

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****TRANSFERRED APPLICATION No. 1 of 2018**

Wednesday, this the 09<sup>th</sup> day of February, 2022

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

Khan Humayun Mahamad, S/o Shri Mahamad, last employed with Central Command Signal Regiment, Lucknow now residing at Sangli, Maharashtra.

..... Petitioner

Learned counsel : **Col AK Srivastava (Retd)**, Advocate  
for the Petitioner

Versus

1. Union of India (through the Chief of the Army Staff, South Block, New Delhi).
2. The General Officer Commanding-in-Chief, Central Command, Lucknow Cantt, Lucknow-2.
3. Commander, Sub Area, Lucknow Cantt, Lucknow-2.
4. Commanding Officer, Central Command Signal Regiment, Lucknow-2.
5. Officer-in-Charge Records, Signals Records, Jabalpur.

.....Respondents

Learned counsel for the Respondents : **Shri Rajiv Pandey**, Advocate  
Central Govt Counsel

## **ORDER (Oral)**

1. Civil Misc Writ Petition No. 5039/SS/1995 was filed by the petitioner in the Hon'ble High Court of Judicature at Allahabad which was transferred to this Tribunal under Section 34 of Armed Forces Tribunal Act, 2007 and re-numbered as T.A. No. 1 of 2018. The petitioner has sought the following reliefs:-

- (a) *a writ, order or direction in the nature of certiorari quashing the order of discharge of the petitioner as promulgated in Central Command Signal Regiment Part I order issue No 199 dated 29<sup>th</sup> August 1992, produced as Annexure No 1 after summoning its original from the respondents.*
- (b) *a writ, order or direction in the nature of mandamus Commanding Respondents to re-instate the petitioner in service with all consequential benefits.*
- (c) *a writ, order or direction in the nature of mandamus commanding the respondents to finally settle the account of the petitioner and to pay him his outstanding dues expeditiously.*
- (d) *Such other writ, order or direction as the Hon'ble Court may deem just and proper in the circumstances of the case; and an order awarding the cost of the writ petition to the petitioner.*

2. Brief facts of the case are that the petitioner was enrolled in the Army (Corps of Signals) on 08.11.1983. During the course of his service he was awarded 06 (six) punishments. While posted with Central Command Signal Regiment based on a report of Provost Unit he was awarded 14 days rigorous imprisonment on 17.06.1992 for an offence under Section 63 of the Army Act, 1950. Based on all punishments a Show Cause Notice dated 05.08.1992 (Annexure C-2) was served upon the

petitioner which he declined to accept twice (Annexure C-3) as is evident from signature of three witnesses viz Capt RK Tyagi (Unit Adj), Maj TS Negi (Coy Cdr) and Sub Maj CJ Ninan (Unit Sub Maj). Accordingly, he was discharged from service w.e.f. 31.08.1992 in terms of Rule 13 (3) III (v) of Army Rules, 1954. On 02.09.1992, applicant submitted a statutory petition under Section 26 (1) of Army Act, 1950 which was rejected and conveyed to the petitioner vide letter dated 11.03.1993 (Annexure-3). After statutory petition being rejected the petitioner submitted a statutory complaint to Chief of the Army Staff on 10.02.1993 (Annexure-4) which too was rejected by Signals Records vide letter dated 27.03.1993 (Annexure-5) mentioning therein that he cannot be re-instated into service. Later, in response to his petition dated 10.02.1993, Directorate of Signals also conveyed to the petitioner on 19.03.1993 (Annexure A-6) that he cannot be re-instated into service. Thereafter, the petitioner had filed Civil Misc Writ Petition No 5039/SS/1995 in the Hon'ble High Court of Judicature at Allahabad which on transfer to this Tribunal is before us for adjudication.

