

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A. No. 25 of 2014

Tuesday, the 03rd day of February, 2015

The Honourable Justice V.Periya Karuppiah
(Member-Judicial)

and

The Honourable Lt Gen K Surendra Nath
(Member-Administrative)

Ex-Sepoy M.Sanyasi Rao
Service No.2569236-P
Son of Late Dallaya, aged about 63 years
House No.32/24/6/2, Capt. Rama Rao Junction
Chakalipeta, Post-Visakhapatnam Railway Station
District-Visakhapatnam (A.P.), PIN: 530 004

...Applicant

By Legal Practitioners:
M/s M.K.Sikdar and S.Biju

vs

1. Union of India
Represented by The Secretary
Ministry of Defence, New Delhi – 110 011
2. The Officer in-Charge
Madras Regiment Abhilekh Karyalaya, Records
The Madras Regiment
PIN: 900 458, C/o 56 APO
3. The Commanding Officer
No.9, Madras Regiment
C/o 56 APO
4. The PCDA (P)
G-3 Section, Draupadi Ghat
Allahabad (U.P), PIN: 211 014

...Respondents

Mr.S.Haja Mohideen Gisthi, SCGSC

ORDER

[Order of the Tribunal made by
Hon'ble Lt Gen K Surendra Nath, Member (Administrative)]

The applicant Ex-Sepoy M. Sanyasi Rao has filed this Original Application with a request to call upon the respondents to produce records in respect of the impugned discharge certificate dated 17 October 1986 and quash the same and to direct the respondents to grant service pension to the applicant from the date of discharge from service.

2. Briefly, the applicant submits that he was enrolled in the Army on 14 August 1971 and that after approximately 15 years of service, he was discharged from service on 17 October 1986 under Rule 13 (3)III(v) of the Army Rules 1954 on disciplinary grounds under 'service no longer required'. The applicant would submit that while he was posted in Kolkata in 1978, he was granted 2 months annual leave and while on leave, he fell sick and was diagnosed with psychiatric problems, and also lost his Identity card. The applicant submits that he underwent long treatment at K.G.Hospital, Visakhapatnam and after recovery from the said disease, he rejoined voluntarily and despite producing all relevant documents regarding illness, he was punished with 28 days of RI under Army Act Section 39 (b). The applicant further submits that the 3rd respondent was biased against him and gave him a number of red ink entries and minor punishments and would submit that he was not counseled by the respondents nor was told about the pros and cons of committing minor offences. He would also submit that he was not served with a Show Cause Notice or given any warning to rectify his mistakes and, to his dismay, that on the verge of pensionable service, he was discharged on 17.10.1986 under Rule 13 (3)III(v) of Army Rules 1954 on disciplinary grounds.

3. The applicant would also submit that he made a number of submissions for grant of service pension. However, the respondents did not grant him any

service pension stating that he was discharged on disciplinary grounds being service no longer required after rendering less than minimum qualifying service for pension. He would also state that his discharge from service was biased and done with mala fide intentions to deprive him of service pension and without following due procedure including issue of Show Cause Notice as contemplated in the Army Rules. The applicant would state that at the time of discharge from service, he had 15 years 2 months and 4 days of service. In view of the foregoing, the applicant would state that the impugned order dated 17.10.1986 be set aside and he be granted service pension with all consequential benefits.

4. The respondents would state that the applicant had been a habitual offender and was punished a number of times for offences for overstaying of leave, losing government property by neglect and for acts prejudicial to military service. The applicant had 4 Red Ink entries and 1 Black Ink entry in his service record. Therefore, he was discharged from service after following due procedures as contained in the ROI 64 of 1973 with regard to disposal of undesirable persons. He was given a Show Cause Notice by Commanding Officer, 9 MADRAS *vide* letter dated 31 July 1986 and the applicant had submitted a reply which was not satisfactory and, therefore, these facts were considered by the competent authority and finally he was discharged from service on 17 October 1986 being service no longer required. At the time of discharge, the applicant had a total of 15 years and 65 days of service of which 2 years and 249 days were non-qualifying service owing to his desertion / overstayal and punishments. At the time of discharge, the applicant's credit balance and monetary benefits from the Army Group Insurance, Provident Fund, Service gratuity, DCRG and the balance of pay, to the tune of Rs.29,982/- was paid to him. The applicant did not complete 15 years of qualifying service for grant of pension and, therefore, was not granted service pension. Further, the respondents would state that the applicant had come to the Tribunal after a delay of more than 28 years and, therefore, the application suffers from delays and laches. In view of the foregoing, they

would contend that the application be set aside as it lacks in substance or merit.

