

Court No. 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 807 of 2022

Monday, this the 10th day of March, 2025

Hon'ble Mr. Justice Anil Kumar, Member (J)

Hon'ble Maj Gen Sanjay Singh, Member (A)

Rajmani Tripathi (Service Number JC 382144L)

Rank – Ex Sub Maj (DR)

Unit – 19 Wireless Experimental Unit

Presently residing at House No. 1230, Aurangabad

Jageer, Bijnor, Lucknow

.... Petitioner

Ld. Counsel for the Petitioner: **Shri Shrikant Mishra**, Advocate

Versus

1. Union of India, through its Secretary, Ministry of Defence, Sena Bhawan, New Delhi.
2. Commanding Officer, 19 WEU, PIN 904819, C/o 99 APO, Eastern Command.
3. Senior Record officer, OIC Records, Jabalpur (M.P.)
4. General officer Commanding, HQ Eastern Command, Kolkata.

... Respondents

Ld. Counsel for the Respondents : **Shri Pushpendra Mishra**,
Central Govt Counsel

ORDER

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

(I) To set-aside the discharge order dated 11/11/2021, passed by the Lt. Col. Record officer, OIC Records, whereby the present was discharged from service prior to commencement of his extension period.

- (II) *To set aside the order dated 03/11/2021, passed by Lt. Col, Offg Commanding Officer, 19 WEU, PIN 904819, C/o 99 APO, whereby the said authority has taken a decision that the present applicant be discharged from military service on completion of the normal terms of engagement (without extension).*
- (III) *Issue directions to respondents to reinstate the applicant in service on the regular basis, in pursuance of his selection order dated 11/11/2018 for the post of JCO ADC with all consequential benefits.*
- (IV) *Issuing/passing of any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
- (V) *Allowing this application with cost.*

2. Briefly stated, applicant was enrolled in the Indian Army on 20.12.1989 and discharged from service on 31.12.2021 (AN) after rendering 32 years and 12 days of service. The applicant while posted with 2 Signals Training Centre, Goalost his service Identity Card on 19.07.2013 and he was awarded punishment of red ink entry, 'SEVERE REPRIMAND' on 21.03.2014 in the rank of NaibSubedar, however no entry in this regard was published by Part II Order. The applicant was promoted to the rank of NaibSubedar on 01.02.2013, Subedaron 01.04.2015 and Subedar Major on 01.08.2018. The applicant was screened for two years of extension of service and granted extension w.e.f. 20.12.2021 to 05.08.2022 vide Signals records Part II Order dated 21.11.2019. Later on, it came to notice that as per Field Conduct Sheet, the applicant was awarded punishment of 'SEVERE REPRIMAND' for loss of his service Identity Card but Part II Order regarding punishment has not been published

and then Part II Order of punishment of the applicant was published. The applicant was served a Show Cause Notice dated 01.11.2021. Accordingly, discharge order of the applicant was issued vide Signals records letter dated 11.11.2021 and the applicant was discharged from service on 31.12.2021. Being aggrieved with the cancellation of extension period and discharge from service, the applicant has filed the instant Original Application.

3. Learned counsel for the applicant submitted that applicant was enrolled in the year 1989 and retired from service in the month of December 2021. The applicant was promoted to the post of Naik on 01.03.1999, Havildar on 01.03.2006, Naib Subedar on 01.02.2013, Subedar on 01.04.2015 and Subedar Major on 01.08.2018. All the promotions have been granted to the applicant after due process of law by the Signals Records. On 01.11.2018, applicant was shortlisted for the post of JCO ADC to the President of India and his service period was extended from 20.12.2021 to 05.08.2022 by the Signals Records vide Part II Order dated 21.11.2019. After selection on the post of JCO ADC to the president of India, Master Sheet of the applicant was prepared and thereafter, a letter dated 08.07.2021 was sent to the unit of the applicant to forward documents and transfer the applicant to pension establishment, who will be discharged from service w.e.f. 31.08.2021 as per list, serial no. 38. On 13.08.2021, unit of the applicant was informed by the Signals records that the applicant being discharged from service w.e.f. 31.08.2022, his pension document may be submitted to Records in the month of February, 2022. The applicant was surprised when he received Show

Cause Notice dated 01.11.2021, issued by Offg Commanding Officer of the unit to show cause as to why he may not be discharged from service on completion of normal terms of engagement (without extension). For reply to Show Cause Notice, applicant sought time vide his letter dated 02.11.2021 but without considering the prayer of the applicant, impugned order of discharge dated 11.11.2021 was passed by the respondents and applicant was discharged from service on completion of his normal terms of engagement; prior to commencement of this extension period, which is illegal, arbitrary and without following the proper procedure of law and therefore, the same is liable to be quashed. The applicant was promoted to the rank of Sub. Maj. on 06.08.2018 which comes in the rank of JCO and from the said date to the date of extension of service (20.12.2021), the applicant has no red ink entry or recordable censure, hence, discipline criteria as per Para 2(e) of ADG PS, IHQ of MoD (Army) letter dated 20.09.2010 for award of punishment of 'Severe Reprimand' to the applicant in the rank of NaibSubedarin the year 2013 in cancellation of extension of service is not applicable in this case.