3. Learned counsel for the petitioner pleaded that the petitioner was awarded punishment of 14 days rigorous imprisonment on 17.06.1992 alleging that he failed to salute a Junior Commissioned Officer on 27.05.1992. He further submitted that after award of punishment he submitted several

applications seeking personal interview with the senior officers to represent his case but it was not allowed and respondent No 4 issued Part-I Order No 199 dated 29.08.1992 for his discharge from service w.e.f. 31.08.1992 (AN) under Army Rule 13 and 17 on the authority of HQ Lucknow Sub Area order dated 17.08.1992. His further submission is that neither any preliminary enquiry was conducted nor a Show Cause Notice was served upon him prior to contemplated discharge and he was provided no opportunity to defend himself as per Army Rule 17 according to which a reasonable time ought to have been allowed to state in writing he might have to urge against his removal from service. His other submission is that petitioner's representations/statutory appeals were rejected by the authorities concerned arbitrarily. His other submission is that at the time of his removal from service he had completed 08 years, 09 months and 23 days of service and based on the Hon'ble Apex Court judgment dated 16.10.2015, titled ***Veerendra Kumar Dubey vs Chief of Army Staff & Ors***, the petitioner deserves relief. The petitioner has also made a prayer to settle his dues, list of which as per Army Order 32/80 was provided by him to the respondents at the time of removal from service (Annexure-7).

4. On the other hand, submission of learned counsel for the respondents is that the petitioner proved himself time and again as indisciplined soldier and was awarded 06 bad entries.

His further submission is that the petitioner was counseled time and again by his superiors and in the year 1992 when he was awarded 14 days rigorous imprisonment (red ink entry) under Section 63 of Army Act, 1950 for an act prejudicial to good order and military discipline, a Show Cause Notice dated 05.08.1992 (Annexure C-2) was issued to the petitioner which he declined to accept. He further submitted that the fact of his non acceptance of Show Cause Notice is on record and witnessed by three personnel [Capt RK Tyagi (Unit Adj), Maj TS Negi (Coy Cdr) and Sub Maj CJ Ninan (Unit Sub Maj)]. Pursuant to Show Cause Notice dated 05.08.1992 his discharge was sanctioned by Commander, Lucknow Sub Area vide order dated 17.08.1992 and he was discharged from service w.e.f. 31.08.1992 being undesirable soldier in terms of Rule 13 (3) III (v) of Army Rules, 1954. He further submitted that statutory appeals/representations submitted by the petitioner were dismissed by the competent authority which clearly indicates that the petitioner has been rightly discharged from service. His submission is that the order of discharge was passed by following due procedure after observing all the rules and regulations. He pleaded for dismissal of T.A.

5. Heard learned counsel for both the sides and perused material placed on record.

6. On scrutiny of the counter affidavit we find that the petitioner was awarded five punishments earlier on various

counts. The last punishment of 14 days rigorous imprisonment awarded on 07.06.1992 makes six bad entries for the offences committed, details of which are as under:-

Sr. No.	AA Sec under which punishment awarded	Date of award	Punishment awarded	Remarks
(i)	Sec 42 (e) Sec 63	10.05.1985	14 days RI	Red Ink Entry
(ii)	Sec 40 (c)	02.07.1986	07 days detention	Black Ink Entry
(iii)	Sec 63	04.01.1987	10 days RI	Red Ink Entry
(iv)	Sec 63	30.03.1990	07 days pay fine	Red Ink Entry
(v)	39 (d)	21.09.1991	07 days confinement to lines	Black Ink Entry
(vi)	Sec 63	07.06.1992	14 days RI	Red Ink Entry

7. In respect of each of the above offences culminating in red/black ink entries, the charges against the individual were heard by the Commanding Officer in accordance with Army Rule 22 where the individual was given full liberty to cross examine the witnesses and make any statement in his defence and after following the due procedure, appropriate punishment was awarded. It is thus, found that there was no illegality in the punishments awarded and the red/black ink entries earned. In spite of being given ample opportunities to improve his conduct and military discipline, the petitioner had failed to bring out changes in his conduct. On 05.08.1992 a Show Cause Notice was issued to him which he declined to accept. The incident of his non acceptance of Show Cause notice has been witnessed by two Army officers and a Sub Maj of the Regiment.

8. During the course of hearing learned counsel for the applicant has relied upon the Hon'ble Supreme Court judgment in the case of **Veerendra Kumar Dubey vs Chief of Army Staff & Ors**, Civil Appeal No 32135 of 2015 decided on 16.10.2015 and submitted that the petitioner be re-instated in service with all consequential benefits. We have gone through the above referred case and find that facts of the aforesaid case are different with the case in hand as in that case applicant had accepted the Show Cause Notice and reply was given. The petitioner in that case had completed about 12 years of service when he was discharged from service but in the instant case the petitioner has put in 09 years of service in which he received 06 punishments on various offences committed during the service.

