COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

126.

OA 1643/2017 WITH MA 1228/2017

Ex Cpl Happy Singh ... **Applicant**
Versus
Union of India & Ors. ... **Respondents**

For Applicant : Mr. Ajit Kakkar, Advocate
For Respondents : Mr. Harish V. Shankar, Advocate

CORAM :
HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

O R D E R
02.04.2024

MA 1228/2017

Keeping in view the averments made in the application and in the light of the decision in ***Union of India and others*** *Vs.* ***Tarsem Singh*** (2009(1) AISLJ 371), the delay in filing the OA is condoned.

2. MA stands disposed of.

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3. Invoking the jurisdiction of this Tribunal; under Section 14, the applicant has filed this application seeking reinstatement into the service after being discharged on disciplinary grounds.

4. The applicant was enrolled in the Indian Air Force on 01.04.2009. During his service, he was issued with 8 punishment entries with 5 Red Ink Entries and 3 Black Ink Entries. Subsequently, he was issued Show

Cause Notice vide letter CAC/C 2702/63/Discp dated 17.05.2016, to which he submitted his reply dated 14.06.2016. After consideration of the reply submitted by the applicant, the AOC-in-C (Personnel) approved his discharge from the Air Force in accordance with Rule 15(2) (g) (ii) of the Air Force Rules, 1969, under the clause, "Unsuitable for retention".

5. Ld. Counsel for the applicant submits that the applicant has always carried out his trade duties in an exceptional manner without any failure to complete a task at hand, which shows that the applicant was diligent towards his service, and that it is highly unlikely that the applicant carried out the said violations intentionally.

6. It is contended by the applicant that he has incurred a total of five red ink and two black ink entries against his name which were given during a period of 7 years 1 month and 5 days, and that the said violations were not done intentionally as mentioned in the reply to Show Cause notice dated 24.06.2016.

7. It is further contended by the applicant that the respondents have erred in discharging the applicant from service as the respondents have not followed proper procedure on many occasions, and that the respondents have not carried out Court of Inquiries in cases involving the applicant being AWL and arbitrarily imparted punishment.

8. Placing reliance on the judgement of Hon'ble Supreme Court in ***Veerendra Kumar Dubey v. Chief of Army Staff and ors*** [2016 (2) SCC

627], Ld. Counsel submits that the statutory sanction of discharge upon reaching the threshold of ink entries is not mandatory in nature, and that the provisions are not to be read in a mechanical manner and where the violations are not serious in nature, the decision of discharge must not be taken.

9. Per Contra, it is submitted by the Respondents that the applicant being shown as exceptional in his trade proficiency in his OA has no relevance since he was discharged on the grounds of incurring punishment entries in his conduct sheet which rendered him liable to be discharged in terms of Habitual Offenders Policy.

10. It is further submitted by the Respondents that the applicant has incurred 8 punishment entries in total, out of which 5 are red ink entries and 3 are black ink entries, while the first black ink entry dated 21.08.2010 as "Extra Guards for 3 days" has not been counted for his discharge as Habitual Offender as per the policy.

11. It is contended by the Respondents that the offences for which the applicant has been awarded punishments on various occasions are of serious nature disturbing the discipline of the Air Force and includes creating nuisance under influence of liquor, consuming liquor in billet which is prohibited, damaging govt property when caught having liquor, breaking out of the camp, making false statement, and being Absent

without leave even after being warned for the indiscipline by the authorities.

12. Having heard Ld. Counsels for both parties and perused the Air Force Rules, 1969, policy letters issued by the Ministry of Defence and Air Headquarters, and the judgements placed on record, the only question that remain to be answered is whether the discharge of the applicant on the ground, "unsuitable for retention" was as per the law and procedure as enshrined under the Air Force Rules and Habitual Offenders Policy, 1996.

13. We find that a warning was issued to the applicant on 05.06.2015. By that time, there were five entries of punishment (3 Red Ink and 2 Black Ink) in the Conduct Sheet of the applicant, and the applicant was informed by the said letter dated 05.06.2015 that he was already in the category of potential habitual offender.

14. We find that in accordance with the Habitual Offenders Policy, 1996, the habitual offenders can be considered for discharge from service under Rule 15 (2) (g) (ii)/ Rule 15(2)(k) read in conjunction with Rule 15(2) of the Air Force Rules, 1969 (hereinafter, 'the Rules'), under the Clause "His Service No Longer Required Unsuitable for Retention in the Air Force".

15. We find that vide aforesaid letter, the applicant was cautioned and counselled to mend himself and desist from acts of indiscipline, while

being additionally warned that any addition of another punishment entry would render him liable for discharge from service under Rule 15 (2) (g)(ii)/ Rule 15(2) (k) read in conjunction with Rule 15(2) of the Rules.

