

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 298 of 2021**Wednesday, this the 12<sup>th</sup> day of January, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**No. 13985451-L Sep/NA Joseph John Menezes  
S/o Late Mahadev Menezes  
R/o 4A/210, Vishal Khand, Gomti Nagar, Lucknow (UP)  
.... **Applicant**Ld. Counsel for the Applicant : **Shri R Chandra**, Advocate.

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi – 110011.
2. The Chief of the Army Staff, Integrated Headquarters, New Delhi-110011.
3. The Officer-in-Charge, Army Medical Corps Records, Lucknow-226002.
4. PCDA (P), Draupadi Ghat, Allahabad-14 (UP).

... **Respondents**Ld. Counsel for the Respondents : **Shri Arun Kumar Sahu**,  
Central Govt Counsel**ORDER (Oral)**

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

- “(I) The Hon'ble Tribunal may be pleased to set aside the Order dated 05.06.2009 (Annexure No. A-1) and order dated 25.11.2016 (Annexure No. A-2).
- (II) To direct the respondents that applicant be treated to be in service notionally in the same rank from the date of discharge

till date of attaining of required qualifying pensionable service and further service pension be granted alongwith its arrears and interest thereon at the rate of 9% 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. Counter affidavit filed by the respondents is taken on record.

3. Brief facts of the case are that the applicant was enrolled in the Indian Army on 09.12.1992 and was locally discharged from service on 14.12.2008 being undesirable soldier after rendering 14 years, 05 months and 02 days of qualifying service (excluding 577 days Non-qualifying service) under Army Rule 13 (3) III (v). During the entire service, the applicant was awarded six red ink and two black ink entries punishments. Since the applicant had failed to show improvement in discipline and sense of devotion towards duty despite frequent counselling and punishment keeping in view the above facts, it was brought out that the applicant was not upto the acceptable limit of discipline of soldier in Indian Army where the discipline is the backbone. Therefore, a preliminary enquiry was conducted by Senior Registrar & Officer Commanding Troops of Command Hospital (Western Command) Chandimandir and after due examination of the case, the applicant was served with a Show Cause Notice by the Commandant, Command Hospital, Chandimandir vide letter dated 17.10.2008. The notice was replied by the applicant and the competent authority being not satisfied with the reply of the applicant, Commandant, Command Hospital, Chandimandir directed vide order dated 08.12.2008 directed that applicant be discharged from service

as undesirable soldier. Accordingly, applicant was locally discharged from service w.e.f. 14.12.2008 under the provisions of Army Rule 13 (3) III (v) and Army Headquarters letter dated 28.12.1988. Thereafter, applicant and his wife submitted so many applications to the respondents for grant of pension which were suitably replied rejecting the claim of the applicant. The applicant being not satisfied with the procedure of discharge and denial of service pension, has filed the present Original Application.

4. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Army (Army Medical Corps) on 09.12.1992. On 17.10.2008, applicant was given a Show Cause Notice by Commandant, Command Hospital (WC), Chandimandir for red and black ink entries under the provisions of Army Rule 13 (iii) (V) and Army HQ policy letter dated 28.12.1988. The reply of applicant was not considered and on 13.12.2008, applicant was issued a movement order and was discharged locally and no discharge order as per Army Act/Rule was issued to the applicant. On 19.06.2009 applicant approached respondent No. 3 for pension which was assured to him at the time of discharge. On 10.07.2009, 19.01.2011, in Feb. 2013 and on 11.09.2015 wife of the applicant requested to respondent No. 3 for pension but nothing was done by the respondents for grant of pension. On 25.11.2016, respondent No. 3 replied that applicant was discharged from service as undesirable soldier and not completed 15 years of service, he is not entitled for service pension. Thereafter,

applicant filed case in this Tribunal which was also dismissed and applicant could not get any relief.

