FORM NO – 21
(See Rule 102 (1)

ARMED FORCES TRIBUNAL, KOLKATA BENCH

APPLICATION NO : OA – 51 OF 2011

TUESDAY, THIS SEVENTEENTH DAY OF APRIL, 2012

CORAM : **Hon'ble Mr. Justice Sadhan Kumar Gupta, Member (Judicial)**
Hon'ble Lt. Gen. K.P.D. Samanta, Member (Administrative)

Biteshwar Singh, son of Shiv Adhar Singh of village Kewata, P S Bihinya , Dist. Bhojpur, Bihar

-VS –

1. The Union of India through the Military Secretary, South Block integrated H.Q of The Ministry of Defence (Army) B.H.Q., New Delhi.

2. The Chief of the Army, C.G.O., Complex, Lodhi Road, New Delhi.

3. The Battalion Commandant, 5003 A.S.C Dinapur, Nagaland,

4. The Centre Commandant, A.S.C. Centre, North Paharpur, Gaya (Bihar)

5. The Senior Record Officer, Sena Seva Corps, Abhilekh, A.S.C. Records A.T. Paharpur, Gaya.

.... Respondents

For the appellant : Mr. Fazlur Rahaman, Advocate

For the respondents : Mr. Anup Kr. Biswas, Advocate

O R D E R

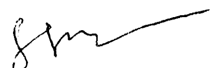
Per Justice Sadhan Kumar Gupta, MEMBER (Judicial)

This Original Application has been preferred by the applicant Sri Biteshwar Singh, challenging the order of discharge passed against him by the competent authority.

2. The case of the applicant is that he was enrolled in the Army in September 1987 as Sepoy and posted in ASC Battalion and thereafter completed more than 6 years of service. All on a sudden, he was discharged from service without any valid reason whatsoever and without affording him an opportunity of hearing. According to the applicant, he earned some red ink entries, which were given to him on account of his alleged unauthorized absence from duty. It is the contention of the applicant that as his wife was seriously ill and as there was no one to look after her in his house, so he had to overstay the leave in order to take care of his wife. This fact was duly informed to the concerned authority. However, ignoring such fact, the competent authority arbitrarily and whimsically passed the order of discharge against the applicant on 10th November 1994. Thereafter, the applicant pursued the matter with the concerned authorities requesting them to reconsider his case and to reinstate him in service. However, no step was taken in that respect. As such, finding no other alternative, the applicant submitted a representation to the Chief of Army Staff, which was rejected by order dt. 28.1.2011 (annexure-A2). The concerned authority, according to the applicant, without taking into consideration the relevant factors, which were agitated by him in his appeal, mechanically dismissed the representation. Being aggrieved and

dissatisfied with such action of the concerned authority, the applicant moved a writ petition before the Hon'ble Patna High Court being CWJC No. 11346 of 2011. Said writ petition was ultimately dismissed on 14.7.2011 holding that the petitioner had alternative remedy before the Tribunal and he should first avail the said remedy. Accordingly, the applicant has filed this original application before this Tribunal in the year 2011 praying for setting aside the orders dt. 10.11.1994 and 28.1.2011 and for a direction upon the respondents to reinstate him in service along with back wages.

3. The respondents have contested the application by filing a counter affidavit wherein they have denied the allegations, as made by the applicant, in the body of the application on material points. According to them, the applicant was a habitual offender and he repeatedly overstayed the leave and remained absent unauthorizedly. For this reason, he was given more than four red ink entries and was punished from time to time. In spite of that, the applicant did not mend his conduct and as such, the concerned authority thought it prudent not to retain the applicant in service any further, as his conduct was unworthy of a soldier. In order to keep discipline in the force, the concerned authority decided to discharge the applicant from service. There was nothing wrong in it. Although such discharge order was passed in the year 1994, the applicant remained silent for more than 16 years and ultimately submitted a representation to the Chief of Army Staff in November 2010, which was duly considered and rejected. As such, the respondents have claimed that the application has got no merit at all and it should not be entertained and the same is liable to be dismissed.



4. We have heard the submissions of the ld. advocates for both the sides and perused the materials as produced by them.

5. It is the admitted position that the applicant, while in service for about 6 years, was discharged from service on account of earning more than 4 red ink entries. From the documents it appears that from time to time the applicant overstayed his leave and remained absent unauthorisedly. For this reason, he was time to time punished by the authorities and in spite of that he did not mend his conduct. However, as there was no improvement in the conduct of the applicant, so, he was discharged from service. The applicant has claimed that due to the illness of his wife, he had to overstay the leave in his native place and sometime had to remain absent unauthorisedly, which was not intentional. However, in respect of such contention, no document whatsoever has been produced by the applicant. Only one medical certificate was produced by the applicant in support of his contention, which is enclosed to the rejoinder. This medical certificate is dated 7.12.11 and as such, we are unable to attach any importance whatsoever to this medical certificate. The fact remains that there was no acceptable explanation on behalf of the applicant for his unauthorized absence and his overstaying leave while in service.

