

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 316 of 2019**Wednesday, this the 1st day of December, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Ex Gdr Sonu Kumar (2704100F)
R/o Village – Chikvirampur, PO – Rabupura Tehsil – Jewar,
District – Gautam Budh Nagar (UP).... **Applicant**Ld. Counsel for the Applicant : **Shri Om Prakash**, Advocate.

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi – 110011.
2. The Grenadiers Records, PIN-908776, C/o 56 APO.
3. Commander HQ 350 Inf Bde, PIN-908350, C/o 56 APO.
4. Commanding Officer, 22 Grenadiers, PIN-910822, C/o 56 APO.
5. The Grenadiers RC, Jabalpur (MP).

... **Respondents**Ld. Counsel for the Respondents : **Shri Amit Jaiswal**,
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:-

- “A. To set aside the order dated 07.11.2017 (Annexure No. A-1) passed by respondent No. 3 and order dated 24.11.2018 passed by respondent No. 2 (Annexure No.

8A) and to reinstate the applicant back in the Army service with all consequential benefits.

- B. To issue directions/orders to respondents to re-investigate into the allegations made by wife of applicant against the then 2IC of unit by detailing Officers from other Army units, in the interest of Justice.
- C. Any other relief which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case, may be granted in favour of the applicant.
- D. Award the cost of Original Application in favour of the applicant."

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 09.01.2007. He was discharged from service on 16.01.2018 being undesirable soldier after rendering 10 years and 09 months and 15 days of qualifying service under Army Rule 13 (3) III (v) as 'Service No Longer Required'. During the entire service, the applicant was awarded four red ink and three black ink entries punishments. 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 issued a Show Cause Notice dated 11.10.2017 by Commander 350 Infantry Brigade. The competent authority was not satisfied with the reply of the applicant and hence proposal for discharge from service under Army Rules 13 was initiated and sanctioned discharge order of the applicant vide letter dated 07.11.2017 and accordingly, applicant was locally

discharged from service w.e.f. 16.01.2018 being an undesirable soldier. Thereafter, applicant submitted a petition dated 10.05.2018 to Chief of the Army Staff against his illegal discharge order issued by Commander HQ 350 Infantry Brigade. The petition was disposed of by a speaking order dated 24.11.2018 by OIC Records stating applicant has rightfully been discharged from service as per IHQ of MoD (Army) letter dated 28.12.1988. The applicant being not satisfied with the procedure of discharge, has filed this Original Application to quash his discharge order and to reinstate him in service.

3. Learned counsel for the applicant submitted that applicant has been discharged from service in an illegal and arbitrary manner without giving any consideration over reply to the Show Cause Notice and violating the provisions of Army HQ letter dated 28.12.1988. The red ink entries have been forcibly awarded without any fault on the part of the applicant. Court of Inquiry was conducted in one day on 22.09.2017 which was signed by Presiding Officer only and not by two members. The discharge of the applicant from service is the fallout of complaint lodged by wife of applicant against 2IC of the unit and date of disposal of complaint and date of completion of court of Inquiry to determine whether service of applicant is desirable for the Army are same i.e. 22.09.2017 which smacks 'malice'. As per Army HQ letter dated 28.12.1988, a preliminary enquiry and not necessarily a Court of Inquiry is to be held in impartial manner before recommending discharge whereas the respondent No. 2 has conducted a Court of Inquiry in one day and that too signed only by

Presiding Officer though two members were also detailed which renders it null and void.. The order of discharge has been passed in a clear violation of Army Rules 13 & 22 and Article 20 of the Constitution of India, as such the impugned order in question cannot be said to be just and proper and the same may liable to be quashed by this Tribunal and applicant should be reinstated in service with all consequential benefits.

