

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Reserved
(Court No. 2)

Original Application No. 245 of 2012

Wednesday the 10th day of February, 2016

“Hon’ble Mr. Justice Abdul Mateen, Member (J)
Hon’ble Lt. Gen. A.M. Verma, Member (A)”

No.4267749Y Ex Havildar, Vidyapati Singh, S/O Shri Vasudev Yadav, aged about 44 years, R/o CF/O B P_ Mishra, H.No. 154/144-A, Kailashpuri, Alambagh, Lucknow-05 District Lucknow (U.P.)

..... Applicant

By Shri R Chandra, counsel for the applicant.

Versus

1. Union of India through, the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of Army Staff, Army Headquarters, DHQ, Post Office New Delhi.
3. Officer-in-Charge, Records The Bihar Regiment C/O 56 APO.
4. The Commanding Officer, 47 RR, C/O 56 APO

..... Respondents.

By Shri R.K.S. Chauhan alongwith Capt. Ridhishri Sharma, Departmental Representative.

ORDER

1. This Original Application has been filed by the applicant praying to quash the orders dated 6.5.2009 and 12.5.2009 (Annexures ‘A-1’ & ‘A-2’ to the O.A., passed by respondent no.4 awarding severe reprimands to the

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applicant and to grant all consequential benefits after setting aside the punishments.

2. As it comes out that the applicant was enrolled in the Army on 18.1.1988. In 2009 he was serving with 47 Rastriya Rifles (47 RR for short). During this he was punished twice for offences under Section 63 of the Army Act and on both the occasions he was awarded the punishment of 'severe reprimand'. The charges on which the applicant was punished are as follows :-

"Field
02 Dec 2008

AA SEC 63
AN ACT PREJUDICIAL TO GOOD
ORDER AND MILITARY DISCIPLINE

*In that he,
at field, on 02 Dec 2008 at 1130hrs, willingly
stated a falsehood to a superior officer that he has
vacated the Govt Married Accommodation at
Lucknow Military Station, whereas he had not
done so.*

Field
08 May 2009

AA SEC 63
AN ACT PREJUDICIAL TO GOOD
ORDER AND MILITARY DISCIPLINE

*In that he,
at field, on 08 May 2009 at 1015hrs, while
performing the duties of an operation party Cdr
in 'A' Coy (Shumrial COB), failed to exercise
proper command and control over his party
resulting in negligent discharge of the AK-47
round by No 15577817F Spr Ramoo".*

3. The facts of the case, in brief, are that the applicant, on 2.12.2008, stated to his superior officer that he had vacated the Government married accommodation at Lucknow, whereas he had not done so, and thereby gave

a false statement. The applicant had been allotted a married accommodation at Lucknow by his previous Unit, i.e. 12 Bihar, till 31.5.2007, whereas he had been posted to 47 RR, with effect from 13.2.2008 and till that time he had not vacated the said Govt. married accommodation. He was sent on leave to hand over the married accommodation, but he came back without vacating the same and mentioned that he had vacated the said accommodation. The second charge against the applicant was that on 8.5.2009, while performing the duties of an operational party Commander, he failed to exercise proper command and control resulting in negligent discharge of one AK 47 round by Sapper Ramoo. The applicant had earned two red ink entries in the form of severe reprimands and, therefore, he could not be granted two years' extension in service, which he had requested. The applicant's wife too submitted an application to the President of Army Wives Welfare Association in this regard, which was suitably replied by the Records of Bihar Regiment, vide their letter dated 9.12.2011. The applicant was discharged from Army Service on 31.1.2012 after rendering 24 years and 14 days' service.

4. The applicant was represented by R. Chandra, learned counsel.

5. The applicant states that his family was residing at Lucknow in a quarter allotted by Bihar Regiment and his four children were studying in K.V. No. 2 at Lucknow in Class X and XI and in view of their education the applicant retained the accommodation given to him by 12 Bihar when he moved to higher altitude/field area in view of the existing instruction from

the Army HQ. The applicant states that he did not disobey the order of the Army authorities because he had not been told to vacate the quarter. Even his Company Commander in 47 RR took up the case with 12 Bihar for further retention of married accommodation. On 12.5.2009 the applicant was awarded severe reprimand for accidentally firing by Sapper Ramoo. The applicant says that in this party there were two officers, one JCO and 11 Jawans including the applicant. While Ramoo was awarded 28 days' R.I., the applicant was awarded Severe Reprimand. The officers and JCO were not punished. The applicant states that even Sapper Ramoo gave in writing that the round had been fired by mistake and that the applicant was not responsible for it. The applicant states that due to the illegal punishments he could not be promoted to the rank of Nb Sub as well as he was not granted extension of two years' service. The applicant says that had not signed the offence report and not accepted the plea of guilty because the charge against him was false and baseless.

