

Court No. 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No 21 of 2018

Thursday, this the 30th day of September, 2021

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

Ex Nk/SKT Uma Shankar Yagik (No. 1566996W)
S/o Late Ram Khelawan Yagik
R/o Village & PO – Kalawalia, Block Pahari,
District – Chitrakoot (UP)

..... Applicant

Ld. Counsel for the Applicant : **Col AK Srivastava (Retd)**, Advocate

Versus

1. Union of India, through it Secretary, Ministry of Defence (Army), South Block, New Delhi-110011.
2. Chief of the Army Staff, IHQ of MOD, South Block, New Delhi-110011.
3. Commanding Officer, 270 Engineer Regiment, C/o 56 APO.
4. OIC Records (BEG), Bombay Engineer Group & Centre, Kirkee Pune – 411003

..... 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 applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

“(a) Issue/pass an order or direction of appropriate nature to quash/set-aside the respondents, the Chief of Army Staff COAS letter dated 28 Mar 2000 rejecting the applicant’s appeal dated 06 Aug 1998.

- (b) Issue/pass an order or direction of appropriate nature to quash/set-aside the respondents, Commanding Office 270 Engr Regt discharge order dated 20 Jul 1998 in respect of the applicant, under AR 13 III (v).
- (c) Issue/pass an order or direction of appropriate nature to quash/set-aside the respondents, Stn Cdr, Nagrota sanction/direction for discharge, dated 16 Jul 1998 in respect of the applicant, under AR 13 III (v).
- (d) Issue/pass an order or direction of appropriate nature to quash/set-aside the Show Cause Notice dated 04 Jul 1998 served by respondents, Commanding Officer, 270 Engr Regt.
- (e) Issue/pass an order or direction of appropriate nature to reinstate the applicant in service w.e.f. 20 Jul 1998 with all consequential benefits after quashing/setting aside applicant's discharge order dated 20 Jul 1998 under AR 13 III (v).
- (f) Issue/pass an order or direction of appropriate nature to the respondents grant him service pension considering the fact that he has rendered substantial army service for 15 ½ years.
- (g) Issue/pass an order or direction of appropriate nature to grant all benefits entitled including ECHS and CSD facilities to the applicant.
- (h) issue/pass an order or direction of appropriate nature to allow.
- (i) Issue/pass an order or direction of appropriate nature as this Hon'ble Tribunal deems appropriate in favour of the applicant.
- (j) Allow this application with costs and 18% interest considering that he has suffered for almost 20 years more."

2. Briefly stated facts of the case are that applicant was enrolled in the Army on 15.02.1983 and was locally discharged from service on

20.07.1998 (AN) after rendering 15 years, 04 months and 13 days of service under Rule 13 (3) III (v) of Army Rule, 1954 as undesirable soldier by competent authority based on the grounds that applicant has incurred four red ink entries and three black ink entries for offences committed by him during his entire service. The applicant was given several opportunities to improve himself by various Commanding Officers but the applicant remained in same casual attitude and repeated same offences again and again. Being Army a disciplined oriented Institution, retention of such habitual offenders is detrimental to the ethos and discipline of the Army. A Show Cause Notice was issued to the applicant by the Commanding Officer, 270 Engineer Regiment vide letter dated 04.07.1998 which was replied by the applicant vide his application dated 14.07.1998. Being not satisfied with the reply of the applicant, final directions of Station Commander Nagrota vide order dated 16.07.1998 to discharge the applicant from service being undesirable for further military service under the provisions of Army Rule 13 read in conjunction with Army Rule 17 and Army HQ letter dated 28.12.1988 was issued. Accordingly, the applicant was discharged from service w.e.f. 20.07.1998 (AN) being an undesirable soldier and his services being no longer required. Thereafter, the applicant submitted a statutory appeal dated 06.08.1998 directly to Chief of Army Staff and filed Writ Petition No. 33816/1998 against his discharge from service in the Hon'ble High Court of Allahabad. The Hon'ble High Court issued direction to the respondents to decide statutory appeal of the applicant and accordingly, statutory appeal of the applicant dated

06.08.1998 was examined and rejected by the Chief of Army Staff due to lack of merits and applicant was communicated the reasons of rejection vide letter dated 28.03.2000. The applicant again filed Civil Contempt Petition No. 987/2000 which was rejected by the Hon'ble High Court of Allahabad on 01.12.2003. Being aggrieved, the applicant has preferred the present O.A.

