COURT NO. 3, ARMED FORCES TRIBUNAL,

PRINCIPAL BENCH, NEW DELHI

T.A. No.441 OF 2010

W.P.(C) No.5441 of 1997 of Delhi High Court

IN THE MATTER OF :

Ex. Corporal K.S. Malik .....Applicant
Through: Mr. S.K. Sanan, Counsel for the applicant

VERSUS

Union of India & Anr. .....Respondents
Through: Ms. Jagriti Singh proxy for Mr. A.K. Bhardwaj, Counsel for the respondents

CORAM:

HON'BLE MR. JUSTICE MANAK MOHTA, JUDICIAL MEMBER
HON'BLE LT. GEN. M.L. NAIDU, ADMINISTRATIVE MEMBER

JUDGMENT

Date: 15.02.2011

1. The petition/application was first filed on 08.12.1997 before the Hon'ble Delhi High Court. It was transferred to this Tribunal on its formation on 18.11.2009.

2. The petitioner/applicant by this petition/application has prayed for quashing of the punishment of "severe

reprimand" awarded to him on 21.05.1993 along with quashing all the summary punishments (5 punishments) awarded to him in the conduct sheet (**Annexure P-3**) and further for quashing the policy instructions of 14.08.1984 being discrimatory, arbitrary and unconstitutional. The applicant, as a result thereof, has prayed to quash discharge order dated 20.11.1993 for a direction to reinstate him in service with all consequential benefits.

3. Brief facts of the case are that the applicant was enrolled into Air Force Service on 27.02.1986. His trade was Equipment Assistant. The applicant continued to perform his duties with utmost capability and acquainted himself well. The applicant further stated that he was doing well for himself but on account of some malafide action of the authorities he was awarded some punishments of minor allegations and on the basis thereof was ordered to be discharged from service on 20.11.1993 with 7 years and 265 days of service.

4. The applicant has further stated that from 1985 to 1989 there was nothing wrong with him and his record was

clean. He was awarded a punishment of admonition during his training for using unfair means on 12.01.1984. Thereafter, he improved his behaviour and he was granted the rank of Corporal. However, between the years 1991 to 1993 the applicant was awarded punishments one after the other for misconceived allegations which did not amount to offences and on the basis thereof he was first warned (**Annexure P-1**) for his discharge being a "Habitual Offender". On 21.05.1993 again he was awarded the sentence of "severe reprimand". Thereafter, he was given show cause notice on 16.07.1993 (**Annexure P-2**) and was discharged from service on 20.11.1993.

5. Learned counsel for the applicant argued that it was non-application of mind by the various authorities before issuing of the show cause notice, as well as before the discharge of the applicant was finally sanctioned. He argued that as per the Air Force Rule 15 (2) (g) (ii) the authority for discharge to a rank of Corporal from service is vested with the Air Officer, Personnel (AOP). While the show cause notice was issued at the command headquarter level. Thus,

the notice to discharge was bad in law. He cited a decision of Hon'ble Delhi High Court delivered in ***Ex. Sepoy Sube Singh vs. UOI & Ors.*** W.P.(C) No.4656/2003 on 20.04.2007 and averred that the Hon'ble High Court in the said judgment has observed that non-application of mind while taking a decision for discharge in such a case would have violated the fundamental rights of the petitioner. Counsel for the applicant has also assailed the policy letter of 14.08.1984 stating that the policy letter was a violation of Section 189 of the Air Force Act, 1950, as this letter gives unguided and uncontrolled powers in the hands of authorities to ease out from service by awarding him some minor punishments.

6. Learned counsel for the respondents stated that a policy for disposal of habitual offender was initiated on 14.08.1984 consequent to a detailed study by the CDM, Secundrabad. This policy was carefully examined by the Hon'ble Supreme Court in their judgment in ***Union of India & Ors. vs. Corporal A.K. Bakshi & Anr.*** JT 1996 (3) SC 310, where, though there was no direct challenge to the policy and the procedure laid down thereof for discharge of habitual

offenders under Rule 15(2) (g) (ii), but the Hon'ble Supreme Court having examined the entire policy and the procedure laid down thereto in detail, upheld the process and therefore, the contentions placed by applicant are not tenable.

