

**Form No. 4**  
**{See rule 11(1)}**  
**ORDER SHEET**  
**ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI**  
**(Sl. No. 15)**

**O.A. No. 56 of 2019**

**Ex. LaC Dwipjyoti Talukdar**

Applicant

By Legal Practitioner for the Applicant : Shri Abhishek Misra, Advocate

**Versus**

**Union of India & Others**

Respondents

By Legal Practitioner for Respondents : Shri P. Sharma, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><b><u>06.04.2023</u></b> <b><u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u></b> <b><u>Hon'ble Air Marshal Balakrishnan Suresh, Member (A)</u></b></p> <p style="text-align: center;">Heard Shri Abhishek Misra Ld. Counsel for the applicant and Shri P. Sharma, Ld. Counsel for the respondents.</p> <p style="text-align: center;">Original Application is <b>dismissed..</b></p> <p style="text-align: center;">For orders, see our order passed on separate sheets.</p> <p style="text-align: center;">Misc. Application(s), pending if any, shall be treated to have been disposed of.</p> <p style="text-align: center;"><b>(Air Marshal Balakrishnan Suresh)</b> Member (A)</p> <p style="text-align: center;"><b>(Justice Umesh Chandra Srivastava)</b> Member (J)</p> <p>AKD/MC/-</p>

(Sl. No.15)

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
GUWAHATI**

**Original Application No. 56 of 2019**

Thursday, this the 06<sup>th</sup> day of April, 2023

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Air Marshal Balakrishnan Suresh, Member (A)”**

Ex- LAC Dwipjyoti Talukdar Service No. 957821-N Unit  
(Last posting):11 BRD, Air Force Station, Ojhar S/o Sh  
Akan Talukdar, Aged about 28 years Present address:  
Vill-Puran Burka Satra, P.O. Kshudradimu, District-  
Kamrup, Assam-781382.

.....Applicant

Ld. Counsel for : **Shri Abhishek Misra**, Advocate  
Applicant

Versus

1. The Union of India, through the Secretary,  
Ministry of Defence, New Delhi.
2. The Chief of the Army Staff, Air Headquarters,  
Vayu Bhawan, New Delhi-110011.
3. The Air Officer-in-Charge Personnel Air  
Headquarters, Vayu Bhawan, New Delhi-110011.
4. The Air Officer Commanding-in Chief HQ  
Maintenance Command IAF, Indian Air Force,  
Vayusena Nagar, Nagpur-440007.
5. Air Force Record Office Nanda Marg, Subroto  
Park, Delhi Cantonment, New Delhi-110057.
6. Air Officer Commanding 11 BRD, Air Force  
Station Ojhar, Nasik, Maharastra-422221.

.....Respondents

Ld. Counsel for the : **Shri P. Sharma**, Advocate  
Respondents Central Govt Counsel

**ORDER (Oral)**

**"PER MR JUSTICE UMESH CHANDRA SRIVASTAVA, MEMBER (J)"**

1. Being aggrieved with contemplated order of discharge, applicant had filed Civil Misc Writ Petition No. 25771 of 2019 in the High Court of Judicature at Mumbai on 17.09.2019 which was dismissed as infructuous as his order of discharge was effectuated on 18.09.2019. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed the following reliefs:-

*(a) Quash & set aside the impugned orders & reinstate applicant in service from 19 Sep 2019 with all consequential benefits.*

*(b) To pass such other and further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.*

2. Brief facts of the case are that the applicant was enrolled in Indian Air Force (IAF) on 28.12.2011. In the year 2018 he was posted to 11 Base Repair Depot. Prior to this posting he was awarded three red ink entries including one during ab-initio training period for offences related to intoxication. While being posted to 10 Squadron Air Force he was counseled by his

