

(SEE RULE 102 (1))
ARMED FORCES TRIBUNAL, KOLKATA BENCH

T.A NO. 18/2013

THIS 10th DAY OF JUNE, 2015

CORUM

HON'BLE JUSTICE DEVI PRASAD SINGH, MEMBER (JUDICIAL)

HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)

APPLICANT(S) LAC Jitendra Kumar Sharma (Air Force No 797825A)
Son of Sri Sitaram Sharma
Village – Mirganj Gangi Road Ara
P O. – Ara Chowk
Dist. – Bhojpur
Bihar
Pin – 802301
-versus-

RESPONDENT(S)

1. The Union of India through Defence Secretary
Government of India, New Delhi
2. The Defence Secretary
Government of India, New Delhi – 110011.
3. The Chief of Air Staff
Air Headquarters (Vayu Bhawan)
New Delhi – 110 011
4. Air Officer Command
Western Air Command
New Delhi
5. Air Officer Commanding
Air Force Record Office
New Delhi
6. The Air Officer Commanding
No. 8, TAC, Mathura
7. The Commanding Officer
No. 864SU, Mathura

For the petitioner (s) Mr. S.K. Choudhury, Advocate

For the respondents Mr. S.K. Bhattacharyya, Advocate

ORDER

PER HON'BLE JUSTICE DEVI PRASAD SINGH, MEMBER (JUDICIAL)

1. The instant application under Section 14 of the Armed Forces Tribunal Act 2007 (in short Act) has been preferred before the Tribunal against the order of discharge from service in pursuance to provisions contained in Rule 15 (2)(g)(II) of the Air Force Rule 1969 (in short Rules). The relevant facts and proposition of law as argued and pleaded are discussed hereinafter.

2. The applicant Jitendra Kumar Sharma was enrolled in the Air Force on 14 Dec 2000. He was medically fit and placed in Category "AYE" (Elect/Fit Trade). He was awarded 3 red ink entries during 6 years of service up to 04 Oct 2006. On account of 3 red ink entries he was considered for discharge as habitual offender in terms of Air Force HQ Circular dated 14 Aug 1984 as modified by Circular dated 18 Dec 1996. The policy for discharge of habitual offender stated to have been affirmed by Hon'ble Supreme Court in a case reported in 1996 Volume 3 SCC page 65 dated 23.02.1996 passed in Civil Appeal Nos. 630-31 of 1993 titled Union of India & Ors. Vs Corporal A.K. Bakshi & Anr.

3. The applicant was warned by the Commanding Officer vide letter dated 26 Oct 2006 and cautioned that he was on the threshold of becoming the habitual offender and any further misconduct would render him to be punished under Rules, 1969. In spite of warning the applicant incurred one more red ink entry entered in his Conduct Sheet on 26 Dec 2006. Subject to above, show cause notice dated 15.02.2007 was served on him on 10 March 2007 as to why he may not be discharged from service under the Rules (SUPRA).

4. After considering the reply submitted by the applicant, being not satisfied a decision was taken to discharge the applicant and approved. In consequence thereafter the applicant was discharged by the impugned order dated 01 Jun 2007. The release medical board was held on 30 May 2007 and he was found medically fit in category (A4G1). While passing the impugned order it has been observed that applicant's service was no longer required being unsuitable for Air Force. It has been further brought on record that the applicant was admonished by his Commanding Officer in accordance with law after due trial under Section 82 of the Air Force Act 1950.

5. The summary of punishments awarded to the applicant from time to time has been filed in Annexure D to the Counter-affidavit which in its totality is reproduced as under :-

Sl. No	Date	Events	Punishment/counseling/ warning
01.	17.01.05	(a) Absent from guard duty on 17.01.05 when detailed by IC section at AF Stn Jaisalmer (b) Disobedience to superior officer failed to pay compliments to UWO while joining the flight during morning working parade at AF Stn Jaisalmer on 11.02.05.	10 days CC
02.	02.03.06	Overstayed leave granted to him from 0001 hrs on 02.03.06 till he reported to sub Guard Room at 1500 hrs on 18.04.06 (Total absentee 47 days 14 hrs 59 minutes)	14 days CC
03.	08.05.06	A very disinterested Airman who want to leave Air Force because of his home problem	Counseling on report to Unit.
04.	24.05.06	The individual has been found missing from the PT on 23.05.06. He has been counseled on the aspect.	Counseling.
05.	13.06.06	The individual overslept in his billet.	Verbal warning and Counseling
06.	19.08.06	Overstayed leave granted to him from 0001 hrs on 19.08.06 till he reported back to guardroom at 1030 hrs on 02.10.06 (Total absence 44 days 10 hrs 29 minutes)	10 days detention.
07.	17.10.06	Airmen found missing on 15.10.06 during station run punch	Verbal warning
08.	31.10.06	Individual found to show least bother attitude.	Counseling
09.	11.12.06	Absented himself from working parade on 11.12.06	Admonition
10.	10.03.07	Show cause notice issued from HQ WAC regarding discharge order to individual	Show cause notice.
11.	07.05.07	Become AWL w.e.f. 2320 hrs on 21.04.07 up to 0710 hrs on 25.04.07 (Total 3 days 7 hrs 49 minute)	8 days CC
12.	08.05.07	Counseling with reference to pending discharge and individual becoming AWL.	Counseling
13.	19.05.07	The individual informed of his discharge.	Counseling.

