

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****E-Court No- 1****Original Application No. 447 of 2017**

Thursday, this the 06<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)**

Vikas Pandey, S/o Vinod Pandey, Ex-927321-B, LAC, 2253 Squadron, Air Force, Ordinarily staying at LIG-291, Neem Sarai, ADA Colony, PO- Begum Sarai, District- Allahabad.

.....Applicant

Ld. Counsel for Applicant: **Shri Vinay Pandey, Advocate**

Versus

1. The Union of India, through Secretary, Ministry of Defence , Bharat Sarkar, New Delhi.
2. The Chief of the Air Staff, Air Headquarters (Vayu Bhawan), New Delhi.
3. Air Officer Personnel (Airmen), Air Headquarters (Vayu Bhawan), New Delhi.
4. AOC in C, Headquarters Central Air Command, IAF, Bamrauli, Allahabad.
5. Air Officer Incharge Air Force Records, Air Force Record Office, Subroto Park, New Delhi.
6. Commanding Officer, 2253 Squadron, Air Force, Gwalior.
7. Wg Cdr SK Paul, Commanding Officer.
8. MWO BB Singh, Assistant Adjutant.

9. Sgt DK Gupta, I/C Group 220 Simulator.

SI No 7 to 9 all at 2253 Sq1uadron Air Force, Gwalior

.....Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal,**  
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:-

(a). *To issue/ pass an order or direction to set aside/ quash the Chief of Air Staff Order dated 18.09.2011 (Annexure No 1) communicated to the applicant through the letter dated 21.05.2012 (Annexure-4) which is because of reason that the same is the end product of non application of mind by respondent No 2 and thus has no sanction and sanctity of law.*

(b). *To pass/ issue an appropriate order, direction to set aside/ quash proceedings initiated by illegally discharging the applicant from service 30.09.2011 (Annexure 2).*

(c). *issue an appropriate writ, order or direction in the nature of mandamus and direct the respondents to reinstate the applicant in service with all consequential benefits.*

(d). *issue any other writ, order or direction, which this Hon’ble Tribunal may deem just and expedient in the interest of justice.*

(e) *award cost of this application in favour of the applicant.*

2. The undisputed factual matrix on record is that the applicant was enrolled in the Indian Air Force on 02.04.2008. On completion of training he was posted to No 2253 Sqn AF, Gwalior. During service, he was awarded 3 red ink entries and 1 black ink entry. On 25.04.2011, the applicant was issued a show cause notice by HQ CAC, IAF stating that you were given opportunity to show cause as to why you should not be discharged from service under Rule 15 (2) (g) (ii) of the AF Rules, 1969. Applicant replied show cause notice vide letter dated 13.05.2011. On 17.10.2011, applicant was discharged from service as undesirable Airman vide Air Headquarters letter No Air HQ/C 23406/685/PS dated 18 December 1996 for having three red ink entries and one black ink entry. Being aggrieved, the applicant has approached this Tribunal to reinstatement him into service with all consequential benefits.

3. Learned counsel for the applicant submitted that applicant was awarded all the punishments by one Commanding Officer and within an span of one and ½ years for very small reasons. Applicant was removed from the service under the provisions of the Policy letter dated 18 December 1996. In the Policy letter dated 18 December 1996, the procedure for discharge of undesirable soldiers 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 policy letter dated 18.12.1996. 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. 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 four offences with 3 red ink entries and one black ink entry and was awarded various punishments within a short span of 4 years. The applicant was granted leave on seven occasions between 01 Jan 2010 to 30 Sep 2010 (98 days total). In spite of being granted leave frequently on many occasions, the applicant became absent without leave on six occasions. He kept quiet for more than one year and even after serving him the show cause notice for discharge under Habitual Offenders' Policy, he did not content the punishment awarded to him. When his discharge was finally approved by the competent authority, he started putting various representations

disputing and questioning all his earlier punishments with the only intention to get some relief. The applicant was declared potential habitual offender under the habitual offenders' policy on incurring 3 punishment entries for repeated commission of same nature of offence i.e. Absent Without Leave. He was duly warned by his Commanding Officer vide letter dated 13.10.2010 to desist from further acts of indiscipline as addition of another punishment entry would render him liable for discharge from service under the said policy. The applicant again indulged in the acts of indiscipline wherein he 'absented himself without leave on two occasions i.e. on 16 Jan 2011 for one day, one hour and 59 minutes and on 20 January 2011 for 13 days, 23 hours and 59 minutes. He also failed to proceed on temporary duty on 16 Jan 2011 when detailed by his Section Commander and also failed to book out from Main Guard Room when leaving the camp area at 1600h on 15 Jan 2011. He was awarded 'Detention of 21 days' for said offences by his Commanding Officer on 04 Feb 2011. The policy letter dated 18.12.1996 enunciates that an individual who earns four punishment entries in his entire service is considered as 'undesirable and inefficient' and such person may be discharged from service. Applicant was given warning and