Commanding Officer vide letter dated 04.10.2017 suggesting him to mend his ways, else he would be discharged from service. In the present unit on 19.08.2018 while detailed to perform Quick Reaction Team (QRT) he was found severely intoxicated at Air Force Dhaba in domestic area and for this offence he was summarily tried on 10.09.2018 under Section 82 of Air Force Act, 1950 and awarded with seven days detention. Upon award of four punishments he came under the ambit of habitual offender within the provisions of Para 5 (b) & (c) of policy letter dated 18.12.1996. Thereafter, his case for discharge under Rule 15 (2) (g) (ii) of Air Force Rules, 1969 was initiated on 25.09.2018 and Show Cause Notice dated 06.12.2018 was issued which he replied on 26.12.2018 blaming the Air Force authorities for their biased approach. Meanwhile, the applicant passed test of skill (TOS) in the third and last attempt in Jan-Jun, 2018 and his result was declared in the month of June, 2018 but due to delay in passing of TOS, promulgation of substantive Couple (Cpl) rank

was delayed by adhering to the administrative procedure. In other words, since the applicant was placed in the category of habitual offender, his promotion order was withheld on the instructions of competent authority. After having considered the applicant's reply to Show Cause Notice dated 06.12.2018 and having taken into consideration of entire material facts on record, Air Officer-in-Charge Personnel (AOP) issued a speaking order dated 26.08.2019 with direction to discharge the applicant from service being 'services no longer required'. Accordingly, he was discharged from service w.e.f. 18.09.2019 (AN) in terms of Chapter III, clause 2 of Rule 15 Air Force Rules, 1969. Applicant has filed this O.A. to quash order dated 19.09.2019 and re-instate him into service with all consequential benefits.

3. Learned counsel for the applicant submitted that the applicant was enrolled in the IAF on 28.12.2011. It was further submitted that while posted with 10 Squadron Air Force the applicant was punished and awarded with prejudice

punishment perpetrated by superior officers due to ego clash on frivolous intoxication charges. The learned counsel for the applicant further submitted that while being posted with 11 BRD he was awarded fourth red ink punishment on the charges of intoxication.

4. Further submission of learned counsel for the applicant is that on 08.09.2019 applicant requested for leave but the same being denied, he became absent without leave and punished. It was further submitted that applicant being promoted to the post of Corporal (Cpl) could not have been punished on 10.09.2018 as it is against the mandate of Section 84 (4) of Air Force Act, 1950. In support of his contention that he was promoted to the rank of Cpl, learned counsel for the applicant has drawn our attention to certificate No. 92/2018-19 dated 12.12.2018 issued by '*Rajbhasha Prabhag, Vayu Sena Station Ojhar*'.

5. Relying upon the Hon'ble Apex Court judgment in the case of ***Pushpa Vanti vs Union of India***, 2011 (1) SCC 193, learned counsel for

the applicant submitted that respondents ought to give importance to soldiers who sacrifice for the sake of their motherland. Keeping in view of aforesaid submission learned counsel for the applicant pleaded that arbitrary discharge order in respect of the applicant be quashed and he be re-instated into service with all consequential benefits.

6. Per contra, learned counsel for the respondents submitted that the applicant was enrolled in the IAF on 28.12.2011. He was posted to 11 Base Repair Depot (BRD) w.e.f. 21.05.2018 till he was discharged from service on 18.09.2019. It was further submitted that prior to reporting to 11 BRD on posting, he was awarded with four red ink entries, including one during ab-initio training period for offences related to intoxication. While being posted to 10 Sqn AF, he was on the threshold of falling in the category of Habitual Offender. He submitted that the applicant was cautioned and counseled to mend his ways and desist from acts of indiscipline

otherwise earning another punishment would be fatal and he will be discharged from service.

7. Learned counsel for the respondents further submitted that while being posted to 11 BRD, AF, on 19.08.2018 he was detailed for Quick Reaction Team (QRT) duty. He drew his weapon for night shift duty, kept weapon in QRT rest room and left the QRT room without intimation/obtaining permission of QRT SNCO IC shift. At 2030 hours, he was found lying at Air Force Dhaba in domestic area of 11 BRD. He was taken to SMC wherein he was found to be severely intoxicated and in an inebriated state and hence he was not in a condition to perform QRT duty. For this offence, he was summarily tried on 10.09.2018 under Section 82 of AF Act, 1950 and awarded with seven days detention, thus he came under the ambit of Habitual Offender in terms of Para 5 (b) & (c) of policy letter dated 18.12.1996.