9. Contention of learned counsel for the petitioner that since Show Cause Notice was issued without conducting preliminary inquiry, therefore procedure for discharge has not been followed as per rules. We have gone through policy letter dated 28.12.1988 mentioning therein the procedure to be followed for discharge and we find that it has got no statutory force and cannot prevail over the statutory Rules and Regulations. The relevant Rules do not provide for holding of preliminary enquiry in a matter of discharge when the discharge is sanctioned on the basis of past service record of the petitioner.

10. In regard to non holding of preliminary enquiry prior to discharge from service, the Hon'ble Apex Court passed order dated 02.09.2019 in Civil Appeal No 1857 of 2018 in the case of **Sep Satgur Singh vs Union of India & Ors.** Para 7, 8 and 9 of the aforesaid judgment is reproduced as under:-

*"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 an 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 suggests 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.*

*8. In reply to the show-cause notice, the appellant has not given any explanation of his absence from duty on seven occasions. He has been punished on each occasion for rigorous imprisonment ranging from 2 days to 28 days. A Member of the Armed Forces cannot take his duty lightly and abstain from duty at his will. Since the absence of duty was on several different occasions for which he was imposed punishment of imprisonment, therefore, the order of discharge cannot be said to be unjustified. The Commanding Officer has recorded that the appellant is a habitual offender. Such fact is supported by absence of the appellant from duty on seven occasions.*

*9. In view thereof, we do not find any error in the order of discharge of the appellant. Appeal is dismissed."*

11. In this context we would also like to refer to the Hon'ble Delhi High Court judgment in the case of **Pratap Singh vs Chief of Army Staff and Ors,** LPA 136/2013, decided on 03.06.2011 which has held that no enquiry is required to be conducted when a person is being discharged from service with

reference to his past service record. The relevant paragraphs of the aforesaid judgment are reproduced as under:-

"8. ....Lastly it was urged that in view of the law laid down by a Division Bench of this Court in the decision reported as 100 (2002) DLT 705 *Surender Singh Sihag vs UOI & Ors*, without conducting an inquiry the service of the petitioner could not be discharged.

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14. The decision deals with the right of competent authority to discharge a force personnel who has earned 5 red ink entries, a power under Rule 13 of the Army Rules. The Division Bench noted that the army authorities had issued an administrative instruction by way of a letter circular dated 28.12.1988 which contemplated an inquiry before discharging or dismissing a person concerned.

15. The Division Bench took the view that no action could be taken under Rule 13 without an inquiry and since no inquiry was held against *Surender Singh Sihag* when his services were dispensed with by way of discharge pursuant to a show cause notice alleging against him that he had earned 5 red ink entries, the order was quashed.

16. But we find that the Supreme Court, in the decision reported as 2009 (7) SCC 370 *UOI & Ors vs Deepak Kumar Santra*, has taken a view contrary to the one taken by the Division Bench of this Court.

17. Pertaining to a discharge of an Army Officer exercising power under Rule 13 of the Army Rules, the Supreme Court held that once statutory Rules occupy the field, there is no place for a policy guideline and as long as the procedure prescribed by the statutory Rule is followed, it hardly matters whether a policy guideline is not followed.

18. Relevant would it be to state that where a Rule deals with subject matter and the procedure to be followed with respect to the subject matter is also prescribed by the Rule, there is no scope to issue a policy guideline with respect to the procedure to be followed.

19. The procedure under Rule 13 of the Army Rule simply contemplates a prior notice to the person concerned before exercising power under the Rule.

20. That apart, it escaped the notice of the Division Bench of this Court as to what was the scope of the inquiry to be conducted if the power to discharge a force personnel was being exercised with respect to the service profile which shows that the person concerned had earned 5 red ink entries and the requirement of the rule was to consider whether such a person is required to be discharged from service.

21. Inquiries have to be held if facts are in dispute or blameworthiness of a delinquent employee has to be ascertained.

22. *We see no scope for any inquiry to be conducted where a person is being discharged from service with reference to his past service record.*

23. x x x

24. *Noting in the instant case that before taking the action a show cause notice was served upon the petitioner and after considering the reply filed by him the action was taken, meaning thereby procedures of the law were followed. We dismiss the appeal but refrain from imposing any cost."*

12. The Hon'ble AFT, Principal Bench, New Delhi in T.A. No. 592 of 2010 decided on 08.02.2012, titled ***Ex Sep Ahibaran Singh vs Union of India & Ors***, has held that main object and aim behind the said inquiry is to find out the existence of punishments, which has not been disputed by the applicant. Therefore, holding of inquiry was not necessary. It was also held that the applicant was in the zone of being declared habitual offender and he filed reply to the show cause notice and after considering his reply, the impugned order was passed.

