

Court No. 1 (E Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 616 of 2020.**

Friday, this the 13th day of May, 2022

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

Ex Guardsman Deepak Srivastava, S/o Chitamani, Village-Ram Nagar, Post Office-Hakeempur, District-Sultanpur (UP), Pin-224232.

..... Applicant

Ld. Counsel for the Applicant : **Shri Vinay Sharma**, Advocate
holding brief of Col YR Sharma (Retd)

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, IHQ of MoD (Army), Army Headquarters, South Block, New Delhi-110011.
3. Commander, 55 (I) Mech Bde, PIN-908055, C/o 56 APO.
4. Records, Brigade of the Guards, PIN-900746, C/o 56 APO.
5. Commandant, 4 Guards (1 Rajput), Pin-910904, C/o 56 APO.

.....Respondents

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

(a) Issue/pass an order or direction to respondents to set aside the Show Cause Notice issued by Commander HQ 55 (I) Mech Bde vide their letter No 1212/14/A dated 13 May 2014. The Show Cause Notice is filed with the Original Application as Impugned Order as Annexure A-3.

(b) Issue/pass an order or direction of appropriate nature to the respondents to quash/set aside the letter No AO/S-8 dated 27 April 2017 along with its annexure issued by 4 Guards (1 Rajput) on 27 April 2017. Copy of Impugned Order is filed with the Original Application and is marked as Annexure A-6.

(c) Issue/pass an order or direction of appropriate nature to the respondents to set aside the discharge and re-instate the applicant with all consequential benefits including pay and allowances, promotion and allied benefits.

(d) Issue/pass an order or direction as the Hon'ble Tribunal may deem fit in the circumstances of the case.

(e) Allow this Original Application with costs.

2. Being aggrieved with the Show Cause Notice dated 13.05.2014 and thereafter discharge order dated 26.05.2015 applicant had preferred a representation dated 03.08.2015 which was disposed of vide reasoned order dated 12.09.2015, applicant has filed this O.A. to quash the Show Cause Notice dated 13.05.2014 (Annexure A-3) and letter dated 27.04.2017 (Annexure A-6).

3. Brief facts of the case are that the applicant was enrolled in the Army on 15.03.2005 and was posted to 4 Guards on 12.02.2006. During his approximately 09 years of service, he was awarded 06 punishments in the form of red ink entries and pay fine on account of various charges like intoxication and absenting without leave. He was time and again advised to serve for 15 years to earn service pension but despite persuasion he did not pay any attention and continued to indulge in alcoholism and misconduct. Since conduct of applicant was having an adverse effect on all ranks of the unit, a Show Cause Notice (SCN) dated 13.05.2014 was served upon applicant, which he received and reply was sought within 15 days (Reply of Show Cause Notice has not been placed on record by the parties). Accordingly, he was discharged from service as an undesirable soldier w.e.f. 26.05.2015. This O.A. has been filed for quashing of Show Cause Notice dated 13.05.2014 and letter dated 27.04.2017.

4. Submission of learned counsel for the applicant is that in the unit some of the JCOs/NCOs were against him on account of his caste and due to this he was implicated on frivolous charges. He further submitted that due to harassment in the unit the applicant became alcoholic and due to which he was hospitalized and was placed in low medical category S3 (temporary). His other submission is

that prior to discharge from service no preliminary inquiry was conducted as per policy letter dated 28.12.1988, as such punishment awarded without giving opportunity to applicant is in violation of principles of natural justice. He pleaded to set aside the Show Cause Notice dated 13.05.2014, letter dated 27.04.2017 and re-instate him in service with all consequential benefits.

5. On the other hand submission of learned counsel for the respondents is that applicant proved himself time and again to be an indisciplined soldier and was awarded six red ink entries. His further submission is that although applicant was awarded first red ink entry on 02.07.2010, however in reality the unit has shielded him on a number of occasions and by taking a lenient view his defiant impulsive behavior was tolerated. He was advised time and again to improve his conduct but he failed to improve himself. His further submission is that in the year 2010 when applicant started consuming excessive alcohol, he was sent for medical examination and the medical authorities diagnosed him as a case of Alcohol Dependence Syndrome. His medical category was downgraded to S3 (temp) and he was advised to refrain from alcohol. He started disobeying orders on daily basis and was disinclined to accept any advice by his superiors. Since the applicant had already been awarded 06 red ink

entries on account of intoxication and was absent without leave, a Show Cause Notice dated 13.05.2005 was issued to applicant which he received. Respondents learned counsel further submitted that after taking sanction from the competent authority, applicant was discharged from service in terms of Rule 13 (3) III (v) of Army Rules, 1954 as an undesirable soldier. He pleaded for dismissal of O.A.

