

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

**Original Application No. 176 of 2012**

Tuesday, this the 23<sup>rd</sup> day of February, 2021

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

Laxman Singh (No-115611488L Ex Gdsm) Son of Shri Pratap Singh, R/o Village – Gair Baram, PO: Gair Baram, The: Tharali, District- Chamoli, PIN – 246481, State – Uttra Khand.

.....Applicant

Ld. Counsel for Applicant: **Shri R Chandra, Advocate**

Versus

1. The Union of India, through the Secretary, Ministry of Defence (Army), Govt of India, New Delhi.
2. The Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), New Delhi-11.
3. Officer in Charge Records, Brigade of the Guards, PIN – 900746, C/o 56 APO.
4. The Commanding Officer, 5 GUARDS, C/o 56 APO.

.....Respondents

Ld. Counsel for the : **Shri GS Sikarwar,**  
Respondents **Central Govt Counsel**

## **ORDER**

### **“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed the following reliefs:-

*(i). The Hon’ble Tribunal may be pleased to quash the Show Cause Notice dated 26.08.2009 (Annexure No A-1) discharge order dated 14.11.2009 be called and set aside and order of the General Officer Commanding, 7 Infantry Division be also set aside..*

*(ii). To direct the respondents to re-instate the applicant in the service with all consequent benefits as given to his batch mates with the interest of 24 percent per annum.*

*(iii). Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. The undisputed factual matrix on record is that the applicant was enrolled in the Indian Army on 30.03.1999. He served at different places in peace as well as field stations including high altitude area. On 26.08.2009, the applicant was issued a show cause notice by General Officer Commanding stating that you were given opportunity to show cause as to why you should not be discharged from service and reply from the applicant was required to reach within 15 days. On 14.11.2009, applicant was locally discharged from service as undesirable soldier under Army Rule 17 and Army Headquarters letter dated 28.12.1988 for having four red ink entries and two black ink entries. Being aggrieved, the applicant

has approached this Tribunal to re-instatement him into service with all consequential benefits.

3. Learned counsel for the applicant submitted that applicant has been removed from the service under the provisions of the Policy letter dated 28.12.1988. In the Policy letter the procedure for discharge has been laid down. It has been provided in the said policy letter that when an opinion is formed with regard to dismissal or discharge of an individual from service, an impartial inquiry with regard to allegations against the individual is required to be made and the individual should be given adequate opportunity of putting up his defence or explanation and to adduce evidence in his defence. In case the allegations are substantiated only then should the extreme step of termination of service of the individual be taken. The recommendations for dismissal or discharge should then be forwarded through normal channels to the authority competent to authorize dismissal or discharge along with a copy of the proceedings of the preliminary inquiry. The intermediary authorities are required to make their own recommendations with regard to the disposal of the case. When the case reaches to the competent authority, the authority is required to consider the case, and if the authority is satisfied that the services of the individual are warranted to be terminated, then the authority would direct to issue the show cause notice to the individual in

accordance with the Army Rules, 13 or Army Rules, 17 as the case may be. While issuing the show cause notice, the individual will also be given the copy of the preliminary inquiry report or other material against him to enable him to give reply to the show cause notice. The reply received from the individual will then be processed through normal channel to the competent authority. Thereafter the competent authority would pass the final order and while doing so it would record why the authority considers the retention of the individual unwarranted in service. In the instant case, before recommending the discharge of the applicant from service such procedure was not followed by the respondents as no preliminary enquiry was held nor opportunity of defence was afforded to the applicant. The applicant has therefore challenged the discharge order by means of this OA.

4. On the other hand, learned counsel for the respondent submitted that applicant was a habitual offender having committed six offences with 4 red ink entries and was awarded various punishments within a short span of 4 years. The policy letter dated 28.12.1988 enunciates that an individual who earns four red ink entries in his entire service is considered as 'undesirable and inefficient' and such person may be discharged from service after issuing a show cause notice. The case of the applicant being 'undesirable' was referred to the

competent authority i.e. General Officer Commanding (GOC) Headquarters, 7 Infantry Division by his unit. The GOC issued show cause notice to the applicant on 26.08.2009. The applicant replied the show cause notice. The competent authority after due consideration and completing all procedures as required by military law sanctioned his discharge from service and he was locally discharged from service on 14.11.2009 being an undesirable soldier having only 10 years and 229 days of service. He prayed that prescribed procedure was followed before discharging the applicant. Therefore, O.A. deserves to be dismissed.

5. We have heard learned counsel for the parties and perused the record.

6. From perusal of record it transpires that in reply to show cause notice, the applicant has stated that on account of problems at home and on account of illness of his wife he used to take drinks, but he was mentally and physically sound and promised to serve with full devotion and discipline. It is not in dispute that at the time of discharge, the applicant had already put in more than 10 years and 2 months service. It also appears that the applicant would have been entitled to pensionary benefits after 15 years of service.