13. Additionally, this Tribunal vide order dated 13.11.2014 while dismissing T.A. No 1442 of 2010, titled ***Upendra Kumar Singh vs UOI & Ors***, has held that a preliminary inquiry is not mandatory prior to issue of show cause notice. Paras 25, 26 and 27 of the aforesaid judgment are reproduced as under:-

*"25. The punishments awarded earlier to the applicant were not challenged and the same have attained finality. The preliminary enquiry is conducted in respect of disputed facts, but in the instant case, the facts are not disputed and under these circumstances, there was no scope for conducting preliminary enquiry before issuing show cause notice to the applicant. The administrative action under Rule 13(3)(III)(v) of the Army Rules, 1954 has been taken by the competent authority on the basis of previous service record of the applicant and there was no*

*need to hold preliminary enquiry as provided in Army Headquarters Letter dated 28.12.1988, particularly, when relevant statutory Rule does not provide for holding such preliminary enquiry.*

*26. The discipline is required to be maintained in the Indian Army. The past service record of the applicant indicates that he was a habitual offender. The competent authority, after considering the past service record of the applicant, came to the conclusion that he is an undesirable soldier and hence, he has taken appropriate action against him, after following the prescribed procedure.*

*27. After considering the record thoroughly, we are of the view that the competent authority had sanctioned the discharge of the applicant from service after following the prescribed procedure as provided in the relevant Army Rules. Relying upon the decisions rendered by the Division Bench of the Hon'ble Delhi High Court, Principal Bench of the Armed Forces Tribunal and this Regional Bench of the Tribunal, in the cases of Pratap Singh vs. Chief of Army Staff & others (supra), Ex Sep Ahibaran Singh vs. Union of India & others (Supra) and Rajesh Kumar Awasthi vs. Chief of Army Staff & others (supra), we hold that under the facts and circumstances of the case, preliminary enquiry was not mandatory before issuing show cause notice to the applicant and no interference is warranted in the impugned discharge order on the said ground. The applicant has himself alleged in the instant Transferred Application that the Army Headquarters Letter dated 28.12.1988 has no statutory force of law and the said letter cannot supersede the provisions of law laid down in the Army Rules and Regulations.*

14. Thus, keeping in view of his past record of service, Show Cause Notice dated 05.08.1992 was issued to him which he denied to accept. Accordingly, discharge order was issued and he was discharged from service as "service being no longer required" as per the provisions of Rule 13 (3) III (v) of the Army Rules, 1954 and policy letter dated 28.12.1988 issued by the Army HQ. It may also be mentioned that punishments awarded to the petitioner prior to 07.06.1992 were not

challenged, meaning thereby that the petitioner had accepted the punishments for acts and omissions on his part.

15. With regard to non issuance of Show Cause Notice to the petitioner as mentioned in para 10 of T.A., the fact is that Show Cause Notice was issued to him but he refused to accept it. For convenience sake, Show Cause Notice dated 05.08.1992 is reproduced as under:-

"SHOW CAUSE NOTICE

1. *On perusal of your conduct sheet, it is revealed that you have earned four red ink and two black ink entries. The details are given below:-*
  - (a) *14 days RI on 10 May 85 under AA Sec 42 (e) (neglecting to obey Regt Orders) and AA Sec 63 (an act prejudicial to Good Order and Mil Discp).*
  - (b) *7 days Detention on 02 Jul 86 under AA Sec 40 (c) for using insubordinate language to his superior officer.*
  - (c) *10 days RI on 04 Jun 87 under AA Sec 63 (an act Prejudicial to Good Order and Mil Discp).*
  - (d) *7 days pay fine on 30 Mar 90 under AA Sec 63 (an act Prejudicial to Good Order and Mil Discp).*
  - (e) *10 days CL on 21 Sep 91 under AA Sec 39 (d) (w/o sufficient cause) failing to appear at the time fixed at the place appointed for duty.*
  - (f) *14 days RI on 17 Jun 92 under AA Sec 63 for an Act Prejudicial to Good Order and Mil Discp and an omission Prejudicial to Good Order and Mil Discp).*
2. *As per provisions of AA Sec 20, I propose to obtain sanction of the competent authority stipulated in ARs 13 and 17 to obtain your discharge from service.*
3. *In view of the above, please intimate the reasons as to why the case to discharge you from Army service should not be taken up with formation HQ. Your reply should reach the undersigned by 1000h on 09 Aug 92 failing which it will be considered that you are willing to be discharged from Mil service under provisions of AA Sec 20.*

