

**Court No. 1**

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

**ORIGINAL APPLICATION No. 825 of 2021**

Wednesday, this the 03<sup>rd</sup> day of August, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Brijesh Kumar Srivastava S/o Sri Prabha Kant Srivastava,  
Permanent resident of 04, Sitapur Road, Maiku Muzaffar Vihar  
volony, Roodahi, Lucknow Presently posted/discharge as Rect  
(Ex. Hav) No. 30062258H, 137, CETF Bn (TA) 39 GR Pin-  
934337, New Cantt. Allahabad, U.P.

..... Applicant

Ld. Counsel for the : **Shri Salik Ram Yadava**, Advocate.  
Applicant

Versus

1. Union of India, through Principal Secretary Defence, Civil Secretariat, New Delhi.
2. T.A. Group Headquarters, Central Command, Pin-900450, C/o 56 APO.
3. Naveen Singh, Brigadier Commander, T.A. Group Headquarters, Central Command, Pin-900450, C/o 56 APO.

.....**Respondents**

Ld. Counsel for the : **Shri Rajeev Narayan Pandey**, Advocate  
Respondents. Central Govt. Counsel

**ORDER (Oral)**

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

- (A) *That this Hon'ble Tribunal may kindly set aside /quash the impugned discharge/termination order dated 09.11.2021 annexed as Annexure No.1 to this O.A. and direct the opposite parties to reinstate the applicant with all consequential benefits in the interest of justice.*
- (B) *That the cost of the original application may kindly be awarded to the Applicant.*
- (C) *That any other order, which this Hon'ble Tribunal may deem fit and proper may also be passed in favour of the Applicant and against the opposite parties.*

2. Brief facts of the case are that the applicant was enrolled in the Army on 06.01.2001 and after completion of 18 years service he was discharged from service on 30.11.2018 (AN). He was re-enrolled in Composite Ecological Task Force (CETF) of Territorial Army on 01.06.2020 as Chef. During the course of his training his verification roll was sent on 25.09.2020 to Senior Superintendent of Police, Lucknow for verification of his character and antecedent. His verification was received through District Soldier Welfare Board, Kaserbagh, Lucknow vide letter dated 29.06.2021 in which he was found to be involved in a case vide FIR No 170/19 under Section 279, 337, 504 and FIR No 273/119 under Section 506 of IPC. Consequent to his involvement in criminal proceedings, letter

dated 31.07.2021 was issued to the applicant intimating him about his involvement in aforesaid FIRs and reply was sought by 03.08.2021. The applicant submitted his reply dated 03.08.2021 in which he admitted his involvement in above cases. Accordingly, a Show Cause Notice dated 09.09.2021 was issued by Brigade Commander, TA Group Headquarters. On receipt of his reply dated 29.09.2021 he was discharged from service w.e.f. 27.12.2021 under the provisions of Rule 14 (b) (ii) of TA Regulations, 1948 (Revised Edition). Applicant has filed this O.A. for his re-instatement into service.

3. Learned counsel for the applicant submitted that the applicant was discharged from Army service on 01.12.2018. He further submitted that applicant's character was exemplary during the period of his service in the Army and nothing adverse was reported at any occasion. It was further submitted that the applicant got selected for Chef Trade in 137, Composite Ecological Task Force (CETF) Battalion and he was not aware of his involvement in criminal cases prior to enrolment and no FIR was lodged against him. Learned counsel for the applicant further submitted that cases pending against him were decided on 05.04.2021 but due to Covid-19 order of court could not be obtained and submitted to Police Station. It was further submitted that SHO, Bakshi Ka Talab was relative of opposite party hence the FIR was lodged against the applicant only to make harassment.

It was further submitted that there being restrictions of discharge during Covid-19 pandemic, the applicant was discharged from service which is in violation of principles of natural justice. He pleaded for setting aside order dated 09.11.2021 and re-instate the applicant into service.

4. On the other hand, learned counsel for the respondents submitted that prior to enrolment in Chef Community in 137, Composite Ecological Task Force (CETF) Battalion, the applicant served for approx 18 years in Army for which he is in receipt of service pension. He further submitted that on receipt of police verification it came to the knowledge of the respondents that two FIRs under Section 279, 337, 504 and 506 were lodged against him prior to enrolment and based on police report a letter dated 31.07.2021 was issued asking his comments to which he replied on 03.08.2021 stating that the above cases had been closed on 05.04.2021. It was also stated by the applicant that due to closure of the court, police authorities did not receive copy of the court.

5. Learned counsel for the respondents further submitted that the individual was well aware of the cases registered against him, however in reply to Show Cause Notice he submitted that no such case was registered against him and did not disclose the factum of criminal cases registered against him in para 12 and 12 (a) of Territorial Enrolment Form. Thus, he submitted that the applicant had given false statement at the time of enrolment which is a

punishable offence. It was further submitted that a Show Cause Notice dated 09.09.2021 was issued to the applicant and his reply was received on 29.09.2021 which being found unsatisfactory, he was discharged from service w.e.f. 27.12.2021 under Rule 14 (b) (ii) of TA Regulations, 1948 (Revised Edition). He pleaded that since the applicant was discharged from service by following due procedure, this O.A. be dismissed.