thereafter a show cause notice was issued by staff officer (CJA) at Command Headquarters on behalf of Air Officer Commanding in Chief who is equal in rank of AOP. Applicant submitted his reply to show cause notice vide letter dated 13.05.2011. 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. Applicant was counseled frequently by his Section IC and OIC to refrain from the act of being absent without leave. In spite of that, he indulged in the act of being absent without leave repeatedly, therefore, he was tried under Section 82 of AF Act 1950. Original copy of speaking order was handed over to applicant on 12.10.2011 as receipt for the same was obtained on the duplicate copy and forwarded to Air HQ (VB) (Jt JAG Air) as per instruction from AFRO. Charge trial of the applicant was conducted on 30.06.2010 for two charges for absent without leave for 01 hour and 19 minutes and for improperly dressed. The speaking order was issued and signed by the AOP after compliance of habitual offender policy. AOP being the competent authority to discharge the applicant, he approved his discharge from service under Rule 15 (2) (g) (ii) of the Air Force Rules 1969 as **“HIS SERVICES NO LONGER**

**REQUIRED- UNSUITABLE FOR RETENTION IN THE IAF”.**

He prayed that prescribed procedure was followed before discharging the applicant. The O.A. filed by the applicant is devoid of merit and lacks substance, therefore, O.A. deserves to be dismissed.

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

6. Attention has been invited to Air Force policy dated 18.12.1996, a copy of which has been brought on record as Annexure-A-2 of the O.A. It shall be appropriate to reproduce the relevant portion of the Policy dated 18.12.1996 (supra) as under :-

*“5. **Criteria for Habitual Offenders.**- Airman or NC (E) who meets with any one of the following individual criteria is to be treated as Habitual Offender and his case is to be considered for discharge after issuing a show cause notice:-*

*(a) Total number of punishment entries six and above (including Red and Black Ink entries).*

Or

*(b) Four Red Ink punishment entries.*

Or

*(c) Four punishment entries (Red and Black Ink entries included) for repeated commission of any one specific type of offence, such as Disobedience, insubordination, AWL/Overstayal of Leave, Breaking Out of Camp, Offence involving alcohol, Mess Indiscipline, Theft or Service/Personal property belonging to others and sue of abusive/threatening language etc.*

6. **Potential Habitual Offenders.** Airman/NCs (E) who are on the threshold, i.e. only one entry (Red or Black Ink as the case may be ) short of qualifying as Habitual Offender as per criteria laid down in Para-5 above are to be declared as potential habitual offenders and are to be issued with a Warning Letter.

Appendix to Air HQ Letter

Air HQ/C 23406/685/PS

Dated 18 Dec 96

**DISCIPLINE: AIRMEN / NCs (E) PROCEDURE TO BE FOLLOWED WHILE  
PROCESSING THE CASES OF HABITUAL OFFENDERS**

**Annexures:-**

1. Warning: Potential Habitual Offenders Airmen/NCs (E).
2. Second Time Warning when a chance was given by competent authority.
3. Second Time Warning when punishment awarded earlier is expunged.
4. Second Time Warning when Potential Habitual Offender fulfils the criterion of Habitual Offenders Policy second time.
5. Show Cause Notice.
6. Fresh Show Cause Notice.
7. Data Sheet.

1. **Aim.** This appendix lays down the procedural details of action required to be taken at various stages/levels to process a case under Habitual Offenders Policy as modified vide Para-5 to 8 of Air HQ Letter No. Air HQ/C 23406/685/PS dated 18 Dec 96.

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

(c) In a case where an individual has been warned in accordance with this policy and subsequent a punishment awarded to him prior to the issue of warning is expunged a second time warning will be required to be issued when he again fulfils any of the criterion laid down for Potential Habitual Offender. Standard format for such second time warning is placed at Annexure-3 to the Appx.

