

Reserved**Court No.2****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 690 of 2020**Thursday, this the 16th day of February, 2023**“Hon’ble Mr Justice Ravindra Nath Kakkar, Member (J)”****“Hon’ble Maj Gen Sanjay Singh, Member (A)”**

No. 14823978Y Ex Sep / MT Ashok Kumar, Son of Sri Hari Singh,
 Resident of Village: Kasthla Ki Mandhaya, Post Office : Kasthla
 Kasmabad, Police Station : Pilakhua, Tehsil: Hapur, District :
 Ghaziabad (UP)

..... Applicant

Ld. Counsel for the : **Shri Rohit Kumar, Advocate**
 Applicant

Versus

1. Chief of Army Staff, DHQ PO, New Delhi
2. Commandant cum Chief Records Officer
ASC Centre and Records, Bangalore
3. Union of India, Through Secretary, Ministry of Defence,
DHQ PO, New Delhi

.....Respondents

Ld. Counsel for the :Shri R C Shukla, Advocate
 Respondents. Central Govt Counsel

ORDER

“Per Hon’ble Mr Justice Ravindra Nath Kakkar, Member (J)”

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

- (a) *To quash the order passed by Officer in Charge ASC Records bearing No. Sep/ Ashok Kumar Singh / CC-1/Legal Cell dated 10 Feb 2018 quashing the statutory representation of the applicant preferred under paragraph 368 of the Defence Service Regulation (Regulations for Army 1987 dated 30 Nov 2016).*
- (b) *To direct the respondents to re-enroll the applicant in DSC to enable him complete minimum pensionable service based on paragraph 142 of the Defence Service Regulation (Regulations for Army) 1987 and to lead an honourable life in the society.*
- (c) *To issue any other order or direction considered expedient and in the interest of justice and equity.*
- (d) *Award cost of the petition.*

2. The facts of the case in brief are that, applicant was enrolled in the Army on 22.04.1996. He was tried by Summary Court Martial (SCM) for overstayed leave for 577 days and dismissed from service

(notionally). He submitted petition against dismissal, which was allowed and order of dismissal was made effective from 28.07.2006. He had rendered 10 years, 05 months and 05 days of qualifying service before his dismissal from service. He submitted representation for joining DSC service which was rejected. Being aggrieved, applicant has filed instant O.A. with the prayer to allow him to re-enrol in DSC to enable him complete minimum pensionable service.

3. Learned counsel for the applicant submitted that while posted to 506 ASC Battalion, the applicant applied for leave which was granted but the applicant could not join duty due to unavoidable circumstances which included psychiatric problem and also illness of wife. After recovery, applicant reported for duty at ASC Centre, Bangalore on 13.12.2005. SCM was held and applicant was dismissed from service against which he filed Civil Misc Writ Petition before Hon'ble Allahabad High Court which was transferred to this Tribunal and re-numbered as T.A. No 14 of 2014. The T.A. was partly allowed in favour of the applicant and dismissal of the applicant was changed into discharged wef 28.07.2006. Thus applicant was discharged from service on completion of about 10 years and 06 months colour service and he was not found eligible for pensionary benefits. As per paragraph 142 of Defence Services Regulations, 1987 an ex-serviceman is permitted to re-enrol if he fulfils terms and conditions. Character of the applicant

was assessed as **EXEMPLARY**. Applicant submitted representation under the provisions of paragraphs 368 of Defence Service Regulation, 1987 for re-enrolment in DSC which was rejected vide order dated 10.02.2018. Learned counsel for the applicant pleaded that keeping in view service profile of the applicant, applicant be given opportunity to re-enrol in DSC to enable him to complete pensionable service.

4. On the other hand, learned counsel for the respondents submitted that applicant was dismissed from service by SCM after rendering 10 years, 05 months and 05 days of qualifying service. Aggrieved by the decision of SCM, applicant filed petition with the prayer to quash the order of dismissal dated 28.07.2006. Petition was transferred to this Tribunal which was partly allowed and his dismissal was converted into notionally discharge wef 28.07.2006.

5. As per criteria for re-enrolment of Ex- servicemen into DSC as a Sepoy, Ex-serviceman is permitted to re-enrol into DSC. His character assessed at the time of discharge from service should be VERY GOOD or EXEMPLARY. The Tribunal had blamed the applicant for approaching the Court with unclean hands to mislead the court by manipulating the charge sheet. Learned counsel for the respondents pleaded that applicant was not fulfilling criteria for re-enrolment in DSC and instant O.A. has no substance and is liable to be quashed.

6. We have heard learned counsel of both the parties and perused the documents available on record.

7. The question before us to decide is "whether the applicant is entitled for re-enrolment in DSC or not?"

8. In the instant case, applicant was dismissed from service by SCM due to overstaying of leave. His dismissal was changed into notionally discharge and he was discharged from service on 28.07.2006. As per Integrated Headquarters of MoD letter dated 05 Aug 2014 and letter dated 20.06.2016, service gap for re-enrolment of ex-serviceman into DSC should be within two years from the date of discharge from former service till the individual reports to the Recruiting Agencies for physical and medical test. In the instant case, there is gap of more than 16 years from the date of discharge. Further, the applicant was blamed for approaching the Tribunal with unclean hands to mislead the Court by manipulating the charge sheet. Hon'ble Apex Court in the decision reported in **(2013) ISCC 685 (Commissioner of Police, New Delhi and another Vs Mohar Singh)** has held that character of a person in uniform should be beyond doubt. Since the applicant manipulated with original documents, he was not fit for re-enrolment in DSC which needs utmost discipline, exemplary character and integrity.

9. We, therefore, do not find any merit to interfere with the impugned order dated 10.02.2018 rejecting statutory representation of the applicant for re-enrolment in DSC. As per policy, applicant cannot be re-enrolled in DSC on such a belated stage. In view of the above, the Original Application is devoid of merit and deserves to be dismissed. Original Application is accordingly **dismissed**.

10. No order as to costs.

11. Pending applications, if any, are disposed of accordingly.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated : 16 February, 2023

Ukt/-