

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

13.

O.A. No. 117 of 2010

Ex. Gnr. Satish Kumar

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. S.M. Dalal, Advocate.

For respondents: Mr. Anil Gautam, Advocate

CORAM:

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

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

ORDER

03.07.2012

1. Petitioner vide this petition has prayed to quash and set aside the impugned notice dated 05.02.2005 and discharge order dated 16.05.2005. It is also prayed that direction be issued to the respondents to reinstate the petitioner back in service with all consequential benefits.

2. Petitioner was inducted in the Indian Army as Sepoy on 10.10.1994 and he served at different places during his service tenure. Thereafter it is alleged that he became a habitual offender. A Court of Inquiry was conducted against him and a show cause notice was issued on 05.02.2005 enumerating the absence details which reads as under;

*"HQ 15 Corps Arty Bde*

*C/o 56 APO*

*30/801/A*

*05.02.2005*

*No. 15121168F Gnr (Ck 'U')*

*Satish Kumar*

*171 Fd Regt*

*C/o 56 APO*

**SHOW CAUSE NOTICE TO NO. 15121168F GNR (CK'U') SATISH KUMAR**  
**OF 171 FD REGT**

1. It has been brought to my notice that you, No. 15121168F Gnr (Ck'U') Satish Kumar have committed the following offences within your 10 years and 03 months of service :-

Ser No	Date of Offence	Army Act Section	Punishment awarded	Date of award
(a)	12 Mar 2000	39(b)	7 days pay fine	28 Mar 2000
(b)	27 Dec 2000	39(b)	14 days pay fine	24 Jan 2001
(c)	28 Jul 2001	39(b)	14 days RI and 7 days pay fine	09 Aug 2001
(d)	28 Oct 2001	39(b)	28 days RI and 14 days pay fine	19 Dec 2001
(e)	04 Apr 2002	39(b)	28 days RI	29 Apr 2002
(f)	22 Mar 2003	39(b)	28 days RI and 14 days pay fine	13 Jun 2003
(g)	20 Oct 2003	39(b)	28 days RI and 14 days pay fine	25 Jun 2004
(h)	22 Jul 2004	39(a)	28 days RI, 14 days CL and 7 days pay fine	02 Nov 2004

2. The aforesaid offences committed by you clearly indicate that you are a habitual offender and not amenable to military discipline. Therefore, I am of the opinion that your continued retention in service is not desirable and you should be discharged from service under Army Rule 13 III (v).

3. In view of the foregoing you are hereby called upon to show cause as to why you should not be discharged from service under Army Rule 13 (III) (V).

4. Your reply should reach the office of the undersigned within 15 days on receipt of this letter, failing which it will be presumed that you have nothing to urge in your defence and an expert decision shall be taken.



5. Pl. ack receipt.

(J.S. Sethi)  
Brig  
Cdr

Sig of Indl. \_\_\_\_\_ Sd/-\_\_\_\_\_  
No. 15121168F Gnr (CK'U')  
Name Satish Kumar  
Date : 09 Apr 2005"

3. It is alleged that petitioner received the above said show cause notice dated 05.02.2005 but he did not reply to the same. Thereafter a final order of discharge dated 16.05.2005 was passed in terms of Army Rule 13 (III) 3 (V). Petitioner through his advocate served a legal notice dated 10.09.2009 to the respondents which was duly replied by the respondents on 30.09.2009. Thereafter petitioner preferred an appeal to the Chief of Army Staff on 14.11.2009 but without any result. Therefore, petitioner approached this Tribunal by filing the present petition in 2010.

4. A reply has been filed by the respondents and they have taken the stand that petitioner was given show cause notice dated 05.02.2005 explaining his absence details which was duly received by him, however no reply was given by him. Thereafter, the authorities passed the final order of discharge dated 16.05.2005 in terms of Army Rule 13 (III) 3 (V).

5. We have heard both the parties and gone through the record. Learned counsel for the petitioner argued that as per Para 5(a) of the Army Policy issued on 28.12.1988 a procedure is laid down that in case a JCO or soldier is found undesirable for military services then in that case, a preliminary inquiry has to be conducted. However, no preliminary inquiry has been conducted in the present case, therefore, order of discharge is bad.

6. Firstly, it is made clear that Army HQ Policy Letters are administrative instructions and these are not statutory in nature. This issue has already come up before us in the case of **Ex. Naik. Birendra Kumar Singh Versus Union of India & Ors. (TA No. 563 of 2009 decided on 27.02.2012)** wherein we held that these are administrative instructions and breach thereof does not lead to any cause of action. In this connection, learned counsel for the respondents invited our attention to the decisions of Hon'ble Delhi High Court in the cases of **Pratap Singh Vs. Chief of Army Staff & Ors. (LPA No. 136 of 2003)** and **Sepoy Islam Khan Vs. Union of India & Ors. (W.P.(C) No. 5023 of 2011 decided on 12.09.2011)**. The Hon'ble Delhi High Court has taken a consistent view that these are administrative instructions. Para 5(a) of the Army Policy clearly contemplates that an impartial inquiry has to be conducted and it does not necessarily mean that a Court of Inquiry has to be conducted about the conduct of the incumbent that whether he is desirable to be retained in service or not. The word 'impartial inquiry' does not mean that a regular Court of Inquiry is required to be conducted. Therefore, this contention of learned counsel for the petitioner cannot be sustained.

7. Secondly, learned counsel for the petitioner argued that no show cause notice was issued to the petitioner before his discharge. This contention of learned counsel for the petitioner is belied from the very fact that show cause notice dated 05.02.2005 bears signatures of petitioner. The explanation put forward by learned counsel for the petitioner to this effect is that petitioner was given so many documents to sign, therefore, he might have signed this document in ignorance. This is nothing but an afterthought. This kind of explanation cannot be accepted. The signature of the petitioner is very clear on the show cause notice and it is evident that petitioner knew very well that

he is being given show cause notice for his eight unauthorized absences from 2000 to 2004. Therefore, we cannot credit this ignorance on the part of petitioner that he did not know that his signature has been obtained on the show cause notice without his notice. Hence, this argument of learned counsel for the petitioner does not deserve to be sustained.

8. Since petitioner remained either absent without leave or overstayed leave unauthorizedly for eight times and he was given punishment for these unauthorized absence, therefore, he was discharged from services vide order of discharge dated 16.05.2005 in terms of Army Rule 13(III) 3(V) after issuing a proper show cause notice on 05.02.2005.

9. Consequently, we do not find any merit in the petition. The same is accordingly dismissed. No order as to costs.

**A.K. MATHUR**  
**(Chairperson)**

**S.S. DHILLON**  
**(Member)**

**New Delhi**  
**July 03, 2012**  
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