

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Court No.2**
Reserved**ORIGINAL APPLICATION No. 211 of 2021**Tuesday, this the 31st day of January, 2023**“Hon’ble Mr Justice Ravindra Nath Kakkar, Member (J)”****“Hon’ble Maj Gen Sanjay Singh, Member (A)”**

Ex Sepoy Laxman Singh (Army No. 4170513A) of the 17 Kumaon Regiment, C/O 56 APO, son of Shri Kedar Singh, Permanent resident of Village - Tulani, Post - Rasai Pata, Tehsil, Didihat and District - Pithoragarh, (U.K.)

..... **Applicant**

Ld. Counsel for the : **Col BP Singh (Retd), Advocate.**
Applicant

Versus

1. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi - 110011.
2. Directorate General, Infantry (Personal), IHQ of MoD (Army), DHQ PO New Delhi - 110105.
3. Officer - In - Charge Records, Kumaon Regimental Centre Lance Down.
4. Commanding Officer, 17 Kumaon Regiment, C/o 56 APO.
5. Principal Controller Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....**Respondents**

Ld. Counsel for the : **Shri Shailendra Sharma Atal,**
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) Issue / pass an order or direction to the respondents to quash / set - aside the discharge from service on 08-06-1989 as mentioned in Discharge Certificate (Annexure No. A-1).

(b) Issue / pass an order or direction to reinstate the applicant in service with effect from 08-06-1989 with all service and monetary consequences.

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

(d) Allow this application with costs.

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 17.09.1977 and was discharged from service on 08.06.1989 being undesirable soldier under Army Rule 13 (3) III (v) as “Service No Longer Required”. During the entire service, the applicant was awarded five red 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, applicant was issued a Show Cause Notice dated 15.04.1989 by Commanding Officer 17 Kumaon. The competent authority was not satisfied with the reply of the applicant and hence proposal for discharge from service under Army Rules 13 was initiated and sanctioned discharge order of the applicant vide letter dated 07.11.2017 and accordingly, applicant was discharged from service w.e.f. 08.06.1989 being an undesirable soldier. Thereafter, applicant submitted number of petitions to various authorities which have been rejected. The applicant being not satisfied with the procedure of discharge, has filed this Original Application to quash his discharge order and to reinstate him in service.

3. Learned counsel for the applicant submitted that applicant has been discharged from service in an illegal and arbitrary manner without giving any consideration over reply to the Show Cause Notice and violating the provisions of Army HQ letter dated 28.12.1988. In reply to show cause notice, applicant prayed that he wants to serve in the army but his prayer was not considered. In show cause notice the Sections of the Army Act and the punishment awarded to the applicant had been mentioned without Part II Order. The applicant is almost uneducated having passed VIII Class and he does not know as to how the entries have been made in the Offence Report (IAFD-901) and he was also not told the charges under which Army Act he

was given various punishments. While awarding punishments, Army Rule 22 was not complied with accordingly Summary Trial is null and void from the very inception and thus no show cause notice could be given to him. The red ink entries were forcibly awarded without any fault on part of the applicant. As per ArmyHQ letter dated 28.12.1988, a preliminary enquiry and not necessarily a Court of Inquiry is to be held in impartial manner before recommending discharge whereas the respondent has conducted a Court of Inquiry in one day. Policy letter The order of discharge has been passed in a clear violation of Army Rules 13 & 22 and Article 20 of the Constitution of India, as such the impugned order in question cannot be said to be just and proper and the same may liable to be quashed by this Tribunal and applicant should be reinstated in service with all consequential benefits.

4. He also placed reliance on the judgment of the Hon^{ble} Apex Court in ***Vijay Shankar Mishra vs. Union of India & Ors***, Civil appeal Nos. 12179-12180 of 2016 (Arising out of Civil appeal (D) No.34132 of 2013), decided on 15.12.2016, ***Veerendra Kumar Dubey vs. Chief of Army Staff and Ors***, Civil appeal D No. 32135 of 2015, decided on 16.10.2015 and AFT(RB) Lucknow judgment in O.A.No. 183 of 2018, ***Arun Kumar Pandey vs. Union of India and Ors***, decided on 23.07.2021 and OA No. 222 of 2011, ***Rajesh Kumar***

vs. Union of India and Ors, decided on 01.12.2015 and pleaded that applicant's case is similar to aforesaid judgments and therefore, his discharge order to be quashed and applicant should be reinstated in service.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in the Indian Army on 17.09.1977 and was discharged from service on 08.06.1989 being an undesirable soldier under Army Rule 13(3) III(v) as "Service No Longer Required". During the entire service, the applicant was awarded

five red ink entries punishments as per following details:-

Ser No.	Date of Award of Punishment	Army Act Section	Punishment awarded
(a)	31.07.1984	39(f)	Deprived of appointment of Lance Naik.
(b)	16.03.1985	40(a)	28 days RI & 14 days detention in Military custody.
(c)	21.05.1986	40(a)	28 days Rigorous Imprisonment.
(d)	11.06.1986	39(a)	7 days Rigorous Imprisonment.
(e)	30.03.1989	48	14 days Rigorous Imprisonment.

6. 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 Ar

my where the discipline is the backbone. The competent authority was not satisfied with the reply of the applicant and hence proposal for discharge from service under Army Rules 13 was initiated. Punishments were awarded to the applicant by respective Commanding Officer after establishing the facts about his being guilty of offences under Army Act, 1950 who are authorised by law under the provisions of Army Act. His discharge was sanctioned by Officiating Brigade Commander 190 Mountain Brigade vide letter dated 26.04.1989 and accordingly, applicant was discharged from service w.e.f. 08.06.1989 being an undesirable soldier. 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 an undesirable soldier.

7. The applicant submitted mercy petition dated 19.12.2009 which was rejected by GOC in C, Eastern Command vide order dated 25.03.2011 against this illegal discharge order to cancel discharge order and to reinstate him in service. He further filed review mercy petition which was also rejected vide order dated 30.10.2012 stating applicant has rightfully been discharged from service as per HQ of MoD (Army) letter dated 28.12.1988.

8. 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 an enquiry is not like a 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 stands satisfied.”

Learned counsel for the respondents pleaded that O.A. may be dismissed.

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

10. Before advert to rival submissions of learned counsel of both sides, it is pertinent to mention that judgments relied upon by the applicant in Para 4 referred above are not relevant in the present case being based on different facts and circumstances.

11. We find that applicant was negligent towards his duties and disciplined. During his service, the applicant was awarded five punishments for his irresponsible attitude and indisciplined nature towards his duty. 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 after holding a Court of Inquiry and due procedure as per Army Rule 13 (3) III (v) and Army Headquarters policy letter dated 28.12.1988 on the subject. Hence, the applicant is not entitled to the relief prayed in Original Application to quash his discharge order and to reinstate him in service.

12. 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**.

13. No order as to costs.

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

(Maj Gen Sanjay Singh)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated :31 January, 2023

Ukt/-