

**RESERVED**

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

**Original Application No. 397 of 2019**

**Tuesday, this the 05<sup>th</sup> day of October, 2021**

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

Sonu Singh (No. 6501359F Sep/ASH) 515 Army Service Corps Battalion, Pin-905515, C/O 56 APO, S/O late Shri Dinanath Singh, R/O village-Bisauli, Tehsil-Bansdih, Police Station-Shtwar, District-Ballia (UP).

.... Applicant

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

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of Army Staff, Integrated Head Quarter Ministry of Defence (Army), New Delhi.
3. G.O.C. Head Quarter, 15 Infantry Division, PIN-908415, C/O 56 APO.
4. Commanding Officer, 515 Army Service Corps Battalion, PIN-905515, C/O 56 APO.
5. A Kishore Kumar, Capt Adjt for Commanding Officer, 515 Army Service Corps Battalion, PIN-905515, C/O 56 APO.

... Respondents

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

## ORDER

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 applicants have sought following reliefs:-

*(a) To set aside/quash the impugned movement order dated 26.04.2019, passed by the respondent No 5, whereby the applicant has been directed to leave the unit of 515 Army Service Corps Battalion on 26.04.2019 and to be SOS/SORS w.e.f. 26.04.2019.*

*(b) To set aside/quash the order of discharge from service (as referred in the movement order dated 26.04.2019) passed against the applicant without affording any opportunity of hearing and without serving/communicating the same to the applicant.*

*(c) To issue a direction to the respondents to reinstate the applicant on the post of Sepoy/Soldier with all consequential benefits of the said rank for full of period (since 26.04.2019 till the date of reinstatement), along with the interest.*

*(d) To issue any other further order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*

*(e) To award the cost of the instant application in favour of the applicant and against the respondents hereto.*

2. Brief facts of the case are that applicant was enrolled in the Army on 16.12.2011 and was discharged from service w.e.f. 26.04.2019 being undesirable soldier under the provisions of Rule 13 (3) III (v) of Army Rules, 1954 being undesirable soldier. This O.A. has been filed to set aside movement order/discharge order dated 26.04.2019 and reinstate him in service.

3. Learned counsel for the applicant submitted that applicant was discharged from service arbitrarily without application of mind and in

violation of the principles of natural justice as he was not provided with any opportunity of hearing. His contention is that prior to discharge from service neither a preliminary inquiry was conducted nor Show Cause Notice was issued to applicant. His further contention is that applicant was already punished for his misconduct by awarding five red ink entries and discharge from service led to double jeopardy which ought not to have been done. He pleaded for setting aside of discharge order and reinstatement of applicant into service.

4. Per contra, learned counsel for the respondents submitted that applicant has served in 890 AT Bn ASC, 725 (I) AD PI ASC and 515 ASC Bn. Prior to posting to 515 ASC Bn applicant's brief history with regard to award of punishments especially for intoxication is enumerated in the succeeding paras:-

(a) While posted with 890 AT Bn ASC applicant was inflicted punishment of 28 days Rigorous Imprisonment and 14 days pay fine (Red Ink Entry) on 27.08.2013 under Section 54 (b) of Army Act, 1950. **Punishment under Section 54 (b) is awarded when a person commits loss to Govt property.**

(b) While posted with 890 AT Bn ASC applicant was awarded 07 days Rigorous Imprisonment (Red Ink Entry) on 11.12.2013 under Section 63 of Army Act, 1950. **Punishment under Section 63 is awarded on account of violation of good order and discipline.**

(c) While posted with 890 AT Bn ASC applicant was awarded 14 days Rigorous Imprisonment (Red Ink Entry) on 09.12.2014 under

Section 48 of the Army Act, 1950. **Punishment under Section 48 is awarded on account of intoxication.**

(d) While posted with 890 AT Bn ASC applicant was awarded 07 days Rigorous Imprisonment (Red Ink Entry) on 16.06.2015 under Section 48 of the Army Act, 1950. **Punishment under Section 48 is awarded on account of intoxication.**

(e) While posted with 725 (I) AD PI ASC he, when found under influence of alcohol, was sent to 305 Field Hospital on 17.02.2016 for medical evaluation. He was referred to 155 Base Hospital for treatment and psychiatric evaluation by graded specialist and was discharged from Hospital on 29.02.2016 in medical category SHAPE-I. For his act of intoxication he was awarded 14 days Pay Fine (Black Ink Entry) on 04.03.2016 under Section 48 of the Army Act, 1950. **Punishment under Section 48 is awarded on account of intoxication.**

(f) On 10.09.2016 while posted with 725 (I) AD PI ASC he, when found in unconscious state, was referred to 155 Base Hospital and his medical category was downgraded to S3 (T-24) w.e.f. 19.10.2016 being a case of 'Alcohol Dependence Syndrome'.

