

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

RA 22/2023 WITH MA 4354/2023 IN OA 1340/2020

Ex SPR Nirmal Singh

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant

: Mr. Ajit Kakkar, Advocate

For Respondents

: Ms. Barkha Babbar, Advocate

CORAM:

HON'BLE MS JUSTICE ANU MALHOTRA, MEMBER (J)

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

Vide the instant RA filed by the Applicant under section 14(4)(f) of the AFT Act, 2007 and Rule 18 of the AFT (Procedure) Rules, 2008, the applicant seeks review of the order passed by this Tribunal on 10.05.2023 in OA No. 1340/2020 with MA 4354/2023. The prayers made in RA 22/2023 read to the effect:

"(a) To review the Judgment/Order dated 10.05.2023 passed in the OA No. 1340 of 2020 and set aside/recall the same to decide the matter afresh after considering the entire factual circumstances of the case as enumerated herein above.

(b) Pass any other such order(s) as the Hon'ble Tribunal may deem fit in the interest of Justice, equity and good conscience."

In the OA 1340/2019, the applicant had prayed for the following:

(a) To direct the respondents to bring relevant service and medical documents on record.

(b) To pass an order directing the respondents to grant the disability pension from the date of discharge i.e., 28.02.2019.

(c) To direct the respondents to grant broad banding of the disability pension from 50% for life.

(d) To direct the respondents to issue a corrigendum PPO pertaining to the disability pension and broad banding of the disability pension of the applicant.

(e) To direct the respondents to pay the arrears of disability pension and broad banded disability pension along with interest @ 12% from the date of discharge i.e., 28.02.2019

(f) To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.

2. The present application has been filed seeking modification of the order dated 10.05.2023, by which this Tribunal had denied the pensionary benefits whatsoever as per para 41 (b) of the Pension Regulation for the Army (Part-I) 2008. The Concluding para no. 17 of the order dated 10.05.2023 reads as under:

"17. Since, the applicant has been discharged on the basis of his misconduct/discipline, hence, the applicant is not eligible for any pensionary benefits whatsoever as per Para 41 (b) of the Pension

Regulation for the Army (Part-I) 2008. Therefore, we are not inclined to accept the contentions made by the applicant for the grant of any relief. Thus, the present O.A. is rejected."

3. Now, in the instant RA, it is the contention of the applicant that the Hon'ble Tribunal while denying any pensionary benefits to the applicant in the order dated 10.05.2023 was restricted to Section 41 (b) of the Pension Regulations for the Army (Part-1), 2008. However, the learned counsel for the applicant has placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Union of India v. Corporal AK Bakshi (AIR 1996 SC 1368)*** wherein the Hon'ble Supreme Court has categorically held that the discharge of an habitual offender cannot be held to termination of service by way of punishment for misconduct, hence, the applicant does not fall under the ambit of discharge on the basis of misconduct, thereby, making the applicant entitled for the relief of disability pension.

ANALYSIS

4. It is pertinent to take into consideration that the applicant in the instant OA was dismissed from the service, after having served 09 years and 08 months of service, as being '*undesirable for retention*' under Section 20 of the Army Act, 1950 read with Rule 17 of the Army Rule 1954 under the clause of Rule 13 (3) III (v) of the Army Rules, 1954 and IHQ of MOD (Army) AG's Branch letter No. *A/13210/159/AG/PS2(C) dated 28.12.1988*. The

aforementioned provision of the Army Act, 1950 and Army Rules, 1954 respectively reads as under: -

"Section 20 of Army Act, 1950. Dismissal, removal or reduction by (Chief of the Army Staff) and by other officers.

- (1) The (Chief of the Army Staff)1 may dismiss or remove from the service any person subject to this Act other than an officer.
- (2) The (Chief of the Army Staff)1, may reduce to a lower grade or rank or the ranks, any warrant officer or any non-commissioned officer.
- (3) An officer having power not less than a brigade or equivalent commander or any prescribed officer may dismiss or remove from the service any person serving under his command other than an officer or a junior commissioned officer.
- (4) Any such officer as is mentioned in sub-section (3) may reduce to a lower grade or rank or the ranks, any warrant officer or any non-commissioned officer under his command.
- (5) A warrant officer reduced to the ranks under this section shall not, however, be required to serve in the ranks as a sepoy.
- (6) The commanding officer of an acting non-commissioned officer may order his to revert to his permanent grade as a non-commissioned officer, or if he has no permanent grade above the ranks, to the ranks.
- (7) The exercise of any power under this section shall be subject to the said provisions contained in this Act and the rules and regulations made thereunder."

"Rule 17 of Army Rules 1954. Dismissal or removal by Chief of the Army Staff and by other officers.