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

7. Written statement filed by the respondents clearly shows that applicant was tried summarily six times and awarded red ink punishments by the Commanding Officers for the offences committed under various sections of the Army Act. Details of offences and punishments awarded to the applicant are given as under:

| Sr. No. | Date of award | AA under which punishment awarded | Sec | Offence | Punishment awarded |
|---------|---------------|-----------------------------------|-----|----------------------|---|
| (A) | 02.07.2010 | Sec | 48 | Intoxication | 28 days Rigorous Imprisonment in military custody. |
| (B) | 29.09.2010 | Sec 39 (a) | | Absent without leave | 28 days Rigorous Imprisonment in military custody and 10 days pay fine. |
| (C) | 13.08.2012 | Sec | 48 | Intoxication | 14 days Rigorous Imprisonment in military custody. |

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|-----|------------|--------|----------------------------|--|
| (D) | 18.12.2012 | Sec 48 | Intoxication | 14 days Rigorous Imprisonment in military custody. |
| (E) | 31.10.2013 | Sec 48 | Intoxication | 14 days Rigorous Imprisonment in military custody. |
| (F) | 15.03.2014 | 39 (a) | Absent without leave | 28 days Rigorous Imprisonment in military custody. |

8. In respect of each of above offences culminating in a red ink entry, the charges against the individual were heard by the Commanding Officers 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 punishments were awarded. It is thus, contended that there was no illegality in the punishments awarded and the red ink entries earned.

8. Relying upon order dated 23.09.2016 passed by this Tribunal in O.A. No. 168 of 2013, **Abhilash Singh Kushwaha vs Unin of India & Ors** and order dated 16.10.2015 passed by the Hon'ble Apex Court in Civil Appeal Diary No 32135 of 2013, **Veerendra Kumar Dubey vs Chief of the Army Staff & Ors**, learned counsel for the applicant submitted that the applicant could not have been discharged from service based on red ink entries. We have gone through the above referred

cases and find that facts of the aforesaid cases are different with the case in hand as in this case the applicant is a case of Alcohol Dependence Syndrome and was referred to Military Hospital, Jalandhar for psychiatric evaluation. We also observe that on 25.02.2014 when he was sent to Military Hospital, Jalandhar for monthly review of his psychiatric ailment, he absented himself without leave and returned on 14.03.2014 after a gap of 18 days and after rejoining he was again sent for medical review where his medical category was not changed and he remained in low medical category S3 (temp).

9. Applicant in para 4.5 of O.A. has stated that no preliminary inquiry was conducted prior to issue of Show Cause Notice dated 13.05.2014 which is against the policy letter dated 28.12.1988. He submitted that where preliminary inquiry is not held, further proceedings vitiate. In this regard we find that a preliminary inquiry was conducted on 15.03.2014 (annexure IV) and based on this inquiry, Show Cause Notice dated 13.05.2014 was issued. Thus, we see no illegality in the order of discharge based on 06 red ink entries on intoxication and absent without leave.

10. 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, applicant's retention in service was considered detrimental for the troops. Based on past record, a Show Cause Notice was served to the applicant by Commander, 55 (I) Mech Bde and thereafter order of discharge dated 25.05.2014 was passed.

11. 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). Red ink entry is a minimal punishment awarded to a soldier on account of his misconduct. 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 applicant which cannot be construed as a punishment.

12. The individual was given ample opportunities to mend his ways and improve his conduct. It is not in dispute that he was tried summarily by previous Commanding Officers and awarded punishments which were not challenged and by the passage of time they have attained finality. Further, he was advised several times to improve himself and mend his ways but he never paid any heed to the advice of his superiors and continued to commit offences like consuming alcohol during duty hours and absenting without leave.

Since he became a perpetual offender, his retention in the service was considered inadvisable as he was setting bad example for others in the Unit.

13. 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 applicant. 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."

14. In light of above facts, we find no reason to interfere with the discharge order of the applicant which was ordered as per procedure on the subject. The O.A. is **dismissed**.

15. There shall be no order as to costs.

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

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 13.05.2022

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