

ARMED FORCES TRIBUNAL
REGIONAL BENCH
GUWAHATI

O.A. No 22 of 2018

In the matter of :

Ex Cpl Mohit Pantola

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mrs. Rita Devi and Shri A.R. Tahbildar,
Advocates

For Respondents : Ms. Dipanjali Bora, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

O R D E R

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this application and the reliefs claimed by him read as under :

- 1) To quash and set aside the 4th red ink entry dated 02.09.2016 for overstayal of leave as the same was not wilful.
- 2) To set aside and quash the impugned discharge order dated 24.01.2017 issued vide No.RO/2510/1/RW (DIS) as well as the discharge certificate dated 26.6.2018.

- 3) To quash and set aside the order dated 05.04.2018 issued on behalf of the Chief of the Air Force vide No. Air HQ/23405/4074/Discip. rejecting the applicant's appeal against the discharge order dated 24.1.2017 issued vide No. RO/2510/1/RW(DIS).
- 4) To re-instate the applicant back in service with all service benefit.
- 5) To direct the authorities that on re-instatement of the applicant as prayed for hereinabove, to consider the application dated 09.11.2016 as an application for voluntary discharge from service and issue fresh discharge certificate under Rule 15(2)(f) of the Air Force Rules, 1969 'voluntarily discharging' the applicant from service and;
- 6) To pass such other or further order(s) as your Lordships may deem fit and proper.

2. The applicant was enrolled in the Indian Air Force on 29.06.2016 in the trade of Mechanical Fitter. It is his contention that since his appointment, he had served the organisation in various Units until his premature discharge from the service on 13.02.2017. He had served the organisation for 10 years 02 months and 05 days and during this period; had incurred 04 Red Ink Entries in quick succession for minor offences. He claims to have an

unblemished service records until he was posted to 9 Wing AF with effect from 12.03.2012. While serving in this Station between 12.03.2012 and 12.09.2016, it is alleged that he earned 04 Red Ink Entries and 01 Black Ink Entry. Details of the 5 entries are as under :

Date of Offence	Particulars	Punishment
27.05.2012 at 9 Wg, AF, 73A-INFORMAL CHARGES	Found in possession of one laptop with TATA PHOTN INTERNET USB Dongle, Three-mobile and one pen drive while on guard duty at 220SQN.	Reprimand
27.03.2013, 65A-Violation of Good Order and Air Force Discipline	Found in possession of 2 mobile phones, one with camera and advance features (Samsung Galaxy POP Plus) and another without Camera (Nokia x1) while on night duty at duty crew when checked by patrolling NCO at Romeo Dispersal.	Severe Reprimand
31.01.2014	<ol style="list-style-type: none"> 1. Failed to carry out challenging procedure while on ground duty at 2320 Hours on 31.01.2014 2. Found improperly dressed in that he was not wearing belt and head dress and sitting inside his personal vehicle while on ground duty. 	Severe Reprimand on 24/3/2014
13.04.2015 - 65A-Violation of Good Order and Air Force Discipline	Found crossing the main taxi track at 2010 Hrs. on 06.02.2015 at War Memorial by his personal Car bearing Registration No. UK—O1A 6408 in front of Bison AC by the Captain WG R GOPINATHAN Taxying in for 'U' dispersal, inspite of Red Signal indication by traffic light as well as hand held red light indication by on duty NC (E), thereby endangering the life of pilot, himself and service property.	SEVERE REPRIMAND
02.09.2016	Overstayal of leave granted to the applicant. Overstayed from 29/7/2016 to 15/8/2016 ie. 17 days 22 hrs 54 mints	Severe Reprimand on 2/9/2016

3. It is the case of the applicant that 04 Red Ink entries and 01 Black Ink entry were recorded in one Unit within a very short span and according to him, this has been done in an arbitrary and illegal manner because of certain bias, as prior to this positing in any other Unit, he had an unblemished service record. It is contended by the applicant that the punishment of severe reprimand for the overstays of leave is highly disproportionate and liable to be interfered with. He further prayed for voluntary discharge and condonation of shortfall in service to enable him to earn pension. Placing reliance on a judgment of Hon'ble Supreme Court in the case of **Krushnakant B Parmar Vs. Union of India & Ors. [(2012) 3 SCC 178]**, it was argued that absence from duty being not wilful and being on compelling circumstances beyond the control of the applicant should have been condoned. *Inter alia* contending that the action taken is contrary to the provisions of Rule 15(2)(g)(ii) of the Air Force Rules, 1969, learned counsel prays for interference into the matter.