5. We have heard the arguments of Mr.M.K.Sikdar and Mr.S.Biju learned counsel appearing on behalf of the applicant and Mr.S.Haja Mohideen Gisthi, Senior Central Government Standing Counsel, assisted by Maj Suchithra Chellappan, learned JAG Officer (Army) appearing for the respondents and perused all the documents made available to us.

6. On the above pleadings, the following points emerge for consideration:

(i) *Were the procedures, as laid down in Army HQ letter dated 23 August 1965 followed while sanctioning the discharge of the applicant on 17 October 1986?*

(ii) *Whether the impugned discharge order dated 17 October 1986 is sustainable?*

(iii) *What remedy, if any, the applicant is entitled to?*

7. Points No. 1 and 2: The fact that the applicant was enrolled on 14 August 1971 and was discharged from service on 17 October 1986 under section 13 (3) III (v) of Army Rule 1954 on disciplinary grounds is not disputed by the respondents. The applicant, at the time of discharge from service, had a total service of 15 years 2 months and 5 days of which 2 years and 249 days were non-qualifying service. In effect, at the time discharge, the applicant had a qualifying service of 12 years and 191 days. The counsel for the applicant would claim that proper procedures were not followed at the time of discharge of the applicant and that no Show Cause Notice was issued to his client. On the other hand, the respondents would claim that the applicant had 4 Red Ink entries and 1 Black Ink entry and he was properly given a Show Cause Notice, being a habitual offender and was, thereafter, discharged from service by the competent authority. In accordance with the provisions of Army Rule 13 (3) III (v), the competent authority to authorize a discharge is the Brigade / Sub Area Commander. The Brigadier / Sub Area Commander before ordering the

discharge is required, if circumstances permit, to give a Show Cause Notice against the contemplated discharge. In the instant case, the Show Cause Notice was issued by the Adjutant of the Battalion on 31 July 1986 on behalf of his Commanding Officer. An examination of the Show Cause Notice reveals that the applicant had been given a total of 5 punishments, out of which were 4 Red Ink entries and 1 Black Ink entry. The last Red Ink entry was given to him was for 14 days Rigorous Imprisonment on 27 July 1981 under Army Act Section 54 (b) for losing his Identity Card. Further, he was given a punishment of 14 days pay fine on 25 July 1985 under section 39 (b) for overstaying leave. For better appreciation, the Show Cause Notice issued by the respondents is reproduced below:

Show Cause Notice

1. *You have been awarded the following punishments as per the details given below:*

(a) *4 days detention on 10 Dec 75 under Army Act Section 39 (b) for overstaying leave.*

(b) *7 days detention on 26 Dec 75 under Army Act Section 63 for loss of identity card.*

(c) *28 days of Rigorous Imprisonment and 14 days detention on 29 Jul 78 under Army Act Section 39 (b) for overstaying leave.*

(d) *14 days Rigorous Imprisonment on 27 Jul 81 under Army Act Section 54 (b) for loss of Identity card.*

(e) *Fined 14 days pay on 25 Jul 85 under Section 39(b) for overstaying leave.*

2. *As per the existing orders in force, persons more than 3 red ink entries in the Conduct Sheet be discharged from service as 'Services no longer required'.*

3. *In spite of repeated award of punishments and advice, you have not shown any improvement in your discipline, hence you are to Show Cause as to why you should not be discharged from service as 'Service no longer required'.*

4. *Your representation against sanctioning of discharge will be submitted in writing. Your reply should reach the undersigned in triplicate by 02 Aug.*

8. In reply, the applicant had stated that he repents for past mistakes and pleaded for mercy and to permit him to continue in service. He would also state that he has a family consisting of wife and two children to take care of and a discharge at this stage when he had not served for the minimum qualifying service to be eligible for pensionary benefits, and that a discharge at this stage would place his family and his future in jeopardy. In view of the foregoing he would state that he should be permitted to continue in service. Notwithstanding the above, the competent authority had issued discharge orders dated 17 October 1986 and dismissed him from service.

