

Court No. 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 194 of 2020

Friday, this the 3rd day of September, 2021

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

No. 14244460F, Om Prakash Surwade
C/o Mani Dev Chaturvedi
House No. 104, Village – Dharahara, Sakaldiha,
District – Chandauli (UP)

.... **Applicant**

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

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), DHQ PO, New Delhi – 11.
2. The Chief of the Army Staff, IHQ of MoD (Army), Sena Bhawan, New Delhi – 110011.
3. The Chief Record officer, Corps of Signals, C/o 56 APO.
4. The Commanding Officer, A Composite Signal Regiment, C/o 56 APO.
5. Principal Controller of Defence Accounts, Draupadi Ghat, Allahabad (UP).

... **Respondents**

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal**,
Central Govt Counsel

ORDER

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:-

- “(a) Issue/pass an order or direction of appropriate nature quashing the discharge of the applicant with effect from 01.10.1994.
- (b) To issue/pass an order of appropriate nature directing the respondents to re-instate the applicant notionally only for the purposes of pensionary benefits and all other consequential benefits.
- (c) Issue/pass 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 17.03.1982 and was locally discharged from service on 01.10.1994 (Forenoon) after rendering 12 years and 198 days of service being undesirable soldier under Army Rule 13 (3) III (v) and Army Headquarters letter dated 28.12.1988. During the entire service, the applicant was awarded four red ink and four 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, applicant was issued a Show Cause Notice dated 11.08.1994 by Commanding Officer, A Composite Signal Regiment in which it was stated that “ it is observed from the frequency of offence, committed by you that you are habitual offender which imparts bad influence on other persons of the unit. In view of this, I consider that your continued retention in service is undesirable. You are directed to explain reasons as to why, you should not be

discharged from service since you earned four red ink entry punishments". On its response, the applicant had pleaded guilty vide his reply to the Show Cause Notice dated nil which is annexed as R-XI to the counter affidavit. Reply of Show Cause Notice alongwith recommendation of Commanding Officer of A Composite Signal Regiment was forwarded to Chief of Staff, HQ 21 Corps which was sanctioned on 24.09.1994 and accordingly, on receipt of sanction of discharge, applicant was discharged locally from service w.e.f. 01.10.1994 (Forenoon). Thereafter, applicant submitted an legal notice dated 09.10.2019 through his Advocate Mr. Vinay Pandey for notionally reinstatement into service and grant of service and other monetary benefits which was suitably replied by the respondents vide Signals Records letter dated 30.11.2019. The applicant being not satisfied with the procedure of discharge, has filed this Original Application to quash his discharge order and to reinstate him into service.

3. Learned counsel for the applicant submitted that applicant has been discharged from service in an illegal and arbitrary manner. The Show Cause Notice was nothing other than an evil mind set which is self evident from the language of the notice and time given for reply of Show Cause Notice. In the instant case, no enquiry has been conducted by the respondents before passing the order of discharge under Army Rule 13 (3) III (v) keeping in view the circumstances, the length of service of the applicant and hard conditions in which he served and also the effect of the order which the applicant would

suffer after discharge from service. He also placed reliance on the judgment of the Hon'ble Apex Court in ***Veerendra Kumar Dubey v. Chief of Army Staff*** (2016) (2) SCC 627, ***Vijay Shanker Mishra vs. Union of India & Ors*** (Civil Appeal Nos. 12179 and 12180 of 2016) decided on 15.12.2016, ***S Muthu Kumaran vs. Union of India*** (Civil appeal No. 352 of 2017), decided on 17.01.2017, ***Narain Singh vs. Union of India*** (Civil Appeal No. 7452-7453 of 2019), decided on 20.09.2019 and AFT (RB) Lucknow judgments in O.A. No. 168 of 2013, ***Nk Abhilash Singh Kushwah vs. Union of India & Ors***, decided on 23.09.2015, O.A. No. 122 of 2012, ***Ex Sep Prem Singh vs. Union of India & Ors***, decided on 14.12.2015, O.A. No. 219 of 2011, ***Ex Sgt. Gupteshwar Singh vs. Union of India & Ors***, decided on 19.01.2018, O.A. No. 283 of 2014, ***Gdsm Brahmanand Chauhan vs. Union of India & Ors***, decided on 07.12.2015 and O.A. No. 248 of 2015, ***Smt. Malti Devi vs. Union of India & Ors***, decided on 07.02.2018 and pleaded that applicant's case is similar to aforesaid judgments and therefore, his discharge order to be quashed and applicant should be reinstated notionally for the purpose of pensionary/consequential benefits.

4. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in the Indian Army on 17.03.1982 and was locally discharged from service on 01.10.1994 (Forenoon) after rendering 12 years and 198 days of service being undesirable soldier under Army Rule 13 (3) III (v) and Army Headquarters letter dated 28.12.1988. During the entire service, the applicant was awarded four

red ink and four black ink entries punishments as per following details:-

Ser No.	Date of Award of Punishment	Army Act Section	Offence	Punishment awarded
Red Ink Punishments				
(a)	02.07.1985	39(a)	Absenting himself without leave	28 days imprisonment and 14 days Detention
(b)	10.09.1986	39(b)	Without sufficient cause over staying leave granted to him	7 days Rigorous Imprisonment (RI)
(c)	25.06.1993	39(b)	Without sufficient cause over staying leave granted to him	5 days Rigorous Imprisonment (RI)
(d)	06.05.1994	48	Intoxication	28 days RI and Detention upto 14 days
Black Ink Punishments				
(e)	13.03.1987	39(b)	Without sufficient cause over staying leave granted to him	14 days Pay Fine
(f)	11.03.1991	54(b)	Losing by neglect identity Card the property of the Government issued	14 days Pay Fine
(g)	25.06.1992	39(b)	Without sufficient cause over staying leave granted to him	14 days Pay Fine
(h)	28.05.1993	39(b) 48	Absenting himself without leave Intoxication	14 days Pay Fine

5. 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. Therefore, applicant was issued a Show Cause Notice dated 13.08.1994 by Commanding Officer, A Composite Signal Regiment. The reply of notice was submitted by the applicant vide his letter dated nil. The reply was duly considered and being not found sufficient, the Chief of Staff, Headquarters 21 Corps sanctioned discharge of the applicant on 24.09.1994 and accordingly, applicant was discharged from service

w.e.f. 01.10.1994 (Forenoon). 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 service no longer required being undesirable soldier.

6. Learned counsel for the respondents further submitted that as per Para 132 of pension Regulations for the Army, 1961 (Part-1) as amended vide Para 47 of Revised Pension Regulations for the Army 2008 (Part-1), "the minimum period of qualifying service (without weightage) actually rendered and required for earning service pension shall be 15 years". Since, the applicant has rendered only 12 years and 198 days of qualifying service (less than 15 years) in the Army, he did not qualify to earn Service Pension.

7. 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 that O.A. may be dismissed.

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

9. It is pertinent to mention that judgments relied upon by the applicant in Para 3 referred above are not relevant in the present case being based on different facts and circumstances of the case as illustrated below :-

(a) ***Veerendra Kumar Dubey v. Chief of Army Staff and Vijay Shanker Mishra vs. Union of India & Ors*** - In both the cases, the Hon'ble Apex Court has held that award of four red ink entries simply pushes the individual concerned into a grey area where he can be considered for discharge but just because he qualified for such discharge, does not mean that he must necessarily suffer that fate. The Commanding Officer while discharging an individual to consider the nature of offence for which red ink entries have been awarded, other aspects that an individual has put in long years of service, hard stations and difficult living conditions during his service. On these basis, as due procedure was not followed, the appeal was allowed by the Hon'ble Apex Court in favour of the appellants.

