

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

ORIGINAL APPLICATION No. 182 of 2018

Monday, this the 06th day of December 2021

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

NK Girraj Singh Tomar (No.15128557) S/o Girwar Singh Tomar of 222 Field Regt, C/o 56 APO residing at 186A, Patel Nagar, Po-Harijinder Nagar, Kanpur-208007.

..... **Applicant**

Learned counsel for the Applicant : **Maj R D Singh, (Retd)**, Advocate.
(Not present)

Versus

1. Union of India through its Secretary Ministry of Defence, DHQ PO, New Delhi-11.
2. The Chief of Army Staff, IHQ of MoD (Army) DHQ PO- New Delhi -11.
3. Commandant & OIC Records Arty. Regimental Centre and Records Nasik.
4. Commanding Officer 222 Field Regiment C/o 56 APO.
5. Col Aditya Devrani Commanding Officer, 222 Field Regiment C/o 56 APO.

.....Respondents

Learned counsel for the Respondents. : **Shri Amit Jaiswal**, Advocate
Central Govt. Counsel

ORDER (Oral)

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- (a) *This Hon'ble Court, be graciously pleased to quash and set aside Annexure No.1 and any connected shades in connection / relation to the subject matter and in setting aside the pension order, arising in it wrt applicant.*
- (b) *Be pleased to direct the respondents to continue the service of the applicant as recommended by the screening committee and approved by the competent Authority vide Annexure No. 3 to the O.A.*
- (c) *Be pleased to direct the Respondents to consider to applicant for promotion to the rank of Havildar with effect from the date his juniors have been promoted with consequential service benefits.*
- (d) *Be pleased to quash and set aside the endorsement of punishments given under section 63 of the Army Act and 39(b) of the Act for the purpose of advancement in the career of applicant.*
- (e) *Be please to pass such other orders in favour of the applicant, as deemed just and expedient, in the light of facts and circumstances of the instant case.*
- (f) *Be pleased to award the cost in favour of the applicant.*

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Artillery Regiment on 28.04.1996. While in service, applicant was awarded six punishments under sections 63 and 39 (b) of the Army Act, 1950. He was discharged from service on 28.08.2013. Against discharge order applicant filed O.A. No. 1243 of 2014 in this Tribunal which was allowed vide order dated 21.09.2016 and applicant was reinstated into service. Applicant was due to retire on 30.04.2018 and accordingly, screening board for two years extension was held two years prior to his date of discharge in which under the disciplinary criterion (eligible/not eligible) 'Not Eligible' was endorsed erroneously and 'extension granted' was approved by the Commanding

Officer. Later this erroneous recommendation was detected by the Record Office, therefore a fresh screening board in respect of the applicant was conducted in which he was not granted two years extension as he was not meeting discipline criteria as per para 564 (h) (v) (aa) of Artillery Record Office Instructions-2011. Consequently, casualty with regard to retention in service was cancelled and non retention in service was notified vide Part II Order dated 10.12.2017. He was discharged from service w.e.f. 30.04.2018 (AN) and casualty to this effect was notified vide Part II Order dated 04.04.2018. He was denied extension of two years service tenure solely on the ground of certain red ink entries which he earned during his service career.

3. Submission of learned counsel for the applicant is that applicant's extension of service for two years was approved by the previous Commanding Officer based on recommendation of screening board by evaluating all aspects. His further submission is that pension documents of applicant, which were required to be sent eight months in advance, were not submitted keeping in view of his extension of service. Further, he submitted that applicant's extension was cancelled in arbitrary manner which is complete violation of rights of applicant as enshrined in Article 14 and 21 of the Constitution of India. Relying upon the Hon'ble Apex Court judgment in the case of **Delhi Transport Corporation vs DTC Mazdoor Congress**, reported in AIR 1991 (supp) 1 SCC 600, learned counsel for the applicant submitted that the act of respondents is capricious, perverse and both discipline and devotion are endangered and efficiency is impaired. Learned counsel for the applicant has further relied upon the Hon'ble Apex Court judgment in the case of **Mohd**

