

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

**T.A. No. 308 of 2009
W.P.(C) No. 2338 of 1997 of Delhi High Court**

IN THE MATTER OF:

Sep Ashok Kumar

....Applicant

Through: Mr. Vinod Kumar, counsel for the Applicant .

Versus

Chief of the Army Staff & Ors.

.....Respondents

Through: Mr. Anil Gautam, counsel for the Respondents.

CORAM:

**HON'BLE MR JUSTICE MANAK MOHTA, JUDICIAL MEMBER.
HON'BLE LT GEN Z.U.SHAH, ADMINISTRATIVE MEMBER.**

JUDGMENT

Date: 15.05.2012

1. The applicant had filed WPC 2338/1997 in the Hon'ble Delhi High Court. The same was forwarded to this Tribunal on 07.09.2009. The applicant has prayed that the following be quashed :

- (a) Summary punishments awarded to him.
- (b) Show Cause Notice dated 14 Aug 1995 (Annx P-3)

(c) Order of Discharge dated 30.09.1995 (Page 45)

The applicant has also prayed that he be reinstated in service with all consequential benefits.

2. The applicant was enrolled in the Army as Clk on 25 March 1987 and subsequently rose to the rank of acting Naik.

3. The applicant states that his superior officer, Capt B P Hatwal, was biased against him and got him punished several times which led to the issue of Show Cause Notice first on 1 July 1995 by Capt B P Hatwal (Annex P-1) and subsequently on 14 Aug 1995 by Brig A S Punia, Cdr Meerut Sub Area. The applicant states that he replied on 5 July 1995 (Annex P-2) and denied all allegations of intoxication levelled against him. The applicant averred that all four red ink entries awarded to him were fraudulent and three were awarded in a period of only 11 months by one CO only, Col E T Mathew, who was in a hurry to terminate his services and thus, awarded him fourth red ink entry on the charge of "refusal to eat food". The applicant states that "refusal to eat food" is no offence. The punishments were biased and some were never awarded.

4. The applicant has also averred that Cdr Meerut Sub Area was not the competent authority to serve him Show Cause Notice or to terminate his services as he (applicant) was posted at CVD, Delhi Cantt which was under HQ Delhi Area. The applicant, therefore, avers that he was under

the jurisdiction of GOC, Delhi Area. The Show Cause Notice at Annx P-3 reflects that the applicant was awarded 28 days RI on 16 Dec 1992. This punishment was never awarded as on that date he was only awarded 7 days RI. The applicant therefore, states that the Show Cause Notice attempted to magnify the punishments awarded to him.

5. The applicant avers that as per Army HQ letter dated 28 Dec 1998(P-6) dealing with "procedure for the removal of undesirable and inefficient JCOs, WOs and OR", does not make it mandatory or legal requirement to terminate his services on the basis of four red ink entries.

6. The applicant also states that no impartial inquiry was conducted and the applicant was mentally ill when he refused to eat food on 15 July 1993. The applicant states that he should have been tried by court martial unless the same was "inexpedient" and his services should not have been terminated administratively. He was also not issued with a discharge certificate.

7. The applicant states that he had made a representation to the Chief of Army Staff but the same was disposed of by the Comdt AOC, Records who was not empowered to do so.

8. In their counter affidavit, the respondents had stated that the applicant was awarded four red ink entries spread over a period from 26 Dec 1991 to 18 Nov 1993. The first punishment to the applicant was

awarded on 26 Dec 1991 by Col Gulshan Rai, Cdt 2 FOD. The second punishment was awarded by Maj Proveer Singh on 25 Aug 1992. The third punishment was awarded by Lt Col E T Mathew Cdt 2 FOD on 22 Dec 1992. The fourth punishment was awarded by Col E T Mathew on 17 Nov 1993 and the fifth punishment was awarded by Col E T Mathew on 19 Nov 1993.

9. The respondents state that the applicant's unit (VSD) is a Sub Depot of CVD, Delhi Cantt but was deployed in Meerut under Meerut Sub Area for "administration including discipline". Cdr Meerut Sub Area was therefore, the competent authority to issue Show Cause Notice and order of termination of service

10. The respondents aver that on each occasion the applicant pleaded "guilty" and was given a chance to cross examine the witnesses but declined to do so.

11. Respondent Capt B P Hatwal in his counter affidavit has denied that he harboured any bias against the applicant and stated that he had helped the applicant to proceed on career courses to enable him to earn promotion.

12. The respondents state that the applicant was a Clk and was well aware that although it was not mandatory to discharge a person with four red ink entries, the consequences could also lead to dismissal on

administrative grounds. In fact, the applicant was warned several times against excessive consumption of alcohol but failed to reform. The punishments which were awarded after applicant showed no improvement, despite several warnings.

13. The applicant in his reply to the counter affidavit of respondents had stated that the respondents have wrongly claimed credit for looking after his career interests.

