

RESERVED

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

O.A. No. 387 of 2018

Monday, this the 11th day of October, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 8991669-L Ex-AC(U/T) Krishna Pratap Singh son of Santosh Singh resident of Village & Post-Binaur, District-Kapur Nagar (U.P.), PIN-209304.

..... Applicant

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

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi, Pin-110011.
2. The Chief of Air Staff, Vayu Bhawan, New Delhi, Pin-110011.
3. Air Officer Commanding-in-Chief, Training Command, Bangalore.
4. Air Officer Commanding, Air Force Station, Jalahalli, Bangalore-560014.
5. Commanding Officer, ETI, AF, Jalahalli (East), Bangalore-560013.

..... Respondents

Ld. Counsel for the : **Shri Arun Kumar Sahu**, Advocate
Respondents Central Govt Counsel.

ORDER

1. The instant Original Application under Section 14 of the Armed Forces Tribunal Act, 2007 has been filed by the applicant with the following prayers :-

“(i) To pass an order or direction for quashing of order dated 05.06.2018 and 06.12.2018, passed by Op No 5 and 2 respectively which is annexed as Annexure No 1 and 5 to this application, by which the applicant was illegally discharged in utter violation of service jurisprudence.

(ii) To direct the respondent to and reinstate the applicant with all consequential benefits.

(iii) To direct the respondent to decide the representation/appeal of applicant dated 20.06.2018, sent by the applicant, to Opposite Party No 2, with reasoned and speaking order within stipulated time frame, fixed by this Hon'ble Tribunal.

(iv) Pass any order which this Hon'ble Tribunal deem fit and proper under the facts and circumstances of the case in favour of the petitioner, in the interest of justice.

(v) Allow the Original Application with cost.

2. Brief facts of the case are that applicant was enrolled in the Indian Air Force (IAF) on 28.12.2016 and discharged from service on 05.06.2018 on the ground of “unlikely to become efficient Airman before fulfilling the condition of enrollment” as per Rule 15 (2) (j) of Air Force Rules, 1969. On 12.09.2017 at around 1830 hrs a fight broke out between two groups of trainees in building No. P-163 at ETI, AF. All trainees belonged to JBPT 01/2017 course. There were two groups of the trainees which were headed by the applicant Krishna Pratap Singh and Sachin. During the fight, 3 trainees

sustained injury. A Court of Inquiry was conducted which found applicant and two other trainees guilty of the incident and were discharged from service w.e.f 05.06.2018 in accordance with Air Force law. After discharge, applicant submitted a representation dated 20.06.2018 against his discharge order which too was rejected vide order dated 06.12.2018. Being aggrieved with discharge order dated 05.06.2018 and rejection of his representation vide order dated 06.12.2018, applicant has filed this O.A. for quashing of aforesaid impugned orders and re-instatement in service with all consequential benefits.

3. Learned counsel for the applicant submitted that on account of scuffle with other trainees, applicant was issued warning order dated 12.10.2017 which was later revoked vide order dated 19.05.2018, i.e. after more than six months without providing him an opportunity of hearing and cross examination of witnesses during Court of Inquiry. His further submission is that no copy of Court of Inquiry was provided to applicant which is in utter violation of Rule 156 (7) of Air Force Rules, 1969. Applicant's learned counsel further submitted that applicant was issued warning order after scuffle and his removal from service is too harsh keeping in view of applicant being under training. He pleaded for quashing of discharge order in respect of applicant and his reinstatement into service.