3. Learned Counsel for the applicant submitted that punishments awarded to the applicant (4 red and 3 black ink entries) are not of a grave nature and out of these some were arbitrary due to vengeance besides being legally untenable. Neither show cause notice dated 04.07.1998 nor the discharge order would have been issued if a preliminary inquiry was instituted in terms of Army HQ letter dated 28.12.1988 because it would have revealed that the offences were not of grave nature to discharge him as an undesirable soldier in terms of Army Rule 13 III (v). The applicant's RMB/IMB before discharge as per AO 3/89 was not held and Review Medical Board for LMC BEE (Permanent) due on 09.05.1999 has also not been conducted till date. Hence, applicant's discharge from service under Army Rule 13 III (v) is illegal and needs to be quashed out. The applicant is also aggrieved due to rejection of his appeal dated 06.08.1998, discharge order dated 20.07.1998, Station Commander, Nagrota sanction order of discharge dated 16.07.1998, show cause notice dated 04.07.1998 and inordinate delay in deciding the Revision Petition dated 29.05.2000 which is pending before the Secretary, Ministry of Defence.

4. Learned Counsel for the applicant further submitted that in view of aforesaid facts and circumstances of the case, a great injustice has been done to the applicant and his discharge under Army Rule 13 III (v) is liable to be quashed since neither mandatory RMB/IMB held before discharge in terms of AO 3/89 nor any preliminary inquiry was conducted to ascertain the gravity of each of the offences for which he was awarded red ink entries in terms of Army HQ letter dated 28.12.1988 which is against the decision of the Hon'ble Supreme Court in ***Veerender Kumar Dubey vs. Chief of Army Staff and Ors*** in Civil Appeal No. 32135/2015, decided on 16.10.2015. He pleaded to set aside illegal discharge order and reinstate applicant in service to enable him to serve with dignity and pride which is his fundamental right under the Constitution of India.

5. During the course of arguments, learned counsel for the applicant also submitted that though after discharge from service, a PPO dated 17.06.2000 has been issued by PCDA (P) Allahabad, granting service pension to the applicant but no amount has been paid to the applicant so far. In addition, he also submitted to conduct RMB of the applicant which could not be conducted at the time of discharge from service being applicant was in low medical category BEE (Permanent).

6. On the other hand, Ld. Counsel for the respondents submitted that applicant was placed in low medical category BEE (Permanent) as per AFMSF-15 dated 27.05.1997 for the period from 09.05.1997 to 09.05.1999 for disease "Essential Hypertension for Re-cat" but the applicant did not undergo for Release Medical Board in terms of Army

Order 3/1989 prior to proceeding on discharge. The applicant submitted an application dated 23.05.1998 requesting for premature retirement on extreme compassionate grounds but his case being under process could not be considered after issuance of final directions dated 16.07.1998 for discharge from service and accordingly, applicant was discharged from service being undesirable for further service. However, he was advised to submit various documents for grant of service pension and for conduct of RMB and latter applicant submitted documents for grant of service pension and accordingly, he was granted service pension vide PPO dated 17.06.2000. The applicant vide his application dated 25.02.2000 himself denied to undergo RMB and hence, in absence of RMB proceedings, his claim for grant of disability pension was not submitted to PCDA (P) Allahabad.

7. Heard learned counsel for the parties and perused the material placed on record.

8. We find that Station Commander, Nagrota in his direction dated 16.07.1998 has clearly mentioned that applicant was provided several opportunities to improve his conduct to become a disciplined soldier but he failed and hence, his further retention in military service was considered undesirable being a habitual offender. In his direction it is also mentioned that applicant was also convicted by Summary Court Martial for a serious offence of unauthorised possession of one hand grenade without valid reasons for which the conviction still stands. Accordingly, applicant was discharged from service after due procedure under the provisions of Army HQ letter dated 28.12.1988

and Army Rule 13 (3) III (v) as an undesirable soldier and his services being no longer required. Hence, the applicant is not entitled the relief prayed in Original Application to quash his discharge order and to reinstate him in service. There being no illegality or illogicality in discharging the applicant from service his prayer to reinstate him in service is **dismissed**.

9. It is also clarified that applicant has himself denied to undergo Release Medical Board at the time of discharge from service vide his application dated 25.02.2000 and hence, in absence of RMB proceedings, his claim for grant of disability pension was not submitted to PCDA (P) Allahabad. However, a Release Medical Board is required to be conducted for the applicant to assess gravity of his disease and medical category from which he was suffering at the time of retirement from service.

10. In view of aforesaid, the respondents are directed to conduct a Release Medical Board for the applicant to assess his medical condition recommending the percentage of disability, if any. The respondents are directed to inform applicant the place and date where RMB is to be conducted and give effect to this order positively within a period of four months from the date of receipt of certified copy of the order.

11. As a result of foregoing discussion, the O.A. is **partly allowed**. The respondents are directed to release service pension to the applicant in accordance with PPO dated 17.06.2000 issued by PCDA (P) Allahabad and also conduct RMB of the applicant which was not

conducted at the time of discharge from service. The respondents are directed to give effect to this order within a period of four months from the date of receipt of certified copy of the order. Default will invite interest @ 8% per annum till actual payment.

12. 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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