

**RESERVED**  
**Court No.1**

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

**ORIGINAL APPLICATION NO. 489 OF 2018**

**Monday this the 18<sup>th</sup> day of February, 2019**

**Hon'ble Mr. Justice S.V.S. Rathore, Member (J)**

**Hon'ble Air Marshal BBP Sinha, Member (A)**

Ex- 667893 CPL Indra Dev Singh Yadav,  
Son of Shri Vijai Singh Yadav,  
R/o Vill Kishohari, Post Pahalwanpur,  
District Ghazipur.

..... Applicant

Ld. Counsel for the Applicant : **Shri Pankaj Kumar Shukla.**  
Advocate

Versus

1. Union of India through the Secretary,  
Ministry of Defence (Air Force),  
New Delhi-110011.
2. The Chief of Air Staff,  
Air Headquarters, Vayu Bhawan,  
New Delhi – 110106.
3. Director, Dte of Air Veteran, Subroto Park,  
New Delhi – 110010.
4. Office of Joint CDA (Air Force), New Delhi  
C/o Air Force Central Accounts Office,  
Subroto Park, New Delhi-110010.
5. Commanding Officer, HQ Maintenance Command,  
Indian Air Force, Vayu Sena Nagar, Nagpur-440007.
6. Commanding Officer No.-1, Base Repair Depot Air Force,  
C/o Air Force Station, Chekeri, Kanpur.

..... Respondents

Ld. Counsel for the Respondents : **Shri Amit Jaiswal,**  
Central Govt Counsel.

**ORDER**

**“Per Hon’ble Mr. Justice S.V.S. Rathore, Member (J)”**

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

- “A. To issue/pass an order or directions to set-aside/quash the Discharge order dated 17.08.1998 and rejection order dated 30.03.2016.*
- B. To issue/pass an order or directions to set aside/quash the Five Red Ink entry and Two Black Ink entry mentioned in show cause notice dated 19.02.1998.*
- C. To issue/pass an order or directions to notionally re-instate applicant in the service alongwith all the consequential benefits from the date of discharge.*
- D. To issue/pass any other order or direction as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.*
- E. To allow this original application with costs.”*

2. Prior to this O.A., the applicant had preferred Civil Misc. Writ Petition No.32298 of 1998 before the Hon’ble High Court of Judicature at Allahabad and the prayer made by the applicant in the said writ petition was as under:

*“(a) issue a writ, order or direction in the nature of certiorari quashing the discharge order NO.Air HQ/40801/190/PA-III dated 7.8.1998 as contained in PO/2510/1/RW (Dis) dated 17.8.1998 (Annexure ‘1’) and the policy No.Air HQ/C 23406/685/PS dated 14..8.1984 (Annexure ‘3’).*

*(b) issue a writ, order or direction in the nature of mandamus commanding the Respondents not to give effect to the discharge order of the petitioner dated 7.8.1998 (Annexure 1).*

*(c) issue a writ, order or direction in the nature of mandamus commanding and directing the respondents not to interfere in the peaceful working of the petitioner in the Air Force in the rank, trade and place and to pay him regularly.*

*(d) issue any other writ, order or direction which may be deemed fit and proper in the facts and circumstances of the case and in the interest of justice.*

*(e) award cost of the petition to the petitioner against contesting respondents.”*

3. The said writ petition was transferred to this Tribunal and was registered as T.A. No. 74 of 2013. Vide order dated 03.09.2015, the same was disposed with the following orders :

“03.09.2015

Hon’ble Mr Justice D.P.Singh, Member (J)

Hon’ble Air Marshal Anil Chopra, Member (A)

*Present : Shri Rajat Pratap Singh, Ld Counsel for the Petitioner and Shri A.K.Singh, Ld. Counsel for the Respondents assisted by Wg Cdr SK Pandey, Departmental Representative of the Respondents.*

*We have heard Ld. Counsels for the parties.*

*Present application under section 14 of the Armed Forces Tribunal Act has been submitted against the impugned order of discharge dated 07.08.1998 on the ground that the applicant is habitual offender. After receipt of said order, the applicant represented his grievances to respondents to review their opinion. Revision was filed against show cause notice dated 19.02.1998. The applicant submitted his representation to the respondents, but no heed was given to the case of the applicant. This controversy is pending since 1998 initially in High court and now in this Tribunal.*

*Ld. Counsel for the Respondents submitted that his representation was decided but it was not communicated to the applicant.*

*Question involved in this case is that AOP has collectively signed the discharge order of several persons which is suffering from infirmity and illegality which has been communicated by the order dated 07.08.1998. It is not known whether it was sanctioned by the competent authority or not and it is a non speaking and unreasoned order.*

*We dispose of the Original Application finally with the directions to appropriate competent authority to decide the representation in accordance with the law by passing a speaking and reasoned order within one month. The applicant is given liberty to file fresh representation alongwith present order.*

*With these directions, the Original Application is disposed of.”*

4. It transpires that in pursuance of the said order, the applicant preferred a fresh representation, which was disposed of by the respondents vide order dated 30.03.2016 and was dismissed. The applicant has challenged the said order and thereby has challenged his discharge order dated 17.08.1998. Admittedly, the applicant was discharged after completing 17 years of service and is receiving pension accordingly.

