

Court No.2**Reserved****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No.209 of 2021**Thursday, this the 23rd day of March, 2023**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**
“Hon’ble Maj Gen Sanjay Singh, Member (A)”

No. 14925212 H Ex Naik Vinod Singh, S/o Firangi Ram, Care Sri Shanket Chaurasiya 113/340 A, Swaroop Nagar, Kanpur (U.P.).

..... ApplicantLd. Counsel for the Applicant : **Shri Rohit Kumar, Advocate**

Versus

1. Chief of Army Staff, DHQ PO, New Delhi - 110011.
2. Commandant cum Chief Records Officer, Mechanised Infantry Regimental Centre, Ahmadnagar (Maharashtra), PIN - 900476, C/O 56 APO
3. Union of India Through Secretary, Ministry of Defence New Delhi - 110011.

..... RespondentsLd. Counsel for the Respondents. : **Shri Sunil Sharma, Central Govt. Counsel.**

ORDER

“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”

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

(a). To quash the Records Mech Inf Regt rejection order bearing No. 14925212/641/NER/LC dated 25 Sept 2018 with all the consequential benefits to the applicant.

(b). To quash the premature discharge order shown in movement order bearing File No. 1154/MO/A dated 29 Aug 2009 with all the consequential benefits to the applicant.

(c) To issue any other or direction considered expedient and in the interest of justice and equity.

(d) Award cost of the petition.

2. The undisputed factual matrix on record is that the applicant was enrolled in the Indian Army on 20.11.1997. He served at different places in peace as well as field stations including high altitude area. He was placed in low medical category for disability ‘**Contusion (L)**’ on 22.08.2008. His disability was assessed @ 1- 5% for two years and considered as

attributable to military service. A show cause notice was issued and the applicant locally discharged from service on 29.08.2009 as undesirable soldier under Army Rule 17 and Army Headquarters letter dated 28.12.1988 for having four red ink entries. He filed statutory complaint for converting his discharge into invaliding medical board which was rejected by Chief of Army Staff vide order dated 27.08.2018. The applicant has filed instant O.A. with the prayer to quash discharge order and re-instatement him into service with all consequential benefits.

3. Learned counsel for the applicant submitted that applicant has been removed from the service under the provisions of the Policy letter dated 28.12.1988. In the Policy letter, the procedure for discharge has been laid down. It has been provided in the said policy letter that when an opinion is formed with regard to dismissal or discharge of an individual from service, an impartial inquiry with regard to allegations against the individual is required to be made and the individual should be given adequate opportunity of putting up his defence or explanation and to adduce evidence in his defence. In case the allegations are substantiated only then should the extreme step of termination of service of the individual be taken. The recommendations for dismissal or discharge should then be forwarded through normal channels to the authority competent to authorize dismissal or discharge along

with a copy of the proceedings of the preliminary inquiry. The intermediary authorities are required to make their own recommendations with regard to the disposal of the case. When the case reaches to the competent authority, the authority is required to consider the case, and if the authority is satisfied that the services of the individual are warranted to be terminated, then the authority would direct to issue the show cause notice to the individual in accordance with the Army Rules, 13 or Army Rules, 17 as the case may be. While issuing the show cause notice, the individual will also be given the copy of the preliminary inquiry report or other material against him to enable him to give reply to the show cause notice. The reply received from the individual will then be processed through normal channel to the competent authority. Thereafter the competent authority would pass the final order and while doing so it would record why the authority considers the retention of the individual unwarranted in service. In the instant case, before recommending the discharge of the applicant from service such procedure was not followed by the respondents as no preliminary enquiry was held nor opportunity of defence was afforded to the applicant. The applicant filed statutory complaint for changing his discharge into Invaliding Medical Board, which was rejected by the competent authority. Learned counsel for the applicant has relied upon judgment passed

by Hon'ble Apex Court in Civil Appeal D No 32135 of 2015 in ***Veerendra Kumar Dubey Vs. Chief of Army Staff and others*** wherein applicant was reinstated in service. He prayed that in similar matter in ***O.A. No 168 of 2015, Abhilash Singh Kushwaha Versus Union of India*** this Tribunal has quashed the discharge order and reinstated applicant in service. He prayed that discharge order passed by the respondents being against procedure laid down in Army Headquarter policy letter dated 28.12.1988, may be quashed and applicant be notionally reinstated in service with all consequential benefits.

4. On the other hand, learned counsel for the respondent submitted that applicant was a habitual offender having committed four offences with 4 red ink entries within a span of about 11 years. The policy letter dated 28.12.1988 enunciates that an individual who earns four red ink entries in his entire service is considered as 'undesirable and inefficient' and such person may be discharged from service after issuing a show cause notice. The case of the applicant being 'undesirable' was referred to the competent authority i.e. Commander 340 (I) Mechanised Brigade by his unit. A show cause notice was issued to the applicant and applicant submitted his reply to show cause notice. The competent authority after due consideration and completing all procedures as required by military law sanctioned his discharge from service and

he was locally discharged from service on 29.08.2009 being an undesirable soldier having only 11 years, 07 months and 09 days of service. A Release Medical Board was held and applicant was placed in low medical category. His disability was assessed as 01 – 05% for two years and considered as attributable to military service. Since applicant was discharged as undesirable soldier, hence, he was not eligible for disability pension as well as invalid pension. The applicant filed statutory complain for converting his discharge into invaliding medical board which was rejected. He prayed that prescribed procedure was followed before discharging the applicant. Therefore, O.A. deserves to be dismissed.

5. We have heard learned counsel for the parties and perused the record.

6. From perusal of record it transpires that in reply to show cause notice, the applicant has stated that on account of problems at home and on account of illness of his wife he used to take drinks, but he was mentally and physically sound and promised to serve with full devotion and discipline. It is not in dispute that at the time of discharge, the applicant had already put in more than 11 years of service. It also appears that the applicant would have been entitled to pensionary benefits after 15 years of service.

