

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH, NAINITAL)****ORIGINAL APPLICATION NO. 200 OF 2018**Wednesday this the 14th day of November 2018**Hon'ble Mr. Justice S.V.S. Rathore, Member (J)**
Hon'ble Air Marshal BBP Sinha, Member (A)Ex Havildar Aranya Kumar Pany (No. 1494187X)
Son of Shri Bishnu Charan Pany
R/o Village : Ambabahali
PO : Khankar
Tehsil : Goindia
Distt : Dhenkanal (Orissa) Pin : 759014

..... Applicant

Ld. Counsel for the Applicant : **Shri Lalit Kumar**, Advocate

Versus

1. Union of India, through Secretary,
Ministry of Defence, South Block,
New Delhi.
2. Officer-in-Charge, Records,
The Bengal Engineer Group and Centre
Roorkee (Uttarakhand).
3. The Commanding Officer
69 Engineer Regiment
C/o 56 APO

..... Respondents

Ld. Counsel for the Respondents : **Shri Amit Jaiswal**,
Central Govt Counsel.

ORDER

“Per Hon’ble Mr. Justice S.V.S. Rathore, Member (J)”

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

- “(i) To quash the impugned entry of “Good” awarded to the applicant in the matter of his military character and entered in his service records and also against serial No. 17 in his ‘Discharge Certificate’ dated 31st March 2018.*
- “(ii) To direct respondent Nos. 2 and 3 jointly and severally to grant ‘Exemplary’ character to the applicant in the matter of his military character in conformity with the provisions of Regulation No. 170 of the Regulations for the Army, 1987.*
- “(iii) To direct Respondent No. 2 to amend the service record of the applicant, in the matter of assessment of his military character from ‘Good’ to ‘Exemplary’.*
- “(iv) To direct Respondent No. 2 to issue a fresh ‘Discharge Certificate’ to the applicant with fresh assessment of his character as being ‘Exemplary’ after which the extant ‘Discharge Certificate’ may be withdrawn from him for its further disposal in accordance with rules and policy.”*

2. At the very outset of hearing, on behalf of the respondents, it is submitted that the annual assessment of the applicant has been upgraded from ‘Good’ to ‘Very Good’ and, therefore, if the applicant is satisfied with the “Very Good” entry, then this O.A. may be disposed of accordingly.

3. In reply to this offer made by the respondents, learned counsel for the applicant has argued that the applicant is not begging any charity but claiming his right for grant of “Exemplary character” in his service records. therefore, he will argue his case on merits.

4. In brief, the facts of this case may be summarised as under:

The applicant was enrolled in Bengal Engineer Group on 08.11.1996. In the year 2008, he was promoted to the rank of Naik and in the year 2015 he was promoted to the rank of Havildar. It is pleaded in the O.A. that due to certain pressing domestic problems, the applicant in November 2016 applied

for premature discharge from service. On 27th May 2017 the applicant's request for premature discharge from service was accepted and he was discharged from Special Training Battalion (Depot) under the command of respondent no.2 for completion of pre-discharge formalities. On 31st March 2018, the applicant was discharged from service and was accordingly issued the Combined Certificate of Discharge and recommendation of Civil employment. On scrutiny of the said documents, the applicant found that against serial no.17, the said Discharge Certificate, his character has been assessed as merely "Good", whereas his character ought to have been assessed as "Exemplary", in pursuance of the provisions of 170 of the Regulations for the Army, 1987. Thus, the case of the applicant is based on the Regulation 170, which deals with the assessment of the military character of a soldier.

5. It has been argued on behalf of the applicant that since the applicant was possessing all the required conditions for grant of "Exemplary character", therefore, granting of "Good" in the discharge certificate is in violation of the aforesaid Army Regulations.

6. In reply to the said arguments, on behalf of the respondents it has been argued that the said Army Regulation 170 provides only the minimum conditions for grant of "Exemplary character", while the discretion entirely vests in the Commanding Officer for assessment of military character of a soldier. It is further submitted that the applicant was discharged w.e.f. 31st March 2018 on compassionate grounds at his own request before completion of term of engagement under Rule 13(3) item III (iv) of Army Rule, 1954. It is pleaded that the Officer commanding the Unit/Records is the sole judge to decide whether a soldier is to be granted an "Exemplary character" and the said grant is discretionary and not obligatory. It has also specifically been pleaded that on 18th March 2017, the applicant was awarded severe reprimand and 14 days pay fine under Section 39(b) of the Army Act, 1954 due to over stay of leave since 18th March 2017 to 01st May 2017, his total absence period was 44 days. Thereafter, he has moved an application for his premature discharge which was accepted and the applicant was discharged

from service. The overstaying leave in the Army is a serious offence and keeping in view the punishment awarded to the applicant, his assessment was downgraded. It is submitted that keeping in view the punishment awarded to the applicant for over staying the leave, the Commanding Officer has not granted “Exemplary character” in the records and the said act of the Commanding Officer cannot, in any manner, said to be illegal, unjust or irregular.