14. The applicant has reiterated that the Show Cause Notice dated 14 Aug 1995 (Annex P-3) by Cdr Meerut Sub Area reflected wrong and false details in that, 28 days RI was never awarded to him on 16 Dec 1992. Only 7 days RI was awarded on that date (Annex P-4). The applicant also avers that the respondents in order to prevent him from getting promoted to Naik discharged him on administrative grounds.

15. The applicant also avers that he was admitted to 92 Base Hospital as a mental case and was mentally ill when awarded punishment on 17 Nov 1993 for an alleged offence committed on 15 July 1993. The applicant was again punished on 19 Nov 1993 for not eating food and admitted to the mental ward on 20 Nov 1993. He, thus claims that he was always subjected to acute mental pressure.

16. We have heard the arguments and perused the records. The applicant was enrolled in the Army as Clk on 25 March 1987. He was

discharged from the Army on 30 Sep 1995 on administrative grounds. The applicant was promoted acting Naik but was deprived of that promotion on disciplinary grounds. During his service the applicant was awarded four red ink entries between the period 26 Dec 1991 to 19 Nov 1993. The last three punishments had been given by the same Commanding Officer, Col E T Mathew between the period 22 Dec 1992 to 19 Nov 1993. We find, there is no illegality in award of punishment, within a short period, if there are valid reasons for the same. All the punishments awarded by Col E T Mathew were as follows :

- (a) 22 Dec 1992 - Army Act Section 48 - intoxication and insubordinate language.
- (b) 17 Nov 1993 – Army Act Section 63 - unauthorised possession of Govt property.
- (c) 19 Nov 1993 – Army Act section 41 (2) - disobeying lawful command of superior officer.

17. The applicant was serving with VSD which, although a part of CVD Delhi Cantt was deployed in Meerut and was under control of Cdr Meerut Sub Area for “administration including discipline”. Cdr Meerut Sub Area, was therefore, the competent disciplinary authority.

18. The applicant was issued a Show Cause Notice on 14 Aug 1995 by Cdr Meerut Sub Area (Annex P-3). We notice from the Show Cause

Notice that on 16 Dec 1992 the applicant was charged under Army Act Section 48 (2) – intoxication and Army Act Section 40 (c) – using insubordinate language to a superior officer. There are two punishments recorded that it is 7 days RI in military custody and 28 days RI in military custody. The later award is a typographical error as a perusal of the charge sheet shows only an award of 7 days RI. The applicant had pleaded “guilty” and in the reply to Show Cause Notice had not denied the offence. In any case, a Commanding Officer cannot award a total of 28 + 7 (35) days RI on one offence report. The applicant has not produced the true copy of Show Cause Notice. We have perused the copy supplied by the respondents. Para 1 of the same is reproduced below.

SHOW CAUSE NOTICE

1. On scrutiny of your service records, it is observed that you have incurred 4 red ink entries as under :-

| Ser No. | Date of offence | Type of Offence | Punishment awarded |
|---------|-----------------|--|---|
| (a) | 25 Dec 91 | <u>AA Sec 48</u> Intoxication | 1. Deprived of acting rank of Naik 2. Pay fine of 14 Days |
| (b) | 16 Dec 92 | (i) <u>AA Sec 48 (2)</u> Intoxication (ii) <u>AA Sec 40 (c)</u> Using insubordinate | 7 days RI in Military custody. 1. 28 days RI in Military custody |

| | | | |
|-----|-----------|---|--|
| | | language to his superior offr | |
| (c) | 15 Jul 93 | <u>AA Sec 63</u> An act prejudicial to good order and military discipline | 1. 28 days RI in military custody. 2, 7 days pay fine |
| | | | |
| (d) | 19 Nov 93 | <u>AA Sec 41 (2)</u> Disobeying a lawful command given by his superior officer | 07 days RI in Military custody |

Against Ser (b) two punishments have been shown. The heavier punishment is always mentioned first but in this case although shown as Para 1 it is shown after “7 Day RI in Military Custody”. This clearly shows it is a typographical error and does not render the Show Cause Notice illegal. The applicant has not been prejudiced by this error. He was aware of this punishment and now can not claim relief on a mere typographical error.

16 It is not mandatory for a person to be dismissed on award of four red ink entries. The administrative punishment of dismissal is up to the discretion of CO against personnel who are habitual offenders and do not show improvement despite warnings and knowing the consequences of earning four red ink entries. We do not find any illegality in the Show Cause Notice, albeit the typographical error, and the order of discharge. We have also considered the contention raised with regard to implementation of policy letter dated 28 Dec 1988. The Hon’ble Delhi

High Court in judgment titled as *Pratap Singh v/s Chief of Army Staff and Ors, LPA 136/2003 passed on June 03, 2011* has ruled that no preliminary enquiry is necessary in such cases if competent authority is satisfied qua non retention. He is empowered to order discharge. No injustice has been done to the applicant. Application dismissed. No costs.

Z. U. SHAH
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Announced in the open Court
on the 15th day of May, 2012

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