7. Learned counsel for the applicant submitted that the show cause notice issued to the applicant is not specific and it only

refers in general terms to certain Red Ink Entries having been given to the applicant. In show cause notice it is nowhere mentioned that inquiry report was also handed over along with show cause notice. There is no evidence that inquiry report was submitted to concerned authority. What is the precise nature of the Red Ink Entry and the offence for which those entries were given and the period to which they relate has not been elucidated in the notice. This vagueness in the notice, submits the learned counsel for the applicant, is clear breach of the policy letter of the Army Headquarter dated 28.12.1988, a copy of which has been produced before us. In the said policy letter of Army Headquarters, para 5 (d) provides that the show cause notice should cover the full particulars of the cause of action against the individual. The allegations must be specific and supported by sufficient details to enable the individual to clearly understand and reply to them. A copy of the proceedings of the enquiry held in the case will also be supplied to the individual and he will be afforded reasonable time to state in writing any reasons he may have to urge against the proposed dismissal or discharge. That apart, Note No. 2 of the policy letter is also relevant. It reads as follows:-

*“2. discharge from service consequent to four red ink entries is not a mandatory or legal requirement. In such cases, Commanding Officer must consider the nature of offences for which each red ink entry has been awarded and not be harsh with the individuals, especially when they are about to complete the pensionable*

*service. Due consideration should be given to the long service, hard stations and difficult living conditions that the OR has been exposed to during his service, and the discharge should be order only when it is absolutely necessary in the interest of service.”*

8. Learned counsel for the applicant submitted that the show cause notice in this case does not conform to the policy letter. The show cause notice given in the present case is not specific about the nature of the allegations against the applicant. Learned counsel for the applicant placed reliance upon the decision of the Delhi High Court in ***Surinder Singh Sihag Vs. Union of India and Others***, and ***All India Services Law Journal***, 2003 (2), page 154 in support of his contention and the procedure provided in the policy letter dated 28.12.1988 is required to be followed. In this case, we find that the show cause notice is not specific and we also find that the applicant has put in more than 10 years of service and he was to acquire pensionary entitlement after putting in total 15 years of service. The policy letter also provides that even if there are four red ink entries awarded to the person, discharge is not mandatory and mind has to be applied by the concerned authority to the nature of the offences and length of service etc. In the notice of August 1992 also the bare allegation is that the applicant was awarded 4 red ink entries without any further particulars of the entries. In both the notices, the applicant was asked to show cause why he be not discharged under Rule 13 (3) III (v) or dismissed under Section 20 (3). The only procedural safeguard provided

under these provisions is the issuance of a show cause notice for obtaining the explanation of the individual concerned. It is for this reason it appears that para 5 (d) of the policy letter dated 28.12.1988 requires that the show cause notice must cover full particulars of the cause of action against the individual and the allegations must be specific and supported by sufficient details to enable the individual to understand and reply to them. Non compliance with the requirement would vitiate the show cause notice. In the absence of the particulars the individual may make admission of guilt in his reply under a misconception about the nature of the allegation. In our opinion, show cause notice issued to the applicant is invalid and is vague.

9. Learned counsel for the respondents produced before us the record relating to the red ink entries awarded to the applicant. The record refers to four red ink entries. The record reveals that almost all entries against him are in respect of minor offences or for short absence. It is also to be noted that in the first 5 years of service, there is no adverse remark against the applicant. It is also to be noted that the policy letter provides that discharge is required to be ordered only when it is absolutely necessary. The authorities can, under clause (b), (c), and (d) of para 2 of the policy letter take lenient action such as transfer of an individual or reducing him to lower rank. In view

of the nature of the entries and the fact that the entries have been given within four years and the rest of the career of the applicant was without blemish and the applicant had already put in more than 10 years service and also the fact that the show cause notice is vague and does not conform to the requirement of the policy letter, the order of discharge passed against the applicant is arbitrary and cannot be sustained.

10. In the result, we allow the application and quash the show cause notice dated 26.08.2009 contained in Annexure A-1 of the application and order of discharge of the applicant with effect from 14.11.2009. The applicant shall be treated to be in service notionally in the same rank from the date of discharge till the date of attainment of required qualifying pensionable service, for which he shall not be paid back wages on the principle of 'no work no pay'. From the date of attainment of such qualifying service for pension, the applicant shall be entitled to pension of the rank held and all other associated benefits (ECHS, CSD, ESM status) in accordance with law and rules. Applicant shall be granted pension from the date of attaining pensionable service. Let the entire arrears of pension be paid to the applicant within the period of four months from the date of communication of order. If the same are not paid within the time stipulated, then the respondents shall also be liable to pay interest at the rate of 8% per annum on the amount

due from the date of its accrual till the date of its actual payment.

11. The Registry is directed to provide a copy of this order to learned counsel for the respondents for its onwards transmission and necessary compliance.

No order as to costs.

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

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

Dated : 23 February, 2021

UKT/-