(b) ***S Muthu Kumaran vs. Union of India*** - In this case applicant has completed more than 15 years of pensionable service and was dismissed from service being involved in an

enrolment scam. Keeping in view his gravity of offence, 15 years pensionable service and to give an opportunity to lead honourable life in the society after retirement, the Hon'ble Apex Court has allowed the petition by modifying the order of dismissal passed by the Tribunal into discharge from service.

(c) ***Narain Singh vs. Union of India & Ors***- In this case, applicant was discharged from service after completion of 13 years & 7 months of service solely on the basis of four red ink entries which were awarded within a short span of one year. The Hon'ble Apex Court found order of discharge wholly unjustified and not sustainable in law while discharging the appellant from service. The Commanding Officer has failed to take into consideration all relevant aspects/factors and order of discharge was passed mechanically on mere four red ink entries. Hence, appeal was allowed in favour of the appellant.

(d) ***Smt. Malti Devi vs. Union of India & Ors*** - In this case, husband of the applicant had served for more than 18 years of service and order of dismissal was modified by the Tribunal to discharge from service in order to enable her to grant her family pension as her husband completed more than 15 years of pensionable service.

(e) ***Gdsm Brahmanand Chauhan vs. Union of India & Ors***- In this case, applicant was discharged from service on account of four red ink entries and was reinstated in service as due procedure was not followed by the respondents.

(f) **Ex Sgt. Gupteshwar Singh vs. Union of India & Ors** - In this case, applicant had served for more than 20 years of pensionable service and order of dismissal was modified to discharge from service being applicant was not found involved in misconduct for which punishment was awarded by the respondents.

(g) **Ex Sep Prem Singh vs. Union of India & Ors** - In this case, applicant was discharged from service on account of six red ink entries and was reinstated in service as due procedure was not followed by the respondents keeping in view the gravity of offences committed by the applicant.

(h) **Nk Abhilash Singh Kushwah vs. Union of India & Ors** - In this case, applicant has completed approx 15 years pensionable service and was discharged from service on account of Alcohol Dependency Syndrome and red ink entries. His order of discharge mainly based on offence of Alcohol Dependency Syndrome was quashed by the Tribunal but prayer to set aside red ink entries was rejected. Hence, O.A. was allowed in part.

Hence, the benefit of cases relied upon the applicant cannot be extended to him being all the cases are different in facts and nature.

10. The applicant in his reply dated nil to Show Cause Notice, has accepted that he has committed mistakes and has been punished eight times due to his own fault and prayed not to discharge him from

service by giving one more chance to serve without any further mistake so that he can look after to his family. This reply of applicant, being a general/routine reply was not treated sufficient and satisfactory cause to retrain him in service and therefore, discharge order issued by the respondents cannot be set aside in the manner that due procedure of regular inquiry was not followed.

11. During the arguments, learned counsel for the applicant also prayed that if applicant's discharge order is not set aside; at least he should be given Ex-serviceman status so that he can avail CSD Canteen, ECHS and other facilities applicable to Ex-serviceman. This prayer of the applicant is also rejected being against the rules as no such facilities are to be extended to a soldier who is discharged from service being undesirable soldier.

12. It is also made clear that in view of Para 7 of the judgment of the Hon'ble Apex Court in **Sep Satgur Singh** (*supra*), no regular inquiry was required as Para 5 (a) of Army Headquarters letter dated 28.12.1988 does not deal with Court of Inquiry. Therefore, discharge order of the applicant was issued as per rules and policy letter dated 28.12.1988.

13. In substance, we find that applicant was negligent towards his duties, habitual of over consumption of alcohol during duty hours and indisciplined soldier. During his service, the applicant was awarded eight 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 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 the relief prayed in Original Application to quash his discharge order and to reinstate him notionally for the purpose of pensionary/consequential benefits as he has served only 12 years and 198 days of service in the Army.

14. In view of the above, the O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

15. No order as to costs.

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

Member (A)

Member (J)

Dated: Sept., 2021

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