Sd/- x x x  
(Commanding Officer)

**-Individual declined to accept and give reply for show cause notice served on him.**

Independent Witness

1. Unit Adjt -Capt RK Tyagi (sd/- x x x x x)
2. Unit Sub Maj -Sub Maj CJ Ninan (sd/- x x x x x)
3. Coy Cdr -Maj TS Negi (sd/- x x x x x)

Sd/-  
(Commanding Officer)"

16. Thus, from the above, an inference may be drawn that contention of the petitioner that he was not served upon the Show Cause Notice is wrong and misconceived.

17. Military discipline is a state of order and obedience existing within a command and maintenance of discipline is of paramount importance in the Army. Being a habitual offender with no regard to military discipline and maturity, petitioner's retention in service was considered detrimental for the troops. Based on past record, a Show Cause Notice was served to the petitioner which he declined to accept and accordingly discharge proceedings were initiated and he was discharged from service w.e.f. 31.08.1992 under clause "services being no longer required".

18. In the light of the foregoing, we are of the view that the number of red ink entries alone is not the criteria for discharge under Army Rule 13 (3) III (v). Four red ink entries are only a guideline. The disciplinary conduct of the individual as reflected in the service record and the requirement of maintaining discipline would decide if services are no longer required. This

is an administrative action resulting from an unsatisfactory service record of the petitioner. It cannot be construed as a punishment.

19. The individual was given ample opportunities to mend his ways and improve his conduct. It is not in dispute that he was awarded punishments on various counts earlier also by different Commanding Officers and they were not challenged and by the pass of time they have attained finality.

20. The petitioner has also stated that at the time of discharge from service he had submitted a list of his pending dues as per Army Order 32/80. We have perused the list and we find that it is obligatory on the part of the respondents to pay his dues, if held forthwith.

21. We could lay our hands on a judgment of the Hon'ble Apex Court in ***Union of India & Ors v. Rajesh Vyas***, (2008) 3 SCC 386, which clinches the issue against the petitioner. It is also the case of red ink entries. The Hon'ble Apex Court has upheld the impugned order therein based on red ink entries. The relevant portion of the judgment is reproduced below:

*" That the red ink entries are for punishment higher in the scale of the punishment under Section 82 of the Air Force Act, 1982 (in short the 'Act') while the black ink entries are for punishment lower in scale in Section 82. The detailed actions and procedure which were required to be followed to implement the policy for discharge are given in the appendix to the policy which was known as the 'Procedure for Discharge". Habitual offenders who were not found suitable for retention in service were initially placed in two categories, (a) habitual offenders who have already crossed the criteria as laid down vide paragraph 4(a), (b) and (c) of the policy guidelines, and*

*(b) offenders who are on the threshold. Warning had to be given as per the procedure to an Airman who was on the threshold and he was called upon to improve his conduct and behaviour and that in case he committed any further offence, and came within the purview of an habitual offender, he would be liable to be discharged. In case he commits any further offence then would be given a show cause notice and, thereafter discharge was to be ordered by the competent authority under Rule 15(2)(g)(ii).*

*As noted above, policy for discharge of habitual offender was considered by this Court in A. K. Bakshi's case (supra). After analyzing the policy, it was observed that the whole idea underlying the policy was to weed out the indisciplined personnel from the force. It was further observed that it was a discharge simplicitor and as such it cannot be held as termination of service by way of punishment for misconduct."*

22. In view of the above, we find no reason to interfere with the discharge order of the petitioner which was ordered as per procedure on the subject. The T.A. is **dismissed**.

23. There shall be no order as to costs.

24. Pending application(s), if any, stand disposed off.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated:09.02.2022

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