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

OA 2022/2017

Ex Cpl Ramesh Soni ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. V S Kadian, Advocate
For Respondents : Mr. Satya Ranjan Swain, Advocate with
Ms. Ankush Kapoor, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act 2009, the applicant calls into question the tenability of an order passed discharging him from service under Rule 15(2)(g)(ii) of Chapter III of the Air Force Rules 1969 on 19.08.1999.

2. The facts in brief indicate that the applicant was enrolled in the Indian Air Force on 11.06.1986 and after completing his training, he was posted to Air Force Station, Palam, New Delhi. While on duty, the applicant wanted to be commissioned as a Ground Duty Pilot. He appeared in the requisite test and SSC interview but, unfortunately, could not qualify and continued in his substantial capacity as Catering Assistant. The applicant was posted in various places and till the

date of discharge, he had performed duties for a total period of 13 years and 02 months. While in service, on account of various acts of commission and omission, particularly being absent from duty and missing from the place of duty, he was awarded six punishments, out of which two were red ink entries and four were black ink entries. In spite of warnings and giving him opportunities to show improvement, when he did not show any improvement, he was discharged from service on the ground that his services were no longer required as he was unsuitable for retention in the Indian Air Force.

3. Challenging this order passed on 08.03.1999, after a period of 18 years, the applicant invoked the jurisdiction of this Tribunal on 29.11.2017 and as the claim was time-barred by virtue of the statutory limitation prescribed under Section 22 of the Armed Forces Tribunal Act, the applicant has filed M.A No. 1533/2017 seeking condonation of delay of more than 18 years. In Para 3 of the application for condonation of delay, the applicant justifies the delay by saying that the family members were shocked, his wife went into depression, his father's whereabouts were not known and because of family problems, he could not file the application. He seeks condonation of the delay on these allegations. The averments made for seeking condonation of delay are neither supported by any document nor any correlating material like medical documents etc which may justify the action. At the same time, the applicant does not

challenge the discharge order passed under Rule 15(2)(g)(ii) in the year 1999, but what is impugned in this O.A is a reply of the respondents issued on 17.08.2017 to the legal notice issued by applicant's counsel on 01.06.2017. The applicant wants to say that as the entire case revolves around the legal notice that was replied only on 17.08.2017, he has filed this application even without impugning the show-cause notice dated 08.03.1999 issued to him vide Annexure A3, the interview and interaction granted to him by the Commanding Officer on 16.08.1999 before taking action against him nor does he challenge the discharge order dated 19.08.1999.

4. It is seen from the record that the applicant kept quiet from 1999 after the discharge was issued to him on 19.08.1999 and through counsel, issued a legal notice on 01.06.2017, after 18 years and thereafter approached this Tribunal in the year 2017 when the legal notice was replied to. In the reply to the show cause notice, the applicant indicates that his wife died on 21.03.2024 and the ailment of his wife is said to be one of the grounds because of which he could not approach the Court on time. Though his wife expired on 21.03.2004 as seen from the death certificate, even thereafter the applicant kept quiet for more than 13 years.

5. Be that as it may on merits the challenge made is primarily on the ground that merely on account of four red ink entries

made in the Service Records he has been discharged from service. The same is unsustainable in law in view of the judgments of the Hon'ble Supreme Court in the case of ***Veerendra Kumar Dubey v. Chief of Army Staff*** (2016) 2 SCC 627, ***Vijay Shankar Mishra v. UoI and others*** (2017) 1 SCC 795, and ***Sube Singh v. UoI*** (2007 SCC Online Delhi High Court 2007). It is the case of the applicant that merely on account of having four red ink entries in his services record he has been terminated, therefore, the same is unsustainable in law. Therefore, in the light of the law laid down in the cases as referred to hereinabove, he should be reinstated in service with all consequential benefits.

5(A) That apart, the learned counsel for the applicant also argued that the punishment of discharge after such a long period of service is highly disproportionate and too harsh, as it amounts to depriving the applicant of pension benefits. On this ground, also the, administrative action taken, it is argued, should be interfered with.

