

FORM NO – 21
(See Rule 102 (1))

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

APPLICATION NO: O.A. 52 OF 2013

THIS 15TH DAY OF SEPTEMBER, 2014

CORAM: Hon’ble Mr. Justice Raghunath Ray, Member (Judicial)

Hon’ble Lt. Gen. K.P.D.Samanta, Member (Administrative)

No. 3196319M Sep Virender Singh,
S/o Shri Mohar Singh,
Working with M/s Trade & Technology Pvt. Ltd.
Sikkim House, Middleton Street, Kolkata-21

..... Applicant

- Versus -

1. Union of India
Service through the Secretary,
Ministry of Defence, Sena Bhawan,
New Delhi-110 105.
2. The Chief of Army Staff, Army HQ,
Integrated HQ of M/o Defence (Army),
DHQ P.O. New Delhi-110 011.
3. The Records, The JAT Regimental
Pin -900496, C/o 56 APO
4. Col Nitin Khare
Then Commanding Officer 19 JAT,
PIN 911219, C/o APO

..... Respondents

For the applicant : Mr. Rajiv Manglik, Advocate
Miss Manika Roy, Advocate

For the respondents: Mr. Souvik Nandy, Advocate

O R D E R**Per Hon'ble Lt. Gen. K. P. D. Samanta, Member (A):**

Being aggrieved by his sudden discharge from Army service, the applicant has filed this OA praying for quashing of the discharge order dt 11 Dec 2009 and for issuing a direction upon the respondents to reinstate him in service with all consequential benefits.

2. The applicant was enrolled in the Army in the JAT Regiment on 10th September, 2001. Since his appointment, he was serving with utmost sincerity, dedication and to the satisfaction of all concerned. It is submitted by the applicant that on certain occasions he could not report for duty in time after the expiry of sanctioned leave and for such OSL (Over Stay of Leave), he was punished with RI and fines etc.. All these punishments were for offences u/s 39(a) or (b) of Army Act i.e. AWL (Absent Without Leave) or OSL. In that process he earned four red ink entries in his service records. He has alleged that while imposing such punishment, the authorities even took into account Sundays which are to be suffixed to the leave and are not considered as part of leave. During May 2009 he sustained a burn injury and was hospitalised. He was allowed by the Medical Authorities to shift but at that time he was again declared as on OSL and was punished under section 39(b) of Army Act. This is the last red ink entry which he received during his service. Subsequently the applicant was issued with a show cause notice on 20-11-2009 (Annexure A4). According to the applicant, he was advised by the Commanding Officer to give reply to the show cause notice by stating that since his hand was burnt, he would not be in a position to continue in service. According to the applicant such reply was written on his behalf (as his hand was burnt) even though the applicant raised no objection fearing he might be in difficulty. Subsequently based on the aforesaid reply to the show cause notice, the applicant was discharged from service by an order dated 11-12-2009 with effect from 12.12.2009

(Annexure A1). The applicant made an appeal, but the same was rejected vide order dated 21-7-2010 (Annexure A2). Being undeterred he sent a legal notice which was also rejected vide order dated 14-9-2011 (Annexure A6). Being aggrieved, he has filed this application praying for quashing of the discharge order as also orders of rejection of his appeal and legal notice and for his reinstatement with full arrears of salary.

3. The respondents have contested the application by filing a reply-affidavit in which they have stated that the applicant was enrolled on 10th September 2001. After completion of training he was allotted 19 JAT on 13-12-2002. During his service he was posted at different places including hard areas. However, during the period of his service from 2007 to 2009, he earned four red ink entries based on punishment inflicted on him for committing offences under Army Act Section 39(a) and 39(b) details of which have been given in pages 4 and 5 of the reply. It appears that the applicant was awarded four red ink entries as also black ink entries. The respondents have further stated that in fact the applicant was AWL or OSL six times; but he was actually punished on four occasions. It is further stated that the applicant was granted 15 days CL from 5th to 19th February 2008. He requested for extension of leave and total 60 days of Annual Leave was granted to him in lieu of 15 days CL. It is stated that on all occasions he was allowed to suffix Sunday as per rules and the allegation to this effect that even Sundays have been included as OSL is not correct. The respondents have stated that as per policy letter dated 28th December 1988 (Annexed as Annexure B to the Reply) (wrongly stated in reply as 28th August); the authorities took action as the applicant became a habitual offender. A preliminary inquiry was held and thereafter approval was taken from competent authority and ultimately the applicant was discharged from service from 12-12-2009 as an 'undesirable soldier' under the provisions of Army Rule 13 (3) (iii) (v). His appeal was duly considered but the same was rejected having no merit.