6. The applicant has admitted in Paragraph 10 of the petition that letter dated 22.04.2007 sent by the respondent was received by the petitioner's mother whereby she was required to inform where about of the petitioner.

7. The applicant has set up a case that he was not mentally fit and running under treatment at Mental Institute, Koclaur, Bhojpur. His behavior was abnormal and doctors advised him for rest with certain medicines.

8. On the other hand the photocopy of the Registration Slip of the mental hospital shows that it was issued on 02.10.2007 prescribing certain medicines. Later on he approached hospital on 06 Mar. 05 Jun and 03 July 2007.

9. While preferring petition the applicant has not brought on record as to when he was declared fit in Para 14 of the application. The applicant has stated that because of repeated punishment he suffered with depression and became mental patient.

10. The striking feature on records is no letter was sent by petitioner's mother and the petitioner to the respondent along with the medical certificate with record of mental illness. The petitioner has also not forwarded his fitness certificate. Thus it appears that he does not possess any interest to serve the Nation as the member of Armed Forces personnel. The summary of punishments reproduced (SUPRA) reveals that the petitioner has been habitual offender and committed misconduct in consequence thereof, he was placed under detention, admonished inspite of 4 times counseling. He has not corrected himself, absented from duty three times, firstly, for 47 days, secondly for 44 days and again 3 days (SUPRA). Admonition seems to be a punishment in accordance to Para 1054 of Regulations of Air Force 1964 read with Section 82 Of Air Force Act 1950. In view of the above, the applicant was declared habitual offender and discharged from Air Force in terms of Air HQ Circular dated 14.08.84 as modified on 18.12.1996.

11. Hon'ble Supreme Court of India has affirmed the policy of the Air Force with regard to the habitual offender and discharge from service on the ground of unsuitability on the basis of punishments awarded on account of misconduct in a case reported in 1996 - Volume 3 SCC, Page 65. UOI & Ors. Vs Corporal A.K. Bakshi & Anr.

12. In case of A.K. Bakshi, Their Lordships of Hon'ble Supreme Court of India has considered relevant Rules and other provisions while upholding the punishments. For convenience, the relevant part are reproduced as under :-

4. "A project study on "absence without leave" (AWL) of airman covering the period 1978 to 1983 made by the Institute of Defence Management brought out the following salient feature regarding the existence of habitual offenders among airman":

"(a) There is a specific hard core group of airmen in the Air Force (about 1288 in number from all trades) who have been contributing regularly and predominantly to the annual offence statistics in the Air Force Year after year. Further breakdown of the group based on the number of punishments and the corresponding number of airmen in each of these sub-groups is as under :-

Groups based on Punishments on record	No. of Airmen	Progressive total
11 and above	17	17
10	7	17
9	11	35
8	22	57
7	56	113
6	80	193
5	145	338
4	339	677
3	611	1288

(b) This group of airmen has not only been repeating AWL offences, but also other offences and

(c) This group of airmen have been a strong source of adverse influence on the general discipline of other airmen in the service

Adverse Effects

3 The main adverse effects flowing out of the repetitive indiscipline perpetrated by this group of habitual offenders were :-

(a) Serious adverse effects on the general morale and discipline, especially on the young airmen joining various Units from the training centres.

(b) Unit level administration is kept preoccupied with these chronic indiscipline cases impinging on time which is otherwise required for constructive activity.

(c) Very often, at some stage or the other, airmen from this group are found to commit serious offences not only within but also outside the Air Force, thereby tarnishing the image of the service.

(d) Invariably many of these airmen are not performing well in their trades also. Hence their overall contribution to the service is negligible.

(e) Some of the airmen of this group have been promoted and have attained the ranks of SNCOs (Sgts. and above). Such SNCOs are a very poor example to others particularly the younger airmen."

