

Court No 3
(Ser No. 8)

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

ORIGINAL APPLICATION No. 95 of 2020

Wednesday, this the 08th day of February, 2023

Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Vice Admiral Atul Kumar Jain, Member (A)

Arbind Rai (No. 14377678H Ex Sep/Gnr DMT), son of Hira Rai, resident of village-Tiha Mohammadpur, Post Office-Barhalganj, District-Gorakhpur (Uttar Pradesh).

.... Applicant

Ld. Counsel for the: **Shri Yashpal Singh**, Advocate.
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, Central Secretariat, New Delhi-110001.
2. Chief of Army Staff, Integrated Headquarters, Ministry of Defence (Army), DHQ, PO-New Delhi-110011.
3. Directorate of Indian Army Veterans, 104, Cavalry Road, Maude Lines, Delhi Cantt through the Director.
4. Officer-in-Charge, Army Air Defence Records, PIN-908803, C/o 99 APO.
5. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj.
6. Commander, Headquarters 787 (Independent) Air Defence Brigade, C/o 56 APO.

... Respondents

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

ORDER (Oral)

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) Issuing/passing of an order directing the respondents to consider and grant pension and other consequential benefits of ex-serviceman to the applicant by treating him notionally in service up to the date of completion of the term of engagement in the rank he held on 11.04.1996, i.e. the date of premature discharge from service.

(b) Issue/pass an order setting aside the order dated 16.03.1996 passed by the Commander, Headquarters 787 (Independent) Air Defence Brigade, after summoning the relevant records.

(c) Issuing/passing of any other order or direction as this Hon'ble Tribunal may deem fit under the circumstances of the case.

(d) Allowing this Original Application with cost.

2. The factual matrix of the case is that the applicant was enrolled in the Army on 02.12.1983. During the course of his service he served in various parts of the country including field/high altitude area.

3. He incurred five red ink entries in addition to detention in military custody during his service, consequently, the respondents discharged him from service under the provisions of Rule 13 (3) Item III (v) of the Army Rules, 1954 being an 'Undesirable Soldier' with effect from 11.04.1996 (FN).

4. Aggrieved by the said order of discharge, the applicant submitted mercy petition dated 27.08.2018 to the Hon'ble President of India under Section 179 of the Army Act, 1950 with copy endorsed to Secretary, Ministry of Defence, Government of India, South Block, New Delhi followed by RTI application dated nil which was replied vide letter dated 04.10.2017 intimating him that he is not eligible for grant of service pension in terms of Para 47 of Pension Regulations for the Army, 2008 (Part-I). Being aggrieved, the applicant has filed this O.A. for grant of service pension.

5. Learned counsel for the respondents drew our attention to punishments awarded to the applicant mentioned at paragraph 3 of the counter affidavit which is reproduced below:-

Ser No.	Date of Award	Army Act Section	Nature of Offence	Punishment Awarded
1.	27.09.1988	39 (b)	Overstaying leave	28 days rigorous imprisonment and 14 days detention in military custody
2.	03.04.1993	63 & 41 (2)	An act prejudicial to good order and military discipline and disobeying a lawful command given to him by his superior	06 days detention in military custody

3.	05.04.1994	54 (b)	Loss of Identity Card	21 days confinement to lines
4.	06.10.1995	30 (a)	Absent without leave	14 days rigorous imprisonment
5.	20.12.1995	63	An act prejudicial to good order and military discipline	07 days rigorous imprisonment

6. Submission of learned counsel for the applicant is that after completion of rigorous basic military training and technical training the applicant was posted to various places and performed his assigned duties with utmost dedication and satisfaction of higher authorities. It was further submitted that his superior in the rank of Subedar was very much inimical to the applicant and it was on his behest and wrong briefings that the applicant got repeated punishments within a short span of time. Further submission of learned counsel for the applicant is that the charges levelled against the applicant were false, concocted and baseless.