6. Moreover, it appears that the applicant after being discharged in the year 1994 preferred not to take any step in this respect and instead submitted a representation only in the last part of 2011. According to the applicant, in between these long years, he pursued the matter with the appropriate authority from time to time. However, no scrap of paper has been produced by the

applicant in support of this contention. So, the fact remains that although the applicant was discharged in the year 1994, he preferred to submit his first representation only in the year 2010. This unusual long delay on the part of the applicant shows that the applicant was totally negligent in this respect. It is well settled principle of law that delay defeats equity. The applicant has claimed equitable relief by filing this original application before this Tribunal. However, due to his long delay, we are of the opinion that no equitable relief should be granted in favour of the applicant, as prayed for.

7. Ld. advocate for the applicant ~~for the applicant~~ has referred to two decisions of the Hon'ble Apex Court, viz. **Chairman-cum-Managing Director, Coal India Ltd. –vs- Mukul Kumar Choudhuri & Ors**, 2009(6) Supreme 349 and **Ex Naik Sardar Singh –vs- UOI & Ors**, (1991) 3 SCC 213 and contended that it has been held by the Hon'ble Apex Court that where the punishment is harsh and shockingly disproportionate to the gravity of offence, the court or tribunal can interfere. According to him, the punishment, as imposed upon the applicant, was thoroughly unreasonable and not commensurate with the offence allegedly committed by the applicant and as such, following the law laid down by the Hon'ble Supreme Court in the above referred cases, impugned order of dismissal should be quashed and set aside.

8. We have gone through the said decisions. The case of **Ex Naik Sardar Singh** (supra) relates to an army official. True it is, the Hon'ble Supreme Court has observed that in case it appears that the punishment, as imposed on the person concerned is totally excessive and not commensurate with the offence

committed by that person, then the court can always interfere into the matter by way of setting aside the impugned punishment order. There cannot by any two opinion in this respect. However, the important thing that has to be considered is as to what was the nature of offence committed by the delinquent person. So far as the present case is concerned, we have already pointed out that the applicant earned more than four red ink entries and all were on the ground of overstaying leave and unauthorized absence. The applicant is a member of the Armed Force and it is totally unbecoming of his conduct in overstaying the leave and remaining absent unauthoisedly for such a long time without obtaining permission from the concerned authority. Being a member of the discipline force, the applicant should understand the importance of his presence in the work place and he cannot behave like an ordinary civilian employee. In **Sardar Singh's** case (supra) the Hon'ble Supreme Court was of the opinion that since the liquor bottles which were recovered from the appellant concerned while he was going to his home on leave, was purchased through valid permit from army canteen, so it did not warrant imposition of punishment of discharge. The fact of that case cannot be compared with the fact of the present case. In the present case, the applicant committed offence not only once but on several occasions and in spite of being punished by putting him in prison, he did not mend himself. As such, the ratio of the case, as decided by the Hon'ble Supreme Court in **Sardar Singh's** case is, in our considered opinion, not at all applicable.

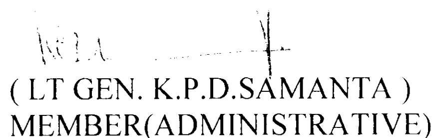
9. We have already pointed out that the applicant earned more than four red ink entries for the offence committed by him. In the army, discipline is the first

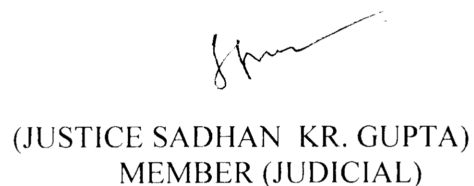
and foremost criteria and there should not be any compromise with such discipline. If a member of the force is allowed to continue with such indiscipline, then in that event, the total establishment will be at jeopardy, which is not at all desirable. Being a member of the Armed Force, the applicant should behave like a disciplined soldier. The retention of the applicant in service is the sole jurisdiction of the competent authority. It is he, who is to decide as to whether further retention in service so far the applicant is concerned, is required or not. In his wisdom, he was of the opinion that a person like the applicant is a misfit for the army and he should not be retained any further. As such, he decided to pass the order of discharge against the applicant, which he is authorized to do as per Army Act and Rules. In our considered opinion the competent authority has rightly passed the order of discharge and to our mind, this Bench should not interfere into such matter particularly after a lapse of more than 16 years.

10. In view of our above discussions, we are of the opinion that there is no merit in this application and the same is liable to be dismissed.

11. In the result, the original application stands dismissed on contest but without any costs.

12. Let plain copy of the order be handed over to both the sides.





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

(JUSTICE SADHAN KR. GUPTA)
MEMBER (JUDICIAL)