9. An examination of the documents placed before us would reveal that the procedure in vogue at the time of dismissal of the applicant have been laid down in the Army Headquarters letter dated 23 August 1965 – Procedure for the Removal of Undesirable and Inefficient JCOs, Warrant Officers and Other Ranks. For a better understanding, an extract of the procedure for dismissal and discharge of undesirable JCOs, Ors is given below:

“1 to 3. xx xx xx

4. *AR 13 and 17 provide that a JCO/WO/OR whose dismissal or discharge is contemplated will be given a Show Cause Notice. As an exception to this, services of such a person may be terminated without giving him a Show Cause Notice provided the competent authority is satisfied that it is not expedient or reasonably practicable to service such a Notice. Such cases should be rare, e.g., where the interests of the security of the State required. Where the serving of a Show Cause Notice is dispensed with, the reasons for doing so are required to be recorded. See proviso to AR 17.*

Subject to the foregoing, the procedure to be followed for dismissal or discharge of a person under AR 13 or AR 17, as the case may be, is set out below:

Preliminary Enquiry

(a) Before recommending dismissal or discharge of an individual the authority concerned will ensure

(i) that an impartial enquiry – not necessarily a Court of Inquiry – has been made into the allegations against him and that he has had adequate opportunity of putting up his defence or explanation and of adducing evidence in his defence;

(ii) that the allegations have been substantiated and that the extreme step of termination of the individual's service is warranted on the merits of the case.

Forwarding of Recommendations

(b) The recommendation for dismissal or discharge will be forwarded, through normal channels, to the authority competent to authorize the dismissal or discharge, as the case may be, along with a copy of the proceedings of the enquiry referred to in (a) above.

Action by Intermediate Authorities

(c) Intermediate authorities through whom the recommendations pass will consider the case in the light of what is stated in (a) above and make their own recommendations as to the disposal of the case.

Action by competent authority

(d) The authority competent to authorise the dismissal or discharge of the individual will consider the case in the light of what is stated in (a) above. If he is satisfied that the termination of the individual's service is warranted, he should direct that a Show Cause Notice be issued to the individual in accordance with AR 13 or AR 17 as the case may be. No lower authority will direct the issue of a Show Cause Notice. The Show Cause Notice should aver the full particulars of the cause of action against the individual. The allegations must be specific and supported by sufficient details to enable the individual to clearly understand and reply to them. A copy of the proceedings of the enquiry held in the case will also be supplied to the individual and he will be afforded reasonable time to state in writing any reasons he may have to urge against the proposed dismissal or discharge.

Action on receipt of the reply to the Show Cause Notice

(e) The individual's reply to the Show Cause Notice will be forwarded through normal channels to the authority competent to authorize his dismissal / discharge together with a copy each of the Show Cause Notice and the proceedings of the enquiry held in the case and recommendations of each forwarding authority as to the disposal of the case.

Note:- As far as possible, JCO, WO and OR awaiting dismissal orders will not be allowed to mix with other personnel.

Final orders by the competent authority

(f) The authority competent to sanction the dismissal/discharge of the individual will, before passing orders reconsider the case in the light of the individual's reply to the Show Cause Notice. A person who has been served with a Show Cause Notice for proposed dismissal may be ordered to be discharged if it is considered that discharge would meet the requirements of the case. If the competent authority considers that termination of the individual's service is not warranted but any of the actions referred to in (b) to (d) of para 2 above would meet the requirements of the case, he may pass orders accordingly. On the other hand, if the competent authority accepts the reply of the individual for the Show Cause Notice as entirely satisfactory, he will pass orders accordingly."

