

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

**10.**

**O.A. No. 451 of 2010**

**Ex. Rfn. Anil Kumar**

**.....Petitioner**

**Versus**

**Union of India & Ors.**

**.....Respondents**

**For petitioner:** Mr. S.R. Kalkal, Advocate.

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

**CORAM:**

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

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

**ORDER**  
**25.01.2012**

1. Petitioner by this petition has prayed that the termination of his services by the order dated 6<sup>th</sup> August 2007 may be set aside being arbitrary and illegal and reinstate the Petitioner in service with all consequential benefits.

2. Petitioner was enrolled in Army on 27<sup>th</sup> October 1997 and thereafter he was posted to Rastrya Rifles on 16<sup>th</sup> July 2005. Meanwhile Petitioner earned six entries in his short tenure of service with four red ink entries which read as under:

<b>Ser No.</b>	<b>AA Sec</b>	<b>Date of Award</b>	<b>Punishment awarded</b>
(a)	AA Sec-39(a)	03 Jun 2003	14 Days Pay Fine
(b)	AA Sec-39(b)	13 Jan 2006	14 Days Pay Fine
(c)	AA Sec-54 (b)	01 Feb 2006	03 Days RI

(d)	AA Sec-39 (b)	29 Jun 2006	28 Days RI
(e)	AA Sec-48 (2)	08 Mar 2007	07 Days RI
(f)	AA Sec-39 (b)	18 Jul 2007	07 Days RI

In that most of the time he overstayed on leave and on one time he was found to be intoxicated. Therefore a show cause notice was issued to him on 23<sup>rd</sup> July 2007 and after that he filed a reply and after considering his reply, the authorities discharged him from service by the order dated 6<sup>th</sup> August 2007.

3. We have heard learned counsel for the parties and perused the record.

4. Learned counsel for the Petitioner has invited our attention to the procedure which has been laid down by the Army in the letter dated 28<sup>th</sup> December 1988 as to how to discharge persons whereas the substantive provision pertaining to this matter is under Army Rule 13 where the power has been given to Commanding Officer to discharge a person who has earned such four red ink entries. In the present case, the Petitioner has earned four red ink entries and therefore he was given a show cause notice and his services have been discharged. Though learned counsel for the Petitioner has pointed out that some procedural compliance has not been made and he has also submitted that the order in question is very laconic order because it is a one line order. Against this learned counsel for the Respondents has pointed out that a show cause notice was given to the Petitioner and he filed a reply and after due application of mind Petitioner's services were discharged. It is true that substantive provision for discharge in Army Rule 13 and this

gives a power to Commanding Officer that in case the incumbent does not improve his performance then it will be open for him to discharge his services. But the detail procedure has been described by administrative order. Therefore breach of one or two provisions of the administrative order will not render the order bad. The substantive matter is the incurring of the four red ink entries i.e. the basis on which the incumbent has been discharged from service. We also do not appreciate the laconic order passed by the Respondents dated 6<sup>th</sup> August 2007 whereby he has been only informed that his services have been discharged. The authorities are under obligation that when a reply is filed, they must pass a proper speaking order so as to show their due application of mind. However, it is a matter involving discipline for the Army and this provision is keeping the Jawans in discipline so that they may not take the services lightly and this is a very deterrent provision to maintain the discipline in Army. Therefore we expect that in future the orders which are passed should be speaking orders so as to show due application of mind by the Commanding Officer. Hence, we are not inclined to grant any relief to the Petitioner and petition is dismissed with no order as to costs.

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

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

**New Delhi**  
**January 25, 2012**  
**dn**