7. Further the show cause notice issued to the applicant is not specific and it only refers in general terms to certain Red Ink Entries having been given to the applicant. In show cause notice it is nowhere mentioned that inquiry report was also handed over along with show cause notice. There is no evidence that inquiry report was submitted to concerned authority. What is the precise nature of the Red Ink Entry and the offence for which those entries were given and the period to which they relate has not been elucidated in the notice. This vagueness in the notice is clear breach of the policy letter of the Army Headquarter dated 28.12.1988, a copy of which has been produced before us. On perusal of show cause notice, it appears that show cause notice was issued to the applicant on 17.07.2009 and applicant submitted his reply on 31.07.2009 whereas recommendations of Commanding officer were made on 11.07.2009 and discharge order was signed by Brigade Commander on 27.07.2009. Thus, it appears that applicant was discharged from service with preconceived and pre-decided notion and in total disregard to the law on the subject and in gross violation of Principles of natural justice and fair play. Para 5 (d) of Policy letter dated 28.12.1988 of Army Headquarters, provides that the show cause notice should cover the full particulars of the cause of action against the individual. The allegations must be specific and supported by

sufficient details to enable the individual to clearly understand and reply to them. A copy of the proceedings of the enquiry held in the case will also be supplied to the individual and he will be afforded reasonable time to state in writing any reasons he may have to urge against the proposed dismissal or discharge. That apart, Note No. 2 of the policy letter is also relevant. It reads as follows:-

“2. discharge from service consequent to four red ink entries is not a mandatory or legal requirement. In such cases, Commanding Officer must consider the nature of offences for which each red ink entry has been awarded and not be harsh with the individuals, especially when they are about to complete the pensionable service. Due consideration should be given to the long service, hard stations and difficult living conditions that the OR has been exposed to during his service, and the discharge should be order only when it is absolutely necessary in the interest of service.”

8. The show cause notice in this case does not conform to the policy letter. The show cause notice given in the present case is not specific about the nature of the allegations against the applicant. Learned counsel for the applicant placed reliance upon the decision of the Delhi High Court in **Surinder Singh Sihag Vs. Union of India and Others**, and **All India Services Law Journal**, 2003 (2), page 154 in support of his contention and the procedure provided in the policy letter dated 28.12.1988 is required to be followed. In this case, we find that the show cause notice is not specific and we also find that the applicant has put in more than 11 years of service and he was to acquire pensionary entitlement

after putting in total 15 years of service. The policy letter also provides that even if there are four red ink entries awarded to the person, discharge is not mandatory and mind has to be applied by the concerned authority to the nature of the offences and length of service etc. In show cause notice, the applicant was asked to show cause why he be not discharged under Rule 13 (3) III (v). The only procedural safeguard provided under these provisions is the issuance of a show cause notice for obtaining the explanation of the individual concerned. It is for this reason it appears that para 5 (d) of the policy letter dated 28.12.1988 requires that the show cause notice must cover full particulars of the cause of action against the individual and the allegations must be specific and supported by sufficient details to enable the individual to understand and reply to them. Non compliance with the requirement would vitiate the show cause notice. In the absence of the particulars the individual may make admission of guilt in his reply under a misconception about the nature of the allegation. In our opinion, show cause notice issued to the applicant is invalid and is vague.

9. The applicant is not entitled for disability pension as his disability was assessed less than 20%. He is also not entitled for invalid pension as he was not discharged from service on medical grounds but he was discharged from service as undesirable

soldier. Learned counsel for the respondents produced before us the record relating to the red ink entries awarded to the applicant. The record reveals that out of four red ink entries, two red ink entries have been awarded for intoxication which is minor offence. It is also to be noted that in the first 09 years of service, there is no adverse remark against the applicant. It is also to be noted that the policy letter provides that discharge is required to be ordered only when it is absolutely necessary. The authorities can, under clause (b), (c), and (d) of para 2 of the policy letter take lenient action such as transfer of an individual or reducing him to lower rank. In view of the nature of the entries and the fact that the entries have been given within two years and the rest of the career of the applicant was without blemish and the applicant had already put in more than 11 years of service and also the fact that the show cause notice is vague and does not conform to the requirement of the policy letter, the order of discharge passed against the applicant is arbitrary and cannot be sustained.

10. Accordingly, the Original Application No. 209 of 2021 is partly **allowed**. The impugned order passed by the respondents is set aside. The applicant shall be treated to be in service notionally in the same rank held at the time of discharge till the date of attainment of required qualifying pensionable service, for which he shall not be paid back wages on the principle of 'no work no pay'.

From the date of attainment of such qualifying service for pension, the applicant shall be entitled to pension of the rank held and all other associated benefits (ECHS, CSD, ESM status) in accordance with law and rules. The applicant was discharged from service on 29.08.2009 and he approached the Tribunal on 11.03.2021 after prolonged delay of about 11 years. Due to law of limitations settled by the Hon'ble Supreme Court in the case of ***Shiv Dass v. Union of India and others*** (2007 (3) SLR 445), the arrear of Pension shall be restricted to three years preceding the date of filing of the instant O.A. The O.A. was filed on 11.03.2021. Let the entire arrears of pension be paid to the applicant within the period of four months from the date of communication of order. If the same are not paid within the time stipulated, then the respondents shall also be liable to pay interest at the rate of 8% per annum on the amount due from the date of its accrual till the date of its actual payment.

11. The Registry is directed to provide a copy of this order to learned counsel for the respondents for its onwards transmission and necessary compliance.

12. No order as to costs.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated : 23 March, 2023

Ukt/-