

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI**

**(T.A.No.65 of 2010)/ A.T.No.21 of 2011**

(T.A.No.24/2010 OF AFT, JAIPUR BENCH &  
SB.CIVIL W.P.NO.2588 OF 2001 OF THE HIGH COURT OF RAJASTHAN)

TUESDAY, THE 7TH DAY OF FEBRUARY, 2012/18TH MAGHA, 1933

**CORAM:**

HON'BLE MR. JUSTICE A.C.ARUMUGAPERUMAL ADITYAN, MEMBER (J)  
HON'BLE LT. GEN. THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

PAUL K. JOHN, SON OF SHRI K.C.JOHN  
(RANK CORPORAL-SERVICE No.707714)  
TRADE ADSO, RESIDENT OF CHRISTIAN  
MISSIONARY DISPENSARY,VILLAGE & POST  
OFFICE NAL, DISTT BIKANER (RAJASTHAN)  
PRESENTLY EMPLOYED IN THE IAF AT  
2230 SQN, AF C/O AIR FORCE STATION  
NAL (RAJ).

**PETITIONER/APPLICANT**

BY ADV. SRI.V.K.SATHYANATHAN

**VERSUS**

1. UNION OF INDIA, THROUGH THE  
SECRETARY, MINISTRY OF DEFENCE,  
SOUTH BLOCK, NEW DELHI-110 011.
2. AIR OFFICER IN CHARGE PERSONNEL  
AIR HEADQUARTERS, (VAYU BHAWAN)  
RAFI MARG, NEW DELHI – 110 011.
3. AIR OFFICER IN CHARGE,  
AIR FORCE RECORD OFFICE,  
SUBROTO PARK, NEW DELHI – 110 010.
4. AIR OFFICER COMMANDING-IN-CHIEF,  
CENTRAL AIR COMMAND, IAF  
ALLAHABAD (U.P.) PIN 211 012.
5. THE COMMANDING OFFICER,  
(GROUP CAPTAIN M BHANDA)  
No.505 SU, AF C/O 56 A.P.O.
6. AIR OFFICER COMMANDING-IN-CHIEF  
WESTERN AIR COMMAND, IAF  
SUBROTO PARK,NEW DELHI – 110 010.

**RESPONDENTS/RESPONDENTS**



7. THE COMMANDING OFFICER  
No.2230 SQN, AF C/O AF STATION NAL  
(BIKANER) – RAJASTHAN.

BY ADV. SMT.E.V.MOLY, CENTRAL GOVT. COUNSEL.

**ORDER**

**A.C.A.Adityan, Member (J)**

The applicant had moved the High Court of Rajasthan at Jaipur by way of filing W.P.2588/2001 challenging the impugned order of discharge dated 22/6/2001 (Annexure-P15) and also the consequential final clearance of the respondents against the said order of discharge vide Annexure-P13 and to cancel the show cause notice (Annexure-P3) and to issue fresh show cause notice in terms of paragraph 3 (d) of Annexure-P1 etc. After the formation of the Armed Forces Tribunal the said Writ Petition was transferred to the Armed Forces Tribunal, Jaipur Bench under S.34 of the Armed Forces Tribunal Act, 2007 and re-numbered as T.A.24/2010. Thereafter, on application by the applicant before the Armed Forces Tribunal, Principal Bench at New Delhi, the said T.A was transferred from the Jaipur Bench to this Bench as per the order of the Hon'ble Chairperson under S.27 of the Armed Forces Tribunal Act, 2007 and numbered as T.A.65/2010/A.T.21/2011.

2. The averments in the application filed by the applicant sans



irrelevant particulars are as follows:- The applicant had enrolled in the Indian Air Force as a Combatant Airman in the rank of Corporal on 12<sup>th</sup> October 1987 for a term of engagement for 20 years and was allotted the trade of ADSO with a reserve liability and he was promoted to the rank of Corporal and had completed 13 years and 9 months of service. The applicant before arriving on posting to serve under 5<sup>th</sup> respondent with effect from 20/12/1996 had two minor punishment entries of 'Admonition' and one entry of 'Severe Reprimand' (i.e. two Black and one Red Ink entry) during his career of 9 years plus service and thereafter and within the short span of nearly 1 ½ years the applicant had incurred four more minor punishment entries under S.82 of the Air Force Act, 1950 while serving under 5<sup>th</sup> respondent on account of personal grudge and the mala fides of respondent No.5 and one MWO M Singh ADSO (Service No.244463-A). The applicant had made various representations in the form of ROG (Redressal of Grievances) under S.26 of the Act. During the year 1984 a policy with regard to the discharge of Airman under Rule 15 read in conjunction with sub-rule 2(g)(ii) of the Air Force Rules, 1969 was issued by the respondent No.2 and which was duly modified vide Air HQ letter No.Air HQ/C 23406/685/PS dated 18<sup>th</sup> December, 1986, giving the background, criteria, guidelines etc prescribing the procedure for issue of warning letter, show cause notice and fresh show cause notice, movement of Airmen on posting