6. The respondents have filed a detailed Counter Affidavit and submit that applicant was discharged in accordance with the Habitual offenders' policy and the Air Force Rules. They point out that under the Habitual Offenders' Policy dated 18.12.1996 (Annexure R1), a habitual offender, under Clause 5 of the aforesaid policy is one who has received a total of six punishments, including red and black ink entries, four

punishment entries (red and black ink) related to commission of offences of disobedience, insubordination, overstay of leave and mess discipline.

7. It is the case of the respondents that the Armed Forces is an organization where maintenance of discipline is the highest requirement and in case of a habitual offender strict action is required to be taken. It is stated that the procedure for taking action in cases of habitual offenders is contained in the policy dated 18.12.1996 filed collectively as Annexure R1. For the acts of commission and omission committed by the applicant as per this policy warning letters were issued to him he was subjected to counseling, a show-cause notice was issued to him and it was only after following the due process of law, that he was punished in accordance with the policy contained in Annexures R1 and 2.

8. It is stated by the respondents that during the period of his service, the applicant earned two red ink entries and four black ink entries on account of the following acts of commission and omission:

i. That he absented himself without leave from duty from 0001 hrs on 22 Dec 91 till he reported back at 1900 hrs on 29 Dec 91 (total absence 07 days & 14 hrs) and was awarded 'Reprimand', a red ink punishment entry. This punishment entry automatically forfeits the pay and allowances of the airwarrior for 07 days and become Red

Ink Entry as per the provision of Para 1054 of the Regulations for the Air Force 1964.

ii. That amended himself the date of SORS & ETA in IAFF (P) 9 movement order (official document) issued to him for reporting to unit at 2359 hrs on 14 Oct 93 on cessation of T/D as per movement order (total absence 01 day 06 hrs 39 minutes) and was awarded 'Reprimand', a black ink punishment entry.

iii. That absented himself from billet from 1030 hrs to 2230 hrs on 01 Jan 95 & Failed to book out from Guard Room on 01 Jan 95 and was awarded 'Admonition', a black ink punishment entry.

iv. That found missing from Airmen Mess at about 0920 hrs on 13 Jun 95 at the time of surprise check carried out by OIC Airmen Mess Flt Lt A Joshi Lgs (19503-A) and Airmen Mess Store was found opened & was found handled by a civilian Cook Pass No. 1378 Sri Sahadeo at about 0920 hrs on 13 Jun 95, thus violating the verbal order given by OIC Airmen Mess and was awarded 'Admonition', a black ink punishment entry.

v. That failed to book in at Main Guard Room at 2200 hrs on 30 May 97 until he reported at Main Guard Room at 0650 hrs on 31 May 97 contrary to SRO SI No. 78/94 and was awarded 'Severe Reprimand', a red ink punishment entry.

vi. That was absent from fir piquet duty at 0700 hrs on 08 Jun 98 till he reported for duty at 1100 hrs on 08 Jun 98

(total absence 03 hrs & 59 minutes) and was awarded 'Reprimand', a black ink punishment entry.

9. It is stated that before these six punishments were imposed upon the applicant he was summarily tried on all six occasions and it was only after following the due process of law that these punishments were imposed. He was issued a warning letter whereby he was warned to refrain from committing any further acts of indiscipline, failing which he would be classified as a potential habitual offender.

10. In support of their contention that the action was taken in accordance with the Habitual Offenders' Policy, which is in accordance with the law, the respondents rely upon a judgment of the Hon'ble Supreme Court in the case of ***UoI and others v. Cpl A.K. Bakshi,*** reported in 1996 AIR 1368. They further rely upon two judgments of this Tribunal, one by a Coordinate Bench of this Tribunal in OA No. 1643/2017, ***Ex Cpl Happy Singh v. UoI,*** **decided on 02.04.2024,** and the other by the Regional Bench, Guwahati, in **OA No. 56/2019,** ***Ex LAC Dwipjyoti Talukdar v. UoI,*** decided on 06.04.2023 in support of their contentions.

