

**COURT NO. 2, ARMED FORCES TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI  
T.A. No. 615 of 2009  
W.P.(C) No. 3003 of 1997 of Delhi High Court**

**IN THE MATTER OF:**

**Shri Shiv Hari** .....**Applicant**  
Through : Mr. Achal Chhabra, counsel for the Applicant

Versus

**Chief of the Air Staff** .....**Respondents**  
Through: Mr. Ankur Chhibber, counsel for the Respondents

**CORAM:**

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

**JUDGMENT**

**Date: 12.09.2011**

1. The petition was filed before the Hon'ble Delhi High Court on 24.07.1997 and was transferred to the Armed Forces Tribunal on 23.12.2009.
2. The prayer of the applicant is to quash the discharge order dated 21.03.1997 and to reinstate the applicant with retrospective effect with all consequential reliefs. He has also prayed to declare the Rule 15 (2)(g)(ii) of Air Force Rules, 1969 as ultra vires as being not congruous with the main rule.
3. The brief facts of the case are that the applicant was enrolled in the Air Force on 07.10.1988 as an Airman in Mechanical Transport Driver (MTD). The applicant's service contract was for 20 plus 6 years.

After successful completion of his training, he was posted to Air Force Station, Bidar, Karnataka. On 01.10.1990, the applicant was promoted as leading Aircraftsman. On 01.10.1993, he was further promoted as Corporal. On 10.08.1993, the applicant passed graduation exam from Delhi University and thus became qualified for taking 'Part I' test for Sergeant on 07.08.1994.

4. On 30.08.1994, the applicant was transferred from Air Force Station Bidar, Karnataka to No. 10 Wing Air Force at Jorhat, Assam. He was charge-sheeted by Flying Officer N. Patel STO (MT) for absenting himself from duty and was given a minor penalty of 'reprimand' on 29.09.1994. The applicant was again charge-sheeted by orderly officer for not carrying out his command as a result of which the applicant was punished with "severe reprimand" on 25.11.1994. The applicant was once again charge-sheeted by Flying Officer N. Patel STO (MT) for refusal to carryout the trade job which resulted in 'reprimand' on 14.12.1994. Learned counsel for applicant states that all the charges were denied by the applicant but still he was punished for the same.

5. On 02.01.1995, the applicant was temporarily attached to 14 Wing Air Force at Chabua (Assam). The applicant was made involved in quarrel with JWO K Sharma who forced him to report to the guardroom for close arrest for coming late on duty. The applicant was kept for two months in close arrest and was also tried by District Court

Martial (DCM) for the charges under Section 40(C) of Air Force Act, 1950 using criminal force to his superior officer JWO K. Sharma by slapping him on the face and also using insubordinate language to his superior officer. The DCM held him guilty for the second charge and sentenced him to undergo detention for two months along with reduction in rank. The findings were confirmed by the AOC-in-C HQ EAC IAF on 03.11.1995 (**Annexure 'A'**).

6. The applicant was further severely reprimanded on 11.03.1995 by Sqn. Ldr. K. Damodaran, Station Adjutant of No. 14 Wing AF for failing to carry official mail. The same officer again severely reprimanded the applicant on 06.04.1995 for taking out his personal application from his office without permission. The same officer again charge-sheeted the applicant on 18.09.1995 for violating the laid down channel of correspondence in which he was punished by an admonition. All these charges were rebutted by the applicant and were reported to the higher authority. The applicant alleges that the said officer, Sqn. Leader K. Damodaran, sent a telegram to the would be father-in-law of the applicant not to marry his daughter with the applicant as he is facing court martial which resulted in breaking up of his proposed marriage.

7. On 15.02.1996 applicant was transferred from 14 Wing AF Chabua, Assam to his parent unit i.e. 10 Wing AF Jorhat (Assam). He was further posted to AF Tejpur on 01.06.1996. The punishment

awarded by the Court Martial was revoked and reduction in rank of the applicant was dropped.

**8.** It was contended by the applicant that despite the satisfactory working, the applicant was served with Show Cause Notice (SCN) on 15.07.1996 (**Annexure 'C'**) by the respondents seeking explanation from the applicant as to why he should not be discharged from service under Rule 15(2)(g)(ii) of Air Force Rules 1969. The applicant responded to the SCN on 02.08.1996 along with a petition under Section 161(2) of the Air Force Act 1950 for annulment of Court Martial proceedings and redressal of grievance. This was acknowledged by the authorities on 07.08.1996.

**9.** The applicant was discharged from service on 21.03.1997 under the Rule 15(2) (g) (ii) of the Air Force Rules 1969.

**10.** Learned counsel for the applicant argued that the charges preferred in the last four red ink entries by itself show that there was an element of malafide on the part of the officers because all the four charges were preferred within a span of three months.