and procedure for issuing a fresh show cause notice due to change of command and action at various levels including the ROG applications in relation to punishment entries etc. The copy of the modified policy letter with its Appendix dated 18th December 1996 is Annexure-P1. The applicant was issued with a warning letter for potential habitual offender by respondent No.5 vide No.505SU/C 451/9/P1 dated 14<sup>th</sup> October, 1999 and was cautioned in terms of Annexure-P1. The copy of the warning letter dated 14<sup>th</sup> October 1999 is Annexure-P2. Only due to vindictiveness of the immediate superior of the applicant, i.e., MWO M Singh and the bias attitude of respondent No.5 the applicant was victimised and was awarded another punishment and as a consequence of the last minor punishment of severe reprimand on 3<sup>rd</sup> July 2000 the applicant was issued with a show cause notice vide HQ CAC, IAF, Allahabad (respondent No.4 vide No.CAC/C 2702/4/5/P1 dated 18<sup>th</sup> August 2000 to show cause as to why the applicant should not be discharged from service under Rule 15(2)(g)(ii) of Air Force Rules, 1960 read in conjunction with S.22 of the Air Force Act, 1950. The applicant was also asked to submit a reply to the said show cause notice to his Commanding Officer (respondent No.5) within 10 days of the receipt of the show cause notice, failing which it shall be assumed that the applicant has nothing to urge in his defence against his discharge from the service and further action would be



taken accordingly. The said show cause notice dated 18<sup>th</sup> August 2000 is Annexure-P3. After serving the show cause notice the applicant was purposely routed to 8 CM & Unit AF on T/D, but the applicant without taking any chance, still submitted a detailed and comprehensive reply dated 13<sup>th</sup> September, 2000 and explained not only the circumstances under which he had been victimised and singled out on account of minority religion and inviting the attention of the respondents with regard to the unjust punishments awarded by Group Captain M.Bhandari, the then respondent No.5 and one Group Captain SS Mehta, C.Adm.O 15 Wing, who had even no jurisdiction to try the petitioner and award any such minor punishment under S.82 of the Act, the applicant not being under his Command or attachment and explaining in detail with regard to each punishment entry and subsequent Redressal of Grievances against the authorities under the provisions of Sec.26 of the Armed Forces Act, 1950 read in conjunction with sub para (o) of para 621 of the Regulations for the Air Force, 1964 and AFO 341/67. The copies of the ROG dated 6<sup>th</sup> October 1999, 5<sup>th</sup> July 2000 and 1<sup>st</sup> August 2000 were annexed along with the reply to the show cause notice to be treated as part of the writ petition having not been actioned and disposed off. The copy of the reply to the show cause notice dated 13<sup>th</sup> September 2000 together with the copies of Redressal of Grievances applications dated 6<sup>th</sup> October 1999, 5<sup>th</sup> July 2000 and 1<sup>st</sup>



August 2000 are produced as Annexures P4, P5, P6 and P7 respectively.

3. As per Sec.26 of the Armed Forces Act, 1950 the applicant's grievances were not remedied by the competent authorities. Further AFO 341/67 prescribes the manner and processing of the Redressal of Grievances Applications and para 621, sub para (o) stipulates that the ROG applications will be disposed off within 45 days of their submission or if any delay at an appropriate level is predicted, an interim reply with regard to its progress be made known or intimated to the complainant, but in the case of the applicant nothing was done. Hence the applicant filed W.P.5460(S/S) of 2000 before the Hon'ble High Court of Judicature for Allahabad , Lucknow Bench, Lucknow praying for quashing the show cause notice and also prayed for an interim relief, but the same was withdrawn on the advice that the ibid Writ Petition was prematured, since no orders with regard to his reply had been passed by the respondents. The said High Court order is Annexure-P8. For the reply to the show cause sent along with his ROGs, there was no reply from the respondents till the end of the year 2000. Keeping in view of the various Redressal of Grievances put against respondent No.5 exigencies of service or for the reasons best known to the respondents keeping in view the contents of para 25 of the