6. Heard Shri Salik Ram Yadava, learned counsel for the applicant and Shri Rajeev Narayan Pandey, learned counsel for the respondents and perused the record.

7. There is no dispute that No 30062258H Rect (Ex Hav) was re-enrolled in 137, Composite Ecological Task Force (CETF) Battalion as Chef Community. During the course of his basic military training police verification roll was sent. A reply dated 29.06.2021 was received through Sainik Kalyan Evam Punarvas Adhikari enclosing therewith police verification report dated 20.05.2021 stating that two FIRs under Section 279, 337, 504 and 506 of IPC were pending against the applicant. On receipt of verification roll a letter dated 31.07.2021 was issued to applicant to submit his reply on the above aspect which he replied on 03.08.2021 admitting that these cases were registered against him due to personal enmity but the matter would be resolved amicably and it was pending due to Covid-19 pandemic. A Show Cause Notice dated 09.09.2021 was issued to applicant to which he

replied on 29.09.2021 submitting that he be granted time to settle the issue. This reply of Show Cause Notice was considered unsatisfactory and he was discharged from service under Rule 14 (b) (ii) of TA Regulations, 1948 (Revised Edition). For convenience sake, Show Cause Notice dated 09.09.2021 is reproduced as under:-

**“SHOW CAUSE NOTICE**

1. Verification roll in respect of you was done by Superintendent of Police, Lucknow (Rural) and forwarded to District Soldier Welfare Board, Kaiser Bag, Lucknow, vide their letter No CVR-03/2021 dated 27 May 2021. The same has been received by your unit, 137 CETF Bn (TA) 39 GR, through the District Soldier Welfare Board letter No ZSK/Misc/2021/7181 dt 29 Jun 2021. As per the verification roll, the following criminal cases have been registered against you:-

S No	FIR No	Date	Under Section	Police Station
(a)	170/19	20 Apr 2019	279, 337 and 504	Bakshi Ka Talab
(b)	273/19	28 Jun 2019	506	-do-

2. you were enrolled in 137 CETF Bn (TA) 39 GR on 01 Jun 2020 and the above mentioned cases were registered against you before enrolment, which was not divulged by you at the time of enrolment.

3. You are, therefore, called upon to show cause as to why the competent authority should not discharge you from service in accordance with Rule 14 (b) (ii) of TA Regulations 1948 (Revised Edition).

4. Your reply should reach the undersigned within thirty (30) days from date of receipt of this notice through the laid down channel, failing which it will be presumed that you have nothing to state in your defence and action will be taken to discharge you from service.

5. For your info and further necessary action”.

8. Applicant submitted his reply dated 29.09.2021 to the aforesaid Show Cause Notice and admitted that two FIRs against him were pending at Police Station, Bakshi Ka Talab, Lucknow in

which he was falsely implicated due to personal enmity and he required some time to liaise with concerned authorities to prove his innocence.

9. We have perused para 12 and 12 (a) of the Enrolment Form and we found that the applicant had declared that he was not involved in any criminal proceedings at the time of enrolment. For convenience sake Para 12 and 12 (a) are reproduced as under:-

*“12. Have you ever been convicted by Criminal Court and if so, in what circumstances and what was the sentence. -No 12(a). Have you ever been imprisoned by the civil power -No or are you under trial for any offence or has any complaint or report been made against you to magistrate or police for any office, if so give details”.*

The aforesaid answer implies that during the course of enrolment the applicant gave false statement that he was not involved in any criminal case but reply of Show Cause Notice shows that he was aware about criminal proceedings against him which being found contradictory he was discharged from service under Rule 14 (b) (ii) of TA Regulations, 1948 (Revised Edition), which for convenience sake is reproduced as under:-

*“14. Discharge-*

*(a) Every person enrolled shall, on becoming entitled to receive his discharge under the Act or these rules, be so discharge with all convenient speed.*

*(b) Any such person may be discharged as hereinafter provided on any of the following grounds namely-*

*(i) That he has been convicted by a criminal court of an offence punishable with transportation or imprisonment.*

*(ii) That he has in filling up any form prescribed by these rules or otherwise for the purpose of obtaining his enrolment made any statement which was false and which he knew to be false or did not believe to be true.*

*(iii) to (iv) x x x x x*

*(c) to (d) x x x x x x x x x*"

10. Perusal of statement made by the applicant at the time of enrolment and his reply to Show Cause Notice clearly envisages that he made a false statement at the time of enrolment and therefore, he was rightly discharged from service in terms of Rule 14 (b) (ii) of TA Regulations, 1948 (Revised Edition) which needs no interference.

11. In the result O.A. is dismissed.

12. No order as to costs.

13. Miscellaneous applications, pending if any, stand disposed of.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated : 03.08.2022

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