

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 394 of 2019**Tuesday, this the 20th day of July, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Naik T.L.R. Ashraf Miyan
S/o Sitab Miyan
Unit 109 Rapid(s) Engineer Regiment,
C/o 56 APO, Allahabad (UP)**.... Applicant**Ld. Counsel for the Applicant : **Shri Dileep Mishra**, Advocate.

Versus

1. Record Officer Records Office Bombay Engineer Group Kirkee, C/o 56 APO, Pune-3/MUST HAVE) Pin 411003.
2. Commanding Officer (389F1) COY/109 Rapid(s) Engineer Regiment, C/o 56 APO Allahabad (UP) Pin 914109.
3. AWWA Secretariat 210 South Block Integrated HQ of Defence (Army) DHQ PO, New Delhi Pin – 110011 Tel No. 011-23018183.

... RespondentsLd. Counsel for the Respondents : **Dr. Gyan Singh**,
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:-

- “(i) This Hon'ble Tribunal may graciously be pleased to quash the impugned discharge order dated 06.03.2019 contained in Annexure No. A-1 to this Original Application.
- (ii) This Hon'ble Tribunal may graciously be pleased to direct the opposite parties not to harass the applicant and correct his pay slip.

- (iii) This Hon'ble Tribunal may graciously be pleased to pass any other order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case.
- (iv) This Hon'ble Tribunal may graciously be pleased to award the cost of the writ petition to the applicant."

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 28.10.1998 and was discharged from service on 31.08.2019 after rendering 20 years, 10 months & 04 days of service before completion of terms and engagement under Rule 13 (3) III (iii) (a) (i) of Army Rules, 1954 due to continued in low medical category as a case of "SEIZURE DISORDER" and no sheltered appointment was available in the unit. During the entire service, the applicant was awarded four punishments for four red ink entries being a habitual offender of overstaying of leave without sufficient cause and over consumption of alcohol. There being no sheltered appointment available in the unit commensurating to his disability, he was discharged from service. The applicant being not satisfied with the procedure of discharge, has filed this Original Application to quash his discharge order and to allow him to join duty.

3. Learned counsel for the applicant submitted that applicant has been discharged from service illegally due to some conspiracy. The applicant is medically fit and wants to serve nation but some employees of the department harassed him and has been discharged from service. He further submitted that applicant is only bread earner of family and there is no any other source of income of family except applicant's service, hence, his discharge order should be quashed

and applicant should be allowed to join duty as he has been discharged from service without any genuine cause.

4. On the other hand, Ld. Counsel for the respondents submitted that applicant was discharged from service on 31.08.2019 after rendering 20 years, 10 months & 04 days of service but before completion of terms and engagement under Rule 13 (3) III (iii) (a) (i) of Army Rules, 1954 in low medical category as a case of "SEIZURE DISORDER" and no sheltered appointment was available in the unit. During the entire service, the applicant was awarded four punishments for his four red ink entries being a habitual offender of overstaying of leave without sufficient cause and over consumption of alcohol. As per procedure in vogue, a Show Cause Notice was issued to the applicant vide letter dated 07.02.2019 and its reply was submitted by the applicant vide affidavit dated 12.02.2019. Thereafter, unit forwarded the case to Record Office Bombay Engineer Group, Kirkee for obtaining approval of OIC Records for non-retention in service and issue of discharge order. Accordingly, in terms of IHQ of MoD (Army) letter dated 30.09.2010, discharge order dated 06.03.2019 with date of discharge as 31.08.2019 was issued.

5. Learned counsel for the respondents further submitted that applicant was a habitual offender of overstaying of leave without sufficient cause, over consumption of alcohol and also making false allegations against senior officers. His continuous involvement in various offences clearly established that he was not amenable to discipline, whereas a soldier should be disciplined, adhere to the

order of superior authorities in a highly disciplined force. He had become a bad example in the unit due to his irresponsible attitude towards his duties and thereby failed to render an unblemished service. There being no sheltered appointment available in the unit commensurating to his disability, he was discharged from service. He pleaded that O.A. may be dismissed.

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

7. We find that applicant was a habitual offender of overstaying of leave without sufficient cause, over consumption of alcohol and indisciplined. During his service, the applicant was awarded four punishments for his irresponsible attitude and indisciplined nature towards his duty. There being no sheltered appointment available in the unit commensurating to his disability, applicant was discharged from service after due procedure as per policy on the subject. Hence, the applicant is not entitled the relief prayed in Original Application to quash his discharge order.

8. In view of the above, the O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

9. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)

Member (A)

Member (J)

Dated: July, 2021

SB