Posting Policy Airmen issued by Air Headquarters, New Delhi vide their No.Air HQ/S 40301/PA II dated 30<sup>th</sup> June 2000 are produced. After the posting out of the applicant from 505 SU (under respondent No.5) and from the Headquarters CAC, IAF (respondent No.4's jurisdiction) to serve under the Command of respondent No.7 under the jurisdiction of HQ WAC, IAF (respondent No.6), the respondent No.4 intimated their counterpart at HQ Western Air Command, IAF(O I/CP01/C P1) vide letter No.CAC/C2702/4/5/P1 dated 21/11/2000 that the applicant has since been routed to 2230 Sqn (respondent No.7) which is under their Command Headquarters and hence the documents relating to the petitioner together with the recommendations and data sheet for their further necessary action. A copy of the letter dated 21/11/2000 is Annexure-P9. Headquarters WAC, IAF (respondent No.6) promptly returned the documents/papers stating that the Airman in his reply has made various allegations, which can be suitably replied/analysed by his previous unit/command. At this stage processing of case afresh at his present unit (respondent No.7)/Command HQ (respondent No.6) will result the processing in terms of Annexure-P1 and in view of the above, the processing of the case at their HQ and the Airman will be attached to 505 SU (respondent No.5) till finalisation of the case. No fresh show cause notice by the Command Headquarters under whose jurisdiction, i.e. respondent No.6 was ever issued in clear



breach of the provisions of the policy of the respondents themselves vide Annexure-P1 para 3.

Para 3(d) reads as follows:-

“Movement of Airmen on posting after issue of show cause notice is governed vide Air Headquarters letter No.Air HQ/S 40302/PA-II dated 5/5/89. However, if such an airman is cleared to move to his next unit, then the new command HQ is to be informed as he is required to be issued with another show cause notice due to change of command”.

Non issue of a fresh show cause notice by respondent No.6 being in clear violation of the provisions of the Policy on Habitual Offenders dated 18<sup>th</sup> December 1996 (Annexure-P1) vitiates the subsequent action of issuing Discharge Orders by respondent No.3, who even otherwise also is not the competent authority in terms of Rule 15(2)(g)(ii) of the Rules. The copy of the letter No.WAC/C 2804/18/800207/P1 dated 12<sup>th</sup> December 2000 is Annexure-P10. The applicant had submitted another application dated 25<sup>th</sup> January, 2001 addressed to respondent No.7, where the petitioner is presently serving, seeking disposal of the ROG and in reply to the impugned show cause notice dated 18<sup>th</sup> August 2000 and requested to intervene and set aside the punishment entries and highlighting



the fact that the developments so far indicate that justice has been denied since 'justice delayed is justice denied'. The copy of the application dated 25<sup>th</sup> January, 2001 is Annexure-P11. At this juncture the applicant was suddenly called by his Selection Commander (SCO) and informed that a Note vide No.2230S/754/707714/P1 dated 29<sup>th</sup> June 2001 has been received from the Adjutant (respondent No.7) intimating that AFRO (respondent No.3) vide letter No.RO/2510/1/RW(Dis) dated 22<sup>nd</sup> June 2001 have issued the discharge orders in respect of the applicant (received on 29<sup>th</sup> June 2001) under Clause 15(2)(g)(ii) 'his service no longer required – unsuitable for retention in the Air Force and to be released from the IAF with effect from 12<sup>th</sup> July, 2001'. The applicant had reported to the orderly room on 29<sup>th</sup> June 2001 (after noon). But even on that date the applicant was not served with a copy of the impugned discharge order nor Air HQ letter dated 18<sup>th</sup> June 2001. The copy of the Service Note dated 29<sup>th</sup> June 2001 is Annexure-P12. In furtherance of the Service Note vide Annexure-P12, which has been issued with a clearance certificate on 2<sup>nd</sup> July 2001 by his Section Commander marked 'Immediate' and Discharge with effect from 12<sup>th</sup> July 2001. The said clearance certificate is Annexure-P13. Since the applicant was not furnished with the above said impugned discharge order and other related letters of Air Headquarters and AFRO, the applicant filed an application dated 2<sup>nd</sup>



July 2001 asking for the same. The said application dated 2<sup>nd</sup> July is Annexure-P14. On 5th July 2001 through Air Headquarters letter dated 18<sup>th</sup> June, 2001 the applicant has been informed that the impugned discharge order was not addressed to respondent No.1, but the same was addressed to respondent No.5 which was received on 29<sup>th</sup> June 2001 and the applicant was informed that a copy of the same cannot be furnished to him, however he may make a reference and note it down. A copy of the impugned order vide AFRO dated 22nd June 2001 is Annexure-P15. Respondent No.3 is not competent to issue the impugned discharge order vide Annexure-P15 under Rule 15(2)(g)(ii) of the Air Force Rules.

