

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 110 of 2021**Thursday, this the 28th day of October, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Ex Gnr/SHGD Pawan Kumar (Army No. 15117282-F)
Of HQ Bty/9 PARA Fd Regt, C/o 99 APO
S/o Shri Om Prakash
R/o 202, Suryalok Colony, Mhow Road, Dayal Bagh,
New Agra – 282005**.... Applicant**Ld. Counsel for the Applicant : **Shri Bhanu Pratap Singh,**
Shri KKS Bisht &
Shri Vishwas Shukla, Advocate.

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi – 110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi – 110011.
3. JS (E/CAO), Government of India, Ministry of Defence, 'E' Block, Dalhousie Road, new Delhi – 110011.
4. Officer-in-charge Records, Topkhana Abhilekh, Artillery Records, Nasik Road Camp, Maharashtra – 422102.

... RespondentsLd. Counsel for the Respondents : **Dr. Gyan Singh,**
Central Govt Counsel**ORDER**

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

- “(a) Issue/pass an order or direction to the respondents to quash/set-aside the arbitrary and illegal discharge of the

applicant w.e.f. 20.03.2004 (FN) and to reinstate him with all consequential benefits.

- (b) Issue/pass an order or direction of appropriate nature to the respondents to decide the representation preferred by the applicant on 07.11.2016 (Annexure No. A-1 (ii) which is pending before the respondent No. 4.
- (c) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.
- (d) Allow this application with costs."

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 30.11.1991 and was discharged from service on 20.03.2004 before completion of terms and engagement under Rule 13 (3) III (v) of Army Rules, 1954 being unsuitable for further retention in military service under the provisions of IHQ of MoD (Army) letter dated 28.12.1988. During the entire service, the applicant was awarded punishments for his offences committed on five different periods. Accordingly, applicant was discharged from service being undesirable soldier. The applicant being not satisfied with the procedure of discharge, has filed this Original Application to quash his discharge order and to reinstate him in service.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Army on 30.11.1991 and has been discharged from service in an illegal and arbitrary manner. During leave period on 16.12.2001, applicant was assaulted by his neighbours and had head injuries for which he was operated in Medical College, Agra. Thereafter, an F.I.R. was lodged by his father in New Agra police station. After being recovered from his injuries, the applicant rejoined

duty. While posted with 9 Para Field Regiment applicant was asked by his Commanding Officer to resign from service and was assured that he will be given disability pension. The applicant has been discharged from service locally w.e.f. 19.03.2004 by the order of Commander 57 Mountain Artillery Brigade being undesirable soldier after rendering 12 years, 3 months and 18 days of service. The applicant has been deceived by the authorities and resignation has been sought from him on the pretext of granting disability pension. On perusal of Discharge Book, applicant came to know that he has been discharged in medical category SHAPE-1 and not in low medical category.

4. Learned counsel for the applicant further submitted that not only a show cause notice was to be served upon the applicant which is an essential part of the requirement of the rule but also an impartial enquiry into the allegations levelled against the applicant in which it was also required and he is entitled to an adequate opportunity of putting up his defence and adducing evidence in support thereof. The order of discharge has been passed in a clear violation of Army Rules and Articles 14, 16 and 21 of the Constitution of India, as such the impugned order in question cannot be said to be just and proper and the same is liable to be quashed by this Tribunal and applicant should be reinstated in service with all consequential benefits. He also placed reliance on the judgment of the Hon'ble Apex Court in ***Veerendra Kumar Dubey vs. Chief of Army Staff & Ors***, Civil Appeal No. 32135 of 2015, decided on 16.10.2015 and AFT (RB),

Lucknow judgment in O.A. No. 400 of 2017, **Guru Prakash Pandey vs. Union of India and Ors**, decided on 13.07.2018 and pleaded that applicant's case is similar to aforesaid judgments and therefore, his discharge order to be quashed and applicant should be reinstated in service with all consequential benefits.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in the Indian Army on 30.11.1991 and was discharged from service on 20.03.2004 being undesirable soldier under Army Rule 13 (3) III (v) and Army HQ letter dated 28.12.1988. During the entire service, the applicant was awarded punishments as per following details:-

Ser No.	Period of Offence	Army Act Section	Offence	Punishment awarded
(a)	10.10.1993 to 11.10.1993	39(a)	Absenting himself without leave	7 days RI
(b)	02.05.1997 to 14.06.1997	39 (a)	Absenting himself without leave	28 days RI
(c)	10.09.1998	40(a)	Using criminal force to his superior officer	14 days RI
(d)	18.10.1998 to 27.11.1998	39 (b)	Overstaying of leave	Tried by SCM and awarded 60 days RI
(e)	04.10.2000 to 17.01.2002	39 (1)	Deserting the service	(i) 28 days RI. (ii) 14 days detention. (iii) 14 days pay fine.