**11.** It was also alleged that the biased and malafide intentions of the authorities were also seen when they sent a telegram to the would be father-in-law of the applicant to say that applicant is facing charges for court martial which resulted in break up of the arranged marriage of the applicant.

12. Learned counsel for the applicant argued that though the applicant had given a detailed reply in his response to the SCN (**Annexure 'D'**), the concerned authority did not apply his mind to the reply before discharging him from service under the category of habitual offender. He further contended that cause for discharge i.e. under habitual offender policy needs to be examined in a manner that all the four red ink entries were given to him within a span of three months in one unit and by the same officers.

13. Learned counsel for the applicant also contended that Rule 15(2) (g) (ii) of Air Force Rules, 1969 is not in consonance with general scheme of the rules, as there is no special instruction in Column No.4, as compared to other rules, therefore, that is required to be quashed.

14. Learned counsel for the respondents stated that the applicant was a habitual offender and as per the policy of 18.12.1996, a procedure is laid for discharge of such person and the same was strictly followed. The applicant was discharged from services after compliance of due procedure. The policy dated 18.12.1996 states that following will be categorized as habitual offender :

**"Criteria Habitual Offenders** *Airman or NC(E) who meets with any one of the following individual criteria is to be treated as Habitual Offender and his case is to be considered for discharge after issuing a Show Cause Notice:-*

- (a) Total number of punishment entries six and above (including Red and Black Ink entries); Or*
- (b) Four Red Ink punishment entries; Or*
- (c) Four punishment entries (Red and Black Ink entries included) for repeated commission of any one specific type of offence, such as Disobedience, Insubordination, AWL/Overstayal of leave, Breaking Out of Camp, Offence involving alcohol, Mess Indiscipline, Theft of Service/Personal property belonging to others and use of abusive/threatening language etc.”*

The applicant was having more than required six red and black entries. He was treated habitual offender, as per said policy, therefore, he was discharged under said rules.

15. Learned counsel further submits that the additional documents filed by the learned counsel for the applicant refers to issues which were not contended in the original application. There has been no representation by the applicant against the punishments meted out to him for the various offences and they have attained finality. At this stage, he is debarred to raise the same, and even when he has challenged the punishments. Therefore, he should be permitted to raise only the issues made in the main petition.

16. Having heard both the parties at length and examined the original documents which included the sheet roll of the applicant, we have observed that the different punishments awarded to the applicant were of his services in No.10 Wing Air Force at Jorhat, Assam and 14

Wing Air Force Chabua (Assam). The contention that he has been time and again awarded punishments by the same officers is because he was posted in that unit and the officer was as an Officer Commanding was responsible for dealing with the disciplinary case, thus the contentions are not having legal force. The applicant has made allegations of biased and malafides but the allegations are not convincing and persons against whom allegations are made has not made parties to proceedings.

17. The contention of the applicant that Army Rule 15(2)(g)(ii) is not congruous with main rule, we have considered the reasons shown for that but we do not find any force in the submissions and they are rejected. No case has been made out that unfair and unjust application of Army Rule 15(2)(g)(ii) was invoked. The show cause notice was correctly served (Annexure 'C') on 15.7.1996 by the CPSO for AOC-in-C who is competent under the existing policy of AHQ issued on 18.12.1996. Based on the response by the applicant on 02.8.1996, he was discharged correctly and approved by the AOP, who is competent authority under Air Force Rule 15(2)(g)(ii).

18. The other contention raised by the applicant is that his superior officers and the CO were biased and vindictive, has also not been established. Merely by sending a telegram to the would be father-in-law for being unable to send the applicant on leave cannot be deemed to be malafide on part of the superior officer since it was a statement of fact at that point of time. The applicant has also not been able to

make out a case to show that his superior officers were biased and vindictive.

19. The additional documents filed by the applicant on 02.02.2011 have also been perused and are of no help to the applicant. The first document (Annexure-P-1) dated 21.12.1994 is a letter addressed to AOC-in-C, South Western Command whereby the applicant has sent a representation to AOC-in-C. The second is a telegram to the AOC-in-C (Annexure-P-2). The annexure-P-3 is a copy of the discharge book in which the character at the time of discharge has been addressed as "Good" and professional trade proficiency as "Exceptional". Annexure-P-4 is a letter addressed to the Chief of Air Staff dated 14.2.1996 which is a petition under Section 161(2) of the Air Force Act which seeks redressal in terms of the DCM held on 11.10.1995 to be annulled and red ink entries be deleted.

20. We have perused the documents and none of the documents help the applicant in the present case.

21. In view of the foregoing, we are not inclined to interfere in the case. The T.A. is dismissed. No orders as to costs.

**M.L. NAIDU**  
**(Administrative Member)**

**MANAK MOHTA**  
**(Judicial Member)**

**Announced in the open Court**  
**on this 12<sup>th</sup> day of July 2011**