10. From a reading of the above, it is evident that before recommending dismissal / discharge of an individual, the authorities concerned should ensure that an impartial enquiry is carried out to substantiate the allegations and the intermediate authorities are required to make their own separate recommendations on the case. The competent authority, if satisfied that the termination of service of the individual is warranted, should direct that a Show Cause Notice be issued to the individual in accordance with Army Rule 13, in this case. No lower authority is entitled to direct the issue of Show Cause Notice. Further, Show Cause Notice should contain the full particulars of the cause of action against the individual and the allegations should be supported by sufficient details so that the individual clearly understands and replies to them. A copy of the proceedings of any inquiry held is also required to be provided to the individual. On receipt of the reply to the Show Cause Notice

with recommendations of the intermediate authorities, the competent authority to sanction dismissal/discharge of the individual is required to reconsider the case in the light of the individual's reply to the Show Cause Notice before passing orders.

11. In the extant case, the Show Cause Notice was issued by the Adjutant on behalf of the Commanding Officer of the Battalion whereas 4 (d) of the above quoted letter of 23 August 1965 lays down that no lower authority will direct issue of such a Show Cause Notice. In this case, the competent authority is the Brigade Commander 161 Infantry Brigade and if a Show Cause Notice was to be issued, it should have been issued on his specific directions. The respondents were unable to produce the documents and correspondence on the subject showing the said directions of the Brigade Commander on the plea that the case is more than 27 years old and the connecting documents are no longer available, being destroyed. An examination of the Show Cause Notice issued on 31 July 1986 shows that the last offence for which the applicant was punished was a Black Ink entry on 25 July 1985, i.e., more than one year prior to the issue of the Show Cause Notice. Further, the last Red Ink entry incurred by the applicant was on 27 July 1981, i.e., five years prior to the issue of the Show Cause Notice. It would appear from the above that the discipline of the applicant during that past year has been exemplary. The immediate reason for having issued the Show Cause Notice is not clear as para 3 of the Show Cause Notice would only say that ***"in spite of repeated award of punishments and advice, you have not shown any improvement in your discipline, hence you are to Show Cause as to why you should not be discharged from service as 'Service no longer required'.*** This is vague and unspecific and not in consonance with the spirit of para 4 (d) of policy letter dated 23.08.1965. The other reason for issuing Show Cause Notice was the fact that he had incurred four Red Ink entries. We have already observed that the last Red Ink entry was incurred more than 5 years prior to the issue of Show Cause Notice and since then his discipline appears to have been good. Further, we note that the applicant had

15 years, 2 months and 5 days of service of which 12 years and 191 days was qualifying service and, but for his discharge from service, he was due to receive pension within the next 2-3 years, a fact that the applicant had pleaded to, in his reply to the Show Cause Notice. Both Army Headquarters and Hon'ble High Courts in several judgments have observed that discharges based on Red Ink entries is not mandatory and that the competent authority has to bear in mind the nature of offences and the likely injustice and harshness that may be caused of such discharge, when individuals are about to complete pensionable service.

12. The Hon'ble Delhi High Court had, in the case of Ex-Sepoy Sube Singh vs Union of India and Ors [140 (2007) DLT 26] has observed the following:

“9. In the case of discharge proposed on the basis of red ink entries, the competent authority has also to bear in mind that such discharge does not become mandatory merely because of such entries having been made. Nature of the offences for which such entries have been awarded has also to be considered by the competent authority. More importantly, the authority has to keep in mind that in the case of individuals who are about to complete their pensionable service, there is no injustice or harshness caused because of discharge. It is obvious that injustice would be more in cases where the person being discharged was about to complete pensionable service than those who have yet to put in the requisite number of years. All told, the competent authority has an onerous duty to perform while deciding whether or not to discharge an individual from service. The least that he must, therefore, do is to ensure that he applies his mind to each one of the factors that are made relevant by the circular and which even independent of the circular appear to be relevant to a proper exercise of power vested under Section 22 Rule 13 of the Army Act and the Rules.”