Yunus vs State of UP, reported in (2010) 10 SCC 539 and ***Baldev Raj Chadha vs Union of India & Ors***, reported in (1980) 4 SCC 321 and submitted that authorities cannot be permitted to abuse law or to use it unfairly. He further submitted that any order which materially suffers from the blemish of overlooking or ignoring, wilfully or otherwise, vital facts bearing on the decision is bad in law. Likewise, any action which irrationally digs up obsolete circumstances and obsessively reaches a decision based thereon cannot be sustained. He further relied upon the Hon'ble Apex Court judgment in the case of ***Nazir Ahmad vs King Emperor***, reported in AIR 1936 PC 253 (2) followed in State of ***UP vs Singara Singh***, AIR 1996 SC 58 and ***Union of India & Ors vs Raj Pal Singh***, 2009 1 SCC 216 and submitted that authorities should not have done injustice to applicant keeping in view of his past excellent track record and professional competence in the Army. He pleaded to quash impugned order contained in Annexure No 1 to O.A. as well as punishments inflicted during the service and promote him to the rank of Havildar with all consequential benefits.

4. Per contra, submission of learned counsel for the respondents is that during the course of his service span of 12 years he was punished 06 times on account of his lapses as under:-

Ser No	Offences under Section	Date punishment awarded	Punishment Awarded
Red Ink Entries			
(i)	Army Act Section 63	24.05.2002	07 days imprisonment in military custody
(ii)	Army Act Section 39 b)	26.06.2002	14 days imprisonment in military custody and 14 days pay fine.
(iii)	Army Act Section 63	18.07.2005	Severe Reprimand and 14 days pay

			fine
(iv)	Army Act Section 39 (b)	21.06.2006	Severe Reprimand and 14 days pay fine.
(v)	Army Act Section 63	02.05.2013	Severe Reprimand
<u>Black Ink Entry</u>			
(vi)	Army Act Section 39 (b)	02.11.2011	07 days pay fine.

5. Learned counsel for the respondents further submitted that adequate opportunity was provided to the applicant after every punishment but he failed to improve on his military discipline and was found as a habitual offender accumulating five red ink entries and one black ink entry which restricted his extension of two years tenure as per rules on the subject. He further submitted that applicant had shown utter disregard to military discipline and set an extremely bad example to other disciplined soldiers in the unit. He pleaded for dismissal of O.A. on the ground that he was ineligible for grant of further two years of extension due to disciplinary criteria.

5. We have heard learned counsel of both the sides and perused the material placed on record.

6. It is undisputed fact of the parties that applicant earned five red ink and one black ink entries and he was granted two years service extension tenure erroneously which was later cancelled when the error was detected by the Record Office. Respondents have placed reliance on para 564 (h) (v) (aa) of Artillery Record Office Instructions-2011 which is applicable for denying extension of tenure of two years. For convenience sake, the aforesaid para is reproduced as under:-

“(v) Discipline. The individual should meet the discipline criteria given below:-

(aa) An individual should not have more than two red ink entries (including recordable censure in the case of a Nb Sub/Sub) during the entire service and not more than one red ink entry in the last five years.”

7. From the aforesaid, it is observed that applicant is having more than two red ink entries which debarred him from getting two years extension. It appears that initially the applicant was considered for service extension due to oversight which was later cancelled by the respondents and he was discharged from service in the rank of Naik.

8. In view of the above, we are of the view that applicant was granted two years extension of service erroneously, which was corrected later, but the fact was that he was having more than two red ink entries which came in his way for denying service extension of two years.

9. Thus, keeping in view that applicant was denied two years extension of tenure on account of having more than two red ink entries, respondents have rightly denied the same in terms of para 564 (h) (v) (aa) of Artillery Record Office Instructions-2011.

10. The O.A. being devoid of merit is accordingly, **dismissed**.

11. No order as to costs.

12. Miscellaneous Applications, pending if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 06.12.2021
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