7. Keeping in view the rival pleadings and the submissions, this O.A. needs interpretation of the relevant Army Regulations, mentioned above. Therefore, before proceeding further, we would like to reproduce the said Regulation, which reads as under :

“170 .Assessment of Character.— (a) (i) On discharge the OC unit/records will enter on the discharge certificate the man's military character while serving with the colours. The entry will be exemplary, very good, good, fair, indifferent bad or very bad as the case may be,

(ii) An assessment of exemplary character is the highest that can be given to any soldier and is to be awarded only to a soldier whose period of service has enabled his conduct to be thoroughly tested. It will therefore be reserved for soldiers who have served at least five years with the colours. The OC unit/records is the sole judge whether a soldier is to be granted an exemplary character, the grant being discretionary and not obligatory.

(iii) In assessing a soldier's character, only entries in the Regimental Conduct Sheet will be taken into account.

(iv) In the case of soldiers who had served as boys, entries which they may have incurred in their Regimental! Conduct Sheets prior to attaining the age of 17 years will not be taken into account in assessing their military character.

(v) A bad character will not be awarded to a NCO.

(b) The following are the minimum standards required in each grade before a soldier's military character can be assessed:—

(i) Exemplary —(aa) At least five years service with the colours on the current employment,

(ab) No award of imprisonment by a civil court which has been undergone.

(ac) No award of imprisonment, detention or field punishment.

(ad) No reduction in rank or grade for an offence under the Army Act,

(ae) No conviction for drunkenness during the last five years of service,

(ii) Very good.—(aa) At least one year's service with the colours on the current engagement.

(ab) No award of imprisonment by a civil court which has been undergone.

(ac) Not more than 28 days of service spent in RI, detention or field punishment in the aggregate.

(ad) No reduction in rank or grade for an offence under the Army Act.

(iii) Good. —(aa) At least one year's service with the colours on the current engagement.

(ab) No award of imprisonment by a civil court which has been undergone.

(ac) Not more than 56 days of service spent in RI, detention or field punishment in the aggregate.

(ad) Not more than one reduction in rank or grade for an offence under the Army Act.

(iv) Fair. —(aa) No award of imprisonment exceeding two years by a civil court which has been undergone.

(ab) Not more than 18 months of service spent in RI, detention or field punishment in the aggregate.

(ac) Not more than, two reductions in rank or grade for offences under the Army Act.

(v) Indifferent. —(aa) No award of imprisonment exceeding two years by a civil court which has been undergone.

(ab) Not more than 3 years of service spent in RI, detention or field punishment in the aggregate.

(vi) Bad.—Not more than four years of service spent in RI.

(vii) Very Bad. —Nil.

NOTE

For purpose of assessment of character, service record of an individual during the past 5 years of service immediately preceding his retirement on the basis of the entries made in his service documents/conduct sheets will be taken into consideration. This will apply in the clause where no period of scrutiny has been laid down.

(c) (i) The OC will not normally award an assessment lower than that to which the soldier is entitled unless there are very strong reasons for doing so; in such a case the assessment will not be lowered beyond one grade.

(ii) In very exceptional cases where a soldier has merited consideration for the grant of exemplary character by meritorious gallantry act of a high order but has served for more than one and less than five years and where the other conditions laid down in sub-para (b)(i) above are satisfied the following assessment will be awarded: —

"Qualified by his conduct for 'exemplary' but is ineligible for it because his service fails short of five years. He is accordingly awarded '-----' ".

(iii) The following special provisions will apply to soldiers who are discharged or released before they have completed twelve months, service: —
(aa) A soldier with less than six months, service will not be awarded an assessment of conduct. His documents will be endorsed "No assessment. Less than six months' service".

(ab) A soldier who has completed six months, but less than twelve months' service, whose conduct merits a higher award than that of "Fair", may . be awarded an assessment of—

"Qualified by his conduct for 'Good' but ineligible, having only..... months' service". No variation in the wording of this assessment is permitted and the terms "Very Good" or "Exemplary" will on no account be used.

(d) The character of an ex-serviceman may be re-assessed at any time by an officer superior in command to the officer who originally assessed Ms character. The Officer-in-Charge Records will be deemed to be a superior authority for the purpose..”

8. The claim of the applicant is based on the aforesaid Regulation, particularly sub-clause (b), whereby certain conditions have been laid down for grant of “Exemplary character”. On the basis of these conditions, the applicant has claimed that since he was fulfilling all these criteria, therefore, the respondents were under obligation to award “Exemplary character” to the applicant.

