

E-Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 528 of 2021**Wednesday, this the 21st day of September, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)921755-S Cpl Atul Pratap Singh Tomar
Auto Fit of 2403-B Flt AF,
S/o Ramvir Singh Tomar
R/o House No. 1, Paliwalan, Street/Town – Jaithra,
PO – Jaithra, Distt – Etah (UP) – 207249**.... Applicant**Ld. Counsel for the Applicant : **Shri R.N. Tripathi**, Advocate

Versus

1. Chief of the Air Staff, Air HQ (Vayu Bhawan), New Delhi -11.
2. Air Officer-in-Charge Personnel, Air HQ (Vayu Bhawan), New Delhi – 11.
3. Air Officer Commanding, Air Force Record Office, Subroto Park, New Delhi-10.
4. 2403-B Flt AF, C/o 51 ASP AF, C/o 99 APO.

... RespondentsLd. Counsel for the Respondents : **Shri G.S. Sikarwar**,
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) An order or direction to the respondents for reinstating the applicant in the service by quashing the Annexure No. A-1.
- (b) To allow the OA with the costs.

- (c) Any other or further order or direction which this Hon'ble Court may deem just, fit and proper in the circumstances of the case and in the interest of the justice.”

2. Brief facts of the case are that the applicant was enrolled in the Indian Air Force on 27.12.2006. The applicant committed many offences for which he was awarded punishments of red & black ink entries and subsequently he was declared as potential and habitual offender. The applicant in response to Show Cause Notice, issued to him, as to why he should not be discharged from the service, submitted his reply that “*I have nothing to urge in my defence against discharge from service*”. The applicant preferred an appeal dated 06.03.2021 but the same has not been decided till date by the respondents and information asked under RTI Act, 2005 has also not been provided to the applicant. The applicant being aggrieved with discharge from service 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 tried on certain charges on many occasions and subsequently he was declared as potential and habitual offender. The applicant in response to Show Cause Notice, issued to him, as to why he should not be discharged from the service, submitted his reply that “*I have nothing to urge in my defence against discharge from service*”. While the case of the applicant for discharge from service was under process, he incurred two black ink and two red ink entries punishments but the

applicant was never advised to challenge or prefer any appeal against the punishments awarded to him.

4. Learned counsel for the applicant further submitted that applicant committed another offence by absenting himself from duty and he was awarded 'Severe Reprimand' by the CO 2403-B Flt AF on 11.01.2018. This shows that applicant was not fit in his mental conditions while incurring the punishments and he was not sent to psychiatric evaluation for the treatment of his mental illness. The applicant preferred an appeal dated 06.03.2021 but the same has not been decided till date by the respondents and information asked under RTI Act, 2005 has also not been provided to the applicant. He pleaded that in view of facts mentioned hereinabove, order of dismissal dated 18.04.2018 passed by Air Officer-in-Charge Personnel be quashed in toto and applicant may please be allowed to join the service.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant has incurred 3 red and 2 black ink entries, therefore, he was issued with Warning Letter in terms of policy on Habitual Offenders vide Air Headquarters letter dated 18.12.1996. Subsequently, while the applicant was posted in 2403-B Flt, he incurred 5 red and 2 black ink entries for various indiscipline activities, accumulating total 12 entries (8 red and 4 black ink entries). Therefore, in terms of provisions contained in Air Headquarters letter dated 18.12.1996 as amended vide Air HQ letter dated 12.06.2006,

applicant was served with Show Cause Notice dated 12.05.2017 by HQ Eastern Air Command for falling under Habitual Offender category. The applicant submitted his reply dated 06.06.2017 and after ascertaining the facts and circumstances of the case, discharge from service under the provisions of Air Force Rules 1969, Chapter-III, Rule 15, Clause 2 (g) (ii), "HIS SERVICE NO LONGER REQUIRED - UNSUITABLE FOR RETENTION IN THE AIR FORCE", dated 25.04.2018 was ordered by the competent authority. Hence, the applicant proceeded being discharged from service w.e.f. 08.05.2018.

6. Learned counsel for the respondents further submitted that appeal against discharge order filed by the applicant is under process for disposal. However, no RTI application has been received from the applicant so far. The applicant 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 'Service No Longer Required'. In view of aforesaid facts and circumstances, applicant is not legally entitled to any relief claimed in the Original Application. He pleaded for dismissal of Original Application.

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

8. We find that applicant was negligent towards his duties and discipline. During his service, the applicant was awarded 12

punishments (8 red ink entries and 4 black ink entries) for his irresponsible attitude and indisciplined nature towards his duty/service. 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 habitual offender, the applicant was discharged from service after issuing a Show Cause Notice and after holding a Court of Inquiry and due procedure was followed as per Air Headquarters policy letter dated 18.12.1996 and Rule 15 (2) (g) (ii)/Rule 15 (2) (k) read in conjunction with Rule 15 (2) of Air Force Rules, 1969, under the clause "His service no longer required – unsuitable for retention in the Air Force". Hence, the applicant is not entitled the relief prayed in Original Application to quash his discharge order and to reinstate him in service.

9. In view of the above, we do not find any irregularity or illegality in discharging the applicant from service being a habitual offender and services no longer required. The O.A. is devoid of merits and deserves to be dismissed. It is accordingly **dismissed**.

10. No order as to costs.

11. Pending Misc. Applications, if any, shall stand disposed off.

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

Member (A)

Member (J)

Dated: September, 2022

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