

**RESERVED**  
**Court No. 2**  
**(Ser No. 16)**

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

**Original Application No. 772 of 2020**

Wednesday, this the 19<sup>th</sup> day of April, 2023

**“Hon’ble Mr. Justice Anil Kumar, Member (J)  
Hon’ble Maj Gen Sanjay Singh, Member (A)”**

Milton Singh Tomar (8931537-H Ex AC (U/T) Comn Tech) S/o Shri Fateh Singh Tomar, resident of Qtr No. 19, S.A.F. Ground Police Hill Colony Kampoo Laskar, District-Gwalior at present living at C/o Deepak Bhardwaj, Sector B, Vijay Nagar (Near Mahakali Inter College), Nilmatha, Lucknow Cantt-226002 (UP).

.....Applicant

Versus

1. Union of India, Through the Secretary, Ministry of Defence, Government of India, New Delhi-11.
2. Chief of the Air Staff, Air Headquarters, RK Puram, Pin-936172, C/o 56 APO.
3. The Officer-in-Charge, Air Force Record Office Subroto Park, New Delhi-110010.
4. HQ Training Command, JC Nagar, PO Bangalore-560006.
5. CTI, Air Force, Jalahalli West, Bangalore-560015

..... Respondents

Ld. Counsel appeared for the Applicant -**Shri R Chandra**, Advocate

Ld. Counsel appeared for the respondents -**Shri RC Shukla**, Advocate

**ORDER**

1. This O.A. has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 against an order passed by the Commanding Officer of the applicant in exercise of his powers under Rule 15 (2) (j) of the Air Force Rules, 1969 discharging him from service on the grounds that he was unlikely to make an efficient airman. The applicant was discharged from the service of Air Force while he was still undergoing training at Air Force Station Belgaum.

He has sought the following reliefs:-

*(i) The Hon'ble Tribunal may be pleased to set aside the order dated 25/03/2013 (Annexure No. A-1) and order dated 18/08/2013 (Annexure No. A-2).*

*(ii) The Hon'ble Tribunal may be pleased to direct the respondents to reinstate in service w.e.f. 24/03/2013 with all consequential benefits.*

*(iii) Any other appropriate order or direction which this Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.*

2. The facts necessary for the purpose of adjudication of the present controversy are enumerated below-

The applicant was enrolled in the Indian Air Force (IAF) on 29.12.2010. After successful completion of basic military training he was inducted in trade phase training of Electric Fitter (R)-20 but due to failure in midterm test he was back phased to next junior entry Electric Fitter (R)-21. On account of failing again in midterm test he was recommended for re-allocation of trade i.e. Communication Technical Trade by Headquarters Training Command on 10.04.2012 and his training started w.e.f. 13.04.2012 which he successfully completed up to Term-II and thereafter, his final Term-III commenced w.e.f. 08.10.2012. During the course of his Term-III training he committed three offences and was awarded punishment. Because of his absence in training due to punishment awarded, his progress was reviewed and he was back phased to next junior entry. Due to above acts, a Show Cause Notice dated 01.02.2013 was served upon him and on receipt of reply dated 07.02.2013 he was discharged from service w.e.f. 23.03.2013 under Rule 15 (2) (j) of Air Force Rules, 1969 as unlikely to make an efficient airman. Against discharge order applicant

submitted appeal dated 11.05.2013 followed by mercy appeal dated 07.03.2014 and thereafter, his brother submitted an appeal dated 15.12.2014 to Commander-in-Chief which was rejected on merit vide letter dated 02.06.2014. Thereafter, appeal submitted by Shri Krishna Singh was replied vide letter dated 27.06.2015 intimating him that there was no provision for re-induction of a trainee after award of cease training and discharge from service, hence this O.A. has been filed for his re-instatement into service with all consequential benefits.

3. Learned counsel for the applicant submitted that the applicant was enrolled in the IAF as electric fitter on 29.12.2010. It was further submitted that on account of alleged misconduct the applicant was punished frequently whereas personnel involved in the same alleged misconduct were not punished and they are still serving in the IAF.

4. Learned counsel for the applicant further submitted that applicant, though not involved in damaging govt property, was implicated in the matter on hearsay but the fact is that Vikas Kumar

was the person who damaged the govt property and even then he was not punished on that count. It was further submitted that prior to discharge from service applicant submitted appeal dated 11.05.2013 to Commander-in-Chief Training Command, Bangalore but while submitting the reply dated 18.08.2013 the respondents have levelled different allegations which were not shown in Show Cause Notice dated 01.02.2013. It was further submitted that after discharge from service applicant and his brother submitted mercy appeals before the competent authority on 07.03.2014 and 15.12.2014 respectively but there being no response from their office this O.A. has been filed for his re-instatement into service.