4. As per R.15 of the Air Force Rules, the person who has been attested has to be discharged on the ground that his service no longer required, the competent authority to discharge is Air Officer I/C Personnel (A.O.P) and if an Air Force personnel enrolled under the Air Force Act was discharged as unsuitable for retention in the Air Force, the competent authority to order discharge is Air Officer I/C Personnel (AOP). Any power conferred under Rule 15 on any of the aforesaid authorities may also be exercised by any other authority superior to it. So as per Rule 15(2), a discharge order has to be signed by respondent No.2 or any authority superior to him, whereas in the instant case, the order has not been passed by the



competent authority nor the same have been reasoned out in the letter addressed to respondent No.5, under whom the petitioner is not serving and as such the respondent No.7 cannot even give effect to it. Since the respondent No.3 is not the competent authority as required by the statutory provisions of the Rules framed under the Air Force Act, 1950, the impugned order vide Annexure-P15 is per se illegal, void and unconstitutional and deserves to be quashed and set aside by this Tribunal/Court. Under such circumstances, challenging the impugned order of discharge vide Annexure-P15 and other related remedies, the applicant has come forward with this application.

5. The respondents in their joint reply statement for R1 to R4, R6 and R7 would contend as follows:- The judgment rendered in W.P.3225/2000 (Corporal Vidhyadhar v. Union of India and Others) will not be applicable to the present facts of the case since the impugned order of discharge was a non-speaking order passed by the competent authority and on that ground alone the impugned order of dismissal was set aside. But in the case on hand the competent authority has given a detailed order of dismissal. With regard to the applicant's allegation of malice there is no substantial material placed to prove the same. It was only a vague and bald statement of malice. The application has been filed after inordinate



delay. When the show cause notice was served upon the applicant he filed Writ Petition before the Hon'ble High Court of Judicature at Allahabad, Luncknow Bench and the same was dismissed. After passing the final order the Writ Petition has been filed before this Tribunal which is not maintainable. The applicant was discharged from Air Force with effect from 12<sup>th</sup> July, 2001 after following the procedures contemplated under law. The applicant was punished with black as well as red ink entries in the service book. The red ink entry recorded in the service was taken as a serious concern. The applicant was cautioned by the Station Commander vide communication dated 14<sup>th</sup> October, 1999. But despite warning the applicant again indulged in an act of indiscipline and consequently he was punished with "severe reprimand" on 3<sup>rd</sup> July, 2000. It has also been revealed that the applicant has been indulging in acts of indiscipline and as such a show cause notice dated 18<sup>th</sup> August 2000 was served upon him. Though a reply to show cause notice was given by the applicant, the reasons given by him in the reply were not satisfactory and consequently the petitioner was discharged from Indian Air Force with effect from 12<sup>th</sup> July, 2001. The representations made by the applicant have already been disposed of. The applicant was sent on T/D to 8 C & MU in connection with his official duties, so also it is submitted that the allegations of victimisation and also the allegations of minority are not correct.



The applicant's representations were rejected on the ground that they were devoid of force and merit. The fact of rejection of his representations were informed to the applicant on 10<sup>th</sup> July 2001. A show cause notice was given to the petitioner on 18<sup>th</sup> August, 2000 so also, reply was submitted by the petitioner. Thereafter matter was processed and considered by the competent authority under Rule 15(2)(g)(ii) of Air Force Rules, 1969. The applicant's ROG applications were forwarded to 46 Wing, and 46 Wing, Air Force in turn asked 505 SU, Air Force vide Signal dated 28<sup>th</sup> February, 2001, but it was found that there was no such applications and the same was conveyed to the applicant. Thereafter the applicant had not pursued the matter. Admittedly, the applicant had noted the contents in the discharge order. The applicant was consistently indulging in the acts of indiscipline, even after caution/warning. No fresh show cause notice was required to be given and so also it is incorrect to say that the whole process was void. Under such circumstances, the application is liable to be dismissed.