16. Even after being warned, the applicant again indulged in the acts of indiscipline, by being AWL from 0730 hrs on 11.01.2016 to 0715 hrs on 22.02.2016 for almost a month, and then again being AWL from 0900 hrs on 04.04.2016 to 0730 hrs on 02.05.2016, only after which, the Show Cause Notice vide CAC/C 2702/63/Discp dated 17.05.2016 was issued to the applicant.

17. A perusal of the reply to the Show Cause Notice shows that the applicant not only admits the commission or omission of the acts, but also has not challenged nor applied for review of the same before the higher authorities and that the only reasoning given by him for the aforesaid offences is that the same occurred unintentionally, and due to situational issues.

18. We find the facts and issue under consideration in the instant case are *pari materia* to the case of ***Union of India & Ors. v. 794898 T. Ex. Corporal Abhishek Pandey*** [Civil Appeal Nos.4780-4781 of 2018], wherein vide a detailed order, ***Hon'ble Supreme Court*** has observed as under:

> ***5. The only point that arises for our consideration in the present case is the interpretation of the Policy dealing with habitual offenders. The Air Force Policy dated 16.12.1996 was issued by the Air Force Headquarters,***

prescribing the procedure to be followed while processing the cases of habitual offenders. According to the Policy, an Airman is entitled to be issued a precautionary warning (being a habitual offender). The Airman has to be informed that he would be getting another opportunity to mend himself and any addition of another punishment entry, either Red or Black, would result in his discharge from the service. Para 2 (b) of the Policy provides that whenever the case of an Airman is considered by the competent authority for final orders and he is afforded one more chance, a warning letter is required to be issued to him by his Commanding Officer again. The said warning letter shall be treated as a second time warning. Para 3 of the Policy postulates that habitual offenders shall be served with a show cause notice calling upon them to explain the reasons as to why the proposed action of discharge from service shall not be taken against them. The habitual offenders are entitled for an opportunity to submit their explanation before an order of discharge is passed.

6. The Tribunal was of the opinion that the Respondent was given only one warning. As the second warning which is mandatory according to the Policy was not given to the Respondent, the Tribunal was of the view that the order of discharge was vitiated. The Tribunal failed to take into account the fact that para 2 (b) provides for a second warning only when the competent authority considers issuance of final orders but is also of the opinion that another chance should be given to the Airman. The requirement of the second warning letter would be only in such circumstances.

7. The Respondent was initially a potential habitual offender before he was considered as a habitual offender. He was entitled for a warning to be issued in 2008. Admittedly, there was a delay in issuance of the warning letter. Ultimately, the warning letter was issued on 18.04.2012. The Respondent did not mend himself for which reason a show cause notice was issued to him. Even in the explanation to the show cause notice, the Respondent did not dispute the allegations of misconduct made against him. He, in fact, admitted to having indulged in acts of indiscipline and sought for another opportunity to correct himself. The show cause notice issued to the Respondent is in accordance with the Habitual Offenders Policy. A second warning letter is not required when it is decided to pass a final order without giving another chance. There is no violation of the procedure prescribed by the Policy dated 16.12.1996.

8. For the aforementioned reasons, the judgment of the Tribunal is set aside. Accordingly, the Appeals are allowed.

19. As far as the reliance placed by the applicant on judgement of Hon'ble Supreme Court in ***Veerendra Kumar Dubey v. Chief of Army Staff and ors*** [2016 (2) SCC 627], we find that the same is not applicable

to the facts, on the ground that the Policy Letter dealing with the discharge in Army, namely Army Headquarters letter No. A/13210/159/AG/PS2(c) dated 28 Dec 88 is substantially different from the Habitual Offenders Policy, 1996, and that while the Army HQ Policy Letter provides for conduct of a Preliminary Inquiry, the Habitual Offenders Policy, 1996 doesn't comprehends the same and instead, provides for issuance of the Warning Letter, which has been complied by the Respondents.

20. Before parting, we find it important to refer to the observations of the ***Hon'ble Supreme Court*** in ***Ex Sepoy Madan Prasad v. UoI & Ors.*** [2023 INSC 656], wherein Hon'ble Supreme Court while dealing with an appeal against the dismissal on ground of being AWL, observed as under:

> ***"10. It is apparent from the above table that the appellant was a habitual offender. There were four red ink entries and one black ink entry against him before the present incident cited at serial number (f) above. Such gross indiscipline on the part of the appellant who was a member of the Armed Forces could not be countenanced. He remained out of line far too often for seeking condonation of his absence of leave, this time, for a prolonged period of 108 days which if accepted, would have sent a wrong signal to others in service. One must be mindful of the fact that discipline is the implicit hallmark of the Armed Forces and a non-negotiable condition of service."***

21. In view of the above analysis, we are of the opinion that the Armed Forces being the premier security forces of the nation, and discipline among the members of the Force is a matter which is indispensable, any act of indiscipline, no matter how trivial it seems to be, is an offence,

which cannot go unpunished, and therefore, this OA deserves to be dismissed.

22. Consequently, the OA 1643/2017 is dismissed.

23. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN C. P. MOHANTY]
MEMBER (A)

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