5. On the other hand learned counsel for the respondents submitted that the applicant was enrolled in the IAF on 29.12.2010 and his basic phase training commenced at Air Force Station, Belgaum on 03.01.2011. After successful completion of basic training his second phase of training started in which he was once back phased to next junior due to failure in midterm test. He again failed in midterm

test and therefore, he was recommended for re-allocation of trade and thus, allotted with communication technical trade by HQ Training Command on 10.04.2012.

6. Learned counsel for the respondents further submitted that the applicant successfully completed first and second terms but while undergoing third term he committed the following offences:-

(i) He was present at the place where No 8973829-K AC (U/T) Vikas Kumar was damaging the service property.

(ii) He failed to inform the authorities about the incident.

The applicant was awarded 05 days confinement to Camp by Commanding Officer, CTI on 03.11.2012 for his indisciplined act.

Again on 17.11.2012 he committed the following offences:-

(i) Broke out the camp area through boundary wall near 4A (T) Mess and brought a bottle of liquor (Royal Stag) at the cost of Rs 500/- from

a Restaurant Bar, KG Halli which may be unhygienic food from out of bound area (KG Halli) at around 2115 hrs.

(ii) Visited 'Out of Bounds' area (Liquor Bar) at around 2145 hrs.

(iii) Consumed liquor while sitting on service blanket along with 06 other trainees in the billet No P-960 at 2320 hrs.

(iv) Found sitting and having un-hygienic food brought from out of bounds area (KG Halli) along with other 06 trainees in billet premises of P-690 at 2320 hrs.

(v) Disturbed other occupants of the billet No P-960 in which he continued to switch on light beyond stipulated time and making noise with group of other 06 trainees.

The applicant was awarded 14 days detention by Commanding Officer, CTI AF on 21.11.2012 for the above indisciplined acts. He was warned by Chief Instructor that in case of any further act of indiscipline, he will have to face the consequences of

cease training and discharge from IAF. His parents were also informed by the Squadron Commander regarding his repeated breach of discipline.

7. On account of his prolonged absence of 11 working days due to 14 days detention for the offences he committed, his progress in training was reviewed on 07.12.2012 and he was back phased to next junior entry. Thereafter, even after all these episodes and repeated counselling, the applicant did not change his behaviour and further committed offence in which he intentionally shuffled himself from one flight to another to give proxy attendance for AC (U/T) Naresh Yadav at 0510 hrs on 22.01.2013 and he was awarded 07 days confinement to Camp by Commanding Officer, CTI AF on 23.01.2013.

8. It was further submitted that on account of continued indiscipline acts his training was ceased and a Show Cause Notice dated 01.02.2013 was issued and on receipt of reply he was discharged from service w.e.f. 25.03.2013 in terms of Rule 15

(2) (j) of Air Force Rules, 1969. He pleaded for dismissal of O.A.

9. Heard Shri R Chandra, learned counsel for the applicant and Shri RC Shukla, learned counsel for the respondents and perused the record.

10. The undisputed facts of the parties are that the applicant was enrolled in the IAF on 29.12.2010 and after successful basic training he was inducted in technical phase of training. Due to his failure in midterm test he was back phased to next junior batch and on failing again he was recommended for re-allocation of trade i.e. Communication Technical Trade on 10.04.2012. Applicant successfully completed first and second term but during the third phase of training he committed various offences related to misconduct as mentioned in Para 6 above. A Show Cause Notice dated 01.02.2013 was issued which for convenience sake is reproduced as under:-

*"1. WHEREAS, you were enrolled as AC (U/T) in the IAF on 29 Dec 10 and initially assigned the trade of Elect Fit (R). Due to your poor academic performance, you were re-allocated to Comn Tech trade and joined the course at this Training Institute on 13 Apr 12.*

2. *AND WHEREAS, during your training you have committed the following offences/acts of indiscipline at this Training Institute:-*

(a) *Present at the time, when 9937929K AC (U/T) Vikas Kumar Comn Tech was damaging the service property at 4 A (T) Mess at 0130 hrs on 24 Oct 12.*