6. Learned counsel for the respondents further submitted that applicant was a habitual offender and has shown utter disregard to military discipline and set an extremely bad example to other disciplined soldiers in the unit. Certain norms and standard of behaviour and a high degree of discipline is expected from military personnel but the applicant never cared of his future prospects and demonstrated no improvement in this regard. Since, the applicant was a habitual offender, his retention in the Army was considered

undesirable in the longer interest of military discipline. He also submitted that since the applicant was discharged from service in SHAPE-1 medical category, hence, he is not entitled for disability pension as per rules.

7. Ld. Counsel for the respondents further submitted that applicant was a habitual offender and has shown utter disregard to military discipline and set an extremely bad example to other disciplined soldiers in the unit. Certain norms and standard of behaviour and a high degree of discipline is expected from military personnel but the applicant never cared of his future prospects and demonstrated no improvement in this regard. Since the applicant had failed to show improvement in discipline and sense of devotion towards duty despite frequent counselling and punishment keeping in view the above facts, it was brought out that the applicant was not upto the acceptable limit of discipline of soldier in Indian Army where the discipline is the backbone. Therefore, applicant was issued a Show Cause Notice dated 31.01.2004 by Officiating Commander 57 Mountain Artillery Brigade. The notice was replied by the applicant on 04.03.2004. The reply of the applicant was examined and it was not considered appropriate, therefore, Commander 57 Mountain Artillery Brigade accorded sanction to discharge the applicant from service vide order dated 09.03.2004 and accordingly, applicant was discharged from service w.e.f. 20.03.2004 being undesirable soldier.

8. Ld. Counsel for the respondents also relied on the judgment of the Hon'ble Apex Court in Civil Appeal No. 1857 of 2018, **Sep Satgur**

Singh vs. Union of India & Ors, decided on 02.09.2019. Para 7 of the judgement being relevant is quoted below :-

“7) We do not find any merit in the present appeal. Para 5(a) of the Circular dated December 28, 1988 deals with an enquiry which is not a court of inquiry into the allegations against any army personnel. Such enquiry is not like departmental enquiry but semblance of the fair decision-making process keeping in view the reply filed. The court of inquiry stands specifically excluded. What kind of enquiry is required to be conducted would depend upon facts of each case. The enquiry is not a regular enquiry as para 5(a) of the Army Instructions suggest that it is a preliminary enquiry. The test of preliminary enquiry will be satisfied if an explanation of a personnel is submitted and upon consideration, an order is passed thereon. In the present case, the appellant has not offered any explanation in the reply filed except giving vague family circumstance. Thus, he has been given adequate opportunity to put his defence. Therefore, the parameters laid down in para 5(a) of the Army Instructions dated December 28, 1988 stand satisfied.”

Learned counsel for the respondents pleaded that O.A. may be dismissed.

9. We have heard learned counsel for both sides and perused the material placed on record.

10. Before advertng to rival submissions of learned counsel of both sides, it is pertinent to mention that judgments relied upon by the applicant in Para 4 referred above are not relevant in the present case being based on different facts and circumstances.

11. We find that applicant was negligent towards his duties, indiscipline soldier and habitual offender. During his service, the applicant was awarded punishments for his irresponsible attitude and indiscipline nature towards his duty for his offences committed on five different periods. Even after giving repeated warnings/ counselling, the applicant did not show any improvement in his personal/military discipline and conduct. There being no other option, being an

undesirable soldier, the applicant was discharged from service after due procedure as per Army Rule 13 (3) III (v) and Army Headquarters policy letter dated 28.12.1988 on the subject. Hence, the applicant is not entitled the relief prayed in Original Application to quash his discharge order.

12. In view of the above, we do not find any illegality or illogicality in discharging the applicant from service. The O.A. deserves to be dismissed. It is accordingly **dismissed**.

13. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)

Member (A)

Member (J)

Dated: October, 2021

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