8. Learned counsel for the respondents further submitted that a Show Cause Notice was issued and on receipt of reply he was discharged from service under Rule 15 (2) (g) (ii) of the Air Force



Rules, 1969 as 'Services No Longer Required'. He pleaded for dismissal of O.A.

9. Heard Shri Abhishek Misra, learned counsel for the applicant and Shri PO Sharma, learned counsel for the respondents and perused the records.

10. No. 957821-N Ex LAC Dwipjyoti Talukdar was enrolled in the IAF on 28.12.2011 and during the course of his service he earned four red ink entries including one during ab-initio training period for the offences related to intoxication. While being posted to 10 Sqn AF, he was on the threshold of falling in the category of 'Habitual Offender' for which he was warned and counseled to mend his ways and desist from acts of indiscipline. He was also warned by the Commanding Officer vide letter dated 04.10.2017 that additional punishment would render him liable for discharge from service.

11. While posted with 11 BRD, AF, being on bonafide QRT duty, he was found lying at Air Force Dhaba in domestic area in an inebriated state for which he was tried under Section 82 of

Air Force Act, 1950 on 10.09.2018. A Show Cause Notice dated 06.12.2018 was issued which he replied on 26.12.2018 blaming Air Force Authorities for their biased approach, conspiracy and ill intention for not affording reasonable opportunities during application of Rule 24 of Air Force Rules, 1969. Thereafter, under the provisions of Paras 5 (b) & (c) of policy letter dated 18.12.1996 he was discharged from service w.e.f. 18.09.2019 (AN). Show Cause Notice dated 06.12.2018 being self explanatory is reproduced as under:-

*"1. WHEREAS, you were enrolled in the IAF on 28 Dec 2011 and assigned the trade of Str Fit.*

*2. AND WHEREAS, during your total service of about 07 years, 09 months as on 10 Sep 18 (date of last punishment) in the Air Force, you have been summarily tried and punished on as many as five occasions, thereby incurring five punishment entries in your conduct sheet (four effective punishment entries for the purpose of the Habitual Offender policy). However, as per Habitual Offender policy, your first punishment entry dated 01 Oct 12 has not been counted as it was incurred during your ab-initio training period. Copy of your conduct sheet is attached as Appendix 'A' to this Show Cause Notice.*

*3. AND WHEREAS, having incurred three red ink punishment entries as well as three punishment entries for repeated commission of specific offence, you were warned by CO, 10 Sqn, AF on 04 Oct 17, advising you to desist from acts of indiscipline, as any further addition of a punishment entry would result in initiating*

*action for your discharge from service. Copy of the said warning letter is attached as Appendix 'B' to this Show Cause Notice.*

*4. AND WHEREAS, inspite of the said warning, you have again indulged in an act of indiscipline, i.e., at 11 BRD, AF at about 2030 hrs on 19 Aug 18, found lying under influence of liquor near Air Force Dhaba Ojhar while on QRT duty when checked by 779473-N Sgt Ola Santosh AF Fit, Shift IC QRT thereby incurring one more red ink punishment entry on 10 Sep 18.*

*5. AND WHEREAS, perusal of your conduct sheet reveals that you are a poor airman material and that you are not amenable to service discipline and x x x (sick).*

*6. NOW THEREFORE, you are to show cause as to why you should not be discharged from service under Rule 15 (2) (g) (ii) of the Air Force Rules, 1969. Your reply to this Show Cause Notice is to be submitted by you to your Commanding Officer within 10 days from the date of receipt of this Show Cause Notice failing which it shall be assumed that you have nothing to urge in your defence against your discharge from service and further action would be taken accordingly."*

12. The aforesaid Show Cause Notice clearly shows that the applicant had earned red ink punishments mainly on the grounds of intoxication. It was also laid down in the Show Cause Notice that additional red ink punishment would be fatal but even then the applicant indulged in the act of indiscipline in which he, while on bonafide military duty, consumed liquor and was found in intoxicated state resulting into one more punishment under Section 82 of the Air

Force Act, 1950. This additional punishment became the sole ground for his discharge.