4. On the other hand learned counsel for the respondents submitted that applicant while under training had a scuffle with other trainees on 12.09.2017 in which four persons were injured. He was issued a warning order dated 12.10.2017. His further submission is

that a Court of Inquiry dated 13.09.2017 to this effect was initiated which gave its findings on 23.09.2017 and vide its recommendation dated 23.09.2017, disciplinary action was initiated against fifteen trainees and administrative action was taken against three trainees including applicant for quarrelling in billet leading to manhandling including instigation, inciting violence, use of criminal force, failing to report the matter to authorities and use of threatening and insubordinate language in contravention to para 22 (c) and para 1 (a) of Appx 'L' to TCASI/Part-II/TG/02/15 read with Section 65 of the Air Force Act, 1950. All the three trainees (including applicant) were discharged from service w.e.f. 05.06.2018 in terms of Rule 15 (2) (j) of Air Force Rules, 1969. The learned counsel further submitted that since applicant was discharged from service by following due process, respondents have not erred in discharging him. He pleaded for dismissal of O.A.

5. We have heard learned counsel for both the sides and perused the material placed on record including Court of Inquiry proceedings.

6. A group of trainees of Indian Air Force undergoing training under JBPT 01/2017 (IPT-07) course was accommodated at GF-3 billet in Block No. F-163. On 12.09.2017 there started a quarrel and the trainees became divided in two groups. One group was headed by applicant and the other was headed by trainee Sachin. During scuffle, four trainees sustained injuries. A Court of Inquiry was ordered on 13.09.2017 by Air Officer Commanding (AOC), Air Force Station, Jalahalli to enquire into the incident. The Court of Inquiry started assembling on 15.09.2017 and subsequent days and total 44

witnesses were examined and evidences were recorded. During the Court of Inquiry, the Presiding Officer, Gp Capt AS Karkare submitted following events that led to the incident followed by Court of Inquiry and discharge of applicant:-

(a) About 10 days preceding to the incident, AC(U/T) Sachin was talking to his parents on phone at the corridor of his living-in billet and AC(U/T) KP Singh was having fun with his friends using abusive language. This led to a verbal altercation between KP Singh and Sachin.

(b) On 12.09.2017 at around 1445 hrs, KP Singh slapped Sachin. Later, in the evening trainees while in billet divided in two groups and fight broke out in which four persons were injured.

Court of Inquiry

7. The court decided to record the statements, first from witness Nos 1 (applicant), 2, 3 and 4 who were injured in the fight and thereafter statements were recorded in respect of other witnesses.

Witness No. 1

8. During Court of Inquiry, applicant who participated in Court of Inquiry as witness No. 1, accepted to have slapped Sachin and thereafter, scuffle with Sachin and his supporters. He also regretted for not reporting the incident to his seniors. As per him, four trainees were injured in the fight including him.

Deliberations by the Court

9. After recording the statement of witness No. 1 and questioning him, it was admitted by applicant that he had slapped witness No. 5 (Sachin) in billet at around 1445 hrs. This incident instigated

subsequent fights. The Court was of the view that applicant was likely to be blamed for quarrelling with fellow trainees leading to manhandling, instigating violence and failing to maintain good order and discipline. This witness declined to cross-examine other witnesses and refused to be present further in the Court of Inquiry.

Witness No. 2

10. During Court of Inquiry, witness No. 2 (Shivank Singh) participated and submitted that an argument took place between KP Singh and Sachin followed by fierce fighting between their colleagues in which he was injured when he tried to intervene. He accepted that KP Singh had slapped Sachin and also submitted that two to three persons were hiding their faces during scuffle.

Deliberations by the Court

11. While recording the statement of witness No. 2 and questioning him, it was admitted by witness No. 2 that witness No. 1 had slapped (Sachin) in billet at around 1445 hrs. This incident instigated in subsequent fights. The Court was of the view that witness No. 2 was involved in the fight in support of witness No. 1 and was likely to be blamed for quarrelling with fellow trainees leading to manhandling and failing to maintain good order and discipline. He declined to cross examine other witnesses and refused to participate in further Court of Inquiry.

Witness No. 3

12. During Court of Inquiry, witness No. 3 (A Vishwakarma) participated and submitted that an argument took place between KP

Singh and Sachin in the morning and Sachin threatened KP Singh. This led to fighting between their colleagues in which he was injured when he tried to intervene. He did not accept that KP Singh had slapped Sachin and submitted that four persons were injured in the scuffle.

