

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI
20.

O.A. No. 277 of 2010

Sh. Shyam Bihari Singh Yadav

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Dr. Sushil Gautam, Advocate.

For respondents: Mr. Mohan Kumar, Advocate for R-1 to R-4.
Mr. Anil Gautam, Advocate for R-5.

CORAM:

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

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

ORDER
27.02.2012

1. Petitioner by this petition has prayed that the order dated 10th February 2010 passed by HQ 140 Armoured Brigade may be quashed in light of the Army HQ policy letter dated 18th December 1988 and directions may be issued to the Respondents to post the Petitioner to any other unit in Mechanised Infantry so that Petitioner could continue in service till his superannuation peacefully.
2. Petitioner was enrolled in the Army on 24th June 1995 and he was promoted to the rank of Naik and even passed the promotion cadre for Hav. on 24th July 2007 and he had a good service record but unfortunately he was forced to join under Respondent No.5 who was his Company Commander. He was served with an adverse entry on 24th September 2002 for misbehaving with the Guard Commander and thereafter he was also given a severe reprimand on 24th March 2008 for alleged intoxication. Then again he received a severe reprimand on 16th September 2008 and on 29th October

2009 for various delinquencies said to have been committed. Thereafter the Petitioner was given a show cause notice on 14th December 2009 and he filed his reply to show cause notice and finally on 10th February 2010 he was discharged from service on account of four red-ink entries.

3. The grievance of the Petitioner is that that he has already filed a statutory complaint against the red-ink entries which was pending but before that he has been discharged. He has also pointed out that the Army policy for discharge dated 28th December 1988 clearly stipulates in note 2 to Para 5(f) which reads as under:

"2. Discharge from service consequent to four red ink entries is not a mandatory or legal requirement. In such cases, commanding officer must consider the nature of offences for which each red ink entry has been awarded and not with the individuals, especially when they are able to complete the pensionable service. Due consideration should be given to the long service, hard stations and difficult living conditions that the OR has been exposed to during his service, and the discharge should be ordered only when it is absolutely necessary in the interest of service. Such discharge should be by the next higher Commander."

4. Learned counsel for the Petitioner submits that since the Petitioner was due to earn his pensionable service after expiry of period of 15 years i.e. on 24th June 2010, his services have been discharged on 10th February 2010 whereby he will be deprived of his pension and livelihood. It is submitted that

in view of the aforesaid policy the authorities should have acted with mercy rather than violate the Petitioner's right to live under Article 21 of the Constitution with dignity. He has submitted that he was not given reasonable opportunity to defend himself.

5. A reply was filed by the Respondents and the Respondents contested the position and they denied that the action was not malafide. It is submitted that all his grievances were properly redressed and all the grievances were examined at the appropriate level and they were found to be without any basis and misconceived.

6. Learned counsel for the Petitioner has tried to persuade us that since his statutory complaint was pending and he has clearly brought out to the notice of the authorities that his statutory complaint has not been disposed of despite that they proceeded to pass the aforesaid order. He has also tried to submit that he has going to complete is tenure of pensionable service i.e. 15 years which will enable him pension but same was cut short by passing the order dated 10th February 2010 otherwise on 24th June 2010 he would have gone home after completion of the tenure of pensionable service. But this was done to harm or spoil the life of the Petitioner. He has also tried to make allegation against Respondent No.5 stating that Respondent No.5 was malafidely motivated against him. Notice was given to Respondent No.5 but no reply has been filed and learned counsel for Respondent No. 5 sought some time to file a reply.

7. We did not think it possible now to permit Respondent No.5 to file a reply as we propose to dispose of the petition on different ground which will be evident hereinafter.

8. It is not necessary for us to go into the allegations of malafide and disposal of statutory complaint in this case in view of the facts that as per the policy laid down by the Respondents 1 to 4 contained in the note to para 5 of the policy letter dated 28th December 1988 laid down by the Army HQ that the discharge from the service consequent to four red-ink entries is not a mandatory or a legal requirement and one has to see whether retention of the incumbent is in the interest of the service or not and they should also give due consideration to the long service and hard stations and difficult living conditions that OR has been exposed during his service and discharge should be ordered only when it is absolutely necessary in the interest of service. It is also pointed out that when the incumbent is likely to complete his pensionable service then in that case such harsh measure will not be necessary. In the present case, the incumbent has already put in 14 years and 7½ months of service and is hardly left with 4½ months of service for earning a pension on completion of 15 years of service. Therefore this harsh measure in present case was not at all warranted. May be that he might be a little indisciplined but when he has already completed tenure of the pensionable service of 14 years and 7½ months only four and a half months time is left then the authorities should have shown some grace than to punish a man to deprive him benefit of 14 years and 7½ months of service. The order appears to us to be harsh. Petitioner has been sinned more than the sin he has committed. Therefore in these circumstances without going into the other questions of malafide and

pendency of statutory complaint, we think that this is a hard case in which the Petitioner shall be deemed to have completed the 15 years of pensionable service and we condone shortage of 4½ months and direct the Respondents 1 to 4 that the Petitioner's papers may be processed for grant of pensionable service as admissible in accordance with law on completion of tenure of service. Accordingly, petition is allowed with no order as to costs. Respondents 1 to 4 are directed to comply with the order within a period of three months. Petitioner shall cooperate to the Respondents in completing the process of the pension papers.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
February 27, 2012
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