

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI**

**T.A. No. 296 of 2009
Writ Petition (C) No. 8009 of 2007**

Sh. S.K. Misra **... Petitioner**

Versus

The Chief of Air Staff & Others **... Respondents**

For petitioner : **Sh. V.K. Misra, Advocate**

For respondents : **Sh. Ankur Chhibber, Advocate**

CORAM :

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON
HON'BLE LT GEN S.S. DHILLON, MEMBER**

**ORDER
09.09.2011**

1. This case has been transferred from Delhi High Court.
2. The petitioner by this petition has prayed for issuance of writ or direction to quash the discharge order of 15th June, 2005 and the order dated 01.08.2006 by which the appeal of the petitioner was dismissed. The petitioner also sought to be reinstated in service.

3. Petitioner was enrolled as an Airman in the Air Force in 1997 and he continued to discharge his duties faithfully. In the month of December, 2002, the petitioner went on leave to his native place and because of his matrimonial dispute, the petitioner was compelled to extend his leave and the same was communicated to the respondent. In spite of the information given by the petitioner, due to malafide intention of his superiors, an adverse entry was made in the ACR of the petitioner, though it was not communicated to him.

4. It is alleged that except on few occasions, at no point of time any memo was ever received nor any adverse entry were ever conveyed to the petitioner. On 25.05.2004, a warning letter was issued stating that there are three red entries found in the service record of the petitioner and he was cautioned that in case any additional adverse entry was incurred by him he would be treated as habitual defaulter and was liable to be dismissed from service.

5. The petitioner argued that he was never informed about the alleged reprimand and as such these entries cannot be taken into consideration for taking any decision against the petitioner. In the month of December 2004, the petitioner proceeded on leave for few days. During the stay at home, he was subjected to some matrimonial dispute which

occasioned him to over stay. The petitioner immediately intimated the higher authorities and requested to extend his leave for two weeks. The petitioner was assured that the leave would be extended. On 04.03.2005 the petitioner was served with a show cause notice stating that the petitioner had earned four red ink entries during the year 2003-2004 and the petitioner was not amenable to service discipline and should be dismissed from service. With this Show Cause notice a copy of the service book showing the punishments was for the first time intimated to the petitioner. Thereafter, the petitioner filed a reply to the notice and protested that he had never acted insubordinately nor shown lack of interest in serving the respondent and that the proposed punishment was harsh, especially since he was never informed about these punishments. The petitioner further contested that he never received four red ink entries and as such he could not be awarded such punishment. Thereafter, the respondent discharged the petitioner on 15.06.2005 under Rule 15 of the Air Force Rules, 1969. Aggrieved against this, the petitioner filed an appeal which was rejected. Thereafter, petitioner filed Writ Petition in Delhi High Court which was transferred to this Tribunal.

6. The respondents filed their reply and contested the matter. Respondents submitted that the petitioner had incurred a total of 05 red ink

entries in his service career on account of his wilfully overstaying leave officially granted to him and also absenting himself from duty. After incurring 03 Red ink entries the individual was given warning letter dated 25.05.2004 by his Commanding Officer stating that he was on the threshold of becoming a habitual offender and an additional punishment entry in the conduct sheet would render him liable for discharge from service under Rule 15(2) (g) (ii) of the Air Force Rules, 1969. The petitioner incurred one more Red Ink punishment entry on 04.01.2005. Consequently, show cause notice was issued on 04.03.2005 upon the petitioner as to why he should not be discharged from service under Rule 15(2)(g) (ii) of the Air Force Rules 1969. After considering his reply and entire facts and circumstances of the case, the petitioner was discharged from service on 27.06.2005.

7. We have heard the Learned counsels for the parties. Learned counsel for petitioner submitted that the show cause notice is without any jurisdiction. As on date he has not incurred three red ink entries. In this connection, attention was invited to Reg. 1054 (xi) which reads as under:-

1054 : Sheet Roll-Red and Black Entries : (a) The following entries in red ink will be made in the conduct sheet contained in the sheet roll which will be maintained for every person subject to the Air Force Act other than a commissioned officer :-

(i) to (x)

(xi) Forfeiture of pay and allowances for absence without leave exceeding two days when classified as an offence by the commanding officer.

8. This clearly says that the forfeiture of pay and allowances for absence without leave exceeding two days when classified as an offence by the Commanding Officer. In the present case the petitioner was punished on 01.01.2003 by being given reprimand. In accordance with Sub Para (xi) of Para 1054 of Air Force Regulations the award of Reprimand was to be treated as a Red Ink Entry. The offence was for overstayed of leave granted to him on 01.01.2003 when he reported on 07.01.2003 and it was recorded that he absented himself for 06 days 08 hours 04 minutes. Therefore as per the aforesaid provision this entry of reprimand was also treated as red ink entry. Accordingly on the relevant date i.e. 25.05.2004, when the notice was given to the petitioner, he already had 03 red ink entries to his credit. On 04.03.2005 in the show cause notice given to him it was mentioned that "you were warned by your Commanding Officer on 26.05.2004, counselling you to desist from acts of indiscipline, as any further addition of punishment entry would result in initiating action in your discharge from the service." In the reply to the show cause notice, the petitioner admitted that "during my total service of 06 years 02 months as on 04 Jan 2004 in the Air Force, I had

been summarily tried and punished on as many as four occasions and all are Red ink punishment entries". The petitioner has also signed the 25.05.2004 counselling letter wherein it has clearly mentioned that as on that date he had already earned 3 red ink entries. In the circumstances, we are of the opinion that the petitioner rendered himself ineligible to continue in service. There is no reason to doubt the authenticity of the records.

9. Accordingly the petition is hereby dismissed, with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

Pronounced in open court
On 09th September, 2011