

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 692 of 2020**Friday, this the 3<sup>rd</sup> day of September, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**Satish Chand  
S/o Shri Ram Chand,  
Resident of 97, Badi Lal Kurti Bazar, Post Office – Dilkusha,  
District – Lucknow (UP)**.... Applicant**Ld. Counsel for the Applicant : **Shri A.U. Ahmad &**  
**Shri Satish Chandra, Advocate.**

Versus

1. Union of India, through its Defence Secretary, Ministry of Defence, Integrated HQ of MoD (Army) DHQ PO, South Block, New Delhi.
2. Dte Gen Remount Veterinary (RV-1), Quartermaster General's Branch, Integrated HQ of MoD (Army), West Block-III, RK Puram, New Delhi.
3. Lt Col, SO Welfare, Astha Cell, HQ Central Command, Lucknow.

**... Respondents**Ld. Counsel for the Respondents : **Shri Shyam Singh,**  
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:-

- “(i) This Hon'ble court may kindly be pleased to set aside the impugned orders dated 31.01.2010 and 16.03.2010 (Annexure No. 1 and 2) passed by respondents with all consequential benefits in the interest of justice.

- (ii) That this Hon'ble court may kindly be pleased to direct the opposite parties to allow and pay the Army Group Insurance Fund amount Rs. 45,640/- along with interest @ 12% till the date of actual payment to the petitioner.
- (iii) In addition to the above relief, if this Hon'ble Tribunal may deem fit and proper to grant any other relief, the same may kindly be granted to the applicant in the interest of justice."

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 07.04.1985 and was locally discharged from service on 12.08.2001 (AN) being an undesirable soldier under Army Rule 13 (3) III (v). During the entire service, the applicant was awarded seven red ink and four black ink entries punishments being a habitual offender. 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 locally discharged from service on 12.08.2001 (AN). Thereafter, applicant submitted a petition dated 17.01.2010 to Defence Secretary with a copy to RVC Records for condonation of 341 days shortfall of service to earn minimum service pension. RVC Records vide letter dated 31.01.2010 replied the applicant that he was awarded eleven punishments (seven red ink and four black ink entries) for various offence during 15 years and 03 months of service. A total of 761 days had accrued as 'Non Qualifying Service', owing to which, he was not granted service pension. The

applicant was informed that as per rules, condonation of short fall in service to earn service pension is considered under special circumstances in deserving cases and not as a matter of routine. Thereafter, applicant submitted another petition dated 14.06.2011 for condonation of shortfall of service which was suitably replied by RVC Records. The applicant being aggrieved has filed this Original Application.

3. Learned counsel for the applicant submitted that applicant has been discharged from service in an illegal and arbitrary manner. The discharge order is based on presumption and surmises as it has been observed that prior to local discharge neither any show cause notice nor any opportunity of hearing was given to the applicant, which is contrary to the service law as well as against the principal of natural justice. The total service period of applicant is 15 years and 3 months and various red ink and black ink entries have been recorded without informing to applicant or calling any explanation, hence it is itself clear that punishments have been recorded/awarded without any fault on the part of applicant. Hence, these punishments cannot be the foundation of discharge from service and impugned order of discharge should be set aside accordingly.

4. Learned counsel for the applicant further submitted that payment of Rs. 45,640/- towards Army Group Insurance Fund made by the respondents vide cheque No. 439904 dated 26.03.2003 has not yet been received/credited in bank account of the applicant, which should be now paid to the applicant alongwith interest.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in the Indian Army on 07.04.1985 and was locally discharged from service on 12.08.2001 (AN) being an undesirable soldier under Army Rule 13 (3) III (v). The applicant was awarded eleven punishments (seven red ink and four black ink entries) for various offences during 15 years and 03 months of service. He 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 being an habitual offender. Therefore, applicant was locally discharged from service on 12.08.2001.

6. Learned counsel for the respondents further submitted that applicant had incurred a total of 761 days of 'Non Qualifying Service' being over stay of leave which resulted in a short fall of 281 days to minimum qualifying service of 15 years to earn service pension. As per Para 132 of Pension Regulations for the Army, 1961 (Part-1), total qualifying service required for earning service pension is 15 years. Therefore, under the provisions of Para 113(a) and 132 of Pension Regulations for the Army, 1961 (Part-1), applicant was not granted any kind of pension.

7. The Hon'ble Apex Court in its judgment in Civil Appeal No. 1857 of 2018, **Sep Satgur Singh vs. Union of India & Ors**, decided on 02.09.2019 has held in Para 7 of the judgement that :-

“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. At the outset, we would like to say that in view of the judgment of the Hon'ble Apex Court in **Sep Satgur Singh** (*supra*) and Army Headquarters policy letter dated 28.12.1988, discharge order of the applicant was issued as per rules and policy letter being undesirable soldier.

10. In substance, we find that applicant was negligent towards his duties, indisciplined soldier and habitual offender. During his service, the applicant was awarded eleven punishments (seven red ink and four black ink entries) 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 first relief prayed in Original Application to set aside the impugned order of discharge.

11. With regard to second relief prayed in O.A., it has been admitted by the respondents in their counter affidavit that cheque No. 439904 dated 25.03.2003 for Rs. 45,640/- on account of payment of regular maturity was forwarded by Army Group Insurance Fund, New Delhi vide letter No. RVC/MA/477808 dated 26.03.2003 to the bankers of the applicant i.e. Bank of India, Subhani Khera, Lucknow. At this stage, the claim of the applicant for non payment of AGIF amount of Rs. 45,640/- after lapse of 15 years, without approaching RVC Records is ridiculous and surprising. Though, during the course of hearing, learned counsel for the respondents conceded that AGIF, New Delhi will be approached again for payment of Rs. 45,640/- to the applicant, if not already paid.

12. In view of the above:

(a) The O.A. for relief prayed in prayer clause (i) to set aside the impugned order of discharge, deserves to be dismissed. It is accordingly **dismissed**.

(b) For the relief prayed in prayer clause (ii), the O.A. is **allowed**. The respondents are directed to make payment of AGIF amount of Rs. 45,640/- to the applicant within a period of three months, if not already paid.

13. With the aforesaid directions, the Original Application is disposed off.

14. No order as to costs.

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

Dated: 3<sup>rd</sup> Sept., 2021

SB