4. Respondents have refuted the aforesaid contention and argued that the applicant's services have been dispensed with as no longer required, he being an unsuitable member of Air Force, not fit for retention under Rule 15(2)(g)(ii) of the Air Force Rules. It is the case of the respondents that the applicant falls in the category of 'habitual offender' having incurred

various entries as detailed in the application. Respondents have stated that the applicant was given ample opportunities to mend himself and to serve with discipline; he had incurred 04 punishment entries; he was warned on 15.06.2015, but he did not show any improvement and after issuance of a Show Cause Notice, an action was taken. It is thus the contention of the learned counsel for the respondents that no interference can be made. Reliance is placed by the respondents on the judgments of Hon'ble Supreme Court in the case of Union of India & Ors. Vs. Corporal A.K. Bakshi & Anr. [1996 AIR 1368=1996 SSC (3) 65] decided on 23.02.1996 and in the case of Union of India & Ors. Vs. Ex. Corporal Abhishek Pandey [Civil Appeal Nos. 4780- 4781 of 2018] decided on 08.11.2019 to say that the action taken against the officer in uniform under Rule 15(2)(g)(ii) of the Air Force Rules based on the offences and Show Cause Notice issued does not call for any interference.

5. Having heard learned counsel for the parties and having perused the record, we find that the applicant, while posted in the Unit, the applicant was reprimanded on 27.05.2012 when he was found to be in possession of one laptop with a USB Dongle, three mobile and one pen-drive, while on guard duty. This was an act of unbecoming of a disciplined member of the Force, while on Guard duty and, therefore, initially taking a lenient view, he was reprimanded. Thereafter, on 27.03.2013,

he was again found in possession of two mobile phones, one with camera and various advance features (Samsung Galaxy POP Plus) and another without camera (Nokia x1) while on night duty as Crew duty, when checked by the Competent Authority. This again was an act in violation of the conduct of Good Behaviour and Good Order and Discipline required of a man in Force while on duty, particularly in a night duty and for this second offence committed by him, identical in nature, he was severely reprimanded.

6. Thereafter, on 13.01.2014, applicant failed to carry out challenging procedure while on ground duty and at 2320 hours on 31.01.2014, he was found to be improperly dressed, was not wearing any belt, head dress and was sitting inside his personal vehicle while on ground duty instead of conducting guard duty in the night, and for this act also, he was severely reprimanded.

7. Again on 13.04.2015, he was found to have violated the statutory requirements of maintaining of Good Order and Air Force Discipline, inasmuch as he was found crossing the main taxi track at 2010 hours on 06.02.2015 at War Memorial by his personal car in front of the Bison Aircraft piloted by a senior officer, Captain WG R Gopinathan, who was taxiing in for 'U' dispersal, inspite of the Red Signal indication of the traffic light, thereby violated the Traffic Rules, endangered the life of pilot,

himself and service property. For this serious action, he was again severely reprimanded.

8. On 02.09.2016, he overstayed leave for 17 days 22 hours 54 minutes without any justification and without obtaining sanctioned leave from the Competent Authority. Taking note of all these factors, the respondents have arrived at a subjective satisfaction to say that the applicant has committed the offences and when a Show Cause Notice was issued to him, the applicant has not come out with any cogent justification for his acts of commission and omission. Taking note of all these factors and further considering the fact that he failed twice in LAC Re-Classification Test, passed only in the 3rd attempt; did not have good service profile in the matter of passing test and examinations; had incurred 04 punishments as indicated hereinabove, if the respondents have classified him as a 'habitual offender', this Tribunal, in exercise of its limited jurisdiction under Section 14 of the AFT Act, cannot interfere into the matter.

