air Force Rules, 1969 and his services were not terminated by way of punishments for misconduct falling under Rule 18 of Air Force Rules, 1969. The Show Cause Notices were also issued as per Rules, therefore, appeal was allowed in favour of Union of India, there being no infirmity while ordering for discharge of the respondents-applicants from service.

(b) ***Surinder Singh Sihag vs. Union of India and Ors*** - In this case applicant was having more than 14 years of service

and his services were terminated by way of punishments and due procedure was not followed by the respondents as per Army HQ letter dated 28.12.1988. Besides this, no sufficient time was granted to the applicant to reply to Show Cause Notices and even first Show Cause Notice was not received by the applicant and he came to know only on receipt of second Show Cause Notice issued to him by the respondents on non receipt of reply of first Show Cause Notice from the applicant. The applicant replied to second Show Cause Notice and it resulted misconception and thereafter, applicant was discharged from service without giving sufficient opportunity to show cause. Therefore, Writ Petition was allowed in favour of the applicant.

Hence, the benefit of cases relied upon the applicant cannot be extended to him being both the cases are different in nature.

9. The applicant in his reply dated 22.08.2007 to Show Cause Notice, has accepted that he has been punished five times for his own mistakes and prayed not to discharge him from service by giving one more chance to serve without any further mistake so that he can look after to his family. This reply of applicant, being a general/routine reply was not treated sufficient and satisfactory cause to retrain him in service and therefore, discharge order issued by the respondents cannot be set aside in the manner that due procedure of regular inquiry was not followed.

10. It is also made clear that in view of Para 7 of the judgment of the Hon'ble Apex Court in **Sep Satgur Singh** (*supra*), no regular inquiry was required as Para 5 (a) of Army Headquarters letter dated 28.12.1988 does not deal with Court of Inquiry. Therefore, discharge order of the applicant was issued as per rules and policy letter dated 28.12.1988.

11. In substance, we find that applicant was negligent towards his duties, habitual of over consumption of alcohol and indisciplined soldier. During his service, the applicant was awarded five punishments for his irresponsible attitude and indisciplined nature towards his duty. Even after giving repeated warnings/counselling, the applicant did not show any improvement in his personal/military discipline and conduct. There being no other option, being an undesirable soldier, the applicant was discharged from service after due procedure as per Army Rule 13 (3) III (v) and Army Headquarters policy letter dated 28.12.1988 on the subject. Hence, the applicant is not entitled the relief prayed in Original Application to quash his discharge order.

12. In view of the above, the O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

13. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: August, 2021

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