

ARMED FORCES TRIBUNAL
REGIONAL BENCH
GUWAHATI

O.A. No 03 of 2017

In the matter of :

Ex Sep David Manga

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri K.C. Gautam and Shri D. Gangte,
Advocates

For Respondents : Shri B. Kumar, Advocate

CORAM :

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

ORDER

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 :

That in the facts and circumstances of the case the impugned order of discharge dated 17/06/15 and dated 11.8.2015 is bad in law and therefore liable to be set aside and quashed and the applicant is entitled to be retain in services with full back wages and other benefits as by law and other applicable rules made there under applicable, to which the applicant is entitled. It is therefore most humbly prayed that Your Honour would

be pleased to admit this petition called for records, issue notice to the respondents to show cause as to why the impugned order dated 17.6.2015 and dated 11.8.2015 and discharged certificate dated 11.8.2015 should not be quashed and set aside and the applicant be reinstated in service with full back wages and other consequential benefits.

2. The applicant has been discharged from service on 11.08.2015 under the provisions of the Rule 13(3)(iii)(v) of the Army Rules, 1954. It has been observed and held by the Competent Authority that retention of the applicant in service was not in the organisational interest; it was detrimental to the discipline of the organisation and discharge has been based on 5 Red-ink entries earned by the applicant in 13 years and 10 months of service.

3. The applicant is a native of Mizoram and was enrolled as a Sepoy in the Indian Army on 17.07.2001 and was attached to 12 Assam Regiment. After completing the training, he was initially posted to Udhampur, a field posting in the State of Jammu & Kashmir. Thereafter, his Unit was transferred to Binaguri, West Bengal, a peaceful station where the applicant worked from 2004 to 2007. He was thereafter posted to Kupwara Sector of Jammu & Kashmir from 2007 to 2009 and

finally to Jaipur, Rajasthan from 2009 to 2011. The applicant, during his service, had earned 5 Red Ink Entries, he was found to be intoxicated while on duty and he was found to be a case of a person with Alcohol Dependence Syndrome (ADS). He was issued with a Show Cause Notice on 14.05.2015 asking him to show cause as to why he should not be removed from service. It is the case of the applicant that the incidents narrated in the Show Cause Notice relate to various periods between 2011 and 2013 in the barracks. The applicant submitted his reply to the Show Cause Notice and indicated that he has improved himself considerably, having received counselling and medication and contended that he is fully recovered and has corrected himself; he is fit and willing to continue in service and prayed that he may not be discharged from service. The applicant also sought for sympathetic consideration. The applicant admits that he has a past medical history and diagnosed with ADS and it is the admission of the applicant that he has been admitted to military hospitals on six occasions and was diagnosed with the same ailment i.e. ADS. For the first time, he was admitted to the hospital on 06.09.2013 and discharged on 10.10.2013. Thereafter, he was admitted on 13.10.2013 and discharged on 14.10.2013. He was again admitted to the hospital for the 3rd time on 01.10.2014 and discharged on 02.10.2014 and thereafter in the same year, he was admitted on 05.03.2015

and discharged on 12.03.2015 and finally admitted on 13.05.2015 and discharged on 14.05.2015. Thereafter, the applicant was again admitted to the hospital on 18.07.2014 and discharged on 25.07.2015. Records indicate that the applicant has a history of ADS, he was subjected to Psychiatric treatment and medical observations and, therefore, various actions were taken against him. According to the applicant, merely on account of 5 Red-Ink entries, his services cannot be terminated.

4. Relying on the judgment of Hon'ble Supreme Court in the case of **Veerendra Kumar Dubey Vs. Chief of Army Staff and Others [(2016) 2 Supreme Court Cases 627]**, it is argued that the respondents have not followed due process of law as at the time of discharge, the applicant was placed in SHAPE-I medical category and he was not subjected to Medical Board consideration and merely on account of 4 or 5 Red-Ink entries, as held in *Veerendra Kumar Dubey's case (supra)*, he could not have been discharged from service. Learned counsel for the applicant placed reliance on the judgment in *Veerendra Kumar Dubey (supra)* and the following three judgments and sought for indulgence into the matter :