5. Learned counsel for the applicant further submitted that applicant was discharged from service without following the procedure as mentioned in Army HQ policy letter dated 28.12.1988 as applicant was not served a preliminary enquiry alongwith Show Cause Notice. Army HQ letter says that a preliminary Court of Inquiry is must but that was not done. On this fact, a similar case (OA No. 176 of 2012, **Laxman Singh vs. UOI & Others**) has been allowed by this Tribunal vide order dated 23.02.2021. He placed reliance on the judgment of the Hon'ble Apex Court in Civil Appeal Nos. 7452-7453 of 2019, **Narain Singh vs. Union of India & Ors**, decided on 20.09.2019 and pleaded that order dated 13.12.2008 discharging the applicant from service is absolutely illegal, arbitrary and contrary to the statutory provisions and therefore, applicant be treated in service notionally till the date of attaining qualifying pensionable service and grant service pension accordingly.

6. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in the Indian Army on 09.12.1992 and was locally discharged from service on 14.12.2008 being undesirable soldier after rendering 14 years, 05 months and 02 days of qualifying service (excluding 577 days Non-qualifying service) under Army Rule 13 (3) III (v). During the entire service, the applicant was awarded six red ink and two black ink entries punishments as per following details:-

Ser No.	Offence under Army Act 1950	Date of punishment awarded	Punishment awarded	Period of absence (in days)
<b>Red Ink Entries</b>				
(a)	39 (b)	30.03.2000	14 days Imprisonment in military custody	18
(b)	39 (a)	28.05.2002	2 months RI in military custody	59
(c)	39 (a)	17.06.2004	28 days Imprisonment in military custody and 14 days pay fine	160
(d)	39 (a)	12.03.2005	28 days Imprisonment in military custody and 14 days pay fine	153
(e)	39 (a)	14.02.2006	28 days Imprisonment in military custody and 14 days pay fine	90
(f)	39 (a)	24.07.2008	21 days Imprisonment in military custody	56
<b>Black Ink Entries</b>				
(g)	39 (b)	14.10.2003	14 days pay fine	30
(h)	39 (b)	08.03.2007	14 days pay fine	11
			Total	577

7. Ld. Counsel for the respondents further submitted that since the applicant had failed to show improvement in discipline and sense of devotion towards duty despite frequent counselling and punishment keeping in view the above facts, it was brought out that the applicant was not upto the acceptable limit of discipline of soldier in Indian Army where the discipline is the backbone. The applicant committed offences repeatedly and proved himself undesirable and inefficient. Therefore, unit was intimated by AMC Records to take action as per Army HQ letter dated 28.12.1988 which deals with the disposal of undesirable and inefficient personnel. Based on AMC Records letter dated 14.10.2008, a preliminary enquiry was conducted by Senior Registrar & Officer Commanding Troops of Command Hospital (Western Command) Chandimandir vide convening order dated 16.08.2008. Therefore, after due examination of the case, the applicant was served with a Show Cause Notice by the Commandant, Command Hospital, Chandimandir vide letter dated 17.10.2008 to show cause as to why he should not be discharged from service as undesirable soldier under the provisions of Army Rule 13 (3) III (v)

and Army Headquarters letter dated 28.12.1988. The notice was replied by the applicant and the competent authority being not satisfied with the reply of the applicant, discharge formalities under Army Rules 13 were initiated. The Commandant, Command Hospital, Chandimandir directed vide order dated 08.12.2008 that applicant be discharged from service as undesirable soldier. Accordingly, applicant was locally discharged from service and struck off strength w.e.f. 14.12.2008 under the provisions of Army Rule 13 (3) III (v) and Army Headquarters letter dated 28.12.1988.

