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

ORIGINAL APPLICATION No. 399 of 2020

Tuesday, this the 11th day of October, 2022

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

No 2617134Y Sep Akhil DJ of 6 Madras, son of Dharmarajan, resident of DJ Nivas, Valiyavila, Paliyode, Kottackal, P.O.-Anavoor, Thiruvananthapuram, Kottackal (Tvm), Kerala-695124.

.... Applicant

Ld. Counsel for the: **Shri Abhishek Dwivedi**, Advocate.
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of Army staff, Army Headquarter, South Block, New Delhi-110011.
3. Brigade Commander, HQ 28 Infantry Brigade, PIN-908028, C/o 56 APO.
4. Commanding Officer, 6 MADRAS, PIN-911406, C/o 56 APO.

... Respondents

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

ORDER (Oral)

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:-

(a) Issue an order or direction quashing and setting aside the impugned order dated 14.07.2016, (as contained in Annexure-1) passed by the respondents, as the impugned order has been passed without affording time/opportunity to the applicant to represent his case before the competent authority and the same is not reasoned and speaking, therefore the impugned order is in violation of the principles of natural justice and Article 14 of the Constitution.

(b) Issue an order or direction to reinstate the applicant in service along with all consequential benefits of service including due promotions and other benefits on the post of the applicant.

(c) Issue an order or direction to pay the medical benefits and other benefits to the applicant, keeping 30% disability which he suffered during the course of training and was not held by the respondents.

(d) Any other relief which this Hon'ble Tribunal deems fit, just and proper under the circumstances of the case may also be passed in favour of the applicant.

(e) Cost of the present O.A.

2. The factual matrix of the case is that No 2617134Y Ex Sep Akhil DJ was enrolled in the Army on 19.03.2010. During his service of 06 years and 03 months, he served in Sikkim (Nathula Pass) in the year 2011.

3. He incurred five red and one black ink entries in addition to detention in military custody on three

occasions and pay fine on two occasions during his service, consequently, the respondents discharged him from service under the provisions of Rule 13 (3) Item III (v) of the Army Rules, 1954 being an 'Undesirable Soldier' with effect from 14.07.2016 (AN).

4. Aggrieved by the said order of discharge, the applicant submitted an undated letter to the Prime Minister of India and has filed this O.A. before this Tribunal praying for the reliefs mentioned in Para 1 above.

5. Learned counsel for the respondents drew our attention to punishments awarded to the applicant mentioned at paragraph 3 of the counter affidavit which is reproduced below:-

Ser No.	Army Act Section	Nature of Offence	Date of Offence	Date of Punishment	Punishment Awarded
1.	39 (b)	Overstaying leave (18 days)	29.08.2011	29.09.2011	14 days pay fine (black ink)
2.	39 (a)	Absenting himself without leave (82 days)	20.10.2011	16.01.2012	14 days pay fine and 28 days rigorous imprisonment (Red ink)
3.	39 (b)	Overstaying leave (60 days)	13.08.2012	12.10.2012	28 days rigorous imprisonment and 14 days pay fine (Red ink)
4.	39 (a) & (b)	Overstaying leave (30 days) and absent without leave for one day	<u>13.01.2015</u> 22.02.2015	03.09.2015	03 days detention and 14 days pay fine (Red ink)
5.	39 (a)	Absenting himself without leave (14 days)	05.03.2015	08.09.2015	03 days detention (Red ink)

6.	39 (a)	Absenting himself without leave on two occasions (15 days and 30 days)	<u>19.06.2015</u> 02.08.2015	13.10.2015	03 days detention and 14 days pay fine (Red ink)
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6. Submission of learned counsel for the applicant is that during the course of his training on 02.07.2013 the applicant sustained injury on his back while climbing rope. He was admitted to Army Hospital, Wellington, Ooty, Tamilnadu and had undergone prolonged treatment from where he was granted 28 days sick leave. He further submitted that due to aforesaid injury, the applicant had to take leave on several occasions during his service tenure in the Army and because of the same reason sometimes he had to extend his leave for getting Ayurvedic treatment which he communicated to his superiors through telephonic conversation but even then he was punished. Further submission of learned counsel for the applicant is that due to above reasons, the behavior of officers of the Regiment towards the applicant became aggressive and he was punished time and again on trivial grounds with the sole intention and ulterior motive to discharge the applicant from service.

7. Learned counsel for the applicant brought out that the applicant was not afforded reasonable time to submit his reply to Show Cause Notice before the competent

authority and by means of impugned order dated 14.07.2016 the applicant was discharged from service without passing any written order, merely on the basis of sanction of the competent authority, which is violative of Article 14 of the Constitution. It was further submitted that the applicant was not aware that he was being discharged from service in illegal and pervasive manner. The respondents failed to consider the medical condition of the applicant which was on record and which he had suffered during the course of his duty.

