

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

Original Application No. 292 of 2017

Tuesday, this the 07th day of September, 2021

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Abhay Kumar Singh, Ex Sepoy No 3004005Y, S/O Shri Harendra Singh, R/O Village-Fate Sarai, Post-Renga, District-Ghazipur.

.... Applicant

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

Versus

1. Union of India, through Principal Secretary, Department of Defence, Government of India, New Delhi.
2. Colonel, Commanding Officer (Unit), 19th Rajput, Bikaner, Station, C/O 56 APO.
3. Senior Record Officer, Records the Rajput Regiment, Bikaner.

... Respondents

Ld. Counsel for the Respondents. **Shri Sunil Sharma**, Advocate
Govt Standing 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) To set aside the impugned order dated 15.04.2017, passed by the opposite party No. 3, contained in Annexure No. 1 to this original application.

(b) To set aside the order dated 16.11.2009 passed by the opposite party No. 2, contained in Annexure No 2 to this original application.

(c) to direct the respondents to reinstate the services of applicant on the post of Sepoy and pay him regular salary in accordance with law.

(d) allow this original application in favour of the applicant with costs.

2. Being aggrieved with discharge order dated 16.11.2009 applicant had filed a writ petition No. 24902 of 2010 in the Hon'ble High Court of judicature at Allahabad which was heard on 06.05.2010 and dismissed on the ground of alternative remedy. Thereafter, applicant submitted a representation/appeal dated nil which was dismissed by Senior Record Officer, Rajput Regiment, Fatehgarh vide order dated 15.04.2017.

3. According to the averments in the O.A., applicant was enrolled in the Army (Rajput Regiment) on 23.02.2002. On

completion of military training, applicant was posted to 19 Rajput (Bikaner) on 04.01.2003. During his approximately 08 years of service, he was awarded 04 punishments in the form of red ink entries, pay fine and detention in military custody on account of various charges like disobeying lawful command given by his superior officer and using criminal force to superior officer. On 20.06.2009 he caught Naik Awadhesh Singh by his collar and punched him in public for which he was awarded punishment of 21 days rigorous punishment and 14 days pay fine under Section 40 (a) of Army Act, 1950. On 06.07.2009 he was interviewed by Commanding Officer who advised him to improve his conduct and to continue serving till pensionable service. However, applicant submitted an application for discharge from Army same day. He was time and again advised to serve for 15 years so that his dependents do not suffer. On 24.09.2009 while posted at Line of Control (LOC), applicant refused to perform duty and told post commander that "*I will not go on duty and you do whatever you feel like*". He was awarded 07 days rigorous imprisonment under Section 41 (1) of Army Act, 1950. Since conduct of applicant was having an adverse effect on all ranks of the unit, a Show Cause Notice (SCN) dated 10.10.2009 was served upon applicant to which he replied on 13.10.2009 stating therein that he be discharged from service. Accordingly, he was discharged from service as

an undesirable soldier w.e.f. 16.11.2009. This O.A. has been filed for quashing discharge order and reinstate applicant in service.

4. Submission of learned counsel for the applicant is that on an occasion when applicant came back from leave, he was falsely implicated in several disciplinary actions and awarded punishments on trivial grounds. His further submission is that no preliminary inquiry was conducted prior to issuance of Show Cause Notice, as such punishment awarded without giving opportunity to applicant is in violation of principles of natural justice. He pleaded that applicant be reinstated in service with all consequential benefits.

5. On the other hand submission of learned counsel for the applicant is that applicant proved himself time and again as undisciplined soldier and was awarded four red ink entries. His further submission is that although applicant was awarded first red ink entry on 09.08.2008, however in actual the unit has shielded him for almost five and a half years and due to leniency all his defiant impulsive behavior were tolerated. He was advised time and again to improve his conduct. His further submission is that in the year 2008 when applicant started disobeying orders on daily basis and was disinclined to accept any advice by his superiors, his father visited the unit and interacted with the Commanding Officer and requested him to

give applicant a chance and allow him to serve till pensionable service. Applicant had shown some improvement in his behavior and after departure of his father, he again started disobeying orders by his superiors which resulted in some more bad entries being awarded to him. A Show Cause Notice dated 10.10.2009 was issued to applicant and in his reply dated 13.10.2009 he requested therein for discharge from service. Respondents counsel further submitted that after taking sanction from the competent authority, applicant was discharged from service in terms of Rule 13 (3) III (v) of Army Rules, 1954 as an undesirable soldier. He pleaded for dismissal of O.A.