7. The show cause notice issued to the individual, which was accepted by the applicant, was clearly under the powers of para 14 of the appendix of the policy letter dated 14.08.1984, which reads as under:-

> "14. **All cases of the two categories, i.e. those who have already crossed the criteria laid down for qualifying as habitual offenders** and those on the threshold of doing the same reported to Command HQs either by the initial Board of officers or individually, are to be mentioned by the Command HQs. On receipt of intimation regarding the award of another punishment in such cases the **Command HQs are to issue Show Cause Notices to the individual in terms of this HQ letter No Air HQ/C 23406/685/PS dated 28 Oct 66**.

8. Furthermore, learned counsel for the respondents states that the discharge was correctly sanctioned by

competent authority vide letter dated 26.10.1993 (**Annexure R-3**) under Air Force Rule 15(2) (g) (ii), which clearly states:

> "1. In pursuance of this Mukhyalaya letter No.Air HQ/023406/685/PS dated 14 Aug 84, the abovenamed airman had been categorised as habitual offender and therefore the **AOP has been pleased to accord his approval on 21 Oct 93** to discharge him from service, being unsuitable for retention in the Air Force. You are, therefore, requested to issue necessary discharge order of 701771 Cpl Makik KS, Eq/Asst discharing him from the service under the provisions of Air Force Rules 1969, Chapter III, Rule 15, Clause 2(g) (ii) – HIS SERVICE NO LONGER REQUIRED – UNSUITABLE FOR RETENTION IN THE AIR FORCE."

9. It was also contended by learned counsel for the respondents that the Hon'ble Supreme Court in ***Corporal A.K. Bakshi*** (supra) has held as under: -

> "11. It is not disputed that in both these cases the procedure prescribed under the Policy for Discharge has been followed. The orders for discharge of the respondents thus do not suffer from any infirmity and the Division Bench of the High Court was in error in setting aside the said orders."

10. Having heard both the parties at length and examined the documents, we are of the opinion that on the basis of punishments awarded to him, the procedure adopted by the Air Force in having issued show cause notice to the applicant was as per the procedure prescribed and also adhering to paras 19(a) & (b) of the policy of 14.08.1984 (**Annexure R-1**), which follow as under:

> "19. The following general guidelines may be kept in view for processing these cases: -
>
> (a) On the award of another punishment to those airmen who have either already crossed the criteria for qualifying as **habitual offenders and those who are on the threshold of qualifying for the same are to be served with Show Cause Notice without any exception**.
>
> (b) All cases where **show cause notices have been served are to be reported to Air HQ without any exception for consideration of the AOP**."

11. Thus, there was due application of mind. Before issuance of the show cause notice a warning letter was also issued to the applicant, which the applicant has also

confirmed in his O.A. It is clear from the record that the show cause notice dated 16.07.1993 was issued after the last punishment of "severe reprimand" which was given on 21.05.1993. The judgment cited by the petitioner of ***Ex. Sepoy Sube Singh*** (supra) does not help his contentions.

12. We have also considered the contentions raised with regard to different punishments awarded to applicant as those have been made on the basis of impugned discharge. Firstly, they were of 1991 to 1993 and the applicant has filed writ petition in 1997, he has not made any protest or representation earlier. Further in reply it has been made clear that due procedure had been followed. Thereafter, punishments were given by different officers in different time under summary disposal and trial by competent authority. We have also considered the other contentions raised in this regard, but they are not having any legal force.

13. The contention of the applicant that he should have been tried under Section 83 of the Indian Air Force Act, 1950, which requires permission of a superior officer who holds the

warrant for a Court Martial. Having examined the documents as also the nature of offence, we are of the view that the petitioner was correctly tried under Section 82 of the Indian Air Force Act. On examining the offences in detail it is quite obvious that the applicant was prone to one type of offences which made him "Habitual Offender". Therefore, it is quite logical that having been termed as "Habitual Offender" the authorities decided to take action as per the policy letter of 14.08.1984. Even after having received a written warning the applicant again committed a similar offence which gave rise to the issue of show cause notice dated 16.07.1993. Thus, the contentions are rejected.

14. It is also evident from the documents (**Annexure R-3**) that due application of mind was undertaken by the AOP before sanctioning the discharge of the individual as habitual offender. The process laid down by the policy of 14.08.1984 is very elaborate and does not have any conflict, in any manner, from the provisions laid down in Air Force Rule 15(2)(g)(ii) and, therefore, cannot be held as ultra vires as also

upheld by Hon'ble Apex Court in ***Corporal A.K. Bakshi*** (supra).

15. In view of the foregoing discussion, we dismiss the application. No orders as to costs.

M.L. NAIDU
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Announced in the open Court
on the day of 15th February, 2011