

Court No.1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Transferred Application No. 29 of 2014

Monday, this the 3rd day of September, 2018

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)

Hon'ble Air Marshal BBP Sinha, Member (A)

Lal Babu Mishra
Son of Sri Daya Shankar Misra
Resident of Villge and Post – Domalia
Pargana and Tehsil – Salempur
District - Deoria

..... Petitioner

By Legal Practitioner - Shri Rajan Mishra, Advocate.

Versus

1. The Union of India through its Secretary,
Ministry of Defence, New Delhi.
2. The Air Office Commanding-in-Chief,
Head Office Vayu Bhawan,
New Delhi – 110011.

..... Respondents

By Legal Practitioner – Dr. Shailendra Sharma Atal
Learned Counsel for Central Government

ORDER

“Hon'ble Mr. Justice S.V.S. Rathore, Member (J)”

1. Initially, the petitioner had filed Writ Petition No. 30444 of 1996 before the Hon'ble High Court of Judicature at Allahabad. Vide order of Hon'ble High Court dated 07.11.2014, said Writ

Petition was transferred to this Tribunal under the provision of Section 34 of Armed Forces Tribunal Act, 2007 and registered as T.A. No. 29 of 2014.

2. By means of the aforesaid Writ Petition, the petitioner had made the following prayer :-

“(i) Issue a writ, order or direction in the nature of Certiorari, quashing the order dated 6.9.1998 passed by the respondent no. 2, contained in Annexure-3 to this petition and the show cause notice dated 27.10.1995 issued by respondent no. 3, contained in Annexure-1 to this petition.

(ii) Issue a writ, order or direction in the nature of Mandamus commanding the respondents to permit the petitioner to resume his duties as Cook and pay his entire arrears of salary and allowances and other benefits admissible to him under rules.

(iii) Issue any other suitable writ, order or direction which this Hon. Court may deem fit and proper in the circumstances of the case.

And

(iv) Award the cost of the present writ petition to the petitioner.”

3. Brief facts of the case may be summarized as under.

The petitioner was enrolled in the Air Force as a cook on 10.02.1988. It is pleaded that the petitioner served with full satisfaction to his superiors. All of sudden, the respondent No. 2 served a show cause notice dated 27.10.1995 upon the petitioner under Rule 15 clause (2) of Air Force Rules, 1969 and the petitioner was asked to reply the aforesaid show cause notice within the stipulated time, failing which he shall be discharged. It was mentioned in the aforesaid notice that during the course of his service, he has been awarded punishment nine times out of which there were seven entries of red ink and two entries of black ink.

Prior thereto the petitioner was also warned to leave the indisciplined activities otherwise after recording penalizing entries, he may be removed from service.

4. The aforesaid notice was received by the wife of the petitioner and she demanded the enclosures A and B of show cause notice by her letter addressed to respondent No. 2. His wife submitted that her husband is suffering from mental disease and he was under treatment and she is looking after him. She also made a request to get employment for herself so that the family member can be supported by her. The letter of the wife of the petitioner was replied by respondent No. 2 on 06.09.1996 and it was stated therein that the petitioner was given show cause notice on 27.10.1995 and entire enclosures were sent sent to him. Therefore the aforesaid matter relates to the service of her husband and her husband is entitled to receive all the document hence she cannot be supplied the copies of documents. It was also informed by the said letter that her husband was given warning by letter dated 22.08.1994 not to act in indisciplined manner and if he continues to do so, he will be discharged from the service. Ultimately the petitioner was discharged from service w.e.f. 06.09.1996.

5. On behalf of the respondents it was pleaded in the counter affidavit that petitioner was punished on as many as eleven occasions which includes one trial by District Court Martial. The petitioner was initially issued a warning letter on 23.09.1993 in English language and thereafter on 02.08.1994 in Hindi cautioning

him to desist from acts of indiscipline failing which action under Rule 15 (2) (k) of Air Force Rules 1969 would be initiated for his discharge from service . In spite of warning, the petitioner continued to indulge in acts of indiscipline; on 01.05.1995 (Absence Without Leave), 02.05.1995 (loss of Armed Forces Identity Card), 17.07.1995 (Absence Without Leave) and 22.07.1995 (Absence Without Leave). Accordingly, a notice was issued to the petitioner to show cause as to why he should not be discharged from service. Even after receipt of notice, the petitioner committed two more offences and was punished for the same. It is submitted that the petitioner submitted his reply of the said show cause notice. Copy of the reply has also been filed along with counter affidavit. The reply furnished by the petitioner was duly considered by the competent authority and found to be devoid of merit. Hence, the petitioner was discharged from service accordingly.

6. The argument of the learned counsel for the applicant is that order of discharge to the applicant was passed without following due procedure and no preliminary inquiry was conducted. In support of his contention, learned counsel for the applicant has placed reliance on the pronouncement of Hon'ble Apex Court in the case of *Virendra Kumar Dubey vs. Chief of Army Staff & Ors.* in Civil Appeal No. 32135/2013, decided on 16.10.2015 and also placed reliance on the decision of Coordinate Bench of this Tribunal in *O.A. No. 168 of 2013, Nk Abhilash Singh Kushwaha vs. Union of India and Ors*, decided on 23.09.2015.