6. We heard Sri.V.K.Sathyanathan, learned counsel for the applicant and also Smt.E.V.Moly, learned Central Government Counsel for the respondents and considered their respective submissions.



7. Now, the point for consideration in this application is whether the discharge of the applicant under Rule 15 (2)(g)(ii) of the Air Force Rules, 1969 is in conformity with the rules and procedures prescribed under Air Head Quarters Policy Letter No.C 23406/685/PS dated 18<sup>th</sup> December, 1996 (Annexure P1)?

8. **The point:-** With regard to the facts of the case, as well as in respect of the discharge of the applicant under Air Head Quarters Policy Letter No.C 23406/685/PS dated 18<sup>th</sup> December, 1996 on the ground that the applicant is a habitual offender having more than six punishments and was accordingly discharged under Rule 15(2)(g)(ii) of Air Force Rules, 1969, there is no dispute. The main grievance of the learned counsel appearing for the applicant is that while discharging the applicant under Rule 15(2)(g)(ii) of the Air Force Rules, 1969, the respondents have failed to follow the mandatory provision incorporated under Appendix to Annexure P1, Air Head Quarters Policy Letter No.C 23406/685/PS dated 18<sup>th</sup> December, 1996, in issuing a second show cause notice after the applicant has admittedly been transferred from Unit 505 SU, AF to Unit 2230 Sqn.AF. A perusal of Annexure P9 letter from HQ Central Air Command, IAF, Bamrauli, Allahabad in CAC/C 2702/4/5/P1 dated 21<sup>st</sup> November 2000 addressed to HQ,WAC, IAF (O i/c P1), Subroto Park, New Delhi-10, will clearly go to show that the applicant who was working in Unit ADSO of 505 SU was routed on



posting to the Unit 2230 Sqn. AF after issuance of the first show cause notice under Rule 15(2)(g)(ii) of the Air Force Rules, 1969, which was also acknowledged by the applicant on 13<sup>th</sup> September, 2000. In this regard, it is pertinent to read the appendix to Air Head Quarters Policy Letter No.C 23406/685/PS dated 18<sup>th</sup> December, 1996, the relevant portion of which runs as follows:(under the caption Show cause notice)

*3."(d) Movement of airmen on posting after issue of show Cause notice is governed vide this HQ letter No.Air HQ/S 40302/PA-II dated 05 May 89. However, if such an airman is cleared to move to his next unit, then the new Command HQ is to be informed as he is required to be issued with another Show Cause Notice due to change of Command."*

Admittedly, after transfer from 505 SU AF of the applicant to Unit 2230 Sqn. AF, no fresh show cause notice was issued to him as contemplated under Air Head Quarters Policy Letter No.C 23406/685/PS dated 18<sup>th</sup> December, 1996, which is, in our view, flagrant violation of the mandatory requirement of the rule, which definitely enures to the benefit of the applicant. It is further admitted that the applicant had already completed 13 years and 9 months of Air Force Service as on 3<sup>rd</sup> July 2000. Even though as per the dictum in **Union of India vs. Corporal A.K.Bakshi and Anr**, (1996) 3 SCC 65, the respondents are entitled to discharge the Air Force personnel under Rule 15(2)(g)(ii) of the Air Force Rules, 1969, in the case of the



applicant since the respondents have failed to follow the mandatory rule of issuing second show cause notice after his transfer from 505 SU AF to Unit 2230 Sqn. AF, the impugned order of discharge under challenge in this application is vitiated and is liable to be vacated. Accordingly, the same is hereby vacated. The point is answered accordingly.

9. In fine, (T.A. No.65 of 2010)/AT No.21 of 2011 is allowed and the impugned order of discharge against the applicant under challenge is set aside and the applicant is deemed to have been discharged from service after completion of the required qualifying service for pension and consequently will be entitled to all monetary benefits.

No costs. Time for compliance – three months.

Sd/-  
LT. GEN. THOMAS MATHEW,  
MEMBER (A)

Sd/-  
JUSTICE A.C.A. ADITYAN,  
MEMBER (J)

DK.

(True copy)

Prl. Private Secretary



ARMED FORCES TRIBUNAL,  
REGIONAL BENCH, KOCHI.

( T.A. No.65 of 2010)/A.T.No.21/2011

(TA No.24/2010 of Jaipur Bench)  
[SB Civil WP No.2588/2001 of the  
High Court of Rajasthan]

**ORDER**

DATED: 07.02.2012