8. Learned counsel for the applicant further submitted that the applicant being in medical category P3 (permt) ought to have been provided disability pension but even after lapse of considerable period, no amount has been provided to the applicant till date. It was further submitted that the applicant was also not provided his AFPP fund balance. He pleaded that since the applicant was illegally discharged from service, he should be reinstated in service with all consequential benefits.

9. On the other hand, learned counsel for respondents argued and brought out that the applicant was an undisciplined soldier who in a very short span of service was awarded six (five red and one black ink entries) punishments on account of overstayal of leave/absent without leave (OSL/AWL). In the instant O.A. also there

is no challenge to the punishments by the applicant as such the legality of the punishments awarded to the applicant is not subject matter. The applicant was awarded five red ink entries and one black ink entry on different occasions (between the year 2011 to 2015) solely on the ground of OSL/AWL.

10. Further submission of learned counsel for the respondents is that the applicant was awarded the above punishments within 06 years, 03 months and 25 days of his service for OSL/AWL under Army Act Section 39 (a) and (b) for committing offences for which the applicant is himself responsible. It was submitted that the Army, being a disciplined organization, cannot retain personnel who continuously commit offences since it overall affects discipline and may become a bad example to other soldiers. He further submitted that as per the provisions under Army Rule where an individual incurs four red ink entries for offences charged under the Army Act and documents showing no improvements in his behavior, his services can be terminated. Thus, keeping in view of his bad record of service a Show Cause Notice dated 07.01.2016 was issued and on receipt of his reply dated 13.01.2016 he was discharged from service under Rule 13 (3) (iii) (v) of Army Rules, 1954 w.e.f. 14.07.2016 being services no longer required. He pleaded for

dismissal of O.A. on the ground that applicant's services were terminated in accordance with rules.

11. We have heard Shri Abhishek Dwivedi, learned counsel for the applicant and Shri Amit Jaiswal, learned counsel for the respondents and perused the record.

12. There is no dispute that the applicant was enrolled in the Army on 19.03.2010 in MADRAS Regiment of the Indian Army. After completion of military training he was posted to 6 MADRAS on 06.03.2011. During his course of service he incurred five red ink and one black ink entries for OSL/AWL. The record shows that inspite of giving ample opportunities the applicant did not show any improvement in his discipline/conduct which resulted in his discharge from service as an 'undesirable soldier'.

13. We have observed that during his service tenure the applicant sustained injury in his low back and diagnosed as 'Acute Low Back Ache with PIVD L4-5/L5S1' and regarded as attributable to military service. Accordingly, after discharge from service he was granted 30% disability element rounded off to 50% disability element which he is in receipt of vide PPO No 159201900186. Therefore, submission of the applicant that he has not received disability element of pension is misconceived and baseless.

14. We also find that the applicant being a habitual offender had served in his unit only for 610 days (including 58 days of rigorous imprisonment and 28 days pay fine) during his entire service of 06 years, 03 months and 25 days, which fact is apparent by letter dated 20.04.2015 (Exhibit R-4), extract of which is reproduced as under:-

"1. x x x x

2. *The indl has been OSL/AWL six times in his service and since his admission in Base Hosp, Delhi on 21 Jul 2014, he has been OSL/AWL thrice and has not been in unit even for a single day. He has been either admitted in MH, on sick lve or OSL/AWL. x x x x.*

3. *The indl has been a regular offender since his post recruitment. In this connection kindly refer to our a/m letter mentioned at Para 1(a) & appx to that. Since the day indl was enrolled in Army on 19 Mar 2010, he has been in MH/Sick lve/OSL/AWL for 866 days and in unit only for 610 days which includes 56 days of RI and 28 days pay fine.*

4. x x x x.

5. x x x x."

15. The Show Cause Notice dated 07.01.2016 was issued to applicant by the Commander, Headquarters 28 Infantry Brigade i.e. by Higher Military Authority and in response to the Show Cause Notice the applicant submitted his reply dated 13.01.2016. In his reply he did not deny the charges and requested for one last opportunity for his improvement. In the Show Cause notice issued to the applicant, there was no legal infirmity. As per Army Headquarters letter dated 28.12.1988, prescribed procedure for his removal from

service was adopted. Preliminary inquiry, which in fact was not required to be conducted as per Army Rule 22, was conducted wherein opportunity was given to him to submit his defence which he declined. The applicant being a perpetual offender was also setting a wrong example in the unit. He lacked discipline and had scant regard for authority and vitiated the congenial working environment of the unit. His continuation in service was having bad influence on his peers, particularly his juniors and was detrimental to the organization, therefore he was discharged from service as an undesirable soldier.

16. Therefore, in view of the aforesaid facts and legal position, the O.A is misconceived and devoid of merits, as such it is liable to be dismissed.

17. In view of above, we do not find any merit in this case and this Original Application is **dismissed** accordingly.

18. No order as to costs.

19. Pending application(s), if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 11.10.2022
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