"5. Having regard to the existence of habitual offenders among the airmen and the adverse effects of their repetitive indiscipline of habitual offenders among the airmen on the general discipline and administration of the Indian Air Force, the Air Headquarters decided to lay down the Policy for Discharge prescribing the guidelines to deal firmly with such habitual offenders. In paragraph 4 of the said policy it was prescribed :-

"Airmen who meet any one of the following individual criteria are to be treated as habitual offenders and considered for discharge under Rule 15 (2)(g)(ii) of Air Force Rules, 1969 :-

(a) Total number of punishment entries six and above (including Red and Black ink entries);

(b) Four Red ink punishment entries;

(c) Four punishment entries (Red and Black ink entries included) for repeated commission of any one specific type of offence such as disobedience, insubordination, AWL, breaking out of camp, offences involving alcohol, mess indiscipline, use of abusive/threatening language, etc."

6. The detailed actions and procedures which are required to be followed to implement the Policy for Discharge are given in the Appendix to the policy (hereinafter referred to as 'the Procedure for Discharge'). By paragraph 3 of the Procedure for Discharge habitual offenders who may not be found suitable for retention in service are initially placed in two categories, viz. (a) habitual offenders who have already crossed the criteria as laid down vide paragraph 4(a), (b) and (c) of the policy guidelines, and (b) offenders who are on the threshold. Under paragraph 7 Units/Stations are required to order Boards of Officers to scrutinize the service documents (conduct sheets) of all airmen with a view to identify and list out the habitual offenders and potential habitual offenders as per the criteria laid down in paragraph 4 (a), (b) and (c) of the policy guidelines. Copies of the proceedings of the Board of Officers are required to be forwarded to the Command Headquarters and Air Force Records. Under paragraph 9 airmen of both categories are to be warned in writing by the Commanding Officer personally about the implication of their persisting in acts of indiscipline and they are to be informed that firstly, they are getting another opportunity to mend themselves and an addition of another punishment entry (either Red or Black) in their record will result in their discharge. Under paragraph 11 conduct sheet of the airman is required to be reviewed by the Adjutant of the unit concerned every time an airman put on charge is found guilty and punished to ascertain whether the offender falls in any of the categories and, if so, initiate appropriate action where necessary. Under paragraph 13 it is required that whenever an airman of the above two categories is awarded another punishment, his case is to be immediately reported by the Unit to the Command concerned. In paragraph 14 it is provided that all cases of the two categories, i.e., those who have already crossed the criteria laid down for qualifying as habitual offenders and those on the threshold of doing the same, reported to Command Headquarters either by the initial Board of Officers or individually, are to be monitored by the Command Headquarters and on receipt of intimation regarding award of another punishment in such cases the Command Headquarters are to issue show cause notice to the individual. By paragraph 15 it is required that all case of airmen who have been served with show cause notices are to be individually forwarded with all the relevant replies/details/documents/recommendations to Directorates of PS and PA at AIR Headquarter at the earliest. Paragraph 16 makes provision for scrutinizing of the cases by the Directorate of PS and for forwarding the same to the Directorate of PA with their recommendations. Under paragraph 17, the Directorate of PA has to submit the cases to Air Officer In charge Personnel for his approval and then to intimate follow up action with Air Force Records Officer "

13. Applicant's Counsel while pressing the petition, has not invited attention to any procedural irregularity while passing the impugned order of the punishments. On one hand he claims mental sickness but on the other hand while preferring the Writ Petition the petitioner has not brought on record any material of mental sickness which may indicate that during the course of employment in the Air Force he was referred to a Psychiatrist or advise for any medicine by medical authorities.

14. Even the medical report dated 01.06.2007 (Annexure C in the Counter-affidavit) does not reveal that the petitioner was mentally not sound. In such situation the defence set up by the petitioner with regard to mental illness does not inspire confidence. The recurrence of misconduct and punishments awarded from time to time (SUPRA) seems to show that the applicant is not serious while he discharging duty as a member of Air Force.

15. In 2004 Vol. IV SCC 108 Chennai Metropolitan Water Supply and Sewerage Board Vs. T. F. Muralibabu Supreme Court had deprecated the case of persons who are habitual absentee and held that in case such person is suffered from habitual absenteeism no lenient view may be taken as it shall be gross violation of discipline. After re-appreciating the earlier decision their Lordships held as under :-

23. We have quoted in extensor as we are disposed to think that the Court in *Krushnakant B. Parmar* Case has, while dealing with the charge of failure of devotion to duty or behavior unbecoming of a Government servant, expressed the afore stated view and further the learned judges have also opined that there may be compelling circumstances which are beyond the control of an employee. That apart, the facts in the said case were different as the appellant on certain occasions was prevented to sign the attendance register and the absence was intermittent. Quite apart from that, it has been stated therein that it is obligatory on the part of the disciplinary authority to come to a conclusion that the absence is willful. On an apposite understanding of the judgement *Krushnakant B. Partner* case we are of the opinion that the view expressed in the said case has to be restricted to the facts of the said case regard being had to the rule position, the nature of the charge leveled against the employee and the material that had come on record during the enquiry. It cannot be stated as an absolute proposition in law that whenever there is a long unauthorized absence, it is obligatory on the part of the disciplinary authority to record a find that the said absence is willful even if the employee fails to show the compelling circumstances to remain absent.