(d) The policy letter lays down three criterion under para5(a) (b) & (c) namely, a total of six punishment entries (Red and/ or Black), four Red Ink entries and four punishment entries (Red and/ or Black) for repeated commission of any one offence. Therefore an individual who has acquired a total of five punishment entries or three Red Ink Entries or three entries for repeated offence reaches the threshold of criteria laid down at Para-5(a), (b) or (c) respectively and is declared to be a Potential Habitual Offender with reference thereto. However, there can be a case where an individual has been declared Potential Habitual Offender with reference to criteria at Para-5 (b) or / and 5(c) and he commits offences thereafter and is also punished but does not fulfil the criteria with reference to which he was warned (award of Black Ink entries or an entry for offences other than the one earlier repeated as the case may be). For such a case also an individual will be required to be warned second time when he reaches the threshold of another criterion, i.e. Para-5(a). A standard form for such second time warning is placed at Annexure4 to this Appendix.

### **3. Show Cause Notice.**

(a) In all cases where an airman or NC (E) fulfills the laid down criteria of Habitual Offenders he will be served a Show Cause Notice calling upon him to explain reasons as to why the proposed action of discharge from service shall not be taken against him. A copy of the standard format of Show Cause Notice is placed at Annexure-5 to this Appendix. Copy of the warning letter and conduct sheet is to be attached along with the Show Cause Notice and a period of clear 10 days is to be given to the individual for submitting reply to the Show Cause Notice. In case an individual who are afforded a chance by the competent authority and issued with second time warning, subsequently commits another offence, he is to be issued with a Fresh Show Cause Notice. A

*standard form of a Fresh Show Cause Notice is placed as Annexure-6 to this Appx.*

*(b) A Show Cause Notice is required to be served immediately after it becomes due. It is to be issued by Command Judge Advocate of a Command HQ in respect to airmen/ NC (E) serving under their Command. In case of airmen/ N (E) serving in units directly under Air HQ, JAG (Air) at Air HQ will issue the Show Cause Notice and in the case of NCs (E) serving in units directly under Air HQ, the Commanding Officer concerned will issue the Show Cause Notice.*

*(c) In all cases the Commanding Officer of the individuals will serve the Show Cause Notice and obtain signature on the duplicate copy of the Show Cause Notice. The receipted copy is to be retained in the service documents and a copy thereof to be kept in the file.*

*(d) Movement of airmen on posting after issue of Show Cause Notice is governed vide this HQ letter No. Air S/40302/PA-II dated 05 May 89. However, if such an airman is cleared to move to his next unit, then the new Command HQ is to be informed as he is required to be issued with another Show Cause Notice due to change of Command.*

*(e) In all cases whenever a Show Cause Notice/Fresh Show Cause Notice is served on the individual, a copy thereof should be forwarded to AFRO. ”*

7. Before advertent to rival submissions of learned counsel of both sides, it is pertinent to mention that judgment relied upon by the applicant is not relevant in the present case being based on different facts and circumstances.

8. In the instant case, perusal of record shows 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 father, he could not join duty in time. Perusal of warning register shows that after awarding two punishments, he was warned not to absent without leave otherwise his services shall be terminated

as undesirable soldier. While on leave his father spoke to his Commanding Officer stating that his son did not want to serve in the air force. The airman was counseled and was advised to refrain from acts of indiscipline from time to time. On every occasion he promised to mend his ways but continued to repeat the same offence. In the last 11 months, he was granted 77 days leave on 5 occasions. In spite of granted sufficient leave, he repeatedly became absent without leave which shows that he was not interested in service. His further retention in service was likely to have adverse effect on the discipline of other air warriors also. In view of the fact that the entries have been given within only four years of service and also the fact that the show cause notice conforms to the requirement of the policy letter, the respondents passed the order of discharge, which, by no stretch of imagination, can be said to be illegal or irregular.

9. We find that applicant was negligent towards his duties and disciplined. During his service, the applicant was awarded four punishments for his irresponsible attitude and indisciplined nature towards his duty. Even after giving repeated warnings/ counseling, the applicant did not show any improvement in his discipline and conduct. There being no other option, being an undesirable soldier, the applicant was discharged from service

after holding a Court of Inquiry and due procedure was followed. Hence, the applicant is not entitled the relief prayed in Original Application to quash his discharge order and to reinstate him in service.

10. In view of the above, we do not find any irregularity or illegality in discharging the applicant from service being an undesirable soldier and hence, there is no violation of Army Rules 13 & 22 and Article 20 of the Constitution of India as alleged by the applicant. The O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

11. No order as to costs.

12. Miscellaneous applications pending, if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 06 January, 2022

UKT/-