

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No 76 of 2017**Monday, this, the 22nd day of October, 2018**Hon'ble Mr. Justice SVS Rathore, Member (J)****Hon'ble Air Marshal BBP Sinha, Member (A)**

Ashok Kumar Yadav, No. 140406922H, Rank Havildar, son of Sri Lallu Yadav, resident of village & Post Rasulpur, police station Baragaon, Tehsil Varanasi (Pindra), New district Varanasi (UP) 221204

...Applicant

Counsel for the applicant:

Shri V.K. Pandey, Advocates

Versus

1. Union of India through Principal Secretary, Ministry of Defence, R.K. Puram, South Block, New Delhi.
2. Chief of the Army Staff, A.H.Q., D.H.Q., South Block New Delhi.
3. Officer-in-Charge, Arty Records Nasik Road Camp, Deolali.
4. Brigade Commander, 6th Mountain Arty Bde. C/O 56 APO.
5. Commanding Officer, 274, Med/Fd Regiment, C/O 56 APO.

.... Respondents

Counsel for the Respondents :

Shri Amit Jaiswal,

Addl Central Government Counsel

ORDER

“Per Hon’ble Air Marshal BBP Sinha, Member (A)”

1. By means of the present O.A., the applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 praying for the following reliefs:

- (i) *That this Hon’ble Tribunal may kindly be pleased to quash the impugned SEVEREP order dated 17.07.2010, mentioned in DO PART-II as contained in ANNEXURE No. 1 to this Original Application and also grant promotion and other service benefits to the applicant.*
- (ii) *That this Hon’ble Court may pass any other order or direction which this Hon’ble Court may deem just and proper in the circumstances of the case.*
- (iii) *The award of this application may be granted to the applicant.*

2 The facts in brief of the present O.A. are that the applicant was enrolled in the Army 26.02.1992. On completion of training period, he was promoted from time to time and ultimately on 13.02.2014 was promoted to the rank of Naib Subedar (Driver Mechanical Transport). During the year 2010, when he was Havildar, as a part of service requirement, certain eligible names of Havildar were suggested by the 274 Medium Regiment for Extra Regimental Duty at Headquarter 6 Mountain Artillery Brigade. After due consideration, the applicant was detailed and was dispatched to Headquarter 6 Mountain Brigade with 60 days preparatory leave as applicable. After availing 60 days preparatory leave, while reporting to the Headquarters 6 Mountain Artillery Brigade. the applicant expressed his unwillingness for Extra Regimental Employment with the Headquarters 6 Mountain Artillery on several grounds including

the ground that he wanted to go back to his parent Unit. Written explanation was asked for from the applicant with regard to his unwillingness for Extra Regimental Duty at 6 Mountain Artillery Brigade to which the applicant did not comply. Meanwhile the applicant was reverted back to his parent Unit, i.e. 274 Medium Regiment with follow-up letter stating that he was unwilling to work for Extra Regimental Employment due to domestic reasons and has forwarded an application for reversion to Unit. At parent Unit, a written explanation was asked from the applicant vide notice dated 18.06.2010 to explain as to why he has been routed back to Unit to which the applicant replied vide explanation dated 11.07.2010. Several grounds were mentioned by the applicant to the show cause notice including the ground that his wife is ill and he has to get admission of his children. In addition he also stated that because he felt that other Units cannot take care of a person as that of his own Unit, therefore, he was keen to come back to his Unit. As a result of his unwillingness to carry out the duty for which he was detailed and on the unsatisfactory explanation of the applicant, he was tried summarily under the provision of Section 80 of the Army Act, 1950 and was awarded Severe Reprimand by his Commanding Officer. The present O.A. preferred by the applicant is primarily to quash the Severe Reprimand awarded to him in 2010.

3. The argument advanced by learned counsel for the applicant is that the summary trial by Commanding Officer and the punishment of Severe Reprimand is arbitrary and illegal. The applicant was not given the show cause notice and a chance to explain the reasons as to why he opted for

unwillingness for the Extra Regimental Duty. Learned counsel for the applicant further contended that had the order not been passed, the applicant would have retained his seniority along with his batch mates and would in due course of time have been considered and promoted to the rank of Subedar. He vehemently pleaded for quashing of the Severe Reprimand by the Commanding Officer

