

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**TRANSFERRED APPLICATION NO 84 of 2013**Friday, this the 1st day of September, 2017**Hon'ble Mr. Justice D.P. Singh, Member (J)**
Hon'ble Air Marshal Anil Chopra, Member (A)

Gurcharan Singh, Sepoy No. 4457380P son of Shri Gurbux Singh

(through)

- (1) Gurmit Singh,
- (2) Shamsheer Singh, sons of Gurcharan Singh,
- (3) Balpreet Kaur
- (4) Manpreet Kaur daughters of Gaurcharan Singh,
residents of Village Lohari, Post Singh Bhagwantpur, district
Ropar (Punjab

....Petitioners

Versus

1. The Union of India, through Secretary to the Ministry of Defence,
Govt Of India, New Delhi.
2. The Commandant Sikh Light Infantry, Fatehgarh U.P.
3. The Commandant 33D, Infantry Brigade c/o 56 A.P.O.
4. The Chief of army Staff, Army Headquarters, New Delhi.
5. The Commandant 11 Sikh Light Infantry, through the Commandant
Sikh Light Infantry, Fatehgarh U.P.

.....Respondents

Counsel for applicant :**Shri Bachchan Singh.**Counsel for respondents :**Amit Jaiswal,
Advocate.**Assisted by :**Maj Salen Xaxa, OIC Legal Cell**

ORDER (ORAL)

1. Being aggrieved with the order of discharge the deceased petitioner Gurcharan Singh filed Original Suit No.186 of 1988 in the Court of City Munsif, Farrukhabad at Fatehgarh. On establishment of the Tribunal the said Original Suit has been transferred to this Tribunal in pursuance to provision of Section 34 of the Armed Forces Tribunal Act, 2007 and has been renumbered as T.A. No. 84 of 2013.
2. We have heard learned counsel for the parties and perused the record.
3. The impugned order of discharge dated 10.06.1987 has been passed on account of four red ink entries suffered by the deceased petitioner. Learned Counsel for the petitioners submitted that the order of discharge has been passed without issuing show cause notice and without holding preliminary enquiry. Submission of learned counsel for the petitioners is that the impugned order has been passed in utter disregard to the principles of natural justice and is liable to set aside.
4. So far as four red ink entries are concerned, in paras 21, 22 and 23 of the counter affidavit are relevant and reproduced as under:

“22. That the performance and general conduct of the plaintiff remained totally unsatisfactorily throughout his service period. During the total service of the plaintiff of 8 years 4 months and 9 days he earned four red ink entries i.e. adverse entries as he had been punished under section 39 (a) (b) of the Army Act, i.e. for absenting himself/overstaying leave on four occasion. It is wrong to say that the performance and conduct of the plaintiff has always remained satisfactory.”

“23 That it is wrong to say that the order of the discharge has not been communicated to the plaintiff as the same was duly notified to him, as evident from his signatures on Rollof discharge (IAFY-1948”

“24. That under Army Rule 13 (3) III (V) read with HQ Letter No. A/00660/25/ERtg 8 (I of R) (a) dt 21 Jul 73, an Army person may be discharged from service if he earns four or more red ink entries. The performance and conduct of the plaintiff was found unsatisfactory as he was awarded four red ink entries for persistent absence from duty.”

5. So far as arguments advanced by learned counsel for the petitioners that no inquiry was held, the same is misconceived for the reason that

provisions with regard to preliminary inquiry is governed by Army Headquarters letter No A/13210/159/AG/PS(C) dated 28 December 1988 and in Original Application No. 168 of 2013 **Nk Abhilash Singh Kushwah vs. Union of India and others** decided on this the 23rd day of Sep 2015, followed by Hon'ble Apex Court decision in the case of **Union of India vs. A.K. Pandey**, reported in 2009 (1) SCC 552 we have held that inquiry is condition precedent with regard to red ink entries. In the present case, show cause notice was served on the petitioners and sufficient compliance of principles of natural justice seems to have been done because of service of show cause notice.

6. Maj Salen Xaxa, OIC Legal Cell submitted, and rightly so, that the policy of 1988 (supra) came into vogue from 28 Dec 1988 and it was not given retrospective effect, as such the said policy is not applicable in the fact of the present case.

6. No further argument has been advanced or contention has been made in view of material on record which may make out a case for interference with the impugned order of discharge. We do not find any error in the impugned order of discharged passed after issuing show cause notice followed by inquiry proceedings. The petition, being devoid of merits is liable to be dismissed.

It is accordingly **dismissed**.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P. Singh)
Member (J)

Dated : 01.09.2017
anb