

**Court No. 1**  
**RESERVED**

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

**Original Application No. 482 of 2017**

Thursday, this the 12<sup>th</sup> day of August, 2021

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

No. 6936433K Ex Hav Sajjan Pratap Singh  
Vill – Amlı Kour, PO – Subhash Nagar,  
Tehsil – Banda, District – Banda (UP) – 210128

.... **Applicant**

Ld. Counsel for the Applicant : **Shri Nishant Verma**, Advocate.

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, COAS Sectt, Integrated Headquarters of MoD (Army), New Delhi – 110011.
3. GOC, HQ 31 Sub Area, PIN – 908631, C/o 56 APO.
4. GOC-in-C, GOC-in-C Sectt, HQ Northern Command PIN – 908545, C/o 56 APO.

... **Respondents**

Ld. Counsel for the Respondents : **Shri Shyam 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:-

- “1. That by means of an appropriate order or direction this Hon'ble Tribunal may kindly be pleased to quash and set aside the orders dated 27/08/2014 and 01/04/2017 and further direct the respondents to treat the applicant as

having continued in service from 27/08/2014 till the age of superannuation.

2. That by means of an appropriate order or direction this Hon'ble Tribunal may kindly be pleased to direct the respondents to release the arrears of salary and other consequential benefits which has fallen due since 27/08/2014 till the age of superannuation.
3. That any other order or direction which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may also be passed.
4. That the cost of the suit may also be granted."

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 02.03.1995. During his service period of 19 years, 05 months & 25 days, he was awarded six red ink entries and two black ink entries and therefore, he was discharged locally from service on 27.08.2014 under Rule 13 (3) III (v) of Army Rules, 1954 on having been found undesirable for army service in terms of Integrated Headquarters of Ministry of Defence (Army) letter dated 28.12.1988. Thereafter, the applicant preferred a statutory petition which was rejected by GOC-in-C Northern Command vide order dated 01.04.2017. The applicant being not satisfied with the procedure of discharge, has filed this Original Application to quash his discharge order and to allow him to join duty till the age of superannuation.

3. Learned counsel for the applicant submitted that applicant has been discharged locally from service illegally and arbitrarily without holding any enquiry. He always performed his duties diligently and never gave any opportunity to his superiors to complain regarding his duties. The applicant was issued a Show Cause Notice in November

2013 and in July 2014 by GOC, 31 Sub Area to submit his reply as to why he should not be discharged from service being undesirable for the maintenance of Army discipline in view of six red ink entries and two blank entries accumulated by him. The applicant submitted his reply to Show Cause Notices but he was discharged forcefully from service which is violation of Army Rule 22 and Army Headquarters policy letter dated 28.12.1988. The applicant submitted a statutory petition to GOC-in-C HQ Northern Command which was also rejected. He further submitted that order dated 27.08.2014 and 01.04.2017 have been passed in a biased manner, therefore, his discharge order to be quashed and applicant should be allowed to join duty till the age of superannuation.

4. On the other hand, Ld. Counsel for the respondents submitted that applicant was discharged locally from service on 27.08.2014 under Rule 13 (3) III (v) of Army Rules, 1954 on having been found undesirable for army service in terms of Integrated Headquarters of Ministry of Defence (Army) letter dated 28.12.1988. During the entire service, the applicant was awarded eight punishments (six red ink entries and two black ink entries) as per Army Act being a case of over consumption of alcohol (Intoxication), indisciplined behaviour and absenting himself without leave (AWL). As per procedure in vogue, Show Cause Notices were issued to the applicant vide letter dated 20.11.2013 and 17.07.2014 and after considering applicant's reply and possible opportunities to applicant to become a disciplined soldier there being no improvement in discipline despite repeated

warnings, applicant has rightly been discharged from service as per Army Headquarters policy letter dated 28.12.1988.

5. 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.

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

7. We find that applicant was an indisciplined soldier of over consumption of alcohol (Intoxication), indisciplined behaviour and absenting himself without leave (AWL). During his service, the applicant was awarded eight punishments (six red ink entries and two black ink entries) for his irresponsible attitude and indisciplined nature towards his duty. Even after giving repeated warnings/counsellings, the applicant did not show any improvement in his personal/military

discipline and conduct, applicant was discharged from service after due procedure as per policy on the subject. Hence, the applicant is not entitled the relief prayed in Original Application to quash his discharge order and to allow him to join duty till the age of superannuation.

8. In view of the above, the O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

9. No order as to costs.

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

Member (A)

Member (J)

Dated: August, 2021

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