6. Heard learned counsel for both the sides and perused material placed on record.

7. Written statement filed by the respondents clearly mentions that applicant was tried summarily four times and awarded red ink punishments by the Commanding Officer for the offences committed under various sections of the Army Act.

Details of offences are given as under:

Sr. No.	Date of offence	AA Sec under which punishment awarded	Offence	Date of award	Punishment awarded
(A)	11.06.2008	Sec 42 (2)	Disobeying a lawful command given by his superior officer	25.07.2008	14 days detention in military custody and pay fine for 14 days.
(B)	25.07.2008	AA Sec 41 (1)	Disobeying in such manner of defiance of authority a lawful	09.08.2008	-do-

			command given personally by his superior officer in the execution of his office.		
(C)	20.06.2009	AA Sec 40 (A)	Using criminal force or assaulting his superior officer	06.07.2009	21 days rigorous imprisonment in military custody and 14 days pay fine.
(D)	24.09.2009	AA Sec 41 (1)	Disobeying in such manner as to show a wilful defiance of authority a lawful command given personally by his superior officer in the execution of his office.	25.09.2009	07 days rigorous imprisonment in military custody

8. In respect of each of above offences culminating in a red ink entry, the charge against the individual was heard by the Commanding Officer in accordance with Army Rule 22 where the individual was given full liberty to cross examine the witnesses and make any statement in his defence and after following the due procedure appropriate punishment was awarded. Copies of the tentative charge sheet, record of proceedings under Army Rule 22 and form for summary trial under Army Act Section 80 have been produced. It is thus, contended that there was no illegality in the punishments awarded and the red ink entries earned.

9. During the year 2009, when the unit was deployed on line of control, applicant refused to perform duty and on intervention of post commander, he said, *"I will not go on duty and you do whatever you feel like."* From the above, we

observe that on 25.09.2009, as the offence was committed on line of control in war like condition, applicant was liable for a severe punishment but after considering that he would lose the job, respondents had leniently awarded 07 days rigorous imprisonment in military custody. Thereafter, in spite of being given ample opportunities to improve his conduct and military discipline (Annexure V of CA showing counseling to applicant), the applicant had failed to bring about changes in his behaviour and conduct.

10. A Show Cause Notice dated 10.10.2009 was issued to applicant and applicant replied on 13.10.2009 mentioning therein that he wanted to leave Army service. Extracts of Show Cause Notice and reply received from applicant are reproduced as under:-

Show Cause Notice

	<u>गोपनीय</u>	
19		राजपूत (बीकानेर)
		पिन-912119
		द्वारा 56 सेना पत्रालय
		अक्टूबर 2009
1054/ए	10	
ना 3004005 सिपाही अभय कुमार सिंह		
सी कंपनी		
19 राजपूत (बीकानेर)		

कारण बताओ नोटिस

1. आपको सूचित किया जाता है कि पिछले साढ़े सात सालों की नौकरी के दौरान सेना की निम्नलिखित धाराओं के अंतर्गत अपराध करने के लिए आपको चार बार सजा मिल चुकी है | इन सजाओं का ब्योरा इस प्रकार है :-

क्रमांक	अपराध करने की तारीख	सेना की धारा	सजा की तारीख	सजाएँ
(क)	11 जून 2008	धारा 42(2) अपने	25 जुलाई	14 दिन सेना

		वरिष्ठ अधिकारी द्वारा दिये गए विधिपूर्ण आदेश की अवहेलना करना	2008		के अंदर कैद और 14 दिन वेतन का जुर्माना
(ख)	25 जुलाई 2008	धारा 41(1) अपने वरिष्ठ अधिकारी द्वारा अपने कर्तव्य के निष्पालन में स्वयं दिये गए किसी विधिपूर्ण आदेश की ऐसी रीति से उपेक्षा करना जिससे प्राधिकारी का जानबूझ कर तिरस्कार करना परिलक्षित हो	09 अगस्त 2008		14 दिन सेना के अंदर कैद की सजा
(ग)	20 जून 2009	धारा 40 (ए) अपने वरिष्ठ अधिकारी पर हमला करना	06 जुलाई 2009		21 दिन सेना के अंदर कठोर सजा और 14 दिन का वेतन का जुर्माना
(घ)	24 सितंबर 2009	धारा 41(1) अपने वरिष्ठ अधिकारी द्वारा अपने कर्तव्य के निष्पालन में स्वयं दिये गए किसी विधिपूर्ण आदेश की ऐसी रीति से उपेक्षा करना जिससे प्राधिकारी का जानबूझकर तिरस्कार करना परिलक्षित हो	25 सितंबर 2009		7 दिन सेना के अंदर कठोर कारावास