11. Heard learned counsel for the parties, a perusal of the law laid down and the facts in the case of *Veerendra Kumar Dubey* and *Vijay Shankar Mishra* indicate that the members of the Forces therein who were governed by the Army Act and the Army Rules

were discharged from service based on similar provisions applicable in the Army only on the ground that they had earned red ink entries and therefore were discharged. It was after considering these factors that the Hon'ble Supreme Court observed that merely because the employee had earned four red ink entries that by itself is not a ground for discharge. The Commanding Officer before ordering a discharge should follow the inbuilt procedure laid down in the policy and is required to consider the nature of offences for which the entries are awarded, take note of the long service rendered by the individual, the postings in hard stations, the difficult working conditions and thereafter take action.

12. The applicant relies on these judgments to argue that merely on the basis of the red/ black ink entry, discharge is unsustainable. On the contrary when we analyse the case at hand we find that the discharge has not been made simply on the basis of the six entries made in the service record, i.e. two red ink entries and four black entries. Rather the applicant committed acts of commission and omission after his enrolment in 1986, in the years 1991, 1993, 1994, 1995, 1997 and 1998 respectively for which the entries were made in the service record. In fact, he committed offenses once in each of the years 1991, 1993, 1997 and 1998 and twice in the year 1995. For each of these acts of commission and omission he was summarily tried and after hearing him he was punished. As has been detailed hereinabove

records indicate that a warning letter was issued to him specifically warning him not to commit such acts again. He was informed that if he did so it would result in him being declared a habitual offender. He was also counselled and permitted to continue working until the show cause notice was issued after which he was proceeded against under the policy for dealing with habitual offenders.

13. It has also come on record in the show cause notice and the material available that he even committed an offence while being posted in a sensitive insurgency area like Srinagar. It was only after the warning and counseling failed to show any improvement in his conduct that the impugned action was taken. That being so the moot question before this Tribunal is whether the impugned administrative action warrants interference.

14. The applicant relies upon the judgments in the cases of *Veerendra Kumar Dubey* (supra) and *Dinesh Shankar Mishra* (supra), which as already indicated hereinabove state that merely on the basis of four black entries, discharging an employee is not proper and that the Commanding Officer should follow the inbuilt process before taking action. As already indicated hereinabove those cases pertain to the Army Act and the Rules framed thereunder whereas in the present case the applicant was working in the Indian Air Force and the Habitual Offenders Policy formulated by the Indian Air Force has been applied. The said

policy, dated 15.12.1996 prescribes the procedure for declaring a person as a habitual offender in Para 5 and the action against the applicant was taken after declaring him a habitual offender after following the aforesaid policy. Moreover the respondents have also processed the applicant's case in accordance with the procedure laid down for dealing with habitual offenders as contained in the appendix to the policy dated 18.12.1996 available at page 56 of the Paper Book. We find that the Commanding Officer in this case followed the detailed procedure laid down in the said appendix, inasmuch as warning letters were issued to the applicant, he was subjected to counselling and the show cause notice was issued as required under the scheme before the punishment in question was imposed. That being so merely on the basis of the law laid down in *Veerendra Kumar Dubey* (supra) and *Vijay Shankar Mishra* (supra) interference in the administrative action cannot be undertaken.

15. In *Veerendra Kumar Dubey* (supra), the Hon'ble Supreme Court held that when administrative procedures prescribe certain procedural safeguards to prevent the arbitrary exercise of power such safeguards should be followed before taking an administrative decision. In cases where action was taken merely on the basis of four red ink entries without following the administrative safeguards, the same had been interfered with by the High Court. However, in the instant case, the facts are entirely different. The procedural safeguards laid down in the policy for

declaring a person a habitual offender and taking action against him had been followed.