13. From the above, it may be seen that, firstly, the Show Cause Notice was issued by a lower authority other than the competent authority; secondly, there is nothing to show on record that the competent authority has authorized the issue of Show Cause Notice. While this may be overlooked as the case is more than 27 years old and concerned documents are no longer available, being destroyed, the Show Cause Notice does not show immediate

cause of action for its issue. There is also nothing to show either in the Show Cause Notice or in the records produced before us that the discipline of the applicant was less than exemplary in the intervening period since his last Red Ink entry. The competent authority has not observed or recorded any compelling reason as to why the applicant should be dismissed from service, especially when he was close to attaining the qualifying period for receiving pension. As the Hon'ble Delhi High Court had observed in the case of Ex-Sepoy Sube Singh vs UOI and others (Supra) that the competent authority ought to display proper application of mind in such circumstances before sanctioning discharge / dismissal. In the instant case, the competent authority appears to have signed on the dotted line mechanically without assigning any reason as to why the discharge of the applicant has been sanctioned especially when there is no major infraction of discipline by the applicant over the previous five years.

14. In view of the foregoing, we are inclined to agree with the counsel for the applicant that while dismissing the applicant from service under Army Rule 13 (3) III (v) that there was no application of mind in sanctioning the said dismissal.

15. Point 3: The applicant is already out of service for more than 27 years before coming to this Tribunal. He is now more than 63 years old. Therefore, a reinstatement into service is not feasible. Further, while admitting his case after inordinate delay in approaching this Tribunal, we have already said that any benefit to be given would be restricted to 3 years from the date of his Original Application, i.e., 05 August 2013. We are of the view that but for the order of dismissal, the applicant would have completed his pensionable service and would have otherwise been entitled to receiving pension after condoning a shortfall, if any, by the competent authorities. Therefore, the minimum the applicant must be given is the service pension and other benefits due to him upon completion of 15 years of service in the Indian Army. This can be achieved by examining the date on which he would have ordinarily retired in the present rank. Consequently, the applicant's discharge shall take

effect on the date he would have otherwise completed 17 years of service as per his terms and conditions of service prevailing then, i.e., 31 August 1988. On this date, he would have a qualifying service of 14 years and 116 days after discounting 2 years and 249 days of non-qualifying service. Therefore, he would still be short of 249 days (Eight months and 09 days) service for qualifying for minimum service pension. Pension Regulations 1961 as amended contain provisions for condoning up to one year shortfall of qualifying service for pension purposes. In view of the foregoing, the said shortfall of 7 months and 10 days qualifying service is accordingly condoned.

16. In sum, the applicant is deemed to have been discharged from service on 31 August 1988 with minimum pensionable service of 15 years. Accordingly, the applicant is entitled to service pension, and allied benefits, if otherwise entitled to. However, the payment of arrears of pension will be restricted to three years prior to the filing of this O.A., i.e., 05 August 2013. The respondents are directed to comply with the order within three months from the date of receipt of this order. In default, an interest of 9% per annum is payable from that date.

17. Accordingly, the O.A. is allowed to that extent. No order as to costs.

Sd/-

Lt Gen K Surendra Nath
Member (Administrative)

Sd/-

Justice V.Periya Karuppiah
Member (Judicial)

03.02.2015

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No

Internet : Yes/No

ap

True copy

To

1. The Secretary
Ministry of Defence, New Delhi – 110 011
2. The Officer in-Charge
Madras Regiment Abhilekh Karyalaya, Records
The Madras Regiment
PIN: 900 458, C/o 56 APO
3. The Commanding Officer
No.9, Madras Regiment
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G-3 Section, Draupadi Ghat
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Hon'ble Justice V.Periya Karuppiah
(Member-Judicial)

and

Hon'ble Lt Gen K Surendra Nath
(Member-Administrative)

O.A.No.25 of 2014

Dated : 03.02.2015