1. **Ashutosh Kumar Vs. Union of India & Ors. [O.A. No. 73 of 2014] passed by AFT, Regional Bench, Kolkata**
2. **Guru Prakash Pandey Vs. UOI & Ors. [O.A. No. 400 of 2017] passed by AFT, Regional Bench, Lucknow**

**3. Tripat Singh Vs. UOI & Ors. [T.A. No. 34 of 2015]
passed by AFT, Regional Bench at Chandigarh**

5. It was argued before us that the applicant's case was not referred to the Invaliding Medical Board inspite of the fact that the applicant was in SHAPE-I medical category, no detailed Court of Inquiry was conducted and thus without giving an opportunity to the applicant, only on the basis of the Show Cause Notice, his services have been terminated, which is in contravention of the principles of natural justice. That apart, he had not consumed alcohol while on duty and, therefore, as he has completed 14 years 01 month of service, the shortfall in the qualifying service may be condoned and he may be granted pension.

6. Respondents have filed a detailed counter affidavit and pointed out that the applicant has been a habitual offender. He was found to be consuming alcohol as detailed by the applicant himself. He was awarded various Red-Ink entries and various punishments. According to the respondents, during the applicant's service, the following Red-Ink entries and punishments were imposed :

SI No.	Place and date of Offence	Army Act Section	Date of Award	Punishment awarded
(i)	Peace, 03/08/2011	48	20/08/2011	28 days military rigorous imprisonment

(ii)	Peace, 05/10/2011	48	08/10/2011	21 days military rigorous imprisonment
(iii)	Field, 09/10/2012	48	21/11/2012	21 days military rigorous imprisonment
(iv)	Field, 04/01/2013	48	02/03/2013	21 days military rigorous imprisonment
(v)	Field, 28/11/2014	48	29/11/2014	14 days military rigorous imprisonment and 14 days pay fine

7. It is the case of the respondents that the applicant did not prove himself to be a good soldier in uniform. On the contrary, he proved himself undesirable and, therefore, his retention was not sought for. He was admitted to various hospitals on various occasions and mostly on account of his diagnosis as ADS. Details of his hospitalisation and discharge are as under :

Sl No.	Hosp/Place	From	To
(a)	456 Field Hospital	04/09/2013	-
(b)	5 Air Force Hospital	06/09/2013	10/10/2013
(c)	456 Field Hospital	11/10/2013	-
(d)	456 Field Hospital	14/10/2013	14/10/2013
(e)	162 Military Hospital	30/04/2014	01/05/2014
(f)	456 Field Hospital	15/09/2014	-

It is the case of the respondents that once it is found that the applicant is a habitual offender and has indulged in actions which cannot be approved, he was discharged from service.

8. Placing reliance upon the judgments rendered by the Hon'ble Supreme Court in the case of Sep. Satgur Singh Vs. Union of India and Others [(2019) 9 Supreme Court Cases 205] and in the case of Union of India and Others Vs. Balwant Singh [(2015) 14 Supreme Court Cases 389], it was argued that the punishment is justified and for taking action under Army Rule 13, conduct of a regular Court of Inquiry is not called for and the action taken in the matter being in accordance with the requirement of Army Rule 13, no interference is called for.

9. We have heard the learned counsel for the parties at length and have perused the record.

10. During the course of hearing, much emphasis was laid on the ground that merely because the applicant had earned 05 Red-ink entries, his services could not be dispensed with and for making such a submission, reliance was placed on the judgment of the Hon'ble Supreme Court in the case of *Veerendra Kumar Dubey (supra)*. In that case, after considering the requirement of Army Rule 13, relied upon by the applicant, Hon'ble Supreme Court in Paras 14 to 17 has crystallised the principles of law in the following manner :

"14. It is true that Rule 13 does not in specific terms envisage an enquiry nor does it provide for consideration of factors to which we have referred above. But it is equally true that Rule 13 does not in

terms make it mandatory for the competent authority to discharge an individual just because he has been awarded four red ink entries. The threshold of four red ink entries as a ground for discharge has no statutory sanction. Its genesis lies in administrative instructions issued on the subject. That being so, administrative instructions could, while prescribing any such threshold as well, regulate the exercise of the power by the competent authority qua an individual who qualifies for consideration on any such administratively prescribed norm. Inasmuch as the competent authority has insisted upon an enquiry to be conducted in which an opportunity is given to the individual concerned before he is discharged from service, the instructions cannot be faulted on the ground that the instructions concede to the individual more than what is provided for by the rule. The instructions are aimed at ensuring a non-discriminatory fair and non-arbitrary application of the statutory rule.