8. Ld. Counsel for the respondents further submitted that applicant submitted an application dated 19.06.2009 which was suitably replied by AMC Records vide letter dated 19.10.2009 stating the since applicant has been discharged from service as undesirable soldier and not completed minimum 15 years of qualifying service which is mandatory for grant of service pension, he is not eligible for service pension as per rules. Thereafter, wife of the applicant submitted a mercy petition dated 11.09.2015 and 29.07.2016 which was suitably replied vide AMC Records letter dated 25.11.2016. Thereafter, applicant filed MA No. 181 of 2018 Inre OA No. Nil of 2018 before this Tribunal which was dismissed as withdrawn vide order dated 15.05.2019. The applicant again filed OA No. 237 of 2020 before this Tribunal which was also dismissed vide order dated 01.02.2021. Thereafter, applicant also filed a Review Application No. 21 of 2021 before this Tribunal which was rejected vide order dated 24.03.2021. Now the applicant has again filed present O.A. for grant of service

pension. The applicant had become a bad example in the unit due to his irresponsible attitude towards his duties and discipline and thereby failed to render an unblemished service which resulted his discharge from service as undesirable soldier.

9. Ld. Counsel for the respondents also relied on the judgment of the Hon'ble Apex Court in Civil Appeal No. 1857 of 2018, **Sep Satgur Singh vs. Union of India & Ors**, decided on 02.09.2019. Para 7 of the judgement being relevant is quoted below :-

“7) We do not find any merit in the present appeal. Para 5(a) of the Circular dated December 28, 1988 deals with an enquiry which is not a court of inquiry into the allegations against any army personnel. Such enquiry is not like departmental enquiry but semblance of the fair decision-making process keeping in view the reply filed. The court of inquiry stands specifically excluded. What kind of enquiry is required to be conducted would depend upon facts of each case. The enquiry is not a regular enquiry as para 5(a) of the Army Instructions suggest that it is a preliminary enquiry. The test of preliminary enquiry will be satisfied if an explanation of a personnel is submitted and upon consideration, an order is passed thereon. In the present case, the appellant has not offered any explanation in the reply filed except giving vague family circumstance. Thus, he has been given adequate opportunity to put his defence. Therefore, the parameters laid down in para 5(a) of the Army Instructions dated December 28, 1988 stand satisfied.”

Learned counsel for the respondents pleaded for dismissal of O.A. being devoid of merits and lacking substance.

10. We have heard learned counsel for both sides and perused the material placed on record.

11. Before adverting to rival submissions of learned counsel of both sides, it is pertinent to mention that benefit of judgments relied upon by the applicant in Para 5 referred above are not relevant in the present case being based on different facts and circumstances. The

applicant cannot be given benefit of **Narain Singh** (supra) case on following reasons:-

- (a) **Satgur Singh** (supra) case has not been discussed in it.
- (b) Four red ink entries to **Narain Singh** (supra) were awarded in a period of only one year whereas six red ink entries in the present case have been awarded during a period of 8 years.
- (c) In present case applicant was a habitual offender.
- (d) Earlier O.A. filed by the applicant for grant of service pension after condoning shortfall if any has been dismissed and a review application to review the order has also been dismissed.
- (e) Merely on reason of rendering long service of 14 years plus applicant cannot be allowed benefit more so when he is a habitual offender and being asked time and again to improve his conduct.
- (f) Not an identical case with **Narain Singh** (supra).

12. We find that applicant was negligent towards his duties and discipline. During his service, the applicant was awarded eight punishments (six red and two black ink entries) for his irresponsible attitude and indisciplined nature towards his duties. Even after giving repeated warnings/counselling, the applicant did not show any improvement in his personal/military discipline and conduct. There being no other option, being an undesirable soldier, the applicant was discharged from service as per Army Rule 13 (3) III (v) and Army Headquarters policy letter dated 28.12.1988 after holding a preliminary enquiry and after serving a Show Cause Notice. Since the applicant has not completed 15 years of qualifying service which is

mandatory for earning service pension after excluding non qualifying service of 577 days, hence, under the provisions of para 47 of pension Regulations for the Army 2008 (Part-1), applicant is not entitled for service pension. Therefore, the applicant is not entitled the relief prayed in Original Application to treat him notionally in service til the date of pensionable service and to grant service pension.

13. In view of the above, we do not find any irregularity or illegality neither in discharging the applicant from service being an undesirable soldier nor in denying service pension being less than 15 years of qualifying pensionable service. The O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

14. No order as to costs.

15. Pending Misc. Applications, if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)

Member (A)

Member (J)

Dated: January, 2022

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