4. Learned counsel for the applicant further submitted that impugned discharge order has been passed without giving any opportunity of hearing to the applicant which is against the principle of nature justice as well as against the right provided by Articles 14, 16, 21 and 311 of the Constitution of India, hence the impugned order of the discharge is liable to be set aside and applicant be reinstated in service to complete his tenure of extension of service

upto 05.08.2022, i.e. the date upto which extension was granted. The applicant placed reliance on the judgment of the Hon'ble Apex Court in the case of **Veerendra Kumar Dubey vs. Chief of Army Staff** (2016) 2 SCC, 627 and **Vijay Shanker Mishra vs. Union of India &Ors** (Civil Appeal Nos. 12179-12180 of 2016), decided on 15.12.2016 and this Tribunal judgment in the case of O.A. No. 400 of 2017, **Ex Swr Guru Prakash Pandey vs. Union of India &Ors**, decided on 13.07.2018, for not conducting a preliminary enquiry before issuing of Show Cause Notice to the applicant. He pleaded that applicant is fulfilling all required criteria for extension of service and therefore, withdrawal/denial of extension of service being arbitrary and unjust on the part of respondents, requires to be set aside and applicant be reinstated into service with all consequential benefits.

5. Learned counsel for the respondents submitted that applicant was enrolled in the Indian Army on 20.12.1989 and discharged from service on 31.12.2021 (AN) after rendering 32 years and 12 days of service. The applicant while posted with 2 Signals Training Centre, Goa had lost his service Identity Card on 19.07.2013 and he was awarded punishment of red ink entry, 'SEVERE REPRIMAND' on 21.03.2014 under Army Act Section 54(b) in the rank of NaibSubedar which was mentioned in Field Conduct Sheet of the applicant, however no entry in this regard was published by way of Part II Order. The applicant was promoted to the rank of NaibSubedar on 01.02.2013, Subedar on 01.04.2015 and Subedar Major on 01.08.2018. The applicant was screened for two years of extension of

service and granted extension w.e.f. 20.12.2021 to 05.08.2022 vide Signals records Part II Order dated 21.11.2019. Accordingly, discharge order of the applicant was issued by the Records vide letter dated 08.07.2021, to be discharged from service on 31.08.2022. The Master Sheet of the applicant was forwarded to 19 Wireless Experimental Unit for scrutiny and signature and then it came to notice that as per Field Conduct Sheet, the applicant was awarded punishment of 'SEVERE REPRIMAND' for loss of his service Identity Card but Part II Order regarding punishment as not been published and then Signals records was apprised regarding this punishment by the unit vide letter dated 16.06.2021. Thereafter, Part II Order of punishment of the applicant was published by 5 TTR. On publication of Part II Order of punishment, the applicant was dropped in discipline criteria for extension of service as per IHQ of MoD (Army) letter dated 20.09.2010. The applicant was served a Show Cause Notice dated 01.11.2021 followed by Speaking Order dated 03.11.2021 under intimation to the Signals Records. Accordingly, discharge order of the applicant was issued vide Signals records letter dated 11.11.2021, to be discharged from service w.e.f. 31.12.2021 and previous discharge order issued by the Records was cancelled vide cancellation order dated 11.11.2021. Thus, the applicant was discharged from service on 31.12.2021 (AN).

6. Learned counsel for the respondents further submitted that correspondence file pertaining to 'Selection of JCOs ADC to President' covering period from 04.03.2010 to 31.12.2018 has already been destroyed by Board of Officer dated 12.08.2022 in terms of Para

592 of the Regulations for the Army, 1987 (Revised). He further submitted that as per Para 2 (e) (i) of IHQ of MoD (Army) letter dated 20.09.2010, *'an individual should not have more than two red ink entries (including recordable censure in the case of an Nb Sub/Sub) during the entire service and not more than one red ink entry in the last five years. However, for extension in the rank of Sub Maj there should be no red ink entry including recordable censure in the rank of JCO*'. Since the applicant was awarded punishment of 'Severe Reprimand'(red ink entry) on 21.03.2014 in the rank of NaibSubedar, he was not eligible for grant of two years extension of service, hence, cancellation of extension of service on receipt of information regarding punishment as mentioned in the Field Conduct Sheet of the applicant, is as per rules and policy on the subject and therefore, the applicant is not entitled for the reliefs claimed in the Original Application.