(b) *Failed to inform the authorities about the incident.*

3. *AND WHEREAS, you were awarded with 05 days confinement to Camp by Commanding Officer, CTI AF on 03 Nov 12 for the above mentioned indiscipline acts.*

4. *Further, you have not changed your attitude and conduct and again committed the following offences:-*

(a) *Broke out the Camp area through boundary wall near 4 A(T) Mess and brought a bottle of liquor (Royal Stag) at the cost of Rs 500/- from a bar and unhygienic food from out of bound area (KG Halli) at around 2115 hrs on 17 Nov 12.*

(b) *Visited 'Out of Bound' area (Liquor Bar) located at KG Halli at around 2145 hrs on 17 Nov 12.*

(c) *Consumed liquor while sitting on service blanket along with 06 other trainees in billet No P-960 at 2320 hrs on 17 Nov 12.*

(d) *Found sitting and having unhygienic food brought out of bound area (KG Halli) along with other 06 trainees in billet premises of P-960 at 2320 hrs on 17 Nov 12.*

(e) *Disturbed other occupants of billet No P-960 in which continued to switch on light beyond stipulated time and making noise with group of other 06 trainees.*

5. *AND WHEREEAS, you were awarded with 14 days Detention by Commanding Officer, CTI AF on 21 Nov 12 for the above mentioned indiscipline acts.*

6. *AND WHEREAS, you were warned vide CTI/583/2/Trg dated 30 Nov 12 that in case of any further act of indiscipline, Cease Training and*

*Discharge from Indian Air Force will be the consequence. Your parents were also intimated through a letter in this regard.*

*7. AND WHEREAS, you have not improved your behaviour and conduct and again committed the following offence/acts of indiscipline after issue of the Warning Letter as specified in Para 6 above:-*

*(a) Intentionally shuffled yourself from one flight to another to give proxy attendance for 8943720-R AC(U/T) Naresh Yadav Comn Tech during health run at 0510 hrs on 22 Jan 13.*

*8. AND WHEREAS, you were awarded with 07 days Confinement to Camp by Commanding Officer, CTI AF on 23 Jan 13 for the above mentioned indiscipline act.*

*9. AND WHEREAS, series of disciplinary acts committed by you in spite of punishments awarded, counselling and warning letter issued to you indicate that you are not fit to become an airman.*

*10. NOW THEREFORE, you are to show cause as to why you should not be discharged from service under Rule 15 (2) (i) of Air Force Rules, 1969 (Unlikely to make an efficient airman). Your reply to this Show Cause Notice is to be submitted to your Commanding Officer within 07 days of the receipt of this Show Cause Notice failing which it shall be assumed that you have nothing to urge in your defence against awarding you cease training and discharge from IAF and further action will be taken accordingly."*

11. Applicant submitted his reply dated 07.02.2013 stating that he will not commit any indiscipline act in future and wanted to continue in the service. The aforesaid reply received from the applicant was forwarded to Headquarters Training Command which recommended cease training and discharge of the

applicant under Rule 15 (2) (j) of Air Force Rules, 1969. Accordingly, he was discharged from service w.e.f. 25.03.2013 as unlikely to make an efficient airman. For convenience sake, Rule 15 (2) of Air Force Rules, 1969 is reproduced as under:-

**Section 15(2) in The Air Force Rules, 1969**

(2) Any power conferred by this rule on any of the aforesaid authorities may also be exercised by any other authority superior to it. Clause Cause Discharge Competent Authority to Authorize discharge Special Instructions 1 2 3 4 Persons enrolled under the Act who have attested. (a) At his own request on transfer to the pension establishment Commanding Officer. To be carried out in accordance with the conditions of enrolment. (b) On fulfilling the conditions of the enrolment. Commanding Officer To be carried out in accordance with the conditions of enrolment. (c) Having been found medically unfit for further service. Commanding Officer To be carried out only on recommendations of the Invaliding Board. (d) On transfer to the pension establishment or on discharge with gratuity otherwise than at his own request or under item (c) Officer Commanding, Air Force Record Office. .... (e) Having been found inefficient in his rank or trade and being un-willing to accept reduction or remustering. Air Officer i/c Administrations. An airman reported as inefficient will, as far as vacancies allow be permitted to remuster and/or accept reduction in any rank and trade for which he is reported as suitable. If no such vacancy exists or if he declines to accept such remustering or reduction he will be discharged under this item. (f) At his own request before fulfilling the conditions of the enrolment Director of Personnel (Airmen) (g) His services no longer required: ..... (i) Due to reduction in establishment or to reorganization. Director of Personnel (Airmen). ..... (ii) Unsuitable for retention in the Air Force. Air Office i/c Administration. .... (h) All other classes of discharge. Do Persons enrolled under the Act who have not been attested. (i) At his own request before fulfilling the conditions of his enrolment. (i)