16. In *Cpl A.K. Bakshi* (supra), the Hon'ble Supreme Court took note of not only the Air Force Act and the Rules framed thereunder but also the procedure laid down for discharge. The Hon'ble Court concluded that if the procedure laid down for the discharge of a habitual offender under Rule 15(2)(g) had been followed the Court should not interfere in the matter. If we analyse the present case in the backdrop of the observations made by the Hon'ble Supreme Court in *Cpl A.K. Bakshi* (supra), it is clear that after being warned about his persistent involvement in acts of indiscipline and being given another opportunity to reform, when the acts continued, the result was discharge. It was observed that in cases where an individual has crossed the threshold for being declared a habitual offender and does not show improvement despite warnings discharge under Rule 15 can be effected.

17. This issue has also been considered by a Coordinate Bench of this Tribunal in the case of *Cpl HP Singh* (supra) pertaining to action against a habitual offender under Rule 15 of the Air Force Rules. In that case, the law laid down in *Veerendra Kumar Dubey* (supra) was also cited. This Tribunal considered the issue, took note of the Air Force Rules and the Habitual Offenders Policy of 1996 and found that after earning five entries (three red ink and

two black entries) the applicant therein was warned about being categorized as a potential habitual offender. When he again committed a similar offence after the warning the action taken by the Air Force authorities was upheld.

18. In Paras 14 and 15 of the order in the case of ***Cpl H. P. Singh*** (supra) the issue was considered and after a detailed analysis, the law laid down in *UoI and others v. Ex Cpl Abhishek Pandey* (CA No. 4780-4781/2018) decided by the Hon'ble Supreme Court was applied after distinguishing the case of *Virender Kumar Dubey* (supra). In our considered view the present case is squarely covered by the decision of the Coordinate Bench in *Cpl SP Singh* (supra). A similar view has also been expressed by the Guwahati Bench in the case of, ***Ex LAC Dwipjyoti Talukdar v. UoI,*** **OA No. 56/2019** decided on 06.04.2023. In Para 17, after considering various issues identical nature the discussion in Paras 17, 18 and 19 reads as follows:

> *"17. Maintenance of discipline is of paramount importance in the Armed Forces. Being a habitual offender with no regard to Air force Service and maturity, applicant's retention in service was considered detrimental for the troops. Based on the past record, a Show Cause Notice was served to applicant by the Commanding Officer which he replied. Thereafter, speaking order was passed by the competent authority and on receipt of reply he was discharged from service being service no longer required.*
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> *18. In the light of the foregoing, we are of he view that the number of red ink entries alone is not the criteria for discharge under the Rules. Four red ink entries are only a guidline. The disciplinary conduct of the individual as reflected in the Service record and the requirement of maintaining discipline would decide if*

services are no longer required. This is an administrative action resulting from an unsatisfactory record of service of the applicant.

19. Thus, having considered all aspects of the matter, we find no grounds to interfere with the discharge of the applicant under Rule 15 (2) (g) (ii) of the Air Force Rules, 1969. The O.A. is accordingly, dismissed. "

Apart from the aforesaid, the issue of judicial review of proportionality in the matter of imposing a punishment and the scope of judicial review in such cases has been subjected to detailed analysis by the Hon'ble Supreme Court in various cases. A perusal of most of these cases wherein the issues had been considered viz. ***Union of India and others vs. G. Ganayutham (Dead) by LRs.*** (Civil Appeal No. 524/1988), ***UoI and others v. B.K. Srivastava*** (Civil Appeal No. 7458/1997), ***High Court of Judicature at Bombay v. Sashikant K. Patil and another*** (2001) 1 SCC 416, ***Om Kumar and others v. UoI*** (2001) 2 SCC 386 and ***UoI and Ors v. Dwaraka Prasad Tiwari*** (2006) 10 SCC 388, indicate that after a detail discussion on various aspects of the law governing judicial review of administrative action the scope of judicial review is laid down.