4. The applicant filed a rejoinder to the same reiterating his contention raised in the OA.

5. Mr. Manglik, the learned counsel for the applicant, during his oral submissions has admitted that the applicant has earned 4 red ink entries for being AWL or OSL. He has however, contended that as per policy referred to by the respondents one can be discharged if he earns 5 red ink entries and not 4 red ink entries. He has also submitted that the applicant has been discriminated as some other persons have not been discharged like the applicant in spite of the fact that they were also punished for being on OSL and thus earned red ink entries like the applicant. He has further submitted that the preliminary inquiry was ordered by the Commanding Officer by officers of the unit. Naturally, therefore they will be biased against the applicant because it is the specific allegation of the applicant that the reply to the show cause notice was written by somebody else as dictated by the said Commanding Officer to the effect that because of his burnt hand he would not be able to perform his duties. Mr. Manglik has also stressed on the humanitarian ground by stating that the applicant has rendered about 8 years of service and no other offence touching moral turpitude or any other offence of serious nature was committed except OSL or AWL, that too, only for a few days. For such act, the applicant should have been given another chance to improve, but the authorities instead showing any mercy, straightway discharged him under administrative action. He has fervently prayed that the discharge order may be quashed and the applicant may be reinstated in service.

6. Mr. Nandy on the other hand has submitted that action has been taken by the authorities since the applicant was found to be a habitual offender. Therefore after issuing show cause notice and holding appropriate preliminary inquiry as required under the policy, the competent authority discharged him from service as in the opinion of the authorities he was not likely to become good soldier. Therefore no illegality was committed and as such the Tribunal need not interfere in this matter.

7. We have heard Mr. Rajiv Manglik, learned counsel for the applicant and Mr. S. Nandy, learned counsel for the respondents. Mr. Nandy has also produced before us the departmental file as relevant to this case. We have also gone through these relevant departmental file.

8. As it appears the applicant was enrolled in Sep 2001 and was posted to different military stations. After joining the Unit during the period from 2003 to 2006 there was no complaint against the applicant. He, however, became OSL or AWL on six occasions between the period Feb 2007 and Sep 2009. During this period he was posted in peace station i.e. either at Meerut or Suratgarh except on the last occasion in Aug-Sep 2009 when he was posted at Kargil for only a few months. From Annexure-C to the reply it also appears that a preliminary enquiry was held by a committee of three officers which took into account all aspects including his places of posting and period of AWL/OSL. It has been clearly opined that the applicant failed to show any improvement in discipline and his sense of devotion to duty despite frequent counselling and award of punishments. Recommendation was, therefore, made to discharge him in terms of policy letter dated 28 Dec 1988 under Army Rule 13 (3) (III) (v). The competent authority i.e. Commander, HQ 121(1) Infantry Brigade accepted the recommendation and accordingly the discharge order was issued after issuing appropriate show cause notice as required by ibid policy letter.

9. From a perusal of the ibid policy circular of 1988, it appears from Para 5 thereof that preliminary enquiry is required to be held before recommending discharge of an individual on such allegations. It is also provided therein that discharge from service consequent to 4 red ink entries is not a mandatory or legal requirement. In such cases, Commanding Officer must consider the nature of offences for which each red ink entry has been awarded and not be harsh with the individuals, especially when they are about to complete the pensionable service. Due consideration should be given to the long service, hard stations and difficult

living conditions that the OR has been exposed to during his service, and the discharge should be ordered only when it is absolutely necessary in the interest of service. In the instant case, however, the applicant has rendered only about five years service; thereafter his discipline started deteriorating. He failed to improve despite counseling and continued to commit the same offence repeatedly. We have taken note of the fact that most of the offences were committed when the applicant was posted in peace areas and only on the last occasion he was posted at difficult field area. We have also seen from the records that even though four red ink entries have been mentioned, the applicant also earned black ink entries on some occasions.

10. It is true that on some occasions, the applicant was punished for being on OSL or AWL only for a few days and in the normal circumstances, it would have been viewed as harsh; however, in this proceeding, we are not called upon to consider the validity or legality of the punishment already imposed on the applicant. We are only to consider whether the discharge of the applicant as has been done is valid or not. Considering his past conduct, we are unable to agree with the Id. Adv. for the applicant that the respondents have taken a very drastic step to discharge the applicant for committing offences u/s 39(a) or (b) of Army Act and not involved in any offence of serious nature. Indiscipline in a disciplined force cannot be encouraged. We find that all procedures as laid down in the policy have been followed by the respondents and, therefore, it is very difficult for us to interfere with the impugned order.

11. Considering the matter from all angles, we do not find any justifiable cause for interference and accordingly, the OA stands dismissed on contest but without any costs.

12. Let original records be returned to the respondents on proper receipt.

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

(LT. GEN. K.P.D.SAMANTA)
MEMBER (ADMINISTRATIVE)

(JUSTICE R.N.RAY)
MEMBER (JUDICIAL)