

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

21.

O. A. No. 474 of 2010

Sepoy Rabindra Prasad Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. K. Ramesh, Advocate.

For respondents: Sh. Romil Pathak and Sh. Anil Gautam, Advocates.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER
06.07.2011

1. Petitioner by this petition has prayed that his discharge order dated 2nd July 2009 may be set aside as it is against the order of the Army HQ and also against the judgment of the Hon'ble Delhi High Court.

2. The petitioner was enrolled in the Indian Army on 24th February 2000 and continued in service but he earned four red ink entries which ultimately led to his discharge on 2nd July 2009. Hence, he filed the present petition after exhausting necessary remedies.

3. A reply has been filed by the respondents and respondents have taken a stand that petitioner has four red ink entries and they produced the relevant charge

sheets for these red ink entries and tried to justify that the petitioner is undesirable to be retained in service and, therefore, the authorities have exercised their powers under Army Rule 13 (3) III (v).

4. We have heard learned counsel for the parties and perused the record.

5. Learned counsel for the petitioner submitted that of these red ink entries some are of same date, therefore, incumbent should not have been discharged from service. In this connection learned counsel for the petitioner has invited our attention to the guidelines provided by the Army authorities for discharge on account of red ink entries and he has specially invited our attention to the observation that it is not mandatory that an incumbent with four red ink entries should be discharged and nor it is a legal requirement. The Commanding Officer should consider the nature of offences for which each of the red ink entries has been awarded and not to be harsh with the individual specially when he is about to complete pensionable service. The Commanding Officer has to give due consideration to the long service, hard situations and difficulty in communication which the ORs have been exposed to during the service and order discharge only when it is absolutely necessary in the interest of service. In this connection our attention was invited to a decision given by the Division Bench of the Hon'ble Delhi High Court in **Ex. Sepoy Sube Singh v. Union Of India & Ors.**, in which a person with four red ink entries was ordered to be discharged was upheld but he was granted benefit of full pensionable service. Learned counsel for the respondents submitted that a person who has already been awarded four red ink entries, the authorities are well within their rights under Army Rule 13(3) III(v) to discharge a person who has become undesirable to be retained in

service. It is also pointed out that it is discretion of the concerned officer and proper care has been taken by the Commanding Officer. Ultimately a show cause notice was issued to the petitioner and thereafter petitioner has been discharged.

6. It is true that the guidelines which have been provided for exercise of the powers for discharge contain a necessary prohibition also that it should not be taken to be a routine matter and authorities should apply their mind objectively that whether the person be retained in service is desirable or undesirable. It has also been laid down that in case of a person nearing completion of pensionable service, these powers as far as possible should not be exercised. Keeping in view these directions, the authorities have applied their mind and thought that it would not be conducive for the discipline of the forces to retain such a person and they discharged him. We do not see any reason to interfere if discipline in the Army is not maintained, it would likely to cause havoc. The Courts will interfere only if the action of the authorities is actuated with the malice or there is a serious violation of a statutory direction. Normal exercise of powers by Army authorities shall not be interfered with otherwise it will cause indiscipline in Army which is not conducive for the service. We have gone through the judgment of the Division Bench of the Hon'ble Delhi High Court in **Ex. Sepoy Sube Singh v. Union Of India & Ors.** The Court has upheld the decision of Army to discharge a person. However they have granted a mercy by giving him the benefit of pension and that is the discretion of the Court. However in the present case, looking into the nature and conduct of the incumbent we are not inclined to interfere with the order of discharge.

7. The petition is dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
July 06, 2011