

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

107.

O.A No. 2888 of 2023

(O.A No. 40 of 2022, AFT, RB, Kolkata)

Rect (Gnr) Prem Chand Kumar

.. Applicant

v.

Union of India and others

.. Respondents

For Applicant : Mr. B.P. Vaishnav, Advocate

For Respondents : Dr. Vijendra Singh Mahndiyan,
Advocate

CORAM:

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

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

ORDER

25.04.2025

M.A No. 3263 of 2024:

This is an application for early hearing. Having heard the learned counsel for the parties and in light of the averments made in the affidavit filed along with the petition, we are of the view that the matter can be disposed of on merits today itself. We, therefore, dispose of all applications and direct for hearing of the OA today itself. M.A No. 3263 of 2024 thus stands disposed of.

O.A No. 2888 of 2023:

2. The applicant has invoked the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as "the AFT Act"). The OA was initially filed

before the Armed Forces Tribunal, Regional Bench at Kolkata as O.A. No. 40 of 2022. However, on a request made by the applicant and due to the non-functioning of the Regional Bench at Kolkata, the Chairperson, in exercise of his powers under the AFT Act, transferred the matter to the Principal Bench at New Delhi. Upon such transfer, the case was re-numbered as O.A. No. 2888 of 2023 and is now being heard and disposed of by this Bench. The primary relief sought by the applicant in Para 8 of the OA is for reinstatement in service with all consequential benefits and challenge is to the order of discharge dated 13.11.2021.

3. The brief facts of the case are that the applicant, after undergoing the recruitment process, was enrolled in the Indian Army on 19.01.2021 and reported to the Artillery Centre, Hyderabad (AP) on 20.01.2021 for training. During training, a police verification was conducted regarding his antecedents. An adverse police report was received from the Assistant Sub Inspector of Bondeya Police Station, Aurangabad (Bihar) indicating about the applicant's involvement in Criminal Case No. 01/2018 under Sections 341, 323, 308 and 504 of the Indian Penal Code (IPC). Based on the police report (Annexure A1), a show cause notice (Annexure A2) was issued to the applicant on 22.09.2021 under Rule 13(3)(IV) of the Army Rules, 1954 (the Army Rules, in short) stating that he was unlikely to become a good soldier.

4. In his reply, the applicant categorically denied the allegations stating that he was never involved in any criminal case and that the report was erroneous. Despite his denial, the applicant was discharged from service on 13.11.2021. Aggrieved, he submitted a

representation dated 10.01.2022 (Annexure A5) to the Superintendent of Police, Aurangabad requesting a re-verification of the police report submitted.

5. Upon inquiry, the Officer-in-Charge, Bondeya Police Station informed the Superintendent of Police on 19.01.2022 (Annexure A6) that from the records it was found, that upon questioning the complainant, Surya Dev Yadav, it was seen that the applicant had not been named as an accused in FIR No. 01/2018. The complainant clarified that the applicant was never involved in the alleged incident. This was further confirmed by a re-verification report dated 21.01.2022 (Annexure A7), which clarified that the initial police verification report was incorrect.

6. Despite this re-verification, the respondents did not reconsider the applicant's case. The applicant submitted another representation on 02.02.2022 (Annexure A8), but no action was taken leading him to file the present application before this Tribunal.

7. During the hearing, this Tribunal took note of the discrepancies in the two verification reports submitted by the police and thereafter on 09.08.2024, we directed the Superintendent of Police, Aurangabad to produce the case diary relating to FIR No. 01/2018. When no response was received, fresh directions were issued on 08.10.2024 to the District Judge, Aurangabad to forward the Tribunal's orders to the Superintendent of Police. Upon compliance, the case diary was produced before this Tribunal.

8. On examining the FIR and the case diary, it became evident that FIR No. 01/2018 was filed by one Surya Dev Yadav against five accused persons – (i) Rajnandan Yadav, aged 55 years, (ii)

Brijnandan Yadav, aged 50 years (applicant's father and uncle), (iii) Ajai Yadav, aged 25 years (brother), (iv) Ranjay Yadav and (v) Anuj Kumar (cousins). The applicant's name does not appear anywhere in the FIR or in the charge sheet. The case diary confirms that the applicant was never named or investigated as an accused.

9. The respondents, however, relied solely on the initial adverse verification report dated 05.06.2021 (Exhibit 1), which mechanically indicated the applicant's involvement in FIR No. 01/2018 without substantiating it by any evidence. The discharge order (impugned herein) was passed based on this flawed report without further inquiry or verification, despite later clarifications by the police authorities themselves. Even the complainant, Surya Dev Yadav, submitted an affidavit (Page 42 of the paper book) stating that he had never named the applicant as an accused. The respondents, however, did not act on this clarification and proceeded to defend the discharge on the sole ground that it had already been effected.

10. This Tribunal, to satisfy itself regarding the authenticity of the applicant's claim, examined the original case diary produced by the Bondeya police, obtained through the office of the District Judge, Aurangabad. The documents therein confirmed beyond doubt that the applicant was not named at any stage of the investigation or trial. Despite the report of the Superintendent of Police, the complainant's affidavit and the conclusive entries in the case diary and FIR, the respondents failed to reconsider their decision. They neither conducted a fresh inquiry nor corrected the evident error, thereby compelling the applicant to approach this Tribunal.

11. On overall consideration of the pleadings, evidence and the material on record, it is manifest that the action of the respondents in discharging the applicant under Rule 13(3)(IV) of the Army Rules was not only arbitrary and legally unsustainable but also based on incorrect factual assumptions and in disregard of later verified facts.

12. Accordingly, we allow this OA quashing the impugned discharge order dated 13.11.2021 issued under Rule 13(3)(iv) of the Army Rules and directing the respondents to reinstate the applicant forthwith in service with all consequential benefits, treating the period from the date of discharge to the date of reinstatement as spent on duty for all purposes. The respondents shall grant the applicant arrears of pay and allowances and restore all service benefits, including seniority and eligibility for promotion, as per rules. The entire exercise shall be completed within a period of three months from the date of receipt of a certified copy of this order.

13. No order as to costs.

(Justice Rajendra Menon)
Chairperson

(Rear Adml Dhiren Vig)
Member (A)

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