Save in the case where a person is dismissed or removed from service on the ground of conduct which has led to his conviction by a criminal court or a court martial, no person shall be dismissed or removed under subsection (1) or sub-section (3), of section 20, unless he has been informed of the particulars of the cause of action against him and allowed reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from the service.

Provided that if in the opinion of the officer competent to order the dismissal or removal, it is not expedient or reasonably practicable to comply with the provisions of this rule, he may, after certifying to that effect, order the dismissal or removal without complying with the procedure set out in his rule. All cases of dismissal or removal under this rule where the prescribed procedure has not been complied with shall be reported to the Central Government.

NOTES

1. *A show cause notice is required to be given under this rule to the individual whose dismissal or removal from service is contemplated, except when the authority competent to order such dismissal or removal considers it inexpedient or impracticable to give such notice as stipulated in the proviso to the rule.*

Show cause notice will not be necessary when the dismissal or removal is sought on grounds of misconduct for which the person has already been convicted by a criminal court or court-martial.

2. *When a dismissal or removal of a person is sought on grounds of misconduct for which he has not been convicted by a criminal court or a court-martial, the authority competent to order such dismissal or removal should satisfy itself that trial by court-martial of such a person is inexpedient or impracticable for reasons other than probable failure to establish the charge, and that further retention in service of the individual is undesirable.*

3. *All cases of dismissal/removal under this rule where the prescribed procedure has not been followed are to be reported to the Central Government."*

"Rule 13 of Army Rules 1954. Authorities empowered to authorize discharge.

(1)

(2)

(3)

TABLE

CATEGORY	GROUND OF DISCHARGE	COMPETENT AUTHORITY TO AUTHORIZE DISCHARGE	MANNER OF DISCHARGE
1	2	3	4
Persons enrolled under the Act but not attested	III (V) All other classes of discharge	Commanding officer or officer Commanding Recruit reception Camp, or a Recruiting. Technical Recruiting or Deputy Technical Recruiting	The Brigade or Sub Area Commander before ordering the discharge shall, if the circumstances of the case permit give to the person whose discharge is contemplated an opportunity to show cause against the contemplated discharge.

xxx"

5. Upon perusal, it has been observed that Section 20 of the Army Act, 1950 confers the power upon the Chief of the Army Staff (COAS) w.r.t dismissal, removal or reduction of rank or grade of any Warrant Officer, Junior Commissioned Officer (JCO) and Non-Commissioned Officer (NCO). The powers conferred under Section 20 of the Army Act, 1950 is not restricted, however, it primarily deals with power of **dismissal, removal or reduction** and not discharge from service.

6. The learned counsel for the respondents has also brought on record the issuance of the Show Cause Notice (SCN) dated 01.09.2018 in consonance with the due procedure as enumerated under Rule 17 of the Army Rules, 1954 which was served upon the applicant prior to his discharge from the service. The SCN (Annexure R-1) shows that the applicant had earned seven red ink entries and two black ink entries during nine years of his service for remaining Absent Without Leave (AWL) and Overstaying of leave (OSL) without sufficient cause and the SCN contemplated that further retention of the applicant is not desirable and was advised to forward suitable reply to the SCN within 30 days of receipt of SCN. The applicant in reply to the SCN has admitted that he is not fit to serve in the Indian Army but in mitigation of his defence he has submitted that he is suffering from depression and he may be afforded another chance to improve his discipline, behavior and will not repeat such offence. Based on the reply of the applicant to the SCN, the Brig Cdr 474 Engineer Brigade directed the discharge of *No. 15523747-K Ex SPR Nirmal Singh* of 270 Engineer Regiment from service being undesirable for retention under Army Act Section 20 in conjunction with Army Rule 17 under the clause of Army Rule 13 (3) III (V) and IHQ of MoD (Army). The said order dated 27.02.2019 is annexed as '*Annexure R-3*' to the Counter Affidavit and reads to the effect:

Annexure R-3
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ORDERS BY COMMANDER 474 ENGINEER BRIGADE IN THE CASE OF
NO 15583747K SAPPER (PAD) NIRMAL SINGH OF 270 ENGINEER REGIMENT

1. I have perused the brief of case in respect of No 15583747K Sapper (PAD) Nirmal Singh of 270 Engineer Regiment alongwith reply to Show Cause Notice and recommendations of Commanding Officer, 270 Engineer Regiment. I agree with the recommendations of Commanding Officer, 270 Engineer Regiment.

2 It is directed that No 15583747K Sapper (PAD) Nirmal Singh of 270 Engineer Regiment be discharged from the service being undesirable for retention under Army Act Section 20 in conjunction with Army Rule 17 under the clause of Army Rule 13 (3) III (v) and IHQ of MoD (Army), AG's Branch letter No A/13210/159/AG/PS2(C) dt 28 Dec 1988.