4. Learned counsel for the respondents has argued that the Army is a fighting force and a soldier has to carry out all duties for which he is detailed. The applicant was a driver by trade and despite adequate seniority and experience was in the habit of avoiding duties related to extra regimental employment. Learned counsel for the respondents has quoted an earlier incident of the applicant for the year 2007 when, while serving in the rank of Havildar, the applicant was despatched to 3352 Missile Regiment where on his request of domestic problems, he was granted Annual Leave from 12.10.2007 to 10.11.2007 and on his request, his leave was extended by 19 days by granting him Advance Annual Leave from next year. The applicant, however, failed to join duty on the due date and joined duty after absence of 27 days. It is averred in the counter affidavit that the applicant was also subjected to Driving Proficiency Test. However, even after putting fifteen years of Army service as Driver Mechanical Transport, he could not clear the test in the Missile Regiment. It was thus clear that the applicant was avoiding doing Extra Regimental Employment duties on flimsy grounds. Adverse remarks were recorded against the applicant in the 3352 Missile Regiment that 'temperamentally he is not suited to serve in all Arms/service

environments'. The applicant was awarded punishment of Severe Reprimand and 14 days' pay fine under Section 39 (b) of the Army Act, 1950 and was reverted prematurely to his parent Unit, i.e. 274 Medium Regiment becoming ineligible for further retention with 3352 Missile Regiment. Learned counsel further contended that in a similar situation, later on, the Commanding Officer of the Regiment has awarded the applicant Severe Reprimand in the year 2010 once again due to his unwillingness to carry out an Extra Regimental Duty for which he was detailed. It was specifically argued that the applicant was debarred from further promotion due to him for not meeting the requisite disciplinary criteria since he was awarded two red ink entries during the period 17.07.2008 to 17.07.2010. It was further argued that in spite of putting in over 15 years' of service, the applicant intentionally showed his unwillingness to work during Extra Regimental Employment at Headquarters 6 Mountain Brigade. It was submitted that based on Headquarters 6 Mountain Brigade (Camp) letter dated 14.06.2010 which clearly stated that the applicant is being reverted back to his Unit because he is unwilling for Extra Regimental Employment, he was given a notice by the Adjutant to submit an explanation for his conduct. Additionally, based on the unsatisfactory written explanation given by him vide his application dated 11.06.2010, the Commanding Officer tried him summarily under the provision of Section 80 of the Army Act, 1950. For this summary trial by the Commanding Officer, the charge sheet was issued to the applicant well in advance i.e. on 16.07.2010 and the applicant was given ample opportunity to adduce evidence in defence. In this trial, the applicant pleaded guilty to the charges and thereafter the

impugned order of Severe Reprimand was passed by the Commanding Officer. Learned counsel for the respondents concluded that the Army is a fighting organization where discipline is a mandatory requirement. The Army cannot allow soldiers to avoid duties for which they are detailed and, therefore, the punishment granted to the applicant under the provisions of Section 80 of the Army Act, 1950 is just and required for the discipline and smooth functioning of the Regiment

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

6. From the record, it is borne out that the applicant had preferred OA. No. 72 of 2012 with the prayer for promotion to the rank of Naib Subedar which was got dismissed by the applicant as not pressed on 13.03.2014 with liberty to approach appropriate Forum/Court. Thereafter, the applicant neither raised any grievance nor approached this Court for a long time and has approached this Tribunal by filing the present O.A. with prayer to quash punishment of Severe Reprimand.

7. There is no gainsaying that the Army is a disciplined fighting force. Discipline is the heart-beat of the Army and Army personnel are expected to act in a manner which is not prejudicial to good order and Army Discipline. A member of the Army detailed with a duty, has to discharge it to the best of his ability. If repeated excuses are made on flimsy grounds with intent to avoid an entrusted duty, then it is not good for the discipline and combat readiness of the Army. In the case in hand, it is evident that the applicant has availed himself all the benefits of being detailed for Extra Regimental Duty, i.e. preparatory leave etc. It is also

evident that the family of the applicant was at Varanasi and the distance from 6 Mountain Division where he was detailed for a long period of Extra Regimental Duty was 300 kms closer than the distance from his parent Unit. Hence his ground for using family problems as a reason for not doing the Extra Regimental Duty as detailed is not convincing. He was charge sheeted under Section 63 of the Army Act, 1950 and after issuing charge sheet, providing adequate opportunity of defending himself and after complying with the procedure as envisaged in the Act and the Rules framed thereunder, he was awarded punishment of Severe Reprimand by his Commanding Officer

8. In view of the above, we do not find any reason to interfere with the impugned order.

9. The O.A. lacks merit and is accordingly **dismissed**.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : October 2018
anb