Deliberations by the Court

13. While recording the statement of witness No. 3 and questioning him, it was established that witness No 3 is involved in the fight in support of witness No 1. It appeared to the court that witness No. 3 was likely to be blamed for quarrelling with fellow trainees leading to manhandling and failing to maintain good order and discipline. He declined to cross examine other witnesses and refused to participate in further Court of Inquiry.

Witness No. 4

14. During Court of Inquiry, witness No. 4 (Gaurank Tiwari) participated and submitted that on 12.09.2017 when KP Singh was in his billet, Sachin and his friends entered and started beating KP Singh but since all trainees were in billet they intervened and all dispersed. In the evening Sachin and his associates again came in billet and there was a fight in which when he tried to intervene, he was injured in the scuffle.

Deliberations by the Court

15. While recording the statement of witness No. 4 and questioning him, it was established that witness No 4 is involved in the fight in support of witness No 1. It appeared to the court that

witness No. 4 was likely to be blamed for quarrelling with fellow trainees leading to manhandling and failing to maintain good order and discipline. He declined to cross examine other witnesses and refused to participate in further Court of Inquiry.

16. Thereafter, statements in respect of rest of the witnesses were recorded and it was found that witness Nos 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 21 and 22 were at fault. It was also found that KP Singh had hit Sachin in billet as per the statements and answers given by the witnesses. Even KP Singh also admitted to have slapped Sachin. The Court further found that Sachin grouped with his friends and hit KP Singh and his friends in billet atleast couple of times as per statement and answers by witnesses, which Sachin admitted.

Opinion of the Court of Inquiry

17. Both KP Singh and Sachin chose to fight among themselves with the help of their friends and settle the score. Use of sticks, masking face with handkerchief and coming in a mob spoke volumes about the attitude of all the trainees involved in the fight irrespective of which side they were in. Any amount of explanation by witnesses did not justify usage of threatening and insubordinate language, act of violence and use of criminal force. The court blamed witness numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 21 and 22 on various counts and Air Force Regulation 790 (e) was applied on these witnesses.

Findings of the Court of Inquiry

18. The Court of Inquiry found witness Nos 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 21 and 22 blameworthy under para 22 (c) and Appendix 'L' of TCASI/PART-II/TG/02/15 (Instructions for ab-initio Trainees), Section 46 and 65 of Air Force Act, 1950 and Rule 790 (e) of Air Force Rules, 1969.

Recommendations of the Court of Inquiry

19. The Court recommended administrative action against KP Singh (witness No 1), Sachin (witness No 5) and Rahul Rana (witness No 6) on various counts i.e. quarrelling in billet leading to manhandling, instigating, inciting violence, use of criminal force, use of threatening and insubordinate language and failing to report to authorities and disciplinary action against witnesses Nos 2,3,4,7,8,9,10,11,12,13,14,15,16,21 and 22.

20. Thereafter, by order of AOC-in-C dated 17.05.2018 administrative and disciplinary action were initiated against all trainees who were held blameworthy by findings of Court of Inquiry dated 23.09.2017 and applicant was discharged from service w.e.f. 05.06.2018 after taking concurrence of AOC-in-C vide order dated 17.05.2018.

21. It may be noted that during Court of Inquiry, a warning order dated 12.10.2017 was issued to applicant which is reproduced as under:-

"1. It is to inform you that you have committed an act of indiscipline by involving in group physical clash in the Billet block No P-163 on 12.09.2017 (evening) that caused physical injuries to two

trainees. This is in contravention to the instructions issued to you on 02 Jul 17 on arrival at this institute. (Refer para 1(a) of Appendix 'L' of TCASI/Pt-II/TG/02/2015).