13. After having considered the applicant's reply to Show Cause Notice and having taken into account of entire material facts on record, Air Officer-in-Charge Personnel (AOP) issued speaking order dated 26.08.2019 for discharge of the applicant from service under the provisions of Chapter III, Rule 15 (Clause 2 (b) (ii) of Air Force Rules, 1969 which for convenience sake, is reproduced as under:-

*"1. WHEREAS, 957821 LAC D Talukdar Struc Fit of 11 BRD, AF was enrolled in the IAF on 28.12.2011.*

*2. AND WHEREAS, in his service of about 06 years and 08 months as on 10 Sep 18 (the date of last punishment), he was tried on five occasions and thereby incurred five red ink punishment entries in his service records. Red ink punishment entry incurred by the airman on 01 Oct 12 is not counted for the purpose of the Habitual Offender being for period of ab-initio training.*

*3. AND WHEREAS, having incurred three red ink punishment entries for repeated commission of a specific type of offence, i.e. intoxication as on 21 Aug 17, the airman satisfied the criteria of Potential Habitual Offender under the habitual offender policy and was duly warned by CO 10 Sqn AF vide 10S/C/401/1/2/P1 dated 04 Oct 17 to desist himself from an act of indiscipline as addition of another punishment entry as required by the category of Habitual Offender would render him liable for discharge from service under Rule 15 (2) (g) (ii) of the AF Rules, 1969.*

*4. AND WHEREAS, despite having been so warned, the airman again indulged in*

an act of indiscipline at 11 BRD, AF on 19 Aug 18, wherein at about 2030 hrs he was found lying under influence of liquor near Air Force Dhaba Ojhar, while on QRT duty when checked by 779473-N Sgt Ola Santosh AF Fit (Shift IC QRT) and consequently, he incurred one more red ink punishment entry on 10 Sep 18 in his conduct sheet. Thus, he satisfied the criteria of Habitual Offender and his case is governed by the policy on discharge as a Habitual Offender in terms of Air HQ/C 23406/685/PS dated 14 Aug 84 as amended from time to time.

5. AND WHEREAS, consequently, a Show Cause Notice (SCN) vide letter No MC/C 5000/2/75/821/Discp dated 06 Dec 18 in terms of the Habitual Offenders Policy was served upon him on 17 Dec 18 contemplating his discharge from the service under Rule 15 (2) (g) (ii) of AF Rules, 1969. The airman submitted his reply dated 26 Dec 18 wherein he has brought out the following:-

(a) He hails from a remote village where the employment of youth is very minimal, however, after a lot of struggle and full devotion towards his study with a keen interest to contribute in defence force, he could join the Indian Air Force on 28 Dec 11 as an Structure Fitter in the trade of technical branch and during 07 years of his exemplary service career, his trade proficiency is well recognized and for his professional outputs, continuously he was appreciated by the superiors.

(b) He is a law abiding defence personal, faced some inevitable circumstances wherein, he was charge sheeted for the sake of either nothing on his part or for a silly reason which could have been avoided if he had any legal knowledge and thereby, as an innocent airman neither he had any knowledge to question the authorities nor he had dare to seek the justice from the appropriate higher authorities. In addition to this, he was not aware of the consequences of outcomes of those charges, otherwise, he would have requested for expungement of punishment entries based upon totally false and baseless charge sheets framed against him for the sake of only consumption of authorized liquor.

(c) He is an earning member of his family to look after all the dependents residing in a remote village of Assam where, the youth employment is very minimal.

(d) His marriage is planned in the calendar year and hence, at this juncture, his retention in service becomes a great concern.

(e) He requested that his case may be considered sympathetically and he may be allowed to serve the organization with high moral and full motivation.

6. AND WHEREAS, the airman preferred an application dated 30 Jan 19 for revision and expungement of punishment entry of 'Seven days of detention' awarded by AOC 11 BRD, AF on 10 Sep 18 for being found absent from QRT post while being on duty and found lying under influence of liquor on 19 Aug 18. The said application has been considered by the competent authority, i.e. AOC-in-C, MC, IAF and rejected as being devoid of merit vide Speaking Order dated 22 Apr 19.

7. AND WHEREAS, I have examined the entire material on record in the light of relevant provisions of AF Law and it is revealed that the airman satisfied the criteria of Habitual offender, for having incurred a total of five counted punishment entries mainly for intoxication. The offences committed by him are deliberate and no defence whatsoever has been taken by him for exoneration, in his reply to the SCN.