7. **Per contra**, learned counsel for the respondents has argued that both case laws relied by learned counsel for the applicant relates to Army and not with Air Force. The policy of the Air Force, on this point is entirely different and policy does not contemplate any preliminary inquiry. It only provides to issue warning letter and thereafter to issue show cause notice. As per the policy, due procedure was followed and there is no illegality in the discharge order. At this juncture, we would like to reproduce, show cause notice issued to the petitioner. Show cause notice dated 12.10.1995 is reproduced as under :-

“कारण बताओ नोटिस

1. जोबकी आप १८ फरवरी ८८ को भारतीय वायु सेना में कुक ट्रेड पर भर्ती किए गए।
2. एवं जबकि आप वायु सेना में अपनी अब तक को सेवा के दौरान ०९ अवसरों अक्षरों पर विदारित तथा दण्डित किए गए इनमे से आपको ०७ प्रविष्ट लाल स्याही तथा दो प्रविष्टि काली स्याही को दी गई। आपके आवरण पत्र का एक प्रति इस कारण बताओ नोटिस के साथ परिशिष्ट "अ" के रूप में संलग्न है।
3. एवं तबकि, आपको 22 अगस्त 94 को नियमानुसार आपके कमान अफसर द्वारा लिखित में चेतावनी दी गई जिसमे यह सुझाव दिया गया को आप कथित अनुशासनहीनता की कार्यवारियों को छोड़ दें। अन्यथा और कोई दंडात्मक प्रविष्टि होने पर आपके विरुद्ध सेवा से हटा देने की कार्यवाही की जा सकती है। उपर्युक्त चेतावनी की एक प्रति इस कारण बताओ नोटिस के साथ परिशिष्ट अ के रूप में संलग्न है।

एवं जबकि इस लिखित चेतावनी के बावजूद आपने पुनः 01 मई 95, 02 मई 95, 17 जुलाई 95 तथा 22 जुलाई 95 को अनुशासन हीनता को कार्यवाही के जिसके फलस्वरूप आपको कमान अफसर द्वारा क्रमशः 28 दिन कारावास, 7 दिन कम्प बंदी, 7 दिन कैम्प बंदी एवं 14 दिन कारावास का दंड दिया गया ।

4. एवं जबकि आपके आचरण पत्र के सारांश का अवलोकन करने पर यह प्रकट होता है कि आप एक हीन श्रेणी के एन सी ई हैं तथा सेवा अनुशासन के स्वीकार योग्य नहीं हैं ।

6. अब इस लिए आप कारण बतायें कि आपको वायु सेना डीएम १९६९ के नियम 15 {के } के अंतर्गत वर्गों न सेवा से हटा दिया जाए । इस कारण बताओ नोटिस की प्राप्ति के 10 दिन के अंदर आपका उत्तर कम्मान अफसर को मिल जाना चाहिए । ऐसा न करने पर यह माना जायेगा कि सेवा से हटा देने की कार्यवाही के विरुद्ध मैं आपके पास अपने बचाव में कुछ भी कहने को नहीं है और तदनुसार कार्यवाही की जाएगी ।

ह० अस्पष्ट ,

(सी आर संविधान)

स्ववाहन लीडर

संलग्न यथावर्तित

कार्यालय क० का० स्टाफ

-----कृते वायु अफसर कमांडिंग इस.

मुझे यह कारण बताओ नोटिस दिनांक ----- को -----वजे प्राप्त किया ।

(प्राप्त कर्ता के हस्ताक्षर)

(पूर्ण विवरण सहित)"

8. It transpires from the perusal of the record of the said show cause notice prior thereto a warning letter dated 22.08.1994 was issued to the petitioner to desist from his indisciplined activities.

9. On behalf of the respondents reliance has been placed on the pronouncement by Hon'ble Apex Court in the case of *Union of India & Others vs. Corporal A.K. Bakshi & Another (1996) 3 SCC 65*.

10. Hon'ble Apex Court in the aforementioned judgment has reproduced Para 4 of the said policy which reads as under :-

“Airmen who meet any one of the following individual criteria are to be treated as habitual offenders and considered for discharge under Rule 15 (2)(g)(ii) of Air Force Rules, 1969 :-

(a) Total number of punishment entries six and above (including Red and Black ink entries);

(b) Four Red ink punishment entries;

(c) Four punishment entries (Red and Black ink entries included) for repeated commission of any one specific type of offence such as disobedience, insubordination, AWL, breaking out of camp, offences involving alcohol, mess indiscipline, use of abusive/threatening language, etc.”

11. In the facts of this case, admittedly on more than six occasions, red ink entries, black ink entries were awarded to the applicant. Warning letter dated 22.08.1994 in Hindi language and another warning letter in English language was served on the applicant. Only thereafter show cause notice was issued which was replied by the applicant. After considering the reply, order of discharge was passed.

12. Hon'ble Apex Court in the case of *A.K. Bakshi* (supra) has held as under :-

“The Policy for Discharge envisages that in cases where an airman has been awarded such punishments six times, he is to

be treated as a habitual offender and action for his discharge from service should be taken against him under Rule 15(2)(g)(ii) of the Rules. This action for discharge is not by way of punishment for the misconducts for which he has already been punished. The basic idea underlying the Policy for Discharge is that recurring nature of punishments for misconduct imposed on an airman renders him unsuitable for further retention in the Air Force. Suitability for retention in the Air Force has to be determined on the basis of record of service. The punishments that have been imposed earlier being part of the record of service have to be taken into consideration for the purpose of deciding whether such person is suitable for e retention in the Air Force. The discharge in such circumstances is, therefore, discharge falling under Rule 15(2)(g)(ii) and it cannot be held to be termination of service by way of punishment for misconduct falling under Rule 18 of the Rules.”

13. In view of the findings of the Hon'ble Apex Court which is applicable in the facts of the instant case, the impugned order cannot be said to be illegal and irregular in any manner and the same is devoid of merits and is accordingly **dismissed**.

14. Misc. Applications, if any pending shall be treated as disposed of accordingly.

(Air Marshal BBP Sinha)
Member (A)

Dated : September, 2018
SB

(Justice S.V.S. Rathore)
Member (J)