5. In brief, the facts necessary for the disposal of the instant case are that the applicant was enrolled in the Indian Air Force on 25.06.1980 and was

discharged from service after completion of 17 years and 08 months, including non qualifying service w.e.f. 17<sup>th</sup> August 1998 and under the provisions of AF Rules 1969, Chapter III Rule 15(2)(g)(ii) on the ground that “his service no longer required-unsuitable for retention in IAF. The case of the applicant is that on 19.02.1998 a show cause notice was issued to the applicant on the ground that 5 Red Ink Entry and 2 Black entry stands against him and reply of the same be submitted within ten days. The applicant has filed a revision before the Chief of Army Staff on 16.03.1998 against the said show cause notice dated 19.02.1998, which was not considered by the concerned authority. It is alleged that without considering the request of the applicant, the respondents by the impugned order dated 17.08.1998 stating that his service no longer required-unsuitable for retention in IAF, discharged the applicant. Feeling aggrieved, the applicant preferred writ petition, the details of which we have already mentioned in the earlier part of the judgment.

6. During pendency of the earlier writ petition, Hon’ble High Court of Judicature at Allahabad had directed the respondents to decide the petitioner’s petition, a copy of the said petition and the order passed by the Hon’ble High Court of Judicature at Allahabad was sent by the applicant, but the order passed thereon was not communicated to the applicant. In compliance of the order of this Tribunal in T.A.No. 74 of 2013, a fresh representation dated 01.10.2015 was sent by the applicant, which has been considered and rejected by the respondents, hence this O.A.

7. The submission of the learned counsel for the applicant is that as per the new policy for discharge of habitual offender, two notices have to be issued to the applicant, but the applicant was issued only one show cause notice and, therefore, on this ground, he has challenged the said show cause notice and consequently his discharge order also.

8. Learned counsel for the applicant has also submitted that since two show cause notices were not issued in pursuance of the policy, which was in force at that point of time, therefore, his discharge is illegal and becomes bad

in the eyes of the law, therefore, the applicant was entitled to continue his service for a total period of 20 years.

9. On behalf of the respondents, it has been argued that in this case firstly the applicant was given warning letter dated 02<sup>nd</sup> June 1994 and thereafter a show cause notice was given to him on 19<sup>th</sup> February 1998. The applicant has sent his representation directly to the Chief of Air Staff. After considering the reply, submitted by the applicant against the said show cause notice, the applicant was discharged from service as the same was not found satisfactory. The applicant was in receipt of pension, keeping in view his length of service. It has also been pleaded that the pronouncement of the Hon'ble Apex Court in the case of **Union of India & Others vs. Corporal A.K.Bakshi & Another** (1996 (3) SCC 65) goes against the applicant and the applicant is not entitled to any relief claimed.

10. Per contra, learned counsel for the applicant has argued that in the case of **AK Bakshi** (supra), the Hon'ble Apex Court has considered the earlier policy of 1986, while in the year 1996 a new policy came into existence and the applicant was discharged from service in the year 1998.

11. Before proceeding further, it is pertinent to mention here that in the earlier writ petition filed by the applicant, the applicant has challenged his discharge and the earlier policy of 1986. Now the applicant is claiming that the policy of 1996 has not been complied with. It is true that the applicant was discharged from service in the year 1998, therefore, the policy of 1996 was in vogue at that time. We have carefully perused the order passed by the Hon'ble Apex Court in the case of **AK Bakshi** (supra). Para 10 of the said judgment is relevant in the instant case, which reads as under :

*“10. According to the High Court, the provisions of Rule 18 are attracted in cases where a person is discharged on the basis of the Policy for Discharge for the reason that the action for discharge has been taken on the basis of six punishments which have been imposed on him. We find it difficult to endorse this view of the High Court. The punishments referred to in the Policy for Discharge are punishments that have been imposed for misconduct under the relevant provisions of the Act and the Rules. The Policy for Discharge envisages that in cases where an airman has been awarded such punishments six times, he is to be treated as a habitual offender and action for his discharge*

*from service should be taken against him under Rule 15(2)(g)(ii) of the Rules. This action for discharge is not by way of punishment for the misconducts for which he has already been punished. The basic idea underlying the Policy for Discharge is that recurring nature of punishments for misconduct imposed on an airman renders him unsuitable for further retention in the Air Force. Suitability for retention in the Air Force has to be determined on the basis of record of service. The punishments that have been imposed earlier being part of the record of service have to be taken into consideration for the purpose of deciding whether such person is suitable for retention in the Air Force. The discharge in such circumstances is, therefore, discharge falling under Rule 15(2)(g)(ii) and it cannot be held to be termination of service by way of punishment for misconduct falling under Rule 18 of the Rules. We are, therefore, unable to agree with the High Court that termination of services on the basis of the Policy for Discharge does not constitute discharge under Rule 15(2)(g)(ii) but amounts to removal for misconduct under Rule 18 of the Rules”*

Thus the view expressed by the Hon’ble Apex Court was not dependent upon the policy. Whatever may be the policy of discharge of habitual offenders but the above mentioned legal position shall remain unaffected.