4. He also placed reliance on the judgment of the Hon'ble Apex Court in ***Vijay Shankar Mishra vs. Union of India & Ors***, Civil appeal Nos. 12179-12180 of 2016 (Arising out of Civil appeal (D) No. 34132 of 2013), decided on 15.12.2016, ***Veerendra Kumar Dubey vs. Chief of Army Staff and Ors***, Civil appeal D No. 32135 of 2015, decided on 16.10.2015 and AFT (RB) Lucknow judgment in OA No. 183 of 2018, ***Arun Kumar Pandey vs. Union of India and Ors***, decided on 23.07.2021 and OA No. 222 of 2011, ***Rajesh Kumar vs. Union of India and Ors***, decided on 01.12.2015 and pleaded that applicant's case is similar to aforesaid judgments and therefore, his discharge order to be quashed and applicant should be reinstated in service.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in the Indian Army on 09.01.2007 and was locally discharged from service on 16.01.2018 being undesirable soldier after rendering 10 years and 09 months and 15 days of qualifying service under Army Rule 13 (3) III (v) as 'Service No Longer Required'. During the entire service, the applicant was

awarded four red ink and three black ink entries punishments as per following details:-

Ser No.	Date of Award of Punishment	Army Act Section	Offence	Punishment awarded
(a)	09.04.2009	63	An act prejudicial to good order and military discipline.	15 days RI
(b)	10.07.2010	39 (b)	Without sufficient cause overstaying leave.	7 days RI
(c)	03.11.2011	39(a)	Absenting himself without leave.	7 days pay fine.
(d)	20.12.2013	39(b)	Without sufficient cause overstaying leave.	7 days pay fine.
(e)	14.09.2015	39(b)	Without sufficient cause overstaying leave.	7 days pay fine.
(f)	12.05.2016	39(b)	Without sufficient cause overstaying leave.	7 days RI.
(g)	07.09.2017	39(b)	Without sufficient cause overstaying leave.	28 days RI.

6. Ld. Counsel for the respondents 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. Therefore, applicant was issued a Show Cause Notice dated 11.10.2017 by Commander 350 Infantry Brigade. The notice was replied by the applicant on 20.11.2017. The competent authority was not satisfied with the reply of the applicant and hence proposal for discharge from service under Army Rules 13 was initiated. The Commander 350 Infantry Brigade sanctioned discharge order of the applicant vide letter dated 07.11.2017 (due to clerical error the month was mentioned as Nov 2017 instead of Dec 2017 in sanction letter) and accordingly, applicant was locally discharged from service w.e.f. 16.01.2018 being an undesirable soldier. The applicant had become a bad example in

the unit due to his irresponsible attitude towards his duties and discipline and thereby failed to render an unblemished service which resulted his discharge from service as undesirable soldier.

7. Ld. Counsel for the respondents also submitted that an independent inquiry was conducted to investigate the allegation made by Smt. Pavitra, wife of the applicant regarding her molestation at her residence by Lt Col Prashant Agrawal and Capt Babar Ali Khan on 06.06.2017 and after investigation no evidences of misconduct by the officers were found and the case was treated as closed. The applicant submitted a petition dated 10.05.2018 to Chief of the Army Staff against his illegal discharge order issued by Commander HQ 350 Infantry Brigade to cancel discharge order and to reinstate him in service. The petition was disposed of by a speaking order dated 24.11.2018 by OIC Records stating applicant has rightfully been discharged from service as per IHQ of MoD (Army) letter dated 28.12.1988.

8. Ld. Counsel for the respondents also relied on the judgment of the Hon'ble Apex Court in Civil Appeal No. 1857 of 2018, **Sep Satgur Singh vs. Union of India & Ors**, decided on 02.09.2019. Para 7 of the judgement being relevant is quoted below :-

"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.

9. We have heard learned counsel for both sides and perused the material placed on record.

10. Before adverting to rival submissions of learned counsel of both sides, it is pertinent to mention that judgments relied upon by the applicant in Para 4 referred above are not relevant in the present case being based on different facts and circumstances.

11. We find that applicant was negligent towards his duties and disciplined. During his service, the applicant was awarded seven punishments 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 holding a Court of Inquiry and 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 relief prayed in Original Application to quash his discharge order and to reinstate him in service.