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

8. Para 2 (e) (i) of Appendix 'A' of IHQ of MoD (Army) letter No. 33098/AG/PS-2(c) dated 20.09.2010, discipline criteria for grant of extension of service by two years to Personnel Below Officer Rank (PBOR) is quoted below :-

(e) **Discipline**. *The individual should meet the discipline criteria as given below :-*

(i) *An individual should not have more than two red ink entries (including recordable censure in the case of an Nb Sub/Sub) during the entire service and not more than one red ink entry in the last five years. However, for extension in the*

rank of Sub Maj there should be no red ink entry including recordable censure in the rank of JCO.'

9. In the instant case, we find that the applicant was screened for two years of extension of service in the rank of Subedar Major and granted extension w.e.f. 20.12.2021 to 05.08.2022 vide Signals records Part II Order dated 21.11.2019. Accordingly, discharge order of the applicant was issued by the Signals Records vide letter dated 08.07.2021, to be discharged from service on 31.08.2022. Thereafter, it came to the notice of the Records that applicant was awarded punishment of red ink entry, 'SEVERE REPRIMAND' on 21.03.2014 under Army Act Section 54(b) for loss of his Identity Card in the rank of NaibSubedar which was mentioned in Field Conduct Sheet of the applicant, however no entry for this punishment was published by way of any Part II Order. Owing to this, there was a discrepancy in the Master Sheet and Field Conduct Sheet which was reconciled. On publication of Part II Order of punishment, the applicant was served a Show Cause Notice dated 01.11.2021 and Speaking Order dated 03.11.2021 was passed and fresh discharge order of the applicant was issued vide Signals Records letter dated 11.11.2021, to be discharged from service w.e.f. 31.12.2021 and previous discharge order issued by the Records was also cancelled vide cancellation order dated 11.11.2021 as the applicant was not meeting discipline criteria as per IHQ of MoD (Army) letter dated 20.09.2010, he was discharged from service on 31.12.2021 (AN).

10. The case laws of the Hon'ble Apex Court, relied upon by the applicant in the case of **Veerendra Kumar Dubey** (supra) and **Vijay**

Shankar Mishra (supra) are not applicable in this case as in both the cases, discharge from service on award of four red ink entries or more including issuance of Show Cause Notice and holding of preliminary enquiry taking into consideration other relevant circumstances of long years of service, duty in hard stations and difficult living condition and nature of offence committed by the appellant have been dealt. Here, the case is quite different which pertains to discharge from service on cancellation of extension of service on discipline criteria. In this case, Show Cause Notice was issued to the applicant and applicant in his letter/reply asked more time to give reply to Show Cause Notice. So, no preliminary enquiry is required in this case as the applicant was awarded punishment of red ink entry while he was holding the rank of NaibSubedar (JCO) and for extension of service in the rank of Subedar Major, there should be no red ink entry punishment during entire service of the JCO as per Para 2 (e) (i) of IHQ of MoD (Army) policy letter dated 20.09.2010, therefore, when the matter for award of punishment to the applicant in the rank of JCO (NaibSubedar) came to the notice of the authorities, extension of service of the applicant was cancelled as per rules and policy on the subject and he was discharged from service on 31.12.2021 as per Signals records letter dated 11.11.2021. As such, extension of service is not a right but it solely depends upon the satisfaction of the competent authority whether or not to grant an extension based on factors set by policy like performance, discipline criteria, medical fitness and service/operational requirements and not only on the request/willingness of an individual to continue in service.

11. As regards arguments of the learned counsel for the applicant that insufficient time was granted to explain the punishment and red ink entry awarded to him, from perusal of records, it is evident that notice was given to the applicant but inspite of giving his explanation, he sought further time to give reply to the Show Cause Notice. Nothing is mentioned in the policy letter for holding of Court of Inquiry in case of denial of extension of service on account of one red ink entry in the rank of Subedar Major. It is not denied by the applicant that red ink entry was awarded to him in the rank of JCO.

12. In view of the above, we do not find any irregularity or illegality neither in cancellation of extension of service on account of punishment of red ink entry in the rank of JCO as per IHQ of MoD (Army) policy letter dated 20.09.2010 for not meeting discipline criteria nor in issuance of fresh discharge order on completion of terms of engagement/service in the rank of Subedar Major. The discharge of the applicant is procedurally correct as per rules and policy and there is no violation of the principles of natural justice. The Original Application deserves to be dismissed. It is accordingly **dismissed**.

13. No order as to costs.

14. Pending Misc.Applications, if any, shall be treated to have been disposed of.

(Maj Gen Sanjay Singh)
Member (A)

Dated: March, 2025
SB

(Justice Anil Kumar)
Member (J)