(g) On 01.01.2017, while on leave he was admitted to Military Hospital, Ahmedabad by his brother on account of excess consumption of liquor and was discharged from Hospital on 24.02.2017. His re-categorization medical boards were held from time to time.

5. Learned counsel for the respondents further submitted that applicant was posted to 515 ASC Bn vide order dated 06.01.2018 and while moving from one unit to another, he, on 20.01.2018 at 240 Transit Camp, was found in intoxicated state by Corps of Military Police personnel and was admitted to 151 Base Hospital on 21.01.2018. On rejoining to new unit he was again admitted to Military Hospital, Amritsar on 05.04.2018 and discharged on 09.04.2018 in medical category S2 (T-24). On account of being placed in S2 (T-24), he was recommended to be under guard of 01 NCO and 03 ORs. On 03.07.2018 he was detained by civil police as a suspected drug peddler while roaming around in the prohibited area and was released when Company Havildar Major (CHM) BP Singh approached to police authorities for his release. On 11.07.2018 he was inflicted punishment of 14 days Rigorous Imprisonment (Red Ink Entry) under Section 63 of Army Act, 1950. On 12.10.2018 applicant's medical category was upgraded to SHAPE-I when he reported to Military Hospital, Amritsar for re-categorization medical board.

6. He further submitted that a Court of Inquiry dated 01.12.2018 was held to examine the disciplinary records of applicant for his retention in service or otherwise. Total six witnesses including applicant were present in the said Court of Inquiry. During the aforesaid Court of Inquiry witness No. 2 made statement that as per records available applicant was first time referred to medical authority along with AFMSF-10 as he got hurt on 14.08.2011 at around 0930 hrs. Witness No. 3 stated that he

was performing the duty of Regimental Police on 21.10.2018. He stated that there was some altercation between applicant and Nk/SHT Vishna Ram. On intervention of Maj Nisha Baloria, when applicant did not listen to her, he was put to quarter guard for safe custody being intoxicated. Witness No. 4 stated that on 22.10.2018 applicant made a call to her stating that he was beaten by Nk/SHT RK Upadhyay and Nk/SHT Vishna Ram. On query applicant could not produce any witness. He was intoxicated. Witness No. 5 stated that he was performing duty NCO on 21.10.2018 and while applicant went to cook house for taking dinner, he did not obey his order by not bearing full sleeves shirt. He called Maj Nisha Baloria who carried out on the spot inquiry and applicant was put to quarter guard after meal.

7. His further submission is that after following due procedure, applicant was discharged from service being undesirable soldier having earned five red ink entries.

8. We have heard learned counsel for the parties and perused the material placed on record.

9. We find that applicant having four red ink entries and one black ink entry reported to 515 ASC Bn (MLSS) on permanent posting from 725 (I) AD PI ASC w.e.f. 06.03.2018. In the new unit he was awarded 14 days rigorous imprisonment (red ink entry) on 11.07.2018 under Section 63 of Army Act, 1950 for violation of good order and discipline.

10. On having earned five red ink entries and one black entry, a Court of Inquiry was conducted on 01.12.2018. During Court of Inquiry applicant took active part and refused to cross examine the witnesses.

Thereafter, Army Rule 180 was invoked and Show Cause Notice dated 05.02.2019 (Annexure A-3 to O.A.) was issued to applicant and on receipt of reply (Annexure A-4 to O.A.), sanction for discharge of applicant was issued by GOC, 15 Infantry Division vide letter dated 13.03.2019 and he was discharged from service w.e.f. 16.04.2019.

11. On careful analysis, we find that 'Alcohol Dependence Syndrome' is primarily a disease where an individual cannot control his excessive drinking habits. This disease leads to being drunk while on duty and poor performance during discharge of official duties.

12. It is also well known that all efforts are made by military doctors and the organization to help a soldier who has become a victim of 'Alcohol Dependence Syndrome' and only when all efforts fail, the soldier is discharged/invalided out on ground of undesirable soldier/Alcohol Dependence Syndrome.

13. We take note that applicant being habitual drinker was punished six times by awarding six bad entries, three of them on account of 'Intoxication', during the period 2013 to 2018 as under:-

Ser No	Date and unit of Award	Army Act/Section/Nature of Offence	Punishment Awarded	Nature of Entry (Red/Black)
(a)	27.08.2013 (890 AT Bn ASC)	AA Section 54 (b)	28 days Rigorous Imprisonment and 14 days Pay Fine.	Red Ink
(b)	11.12.2013 (890 AT Bn ASC)	AA Section 63	14 days Rigorous Imprisonment	Red Ink
(c)	09.12.2014 (890 AT Bn ASC)	AA Section 48	14 days Rigorous Imprisonment	Red Ink
(d)	16.06.2015 (890 AT Bn ASC)	AA Section 48	07 days Rigorous Imprisonment	Red Ink
(e)	04.03.2016 (725 (I) AD PI ASC)	AA Section 48	14 days Pay fine	Black Ink
(f)	11.07.2018 (515 ASC Bn)	AA Section 63	14 days Rigorous Imprisonment	Red Ink

14. From the above, an inference may be drawn that during the years 2013-2018, applicant was punished mainly for the offences with regard to

intoxication in which he earned four bad entries (three red and one black) and two other red ink entries related to offences under Army Act Section 54 (b) and 63. The aforesaid punishments were awarded by different Commanding Officers where applicant served from 2013 to 2018.

