

**COURT NO. 3,
ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

**T.A. No. 245 of 2009
(Delhi High Court W.P (C) No. 2613 of 1995)**

IN THE MATTER OF:

Cpl Hari Shankar**Applicant**
Through Mr. Rajeshwar Kumar Gupta, counsel for the applicant

Versus

Union of India and Others**Respondents**
Through: Mr. Gaurav Liberhan, counsel for respondents

CORAM :

**HON'BLE JUSTICE MANAK MOHTA, JUDICIAL MEMBER,
HON'BLE LT GEN Z.U.SHAH, ADMINISTRATIVE MEMBER**

Order

Date: 13-4-2010

1. The applicant filed a writ petition (civil) No. 2613 of 1995 in the Hon'ble Delhi High Court for quashing the charges reflected in show cause notice dated 24.9.1991 (**Annexure P-12**) and order of discharge

dated 24.7.1992 (**Annexure P-15**) with further prayer for reinstatement with all consequential benefits. The same was transferred to the Armed Forces Tribunal on 1.9.2009.

2. The applicant was enrolled in Indian Air Force on 21.1.1985. On 24.9.1991 the applicant was served with a show cause notice for discharge on the basis of previous several red and black ink entries on disciplinary grounds shown in notice (**Annexure P-12**). The applicant filed a writ petition 2458 of 1992 on 17.7.1992 for quashing punishment awarded and restraining orders for discharge. The applicant also contended that he was not paid his salary with effect from May 1991 till he filed writ petition (civil) No. 2458 of 1992 on the baseless grounds that he did not submit his pay book. The applicant and his father requested for an interview but that was turned down and on 24.9.1991. A show cause notice (**Annexure P-12**) was issued for discharge under Air Force Rule 15 (2) (g) (ii) of 1969 stating there in that he had despite warning committed another offence. The applicant replied to the show cause notice on 23.10.1991 (**Annexure P-13**). He challenged the allegations and also filed a writ petition (Civil) No. 2458 of 1992. During the pendency of the writ petition the applicant was discharged on

24.7.1992 (**Annexure P-15**). The applicant also sought amendment in writ petition but at the time of hearing he was allowed to withdraw writ petition (civil) No. 2458 of 1992 on 9.1.1995 with liberty to challenge the subsequent order of discharge. Thereafter he filed the present writ petition (civil) 2613 of 1995, challenging the charges and punishments awarded on several occasions including punishment of severe reprimand dated 3.6.1991, and order of discharge passed under Rule 15(2)(g)(ii) of Air Force Rules 1969 with consequential relief.

3. The applicant contended that he was not given proper and adequate opportunity to defend himself against various charges framed against him. He denied the charges and further submitted that no charge sheet was supplied nor proper procedure as followed. He had been awarded illegal and arbitrary punishments.

4. The applicant has prayed for quashing the charges and the punishments awarded to him and has also prayed for quashing of his order of discharge and for his reinstatement in service with all consequential benefits.

5. The respondents in their counter affidavit have stated that the applicant was involved in several disciplinary cases. There were five red and black entries on his service profile. On 7.8.1990 (**Annexure R-1**) therefore the applicant was issued a warning letter stating that he had already earned two red and two black ink entries and had come into the category of potential/ habitual offender vide Air Headquarter policy dated 14.8.1984 (**Annexure R-4**). The applicant was informed that in case he earned another red/black ink entry he would be declared a habitual offender and would be discharged administratively under Air Force Rule 15 (2) (g)(ii). Despite the warning the applicant committed offences on 30.4.1991 and 6.5.1991 and was awarded “severe reprimand” on 3.6.1991. He again was served with a show cause notice on 24.9.1991. His reply was considered by Headquarter South West Air Command (HQ SWAC) and his discharge was approved by Air Officer in charge Personnel, Air Headquarter on 4.5.1992. The applicant was discharged on 23.7.1992 under Air Force Rules 15 (2)(g)(ii) “Services no longer required unsuitable to retain in service”.

6. The respondents maintain that the applicant in his short span of seven years service committed six offences and was awarded summary

punishments for the same by various Commanding Officers (CO). The applicant was referred to psychiatrist, base hospital Bagdogra because of some paranoid trends in his behaviour. He was however discharged when no abnormality was detected. It was submitted that the applicant, if, was not satisfied with the punishment awarded by his Air Officer Commanding should have opted for revision of such awards as per provisions of Air Force Rules 33 but he did not avail that.

7. The salary of applicant was not paid with effect from May 1991 since he failed to produce his pay book despite repeated instructions on the baseless grounds that the authorities would make false entries in the same. It was also submitted that his total dues amount including gratuity amount etc have been paid.

8. The applicant in his rejoinder affidavit stated that he had not committed any offence on 30.4.1991 or 6.5.1991 as alleged. The alleged offences are false and concocted. The respondent sent him to the psychiatric ward in order harass him.

9. In his rejoinder affidavit the applicant again stressed that the alleged offences were planted against him and he was not afforded an

opportunity to defend himself. The respondents have also not properly considered his reply to the show cause notice. The respondents illegally discharged him during the pendency of his writ petition (civil) No. 2458 of 1992.

10. We have perused the records and heard the arguments at length. During the course of arguments the applicant reiterated the points given earlier. He also cited the judgment given in the case of ***Capt SS Mehta Vs. UOI (74 (1998) DLT 42*** and ***Sumer Singh Vs. UOI & Ors 74 (1998) DLT 15***. These cases however are related to court martial proceedings and the respondents were unable to prove charges against the concerned petitioner. This is not the situation in the case of the applicant. Learned counsel for respondents also cited the case of ***UOI Vs. Corporal AK Bakshi & Anr. (JT 1996 (3) S.C 310)***. In this case, it has been observed that under the policy dated 14.8.1984 habitual offenders can be discharged under Rule 15(2)(g)(ii) of Air Force Rules. We have considered the contention of the applicant that the punishments awarded were false and concocted. However, perusal of his reply to show cause notice and his conduct sheet indicate that the contentions are baseless and have no force. All were summary punishments awarded by various

COs. The applicant had ample opportunity to defend himself. The applicant has been awarded six red/ black ink entries over a period of seven years primarily for disobedience of orders and has been correctly discharged under Air Force rule 15 (2) (g) (ii) “Services no longer required unsuitable to retain in service” for being habitual offender. This was done after due notice. This was justified under the Air Force policy of action against “habitual offenders”. We have perused the policy and feel that it has been correctly applied in the present case of the applicant. The applicant was duly cautioned before such action was contemplated but continued with acts of indiscipline. The application is dismissed. No costs.

MANAK MOHTA
(Judicial Member)

Z.U. SHAH
(Administrative Member)

Announced in the open court
Dated: 13-4-2010