12. On behalf of the applicant, certain annexures have been filed alongwith this O.A. It has been pleaded on behalf of the respondents that entire original record of the applicant has been weeded out after expiry of period of retention i.e. three years, so far as these papers are concerned.

13. Learned counsel for the applicant has also argued that since the applicant has filed a revision before the Chief of Air Staff, therefore, the respondents ought not to have taken a decision for his discharge in this matter. We do not find any substance in this submission. Unless and until any stay order is passed by a Court of competent jurisdiction or by competent authority, the competent authority had full jurisdiction to pass orders in exercise of its powers. Admittedly in this case revision was sent to Chief of Air Force and no order was passed by the Chief not to pass any order during pendency of the said revision.

14. On behalf of the applicant, certain documents have been filed. Annexure No.3 is the show cause notice dated 19<sup>th</sup> February 1998, on the

basis of which the applicant was discharged from service. Another notice dated 02<sup>nd</sup> June 1994 has also been filed, which reads as under:

“CONFIDENTIAL

Tele: AF/4201  
TF/C 4871/1/P1

02 Jun 94

TECYHNICAL FLIGHT (20 WING) AIR FORCE  
DISCIPLINE WARNING POTENTIAL/HABITUAL OFFENDERS; AIRMEN

1. *It has been brought to my notice that you are a Potential/Habitual Offender and as on date you have incurred 05 (Five) (03 Read & 02 Black Ink) punishment entries in your Conduct Sheet. This has been viewed seriously and you are hereby warned not to commit any offence in future.*
2. *You are being given an opportunity to improve yourself and cautioned that any further adverse entry in your conduct sheet will lead to your being discharged from service under Rule 15(2)(g)(ii) of Air Force Rules, 1969.*

*Sd/- Surjeet Singh)*  
*Air Commodore*  
*Air Officer Commanding*  
*20 Wing Air Force.”*

15. Learned counsel for the applicant has drawn our attention towards the following part of the policy of the year 1996, which reads as under :

**“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 the service documents and the copy thereof in the office/case file. A standard format of 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. This will be treated as second time warning. The standard format for such second time warning is placed at Annexure-2 to this Appendix.”*

16. Since one warning letter was issued on 02<sup>nd</sup> June 1994 and thereafter the applicant again earned adverse entries thereafter hence second show cause notice was sent. A perusal of the second show cause notice shows that after issuance of the first warning letter, the applicant was awarded severe reprimanded on 11.10.1996 for disobedience of the command given by his superior. Again on 05<sup>th</sup> August 1997, he was awarded severe reprimanded as he failed to report to his unit on 14<sup>th</sup> July 1997, as directed by the 20 Wing Air Force. Thus, after issuance of the first warning letter, he again earned two adverse entries. Hence, second show cause notice was issued to the applicant mentioning all these facts on 19<sup>th</sup> February 1998 and thereafter he was discharged from service. Thus, we do not find that there was any non compliance of the subsequent policy which was in force at that point of time.

17. Thus, in the facts of this case, it cannot be said that the notice sent in the year 1994 ought not to have been considered as the same was sent, while the old policy was in force. Perusal of the policy shows that the new policy of 1996 talks about two notices. It is nowhere provide that notice, if any, sent earlier shall not be considered. Since one warning letter had already been issued to the applicant in the year 1994, thereafter the applicant again earned two adverse entries, therefore, the respondents after issuing second show cause notice to the applicant passed the order of discharge, which, by no stretch of imagination, can be said to be illegal or irregular.

18. Hon'ble Apex Court in the case of **AK Bakshi** (supra) has held that such a discharge order cannot be considered as termination of service by way of punishment. The Hon'ble Apex Court has decided that such a discharge does not amount to termination or removal from service on the ground of misconduct and it is only a simple discharge. Admittedly, the applicant has been discharged and is getting his service pension. As stated earlier, the applicant in this case was given two notices, the first was a warning and the second show cause notice was again given and the same was in pursuance of the policy, which was in force at the relevant time. Therefore, we do not find any illegality, irregularity or infirmity in the order.



19. Accordingly, this Original Application lacks merit, deserves to be dismissed and is hereby **dismissed**.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice S.V.S. Rathore)**  
**Member (J)**

Dated : February , 2019.  
PKG