15. During the course of hearing, a submission was made by learned counsel for the applicant that one of the signatures on Annexure No. A-1 and on letter dated 16.04.2019 are forged as they are not identical. On perusal it was established that both the letters were signed by different persons holding different posts, therefore, submission made by applicant in this regard is not tenable.

16. While dictating judgment we find that letter dated 29.03.2019 (page 22 to O.A.) addressed to applicant indicates that though approval for his discharge was taken from competent authority on 13.03.2019, yet an advisory was issued by Commanding Officer for continuation of his service subject to improvement in his behaviour which shows leniency on the part of the respondents. For convenience sake letter dated 29.03.2019 is reproduced as under:-

"CONFIDENTIAL

BY HAND

515 ASC Bn (MLSS)  
PIN-905515  
C/O 56 APO  
29.03.2019

1103/ST-12

No 6501359F  
Sep/ASH Sonu Singh  
515 Army Service Corps Battalion  
PIN-905515  
C/O 56 APO

ADVISORY FOR CONTINUATION OF SERVICE

1. It is to inform you that you have been awarded five red ink entry punishments and one black ink entry punishment in your conduct sheet.

*The details of the punishments awarded to you for the offences under various Army Act Sections are as under:-*

<i>Ser No</i>	<i>Date and unit of Award</i>	<i>Army Act/Section/Nature of Offence</i>	<i>Punishment Awarded</i>	<i>Nature of Entry (Red/Black)</i>
<i>(a)</i>	<i>27.08.2013 (890 AT Bn ASC)</i>	<i>AA Section 54 (b)</i>	<i>28 days Rigorous Imprisonment and 14 days Pay Fine.</i>	<i>Red Ink</i>
<i>(b)</i>	<i>11.12.2013 (890 AT Bn ASC)</i>	<i>AA Section 63</i>	<i>14 days Rigorous Imprisonment</i>	<i>Red Ink</i>
<i>(c)</i>	<i>09.12.2014 (890 AT Bn ASC)</i>	<i>AA Section 48</i>	<i>14 days Rigorous Imprisonment</i>	<i>Red Ink</i>
<i>(d)</i>	<i>16.06.2015 (890 AT Bn ASC)</i>	<i>AA Section 48</i>	<i>07 days Rigorous Imprisonment</i>	<i>Red Ink</i>
<i>(e)</i>	<i>04.03.2016 (725 (I) AD PI ASC)</i>	<i>AA Section 48</i>	<i>14 days Pay fine</i>	<i>Black Ink</i>
<i>(f)</i>	<i>11.07.2018 (515 ASC Bn)</i>	<i>AA Section 63</i>	<i>14 days Rigorous Imprisonment</i>	<i>Red Ink</i>

*2. In view of the above, a case for your discharge from service as an undesirable soldier was taken up. The same has been approved by GOC, 15 Inf Div on 13 Mar 10.*

*3. However, you took the personal interview of the undersigned, wherein JC-667478F Sub Maj SC Debata & 14856590N Nk/Clk (SD) Mithun KC were also present. The undersigned has considered your request and decided to give you a last chance to improve.*

*4. Thereafter, if you don't improve in future, your service will be terminated and you will be discharged from service as an undesirable soldier.*

*sd/- x x x x x x  
(Sanjeev Singh)  
Col  
CO"*

17. The aforesaid letter shows that even after issue of sanction letter for his contemplated discharge, applicant was given a last chance to improve and when all efforts failed, he was discharged from service being an undesirable soldier.

18. Thus, considering that due process as envisaged in policy letter dated 28.12.1988 has been followed by Army in discharging the applicant as undesirable soldier, we decline to interfere with this process or provide any other relief to the applicant. The applicant has been rightly discharged from service as an undesirable soldier being the case of 'Alcohol Dependence Syndrome' as endorsed in the Hospital Discharge Slip dated 12.10.2018. We observe from the aforesaid discharge slip that applicant was sent to his unit

along with escort as he was unable to proceed independently being suffering from 'Alcohol Dependence Syndrome'.

19. In view of the above, the Original Application No. 397 of 2019 deserves to be dismissed, hence **dismissed**.

20. No order as to costs.

21. Pending applications, if any, stand disposed off.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated : 05.10.2021  
rathore