7. Learned counsel for the applicant further submitted that as per policy letter dated 28.12.1988 no impartial enquiry was conducted on allegations made and applicant was not given any opportunity of putting up his defence prior to taking extreme step of his termination. It was further submitted that Para 5 (f) of policy letter dated 28.12.1988 specifically provides that discharge

from service consequent to red ink entries is not a mandatory or legal requirement, but the applicant was discharged from service based on five red ink entries is untenable keeping in view of applicant's long service and his service in difficult terrains. He pleaded for grant of service pension keeping in view of his service of more than 12 years.

8. Learned counsel for the applicant further brought out that the applicant was not afforded reasonable time to submit his reply to Show Cause Notice before the competent authority and by means of impugned order dated 10.04.1996 the applicant was discharged from service without passing any written order, merely on the basis of sanction of the competent authority, which is violative of Article 14 of the Constitution. It was further submitted that the applicant was not aware that he was being discharged from service in illegal and pervasive manner. It was also pleaded that the respondents failed to consider his length of service before passing order of his discharge as undesirable soldier. He pleaded for grant of service pension to the applicant.

9. On the other hand, learned counsel for respondents argued and brought out that the applicant was an undisciplined soldier who in a very short span of service was awarded five red ink entries on account of various

charges. In the instant O.A. also there is no challenge to the punishments by the applicant as such the legality of the punishments awarded to the applicant is not subject matter. The applicant was awarded five red ink entries on different occasions (between the year 1988 to 1995) solely on the ground of misconduct/overstaying leave.

10. Further submission of learned counsel for the respondents is that the applicant was awarded the above punishments for committing offences for which the applicant is himself responsible. It was submitted that the Army, being a disciplined organization, cannot retain personnel who regularly commit offences since it overall affects discipline and may become a bad example to other soldiers. He further submitted that as per the provisions under Army Rule where an individual incurs four red ink entries for offences charged under the Army Act and documents showing no improvements in his behavior, his services can be terminated. Thus, keeping in view his bad record of service, a Show Cause Notice dated 29.01.1996 was issued and on receipt of his reply dated 03.02.1996 he was discharged from service under Rule 13 (3) (iii) (v) of Army Rules, 1954 w.e.f. 10.04.1994 being an undesirable soldier. He pleaded for dismissal of O.A. on the ground that applicant's services were terminated in accordance with rules.

11. We have heard Shri Yashpal Singh, learned counsel for the applicant and Shri DK Pandey, learned counsel for the respondents and perused the record.

12. There is no dispute that the applicant was enrolled in the Army on 02.12.1993 in the Indian Army. During his course of service he incurred five red ink entries on various charges. The record shows that inspite of giving ample opportunities the applicant did not show any improvement in his discipline/conduct which resulted in his discharge from service as an 'undesirable soldier'.

13. The Show Cause Notice dated 29.01.1996 was issued to applicant by the Commander, Headquarters 787 (I) AD Bde i.e. by Higher Military Authority and in response to the Show Cause Notice the applicant submitted his reply dated 03.02.1996. In his reply he did not deny the charges and requested for one last opportunity for his improvement. In the Show Cause notice issued to the applicant, there was no legal infirmity. As per Army Headquarters policy letter dated 28.12.1988, prescribed procedure for his removal from service was adopted. Preliminary inquiry, which in fact was not required to be conducted as per Army Rule 22, was conducted wherein opportunity was given to him to submit his defence which he declined. The applicant being a perpetual offender was also setting a wrong

example in the unit. He lacked discipline and had scant regard for authority and vitiated the congenial working environment of the unit. His continuation in service was having bad influence on his peers, particularly his juniors and was detrimental to the organization, therefore he was discharged from service as an undesirable soldier.

14. Therefore, in view of the aforesaid facts and legal position, the O.A is misconceived and devoid of merits, as such it is liable to be dismissed.

15. In view of above, we do not find any merit in this case and this Original Application is **dismissed** accordingly.

16. No order as to costs.

17. Pending application(s), if any, are disposed off.

(Vice Admiral Atul Kumar Jain)
Member (A)
Dated : 08.02.2023
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(Justice Anil Kumar)
Member (J)