2. आपकी उपर्युक्त सजाओं को देखते हुए और आपके लड़ाई के क्षेत्र में वर्तमान व्यवहार को देखते हुए आपका व्यक्तिगत अनुशासन सेना के माहौल के वर खिलाफ है और इससे यह जाहिर होता है की आप सेना में नौकरी करने के इच्छुक नहीं हैं ।
3. अतः रक्षा सेवा विनियमावली 1987 के पैराग्राफ 156 के अंतर्गत आपको कारण बताओ नोटिस जारी की जाती है, कि क्यों न आपको सेना नियम 13 (3) III (4) के तहत आपको सैन्य सेवा से मुक्त कर दिया जाय । आप इस कारण बताओ नोटिस का जवाब पाँच दिनों के अंदर प्रेषित करें । ऊपर दिये हुए समय के अनुसार आपका जवाब नहीं मिलता है तो यह मान लिया जाएगा कि आपको इसके बारे में कुछ नहीं कहना है और आपके खिलाफ उपर्युक्त सेना नियम के अनुसार कार्यवाही की जाएगी ।
4. कृपया इस कारण बताओ नोटिस की पावती भेजें ।

Sd/- x x x x x
Commanding Officer

Reply to Show Cause Notice

न. 3004005 सिपाही
अभय कुमार सिंह
सी कंपनी
राजपूत (बीकानेर)
द्वारा 56 सेना पत्रालय
अक्तूबर 2009

19

13

कर्नल आशुतोष कुमार सिंह, सेना मेडल
कमान अधिकारी
19 राजपूत (बीकानेर)
द्वारा 56 सेना पत्रालय

कारण बताओ नोटिस का जवाब

1. आपके पत्र संख्या 1054/ए दिनांक 10 अक्तूबर के संदर्भ में ।
2. आपके उपर्युक्त पत्र से मैं सहमत हूँ और मुझे इसके बारे में कुछ नहीं कहना है । मेरे पिताजी की तबीयत खराब रहती है । और आगे मैं सैन्य सेवा करने में इच्छुक नहीं हूँ । इसके बारे में मैं आप को पहले भी बता चुका हूँ । अतः मुझे शीघ्र सैन्य सेवा से मुक्त कर जल्दी से घर भेज दिया जाय । मैं आपका आजीवन आभारी रहूँगा । मैं इस जवाब को पूरी तरह से सोच समझ कर लिख रहा हूँ ।

Sd/- x x x x x
Applicant

11. Thus, from the above, an inference may be drawn that after receipt of Show Cause Notice dated 10.10.2009, applicant had submitted reply dated 13.10.2009 in which he himself had mentioned that he did not want to serve in the Army and he be discharged from service. Therefore, he was discharged from service as an undesirable soldier under Rule 13 (3) III (v) of Army Rules, 1954.

12. Vide para 5 (f) of O.A., applicant has submitted that prior to issue of Show Cause Notice no inquiry was conducted as per policy letter dated 28.12.1988. We observe that though it was mandatory to hold preliminary inquiry before ordering discharge as required vide aforementioned policy but since applicant had himself requested for discharge, therefore, provisions of aforesaid policy letter are not applicable in the instant case.

13. Maintenance of discipline is of paramount importance in the Army. Being a habitual offender with no regard to military discipline and maturity, applicant's retention in service was considered detrimental for the troops. Based on past record, a Show Cause Notice was served to applicant by the Commanding Officer, 19 Rajput before recommending his discharge to the competent authority. Scrutiny of the records brings out that the applicant did not want to serve any more and had accepted whatever charges were leveled against him in Show Cause Notice. The competent authority to sanction discharge, Brigade Commander, after applying his mind to the contents of the case history, especially the incidence in the line of control involving safety of the nation entrusted under the care of the applicant, reply to Show Cause Notice, gave consent to the discharge proceedings.

14. In the light of the foregoing, we are of the view that the number of red ink entries alone is not the criteria for discharge under Army Rule 13(3) III (v). Four red ink entries are only a guideline. The disciplinary conduct of the individual as reflected in the service record and the requirement of maintaining discipline would decide if services are no longer required. This is an administrative action resulting from an unsatisfactory record of service of applicant. It cannot be taken as a punishment.

15. Thus, having considered all aspects of the matter, we find no grounds to interfere with the discharge of the applicant under Army Rule 13 (3) Item III (v). The O.A. is accordingly **dismissed**.

16. No order as to costs.

17. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

Dated : 07 September, 2021
rathore

(Justice Umesh Chandra Srivastava)
Member (J)