8. And whereas, perusal of his conduct sheet reveals that he has been punished for offences relating to being found under influence of liquor and certain other acts of misconduct unbecoming of an airman. Nature of the offences committed by the airman reveals that the airman has scant regard to service discipline. The airman has been provided with all the opportunities to vindicate his stand at all the stages. He has not been prejudiced in any manner whatsoever evidently; the minor punishments and warning did not have salutary effect on him and he does not appear to be amenable to the service discipline this amply substantiates that the air warrior is not

*amendable to service discipline he is a poor airman material his further retention in service is likely to have adverse effect on other air warriors therefore, he deserves to be separated from the service.*

9. NOW THEREFORE, having taken into account the entire material on record 957821 LAC D Talukdar Struc Fit of 11 BRD, AF is considered a habitual offender and, therefore, I, being the competent authority approve his discharge from the service under Rule 15 (2) (g) (ii) of the Air Force Rules, 1969 as "HIS SERVES NO LONGER REQUIRED-UNSUITABLE FOR RETENTION IN THE AIR FORCE"

14. Contention of learned counsel for the applicant that the applicant being promoted to the rank of Cpl should not have been punished as it is in contravention to Section 84 (4) of the Air Force Act, 1950. In regard to this we find that though the applicant had passed promotion cadre for the rank of Cpl but his promotion order was withheld as disciplinary proceedings were pending against him. We also find that since the applicant was never physically promoted to the rank of Cpl, he was still holding rank of LAC.

15. In support of his contention that applicant was promoted to the rank of Cpl, learned counsel for the applicant has filed certificate dated 12.12.2018 issued by 11 BRD of 'Rajbhasha Prabhag, Vayu Sena Station, Ojhar' mentioning

his rank as Cpl. In regard to this submission of learned counsel for the respondents is that applicant's rank was erroneously typed when this certificate was issued. On perusal we find that respondents' contention with regard to erroneous typing in certificate seems to be justified as promulgation of personal occurrence report by Air Force Record Office for the rank of Cpl does not authorize a person to wear rank of Cpl unless he is physically promoted. Learned counsel for the respondents though has agreed that the applicant had passed promotion cadre and his promotion order was issued, but submitted that the promotion order was withheld due to ongoing disciplinary proceedings and the applicant was never physically promoted to the rank of Cpl.

16. The applicant had four red ink entries in his record. Habitual Offender Policy dated 18.12.1996 lays down that considerations for dealing with personnel with unsatisfactory disciplined record in which it is advised that in the interest of discipline personnel with four or more red ink entries should be discharged as



undesirable soldiers under Rule 15 (2) (g) (ii) of Air Force Rules, 1969. Four red ink entries are a guideline and are not mandatory for discharge of an incumbent. Personnel with less or more than four red ink entries can be discharged, obviously on merits of each case. The applicant having earned four red ink entries was very appropriately discharged in accordance with the procedure prescribed in aforesaid policy letter.

17. Maintenance of discipline is of paramount importance in the Armed Forces. Being a habitual offender with no regard to Air Force Service and maturity, applicant's retention in service was considered detrimental for the troops. Based on the past record, a Show Cause Notice was served to applicant by the Commanding Officer which he replied. Thereafter, speaking order was passed by the competent authority and on receipt of reply he was discharged from service being service no longer required.

18. In the light of the foregoing, we are of the view that the number of red ink entries alone is

not the criteria for discharge under the Rules. Four red ink entries are only a guideline. The disciplinary conduct of the individual as reflected in the service record and the requirement of maintaining discipline would decide if services are no longer required. This is an administrative action resulting from an unsatisfactory record of service of the applicant.

19. Thus, having considered all aspects of the matter, we find no grounds to interfere with the discharge of the applicant under Rule 15 (2) (g) (ii) of the Air Force Rules, 1969. The O.A. is accordingly, **dismissed**.

20. No order as to costs.

21. Pending applications, if any, are disposed off.

(Air Marshal Balakrishnan Suresh)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 06.04.2023  
rathore