9. In reply, it has been argued on behalf of the respondents that these are the minimum conditions which are provided and the discretion entirely vests with the Commanding Officer for grant of “Exemplary’ character”.

10. It is clear from perusal of the aforesaid Army Regulations that the minimum standard conditions have been laid down before Military character of a soldier may be assessed as “Exemplary”. Thus, the argument of the learned counsel for the applicant is contrary to the said Regulation. A composite reading of entire Regulation 170 for the Army (Vol-1), 1987 shows that the minimum conditions have been provided in Regulation 170 for grant of “Exemplary character” and the entire discretion to grant ‘Exemplary’ character to a soldier has been conferred upon the Commanding Officer, who, as per Regulation, is the sole judge to decide whether a soldier is to be granted ‘Exemplary’ character or not. It is also provided in Regulation 170 (ii) that the grant of “Exemplary character” is discretionary and not obligatory. Therefore, the composite reading makes out abundantly clear that the minimum conditions provided in the aforesaid Regulation for grant of “Exemplary Military character” of a soldier must exist for grant of “Exemplary Military character” to a soldier. It means that even if an Officer commanding is of the view that a person is to be granted

“Exemplary Military character”, but such soldier is not possessing any of the minimum required conditions, mentioned in the Army Regulation 170(b) in such condition, even the Officer Commanding is not competent to grant “Exemplary Military character” to a soldier. The net result would be that in case a person is having these minimum qualifications, then the discretion to assess the Military character of a soldier as “Exemplary”, solely vests in the Commanding Officer and this exercise of powers is entirely discretionary and not obligatory. Therefore, the claim of the applicant that since he was having all the requisite conditions for grant of “Exemplary Military character” of a soldier, as mentioned in the Army Regulation 170, is misconceived. Virtually these are the minimum conditions which a soldier must possess before he can be granted an “Exemplary Military character”. It is admitted case that during the service period, the applicant has overstayed leave of 44 days, for which he was punished with 14 days’ pay fine and severe reprimand. Though, this fact was not mentioned in the O.A., but in the counter affidavit, the respondents have mentioned this fact in Para 24 and in the rejoinder affidavit, the contents of Para 24 have been denied and it has been pleaded as under in Para 24 of the Rejoinder Affidavit :

*“24. That the contents of Para No. 24 of the CA are not admitted. In rejoinder it is most respectfully submitted that sub-clause (iii) of clause (a) of Regulation No.170 mandates that **“in assessing a soldier’s character, only entries in the Regimental Conduct Sheet will be taken into account.”** Consequently, even if the punishment of ‘severe reprimand and 14 days pay fine’ awarded to the applicant on 02 May 2017 is taken into consideration, he still remains entitled to award of ‘exemplary’ character, as per conditions prescribed in clause (b) of the said Regulation No.170 of the RA. It may be noted by the respondents that the discretion cannot exercised by an authority against the specific provisions of law. Thus the discretion of the CO to award a lesser grade of assessment had to flow from **‘very strong reasons’**, which had to be different from the entries in the Regimental Conduct Sheet.”*

11. Thus, a perusal of the aforesaid pleadings in the rejoinder affidavit shows that the applicant has admitted the fact of overstaying leave and the

punishment inflicted upon him. But his claim is that inspite of this punishment, he still remains entitled for award of “Exemplary Military character” as per the conditions prescribed in clause (b) of the Army Regulation 170. This point has been considered in the earlier part of our judgment that these are the minimum conditions, which are mentioned in Army Regulation 170 (b) for grant of “Exemplary Military character” to a soldier, but composite reading of entire Regulation 170 shows that a person cannot be reduced for more than one rank, if he otherwise possesses the conditions for grant of “Exemplary character”. In the instant case, the applicant has been lowered to two grades and has been awarded “Good”. As stated in the opening part of the judgment, this mistake has already been corrected by the respondents and assessment of his Military character has been upgraded from “Good” to “Very Good”. Therefore, the admitted fact is that the applicant on the ground of his over staying the leave of 44 days, was punished and on the basis of his punishment, he was not granted “Exemplary Military character”. The punishment inflicted on a person by the competent authority is a sufficient ground to reduce the assessment of Military character of a soldier.

12. As admitted by the respondents the grade of the applicant has already been upgraded to “Very Good”, therefore, we hope and trust that the respondents shall improve the assessment of the applicant from “Good” to “Very Good”. The applicant is not entitled to any other relief.

13. In view of the aforesaid, we do not find any substance in this O.A., which deserves to be dismissed and is hereby **dismissed** with the abovementioned observations.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated : November, 2018
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