15. It may have been possible to assail the Circular instructions if the same had taken away something that was granted to the individual by the rule. That is because administrative instructions cannot make inroads into statutory rights of an individual. But if an administrative authority prescribes a certain procedural safeguard to those affected against arbitrary exercise of powers, such safeguards or procedural equity and fairness will not fall foul of the rule or be dubbed ultra vires of the statute.

16. The procedure prescribed by Circular dated 28-12-1988 far from violating Rule 13 provides safeguards against an unfair and improper use of the power vested in the authority, especially when even independent of the procedure stipulated by the competent authority in the Circular aforementioned, the authority exercising the power of discharge is expected to take into consideration all relevant factors. That an individual has put in long years of

service giving more often than not the best part of his life to armed forces, that he has been exposed to hard stations and difficult living conditions during his tenure and that he may be completing pensionable service are factors which the authority competent to discharge would have even independent of the procedure been required to take into consideration while exercising the power of discharge. Inasmuch as the procedure stipulated specifically made them relevant for the exercise of the power by the competent authority there was neither any breach nor any encroachment by executive instructions into the territory covered by the statute.

17. The procedure presented simply regulates the exercise of power which would, but for such regulation and safeguards against arbitrariness, be perilously close to being ultra vires in that the authority competent to discharge shall, but for the safeguards, be vested with uncanalised and absolute power of discharge without any guidelines as to the manner in which such power may be exercised. Any such unregulated and uncanalised power would in turn offend Article 14 of the Constitution.”

11. A perusal of the aforesaid clearly goes to show that the enquiry contemplated under Army Rule 13 is not the enquiry, namely, a regular enquiry as canvassed by the applicant. It is further observed that merely because 05 Red-ink entries are earned, it is not a statutory requirement or a statutory sanction for discharge. The genesis lies in the administrative instructions issued and the circumstances, based on which action is taken. That being so, contention of the applicant that merely because he has earned 05 Red-Ink entries, his discharge from service is not sustainable. The

decision of Applicant's discharge was taken, after taking note of his entire service record and the Red-Ink entries along with his ailment i.e. ADS established in the matter. It has been held in the case of *Sep Satgur Singh (supra)* by the Hon'ble Supreme Court that the inquiry contemplated under Army Rule 13 is not a regular Court of Inquiry in the real sense. The kind of inquiry required to be conducted is sufficiently met when before the applicant's discharge, a Show Cause Notice issued and after evaluating the totality of the circumstances, a decision taken. The judgment rendered by Hon'ble Supreme Court in *Sep. Satgur Singh (supra)* also refers to the law laid down in the case of *Veerendra Kumar Dubey (supra)* and approved finding that after evaluating the totality of the circumstances, if action is taken, same cannot be interfered with. Similar is the view expressed by the Hon'ble Supreme Court in the case of *Balwant Singh (supra)*.

12. In the instant case, service profile of the applicant, the acts of commission and omission and punishments imposed upon him clearly show that he was consistently punished for the same offence and he had been admitted to hospitals on account of the same ailment i.e. ADS, on various occasions and after evaluating the totality of circumstances, respondents have exercised the statutory powers available to them. Even in the reply dated 22.05.2015 to the Show Cause Notice issued on

14.05.2015, the applicant did not challenge the action taken. On the contrary, he has, in fact, sought for sympathetic view to be taken. His medical profile and material which has been produced and placed on record and taking an over-all view in the matter, we see no reason to interfere into the matter.

13. However, as far as the prayer made for grant of pension after condoning the shortfall of 11 months in service is concerned, we are of the considered view that it would be for the Competent Administrative Authority to take action in this regard and if permissible and within the policy consideration, on a representation made by the applicant, his case for condoning the shortfall and grant of pension may be considered and a decision taken.

14. With the aforesaid observations and liberty granted to the applicant, finding no case made out, no interference is to be made in this case and, therefore, the OA stands dismissed.

15. 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/