19. A perusal of the principles laid down by the Hon'ble Supreme Court indicates that while analyzing the scope of judicial review and the power of the Courts and Tribunals in the matter of judicial review, the principle of proportionality has been involved on accordance to the principles laid down in *Wednesbury's case 1948*, i.e., the judgment of **Lord Greene in**

Associated Provincial Picture Houses Ltd. v. Wednesbury's Corporation (1948 (1) KB 223) and the observations by Lord Diplock in *CCSU v. Minister for Civil Services* (1985 (1) AC 374),. In the case of *G. Ganayutham (supra)* in Paras 10 and 11 the principles laid down in Wednesbury's Case 1948 and CCSU 1985 have been reproduced, which read as under:

> *"10. This case is treated as laying down various basic principles relating to judicial review of administrative or statutory discretion. Before summarizing the substance of the principles laid down there we shall refer to the passage from the judgment of Lord Greene in Associated Provincial Picture Houses Ltd. V. Wednesbury. Corporation (1948) 1 KB 223. It reads as follows:*
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> *It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the-words 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could even dream that it lay within the powers of the authority... In another, it is taking into consideration extraneous matters. It is unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another.*
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> *Therefore, to arrive at a decision on 'reasonableness' the Court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at having regard to the above principles, and must have been a bona fide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the Court to substitute its view.*
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> *The CCSU Case (1985) and the expectation of future adoption of proportionality:*

"11. The principles of judicial review of administrative action were further summarized in 1985 by Lord Diplock in CCSU v. Minister for Civil Services(1985) 1 AC 374 as illegality, procedural impropriety and irrationality. He said more grounds could in future become available, including the doctrine of proportionality which was a principle followed by certain other members of the European Economic Community. Lord Diplock' observed in that case as follows:

..... Judicial review has I think, developed to a stage today without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by Judicial review. The first ground I would call 'illegality, the second 'irrationality' and the third'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further developmet on a case by case basis may not in course of time add further grounds, I have in mind particularly the possible adoption in the future of the principle of 'proportionality', which is recognized in the administrartive law of several of our fellow members of the European Economic Community...

Lord Diplock explained 'irrationality' as follows:

By irrationality, I mean what can now be succinctly be referred to as 'Wednesbury unreasonable... It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person 'who had applied his mind to the question to be decided could have arrived at."

20. This principle is consistently being followed and in the case of *Om Kumar* (supra), the law laid down in *G. Ganayutham* (supra) has been considered. In Paras 66 and 67, the law has been crystallized by the Hon'ble Supreme Court in the following manner:

"66. It is clear from the above discussion that in India where administrative action is challenged under Article 14 as being discriminatory, equals are treated unequally or unequals are treated equally, the question is for the Constitutional Courts as primary reviewing courts to consider correctness of the level of discrimination applied and whether it is excessive and whether it has a nexus with the objective intended to be achieved by the administrator. Here the court deals with the merits of the

balancing action of the administrator and is, in essence, applying "proportionality" and is a primary reviewing authority.

"67. But where an administrative action is challenged as "arbitrary" under Article 14 on the basis of Royappa (as in cases where punishments in disciplinary cases are challenged), the question will be whether the administrative order is "rational" or "reasonable" and the test then is the Wednesbury test. The courts would then be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary.

In all the cases consistently, the same theory and principle pertaining to judicial review of administrative action and the principle of proportionality have been discussed and followed. If we analyse the case at hand in the backdrop of the aforesaid principle it is clear that in the case of the applicant apart from the fact that the procedure laid down in the Air Force Rules and the Habitual Offenders Policy of 1996 had been followed the respondents have taken action keeping in view the consistent acts of misconduct committed by the applicant in the discharge of his military duty from 1991 up to 1998. The action has been taken after following the due process of law.

21. As indicated by the Guwahati Bench in the case of **LAC Dwipjyoti Talukdar** (supra) the applicant being a member of a disciplined force is expected to maintain a higher standard of discipline. If after analysing all these factors the competent authority viz., the Commanding Officer has taken action after following the due process of law and considering the

requirements of the service then in the exercise of our limited powers of judicial review of administrative action on the grounds canvassed before us we see no reason to interfere in the matter.

22. Accordingly finding no ground to interfere the application stands dismissed.

23. No order as to costs.

24. Pronounced in open Court on this the 23rd day of April 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[MS. RASIKA CHAUBE]
MEMBER (A)

/JYOTI/