*Air or other Officer i/c of Command The Competent authority mentioned in the preceding column will exercise this power only when he is satisfied as to the bona fides of the application and that the total strength of the Air Force will not thereby be unduly reduced. (ii) Director or Personnel (Airmen) in case of units directly under Air Head-Quarters. (j) Unlikely to make an efficient airmen. Commanding Officer Applicable to airmen undergoing training for airmen (k) All other classes of discharge-Commanding Officer."*

12. While undergoing training applicant had committed series of offences which ultimately culminated to his discharge from service. The reply on his appeal dated 07.03.2014 was given vide letter dated 02.06.2014 dismissing his appeal being devoid of merit.

13. While filing rejoinder affidavit learned counsel for the applicant has annexed copies of certain statements given by his colleagues stating that Vikas Kumar has damaged govt property but the applicant has been falsely implicated. We find that the allegations levelled by the respondents have not been denied by the applicant while filing reply in his rejoinder affidavit. Therefore, there is adequate reason to believe that applicant was involved in indiscipline act while undergoing training.

14. We have carefully gone through the pleadings on record, Show Cause Notice dated 01.02.2013 including its reply and letter dated 19.08.2013 rejecting his representation dated 11.05.2013 and on going through the same, we could not persuade ourselves to agree with the argument of the applicant's learned Counsel that there was no application of mind by the concerned authorities while discharging the applicant from Air Force service in exercise of its powers under Rule 15 (2) (j) of Air Force Rules, 1969. In fact, statement made by the applicant (Annexure-7) clearly show that he bought liquor from civil area and drank it with AC (U/T) Narender while his other colleagues were taking dinner. For convenience sake statement made by the applicant on 18.11.2012 is reproduced as under:-

*"I, 8931537-H AC (U/T) MS Tomar, Comn Tech CT-2 state that, after working hours 14.15 I got a message that I have to go in OD at 3.15 hours. And the OD was cancelled. Then I took rest upto 1800 hrs thereafter I studied for 7.30 hrs and I went to take dinner in mess. After taking dinner about 8.30 hours I went to NRC after coming NRC at 9.15 hours. Thereafter, I engaged myself in talking with friends and it was about 10.30 hours. Thereafter I went to take liquor from bunk out with AC (U/T) Narender from the wine shop that is behind the 4A(T) Mess wall in KG Halli. After coming from there me and AC (U/T) Narender started drinking. I asked to take dari from AC (U/T) V Kumar then he came with dari and he has also*

*taken 1 or 2 peg of liquor. But, AC (U/T) VPS Jadon, AC (U/T) Gaurav, AC (U/T) Rajeev, AC (U/T) Naresh were only eating the food. I am committing my mistake."*

15. Statement of the applicant reproduced hereinabove would amply show admission on his part that he had committed activities of indiscipline while he was still on training. His service with Air Force as a trainee was less than two years. Since during this short period of two years, the applicant admittedly did activities amounting to indiscipline and had poor performance in examination, respondents were fully justified in invoking Rule 15 (2) (j) of Air Force Rules, 1969 as they found that the applicant was unlikely to make an efficient airman. We hardly find any ground to interfere with the decision of the respondents in discharging the applicant from service of Air Force on the ground that he was unlikely to make an efficient airman.

16. On account of his poor performance in the training when he failed in midterm test the respondents instead of dispensing with his services offered another trade and while undergoing term-III training he was found involved in several indiscipline

acts for which he was punished on a number of times. In the instant case the applicant being a probationer (under training) was liable to be discharged from service on account of his misconduct which he repeatedly done despite giving frequent counselling. In our opinion the applicant being a probationer was rightly discharged from Air Force service on the grounds of indiscipline act.

17. In view of the above, we do not find any substance in the present O.A. which deserves to be dismissed. It is accordingly, **dismissed**.

18. No order as to costs.

19. Miscellaneous application(s), pending if any, stand disposed of.

**(Maj Gen Sanjay Singh)**  
**Member (A)**

Dated : 19.04.2023  
*rathore*

**(Justice Anil Kumar)**  
**Member (J)**