6. The respondents were represented by Shri R.K.S. Chauhan, learned Standing Counsel, along with Capt. Ridhishri Sharma, Departmental Representative.

7. The respondents have raised objection against the challenge of Severe Reprimand. According to Section 3(o) of the A.F.T. Act, 2007 this O.A. is not maintainable. The applicant quotes several judgments of the Principal Bench of this Tribunal to support his case. The respondents further state that the claim of promotion by the applicant already stand infructuous. Alluding

to the facts of two punishments, the respondents stated that the applicant has asked for multiple reliefs, which is not maintainable. As regards the first charge, the applicant was posted to 47 RR from 13.2.2008 and he should have vacated the quarter allotted to him by 12 Bihar by 31.5.2007. The second charge was an operational area where he was Party Commander and had to exercise proper control lack of which resulted in firing of one round by a soldier of his party. From 47 RR the applicant was posted to 12 Bihar in March, 2010 from where he was posted to a newly raised Infantry Battalion, i.e. 19 Bihar, on 5.10.2010. The applicant was examined for award of retention for two years, but he was not granted this extension in compliance of the existing policy. The application of the wife of the applicant was also suitably replied. The respondents stated that the provision of Army Rule 22 read with Army Order 24 of 1994 were fully complied with.

8. Heard both the sides and examined the documents.

9. We have carefully examined the objection raised by the respondents that a punishment of Severe Reprimand after summary trial is not maintainable. We have no doubt that discipline is a very important facet of the Army life. Compromise of discipline must never be condoned. Punishment of Severe Reprimand awarded by a DCM, SGCM and GCM is maintainable before this Tribunal whereas the same punishment awarded by summary trial is not maintainable according to Section 3(o)(iii) of the Armed Forces Tribunal Act, 2007. The very next point, i.e. Section 3(o)(iv)

lay down “*any other matter, whatsoever*”. Under the provisions of this sub-section, i.e. sub-section (o)(iv) of Section 3 of the A.F.T. Act, 2007, we decided to entertain this application.

10. As regard the first charge, the applicant should have vacated the accommodation which had been allotted to him by 31.5.2007. Before that date, instead of vacating the accommodation he continued to remain in occupation of the said house in complete defiance of the existing orders. The applicant has produced photo-copy of the Army HQ letter dated 17.9.1997 which allows an officer/JCO/OR posted to HAA/field area to retain previous accommodation till allotment of SF accommodation. In the instant case the applicant was posted to 47 RR in February, 2008 whereas he should have vacated the accommodation allotted to him by 12 Bihar by 31.5.2007. The applicant’s claim that his Company Commander took up a case of retention of the accommodation is found to be incorrect as there is a letter of Ad Hoc Station HQ, Zangli, which sent the application for allotment of SF accommodation of the applicant to Station HQ, Lucknow and Station HQ, Gaya. There is not a whisper of retention of the existing married accommodation which the applicant was retaining at Lucknow and about which he had given false statement to his superiors in 47 RR.

11. As regards the second charge, this is a very serious matter. This happened in an operational area in which the applicant was expected to exercise proper command and control over his men so as to ensure safety of his own men. The said negligent firing could have caused injuries to any

one of his own troops, and accordingly, while suitable punishment was awarded to the person who fired that one round, the applicant as Party Commander also bore responsibility for the same and was punished.

12. As regards extension of service, according to the policy laid down vide Integrated HQ of MoD (Army) letter dated 21.9.1998, a person before he is granted extension of service should not have more than three red ink entries during his entire service career and no red ink entry in the last five years. The applicant did not fulfill this condition and accordingly was not found fit for extension of service since he had two red ink entries in the last five years. As regards provision of Army Rule 22, the respondents have enclosed copies of hearing of charge under Army Rule 22 which the individual had refused to sign. The other formalities with regard to framing of charge under Army Rule 22 had been complied with and there is no infirmity.

13. We also find that there is a certificate in Hindi attached as Annexure 'A-6' by Sapper Ramoo Saha in which it has been stated that the round was fired by his own fault and Hav. Vidyapati Singh, i.e. the applicant, was not responsible for it. It has not been indicated in the certificate as to when was this certificate given by Sapper Ramoo Saha. In any case we are of the view that such certificates cannot dilute the responsibility of the Party Commander in operational task and the defaulter must be held adequately responsible.

14. Accordingly, we are of the view that this O.A. deserves to be dismissed lacking merit and we accordingly dismiss this O.A. No order as to costs.

(Lt. Gen. A.M. Verma)
Member (A)

(Justice Abdul Mateen)
Member (J)

PG.