

E-Court**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****TRANSFERRED APPLICATION No. 851 of 2010**Friday, this the 23rd day of September, 2022**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Samimuddin S/o Shri Shafik Ullah (Ex-Sepoy bearing Army No. 1567663, Bombay Engineering Group) resident of stand No. B/10, New Ashok Nagar, Bhopal (MP).

..... Petitioner

Ld. Counsel for the : **Shri R.Chandra, Advocate.**
Petitioner

Versus

1. Commanding Officer, 109 Engineer Regiment, Sagar (MP).
2. Commanding Officer, Bombay Engineering Group, Records Office, Kirkee Pune, Maharashtra.
3. Chief of the Army Staff, Indian Army, Sena Bhawan, New Delhi.
4. General Officer Commanding-in-Chief Indian Army, Southern Command, Pune.

.....**Respondents**

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

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. This Writ Petition No 6557 of 2000 has been received by this Tribunal by way of transfer under Section 34 of the Armed Forces Tribunal Act, from Hon’ble High Court of Madhya Pradesh at Jabalpur and renumbered as Transferred Application No. 581 of 2010. By means of the instant T.A., the petitioner had made the following prayers:-

- (i) issue a writ in nature of writ of certiorari for quashing the discharge order and discharge Book after calling the same from respondents 1 and 2.*
- (ii) to Command respondents to re-instate petitioner with back wages and all consequential benefits.*
- (iii) to grant any other relief deemed proper to the facts and circumstances of the present case.*

2. Brief facts of the case are that the petitioner was enrolled in the Indian Army on 07.06.1983 and was discharged from service on 18.04.1996 being undesirable soldier under Army Rule 13 (3) III (v) as “Service No Longer Required”. During the entire service, the petitioner was awarded four red ink and three black ink entries punishments. Since the petitioner had failed to show improvement in discipline and sense of devotion towards

duty despite frequent counseling and punishments, it was brought out that the petitioner was not upto the acceptable standard of discipline of soldier in Indian Army where the discipline is the backbone. Therefore, petitioner was issued a Show Cause Notice dated 07.03.1996 by 109 Engineer Regiment. The competent authority was not satisfied with the reply of the petitioner and hence proposal for discharge from service under Army Rules 13 was initiated and competent authority sanctioned discharge order of the petitioner and accordingly, petitioner was discharged from service w.e.f. 18.04.1996 being an undesirable soldier. Thereafter, petitioner submitted representation for his reinstatement him in service but the same was denied. Being aggrieved, the petitioner has filed this Transferred Application to quash his discharge order and to reinstate him in service.

3. Learned counsel for the petitioner submitted that petitioner was discharged from service in an illegal and arbitrary manner violating the provisions of Army HQ letter dated 28.12.1988. The red ink entries have been forcibly awarded without any fault on the part of the petitioner. Petitioner was discharged from service before completion of terms of engagement after rendering only 13 years of service whereas for earning pension, 15 years of

colour service was required. He was awarded 13 years meritorious service medal by Deputy Commandant. As per Army HQ letter dated 28.12.1988, a preliminary enquiry is to be held in impartial manner before recommending discharge. The order of discharge was passed in a clear violation of Army Rules 13 & 22 and Article 20 of the Constitution of India, as such the impugned order of discharge be quashed and petitioner be reinstated in service with all consequential benefits.

4. He also placed reliance on the judgment of the Hon"ble Apex Court in ***Vijay Shankar Mishra vs. Union of India & Ors***, Civil appeal Nos. 12179-12180 of 2016 (Arising out of Civil appeal (D) No. 34132 of 2013), decided on 15.12.2016, ***Veerendra Kumar Dubey vs. Chief of Army Staff and Ors***, Civil appeal D No. 32135 of 2015, decided on 16.10.2015 and AFT (RB) Lucknow judgment in OA No. 183 of 2018, ***Arun Kumar Pandey vs. Union of India and Ors***, decided on 23.07.2021 and OA No. 222 of 2011, ***Rajesh Kumar vs. Union of India and Ors***, decided on 01.12.2015 and pleaded that petitioner's case is similar to aforesaid judgments and therefore, his discharge order be quashed and petitioner be reinstated in service.

5. On the other hand, Ld. Counsel for the respondents submitted that petitioner was enrolled in the Indian Army on 07.06.1983 and was locally discharged from service on 18.04.1996 being undesirable soldier after rendering about 13 years service under Army Rule 13 (3) III (v) as "Service No Longer Required". During the entire service, the petitioner was awarded four red ink and three black ink entries punishments as per following details:-

Ser No	Date of Punishment	Army Act Section	Offence	Punishment awarded
1.	09 Sep 1986	39(b)	Over staying leave.	21 days IMC
2.	04 May 1988	39 (f)	Found beyond limits fixed by local orders without pass from his superior	7 days pay fine
3.	04 Jan 1988	39 (a)	Absent without leave.	7 days pay fine.
4.	19 Jun 1991	39 (b)	Over staying leave	Relinquish of acting rank.
5.	17 April 1993	39 (b)	Over staying leave	28 days IMC and 14 days detention.
6.	13 Sep 1994	39 (b)	Over staying leave	28 days IMC and 14 days Detention.
7.	15 May 1995	63	An act prejudicial to good order and Mil Discipline.	28 days IMC and 14 days Detention.

6. Ld. Counsel for the respondents further submitted that since the petitioner had failed to show improvement in discipline and sense of devotion towards duty despite frequent counseling and punishments keeping in view the above facts, it was brought out that the petitioner was not upto the acceptable limit of discipline

of soldier in Indian Army where the discipline is the backbone. Therefore, petitioner was issued a Show Cause Notice dated 07.03.1996 by 109 Engineer Regiment. The competent authority was not satisfied with the reply of the petitioner and hence proposal for discharge from service under Army Rules 13 was initiated. General Officer Commanding Headquarters 36 Infantry Division sanctioned discharge order of the petitioner and accordingly, petitioner was discharged from service w.e.f. 18.04.1996 being an undesirable soldier. The petitioner had become a bad example in the unit due to his irresponsible attitude towards his duties and discipline and thereby failed to render an unblemished service which resulted his discharge from service as undesirable soldier as per IHQ of MoD (Army) letter dated 28.12.1988.

7. 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.”

8. Learned counsel for the respondents pleaded that petitioner is not entitled for reinstatement in service. Instant T.A. has no substance and is liable to be dismissed.

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

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

11. We find that petitioner was negligent towards his duties and disciplined and he was a habitual offender. During his

service, he was awarded seven punishments for his irresponsible attitude and undisciplined nature towards his duty. Even after giving repeated warnings/counseling, the petitioner did not show any improvement in his personal/military discipline and conduct. There being no other option, being an undesirable soldier, the petitioner was discharged from service as per Army Rule 13 (3) III (v) and Army Headquarters policy letter dated 28.12.1988 on the subject. Hence, the petitioner is not entitled the relief prayed in Transferred Application to quash his discharge order and to reinstate him in service.

12. In view of the above, we do not find any irregularity or illegality in discharging the petitioner from service being an undesirable soldier and hence, there is no violation of Army Rules 13 & 22 and Article 20 of the Constitution of India as alleged by the petitioner. The O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

13. No order as to costs.

14. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) **Member (J)**

Dated : 23 September, 2022

Ukt/-