2. You are hereby warned that, any further act of indiscipline may lead to cease training and discharge from IAF."

22. Since the Court of Inquiry was in progress in which applicant was found blameworthy, therefore, the warning order was revoked vide letter dated 19.05.2018 and administrative action was taken to discharge the applicant.

23. Contention of applicant that he was not provided opportunity of hearing and cross examination of witnesses is not sustainable as applicant had participated in Court of Inquiry as witness No 1 and his statement was recorded on 15.09.2017 in which he denied to cross examine the other witnesses.

24. Vide para 4.8 of O.A. it was submitted that applicant was awarded punishment of warning on 12.10.2017 which was equivalent to admonition and the aforesaid punishment was revoked on 19.05.2018 arbitrarily after quite a long time. On this point it was submitted by the respondents that warning is not an admonition which, we find correct. Perusal of material placed on records indicates that the warning order dated 12.10.2017 was issued to applicant by his Chief Instructor on account of his misconduct amounting to indiscipline in terms of para 4 of TCASI/Part-II/TG/02/15. We observe that the warning order did neither contain any charge trial of the said offence by his Commanding Officer nor he was awarded any punishment.

25. We further observe that warning letter was issued to applicant by his Chief Instructor purely in discharge of his duties as Chief Instructor and this was not a final action since an independent Court of Inquiry was already ordered on 13.09.2017 to find out facts of the case. In this regard we are of the view that warning is not a punishment and is merely a caution for a person to mend his ways.

26. Vide para 5 (e & f) of O.A. and para 5 of rejoinder affidavit applicant's contention that he was discharged from service illegally on 05.06.2018. This submission of applicant is wholly untenable as applicant was held blameworthy by a duly constituted Court of Inquiry in which applicant actively participated and was afforded full opportunity to defend himself which he declined and the same is evident from his signature dated 15.09.2017 on page 11 of the Court of Inquiry proceedings.

27. The applicant while under training was found blameworthy of using criminal force to other trainees and was found by the AOC-in-C that he would not make a good soldier as such he was discharged from service as per Rule 15 (2) (j) of Air Force Rules, 1969 which for convenience sake is reproduced as under:-

“Section 15 (2) in The Air Force Rules, 1969

(2) Any power conferred by this rule on any of the aforesaid authorities may also be exercised by any other authority superior to it.

(j) Unlikely to make an efficient airmen- Commanding Officer Applicable to airmen undergoing training for airmen”.

28. Thus, the petitioner, while still under training was found blameworthy of quarrelling in billet leading to manhandling including instigation, inciting violence, use of criminal force, using threatening and insubordinate language in contravention to para 22 (c) and Appendix 'L' of TCASI/Part-II/TG/02/15, Section 46 and 65 of Air Force Act, 1950, and for such reason the competent authority considered him "Unlikely to become a good efficient airman". He was discharged from service under Rule 15 (2) (j) of Air Force Rules, 1969. Such action cannot be termed illegal or arbitrary. The normal rules of procedures, applicable to the soldiers cannot be applied to the recruit trainees as contemplated under the provisions of Air Force Act and Rules framed thereunder.

29. In such view of the matter, the contention of the learned counsel for the applicant that the Rules have not been adhered to while discharging applicant, cannot be accepted.

30. During the course of hearing, learned counsel for the applicant cited case laws relating to probationers vide (2013) 3 SCC 607, **State Bank of India and Anr vs Palak Modi and Anr**, (2010) 8 SCC 220, **Union of India & Ors vs Mahaveer C Singhvi** and pleaded that in view of aforesaid pronouncements, the present O.A. deserves to be allowed. We have gone through the aforementioned judgments and we find that grounds of present O.A. are different to that of cited case laws.

31. In any view of the matter, we do not find any merit in the O.A. to interfere with the order of discharge in exercise of the powers

under Article 226 of the Constitution of India and accordingly, the O.A. is **dismissed**.

32. No order as to costs.

33. Pending miscellaneous applications, if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 11.10.2021
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