Place : c/o 56 APO
Date

Dated: 27 Feb 2019

(Parvinder Singh)
Brig
Commander

7. Having perused the discharge order of the applicant, it is clearly made out that the applicant has been dealt with under Section 20 of the Army Act, 1950 which deals with dismissal/removal from service by the COAS or by other officers. The procedure of issuing SCN has also been followed in accordance with Rule 17 of Army Rules 1954 which deals with dismissal/removal by COAS and other officers. The applicant has finally been

removed from the service by the competent authority (Brig Cdr 474 Engineer Brigade) invoking Rule 13 (3) III (V) which deals with all other clauses of discharge. It is important to see the entire discharge order in totality which has dealt with the case under Section 20 of the Army Act 1950 and Rule 17 of the Army Rules 1954 which essentially deals with *Dismissal/Removal* from service. It is also important to note that the Brig Cdr (the competent authority) finally discharged the applicant, by invoking Rule 13 (3) III (V) of Army Rule 1954 which bestows the power on him for the discharge. However, in the discharge order, Section 20 of the Army Act, 1950 and Rule 17 of the Army Rules 1954 was specially used. It is therefore apparent that the applicant was in fact contemplated to be dismissed from the service as we need to consider the discharge order of the applicant as a whole and cannot isolate it into compartments of various regulations quoted in the discharge order of the applicant.

8. In ***Corporal A.K. Bakshi & Anr. (Supra)***, the respondents were discharged from the service under Rule 15 (2) g (ii) of the Air Force Rules, 1969 which deals with '**authorities empowered to authorise discharge**', and reads as follows: -

"15. Authorities empowered to authorise discharge. (1) Each of the authorities specified in column 3 of the Table below shall be the authority competent in respect of persons subject to the Act specified in column 1 thereof for the causes specified in column 2 and in the

manner specified in column 4, to discharge such persons from the service.

(2) Any power conferred by this rule on any of the aforesaid authorities may also be exercised by any other authority superior to it.

Class	Cause of discharge	Competent authority to authorise discharge	Special instructions
1	2	3	4
Persons enrolled under the Act who have attested.	(g) His services no longer required: -		
	(ii) Unsuitable for retention in the Air Force	Air Officer I/c Administration

The invocation of Section 20 of the Air Force Act, 1950 and Rule 18 of Air Force Rules 1969 which corresponds with the provision under which the applicant in the instant case was dismissed from the service, i.e., Section 20 of the Army Act 1950 and Rule 17 of the Army Rules 1954 was not done, thereby it is clear that the respondents in **Corporal AK Bakshi case (Supra)** were ordinarily discharged from service.

9. The facts of the instant case of the applicant wherein action was taken against the applicant by invoking Section 20 of the Army Act, 1950 read in conjunction with Rules 17 and Rule 13 (3) III (V) of the Army Rules 1954 are distinguishable from the facts and circumstances under which the respondents in **Corporal AK Bakshi Case (Supra)** were discharged and

hence the facts of the case ***Corporal AK Bakshi & Anr. (Supra)*** are not in *pari materia* with the facts of the instant case.

10. In the present case, the discharge order issued by the respondents annexed as Annexure R-3 to the Counter Affidavit filed on 09.02.2022 has to be read in its entirety and its scope cannot be limited to Rule 13 (3) III (V) only. Section 20 of the Army Act 1950 r/w Rule 17 of the Army Rules, 1954 deals with cases of dismissal or removal and does not cover matters of discharge. Rule 13 (3) III (v) only provides for the authority which is competent to authorize discharge and the manner of discharge, which in the instant case was used by the competent authority (Brig Cdr) to finally discharge the soldier.

CONCLUSION

11. Furthermore, the applicant has sought **review** of the order dated 10.05.2023 in OA 1340/2020. Qua the same it is essential to observe that the parameters for invoking review powers under Rule 18 of the AFT (Procedure) Rules 2008 read with Order 47 of the CPC 1908 are not applicable in the instant case. This is so, in as much as there is:

- i. No discovery of any new and important matter or evidence which could not have been produced by the applicant without the exercise

of due diligence which was not within his knowledge at the time when the order was passed,

- ii. There is no mistake or error apparent on the face of the record with order dated 10.05.2023,
- iii. Nor is there any other sufficient reason brought forth by the applicant for review of the order dated 10.05.2023.

12. In view of the above analysis the instant RA 22/2023 in OA 1340/2020 is dismissed and other pending MAs are thus disposed of.

13. No order as to costs.

Pronounced in the open Court on this 3rd day of April, 2025.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/PRGX/