24. In this context, it is seemly to refer to certain other authorities relating to unauthorized absence and the view expressed by this Court. In *State of Punjab v. P.L. Singla* the Court, dealing with unauthorized absence, has state thus : (SCC p. 473, para 11)

“11. Unauthorised absence (or overstaying leave), is an act of indiscipline. Whenever there is an unauthorised absence by an employee, two courses are open to the employer. The first is to condone the unauthorised absence by accepting the explanation and sanctioning leave for the period of unauthorised absence in which event the misconduct stood condoned. The second is to treat the unauthorised absence as a misconduct, hold an enquiry and impose a punishment for the misconduct.”

25. Again, while dealing with the concept of punishment the Court ruled as follows : (*P.L. Singla* case, SCC p 473-474, para 14)

“14. Where the employee who is unauthorisedly absent does not report back to duty and offer any satisfactory explanation, or where the explanation offered by the employee is not satisfactory, the employer will take recourse to disciplinary action in regard to the unauthorised absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments without cumulative effect. The extent of penalty will depend upon the nature of service, the position held by the employee, the period of absence and the cause/explanation for the absence.”

26. In *Tushar D. Bhatt v State of Gujrat*, the appellant therein had remained unauthorisedly absent for a period of six months and further had also written threatening letters and conducted some other acts of misconduct. Eventually, the employee was visited with order of dismissal and the High Court had given the stamp of approval to the same. Commenting on the conduct of the appellant the Court stated that he was not justified in remaining unauthorisedly absent from official duty for more than six months because in the interest of discipline of any institution or organization such an approach and attitude of the employee cannot be countenanced.”

16. Members of Armed Forces command highest respect by the countrymen because of their commitment and dedication to the service of the Nation. The Armed Forces Personnel sacrifice their personal lives while serving the Nation. They are required to be attentive and vigilant round the clock and if necessary their leaves are cancelled and may call on to resume duty to meet out the contingency

of the service. The applicant's absence without sanctioned leave or overstaying leave without communication to their respective officer is a serious misconduct, shows an apathy on the part of such armed forces personnel towards his duty in the Air Force.

17. Patriotism is one of the best virtues of men. It is a noble feeling of the mind. It is said that mother and motherland are superior to heaven. Most men have got a love for their country. They wish to make their native land free and safe. Some are ready to sacrifice their own interest for the good of the country. A selfish man cannot love his/her native country. A person who desert the Air Force or remain absent without sanctioned leave for a petty long time seems to be short of patriotism.

18. Theodore Roosevelt once said that a person who is patriotic shall always stand by the country and if required he or she may sacrifice his personal gain of life. His saying about Patriotism is; to quote -

"Patriotism means to stand by the country. It does not mean to stand by the president or any other public official, save exactly to the degree in which he himself stands by the country. It is unpatriotic not to oppose him to the exact extent that by inefficiency or otherwise he fails in his duty to stand by the country. In either event, it is unpatriotic not to tell the truth, whether about the president or anyone else."

19. The applicant should have a clean hand and mind set by informing the Air Force authorities with regard to unauthorized absence in case it was done under some compelling reasons. But it appears that he has not discharged his obligation. It is not proper to over stay the leave or leaving the Air Force without sanctioned leave. No one knows when country may require the service of an armed forces personnel to meet out the immediate requirements, to secure the country from foreign aggression or alike necessity or natural calamities. India has suffered since post independence since no effective steps has been taken by educating the people from childhood to develop fervour of patriotism or nationalism.

20. Based on the facts and circumstances of each case, the absence without leave or overstaying leave may cause irreparable loss and injury to the country. Accordingly no lenient view may be taken where an armed forces personnel is a habitual offender, absenting himself without any compelling reason and that too without informing his immediate superior authorities or prior sanction of leave

21. The applicant seems to be in the habit of absenting himself even while participating in drill and discharging regular duty. The absence for about 90 days in 2 phases is a highest degree of indiscipline. Action taken by the Air Force authorities does not seem to be improper and unjust. The application is rejected being devoid of merit.

Original documents submitted by the respondents be returned to them under proper receipt.

Let a plain copy of order, duly countersigned by the Tribunal Officer, be furnished to both sides after observance of usual formalities.

(LT GEN GAUTAM MOORTHY)
Member (Administrative)

(JUSTICE DEVI PRASAD SINGH)
Member (Judicial)