9. It is further seen from the records that in the applicant's reply submitted on 09.11.2016 in response to the Show Cause Notice dated 21.10.2016, the applicant had submitted "*I want to state that I have nothing to urge in favour of my discharge from service as I do not see my future bright in the Service and I also want discharge from Service.*" This attitude of the

applicant also compelled the respondents to take action in the matter.

10. Taking note of the totality of the circumstances, we are of the considered view that in the matter of discharge of the applicant, the respondents have taken a decision based on the applicant's over-all service record and his acts of commission and omission, and the law laid down in the case of *Krushnakant B Parmar (supra)* rendered by the Hon'ble Supreme Court may not apply as that was the case of a civilian employee who was absent from duty without prior permission and in the facts and circumstances of that case, because of the compelling circumstances which forced him to be on leave it was held that he cannot be said to be unbecoming of a govt. servant. However, in the case of discharge from service under the Air Force Rule in question, the issue has been recently considered by the Hon'ble Supreme Court in the case of *Ex Corporal Abhishhek Pandey (supra)* decided on 08.11.2019 and after taking note of the provisions of Rule 15(2)(g)(ii) of the Air Force Rules, action was taken on the basis of the Show Cause Notice, 3 Red Ink entries and 4 Black Ink entries. Based on reprimand, the Hon'ble Supreme Court, in Para 5 has dealt with the issue in the following manner :

"5. The only point that arises for our consideration in the present case is the interpretation of the Policy dealing with habitual offenders. The Air Force Policy dated 16.12.1996 was issued by the Air Force Headquarters, prescribing the procedure to be followed

while processing the cases of habitual offenders. According to the Policy, an Airman is entitled to be issued a precautionary warning (being a habitual offender). The Airman has to be informed that he would be getting another opportunity to mend himself and any addition of another punishment entry, either Red or Black, would result in his discharge from the service. Para 2 (b) of the Policy provides that whenever the case of an Airman is considered by the competent authority for final orders and he is afforded one more chance, a warning letter is required to be issued to him by his Commanding Officer again. The said warning letter shall be treated as a second time warning. Para 3 of the Policy postulates that habitual offenders shall be served with a show cause notice calling upon them to explain the reasons as to why the proposed action of discharge from service shall not be taken against them. The habitual offenders are entitled for an opportunity to submit their explanation before an order of discharge is passed."

11. Thereafter, the interference made by this Tribunal was considered by the Hon'ble Supreme Court in Para 6 and finally in Para 7, Hon'ble Supreme Court recorded a finding in the following manner :

"7. The Respondent was initially a potential habitual offender before he was considered as a habitual offender. He was entitled for a warning to be issued in 2008. Admittedly, there was a delay in issuance of the warning letter. Ultimately, the warning letter was issued on 18.04.2012. The Respondent did not mend himself for which reason a show cause notice was issued to him. Even in the explanation to the show cause notice, the Respondent did not dispute the allegations of misconduct made against him. He, in fact, admitted to having indulged in acts of indiscipline and sought for another opportunity to correct himself. The show cause notice issued to the Respondent is in accordance with the Habitual Offenders Policy. A second warning letter is not required when it is decided to pass a final order without giving another chance. There is no violation of the procedure prescribed by the Policy dated 16.12.1996."

12. In view of the foregoing, in our considered view, keeping in view the conduct of the applicant in the present case, the punishment imposed upon him based on his past conduct and other circumstances, which were considered by the respondents in the matter of discharging him from service, we

see no reason to interfere into the matter. The subjective satisfaction arrived at by the respondents in the matter of holding that the applicant will not become a good man in the Force is a finding recorded reasonably on the basis of the facts and circumstances of the case and, therefore, the same does not call for any interference.

13. Accordingly, finding no case made out for interference into the matter, we dismiss this OA.

14. There is no order as to costs.

Pronounced in open Court on this ____^{1st} day of June, 2022.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

**[LT GEN P.M. HARIZ]
MEMBER (A)**
/ng/