

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI
E-Court

10. O.A. No. 76 of 2015

Chikane Abrao Ramdas
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>25.07.2022</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>Heard Mr. Robin Thomas, Ld. Counsel for the applicant and Mr. A.J. Mishra, Ld. Counsel for the respondents.</p> <p>Original Application is dismissed.</p> <p>For order, see our Judgment passed on separate sheets.</p> <p>Misc. Application, if any, pending for disposal, shall be treated to have been disposed of.</p> <p style="text-align: center;"> (Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J) </p> <p>AKD/SB/-</p>

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
MUMBAI**

ORIGINAL APPLICATION No. 76 of 2015

Monday, this the 25th day of July, 2022

**"Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)"**

Mr. Chikane Abrao Ramdas, Army No. 15481198f Ex-SWR Residing at Village-Takli Budruk, Post-Mohra, Tehsil-Kannad, District-Aurangabad-431147 (Maharashtra).

..... Applicant

Ld. Counsel for the : **Shri Robin Thomas**, Advocate.
Applicant

Versus

1. Union of India, through.
2. Chief of Army Staff, Army Headquarter, DHQ, Po-New Delhi-110011.
3. Chief Record Officer, Armed Corps Records, Pin-900476, C/o 56 APO.
4. Commanding Officer, 48 Armed Regiment Pin, 912648 C/o 56 APO.
5. Brigade Commander, HQ 34 Armed Brigade, Pin-908034, C/o 56 APO.

.....Respondents

Ld. Counsel for the
Respondents.

: **Mrs. Lata Patne**, Advocate
Central Govt. Counsel

ORDER (Oral)

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

- (a) *To set aside the order/action of discharged from service under the provisions of Army Rule 13(3) item III (V) (read in conjunction with Army Rule 17 and Army HQ letter No. a/13210/159/AG/PS2(C) dated 28.12.1988), w.e.f. 10.09.2013.*
- (b) *To issue direction to Respondent No.1 to 4 to fix Pension with effect from 10.09.2013.*
- (c) *To issue direction to Respondent No.1 to 4 to provide me with an alternate Government Job/employment /service.*
- (d) *To grant such order and further reliefs as the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.*
- (e) *The Applicant crave leave to add /amend /alter /delete vary any of the grounds and relief sought in the Application.*
- (f) *To provide the cost of this Application.*

2. Brief facts of the case are that the applicant was enrolled in Indian Army on 04.10.2000 and was discharged from service w.e.f. 11.09.2013 as an undesirable soldier under Rule 13 (3) Item III (v) of Army Rules, 1954 on the ground of having earned six red ink

and one black ink entries during his service. At the time of discharge the applicant had put in 12 years, 11 months and 08 days service. Against his discharge from service, the applicant submitted legal notice/RTI application dated 16.08.2014 which was replied vide letter dated 04.09.2014 providing required information as asked for. This O.A. has been filed for setting aside impugned discharge order dated 10.09.2013 and granting service pension.

3. During his 12 years plus service, he was awarded 07 punishments in the form of red/black ink entries, pay fine and detention in military custody on account of various charges like overstaying leave, disobeying lawful command given by his superior officer and intoxication. Even after various punishments awarded to him he was time and again advised to serve for 15 years to earn service pension but he could not mend his ways. Since conduct of applicant was having an adverse effect on all ranks of the unit, a preliminary inquiry was done on 22.01.2013 and based on this inquiry Show Cause Notice (SCN) dated 26.03.2013 was served upon applicant to which he replied on 27.04.2013 stating therein that he be given one more chance. Accordingly, he was discharged

from service as an undesirable soldier w.e.f. 11.09.2013. This O.A. has been filed for quashing discharge order and reinstate applicant in service.

4. Submission of learned counsel for the applicant is that while serving in 48 Armd Regiment, a convening order was issued on 11.03.2013. Thereafter, a preliminary investigation was carried out to assess his suitability for retention in service in which he was not given opportunity of being heard. He further submitted that a Show Cause Notice was issued which the applicant replied on 27.04.2013 and on 10.09.2013 he was thrown out of the unit gate and a movement order dated 10.09.2013 was handed over to him. His further submission is that he was punished several times on trivial grounds. He pleaded that applicant be granted pensionary and consequential benefits keeping in view of his length of service.

5. On the other hand, submission of learned counsel for the respondents is that applicant proved himself time and again to be an indisciplined soldier and was awarded 06 red ink and 01 black ink entry. His further submission is that applicant was provided adequate opportunities by senior personnel of the unit but due to his drinking habits

he was unable to mend his ways and committed several mistakes and was punished time and again. His submission is that the applicant replied to Show Cause Notice on 27.04.2013 which being found unsatisfactory, he was discharged from service. He was also advised time and again to improve his conduct. In the reply to Show Cause Notice dated 26.03.2013 issued to applicant he had pleaded for grant of one more chance which was not considered. Respondents learned counsel further submitted that after taking sanction from the competent authority, applicant was discharged from service in terms of Rule 13 (3) III (v) of Army Rules, 1954 as an undesirable soldier. He pleaded for dismissal of O.A.

6. Heard Shri Robin Thomas, learned counsel for the applicant and Shri AJ Mishra, learned counsel for the respondents and perused material placed on record.

7. Written statement filed by the respondents clearly indicates that applicant was tried summarily seven times and awarded red ink/black ink punishments by the Commanding Officer for the offences committed under various sections of the Army Act. Details of offences are given as under:-

Sr. No.	Date of offence	AA Sec under which punishment awarded	Offence	Date of award	Punishment awarded
(A)	30.09.2002	Sec 39 (b)	Without sufficient cause overstaying leave granted to him	20.10.2002	14 days RI
(B)	20.12.2004	Sec 39 (b)	Without sufficient cause overstaying leave granted to him	21.02.2005	28 days RI and 14 days detention in military custody
(C)	06.03.2008	Sec 48	Intoxication	07.03.2008	14 days RI
(D)	24.01.2009	Sec 63	An act prejudicial to good order and military discipline	28.02.2009	07 days RI
(E)	01.08.2010	Sec 48	Intoxication	02.08.2010	28 days RI
(F)	18.09.2012	Sec 39 (b)	Without sufficient cause overstaying leave granted to him	25.09.2012	02 days RI
(G)	21.10.2012	Sec 48	Intoxication	25.10.2012	Seven days pay fine

8. In respect of each of above offences culminating in a red ink/black ink entry, the charges against the individual were heard by the Commanding Officer in accordance with Army Rule 22 where the individual was given full liberty to cross examine the witnesses and make any statement in his defence and after following the due procedure appropriate punishment was awarded. Copies of the tentative charge sheet, record of proceedings under Army Rule 22 and form for summary trial under Army Act Section 80 have been produced before us. We, thus find

that there was no illegality in the punishments awarded and the red ink/black ink entries.

9. A Show Cause Notice dated 26.03.2013 was issued to applicant by Brigade Commander 34 Armd Bde and applicant replied on 27.04.2013 mentioning therein that his mistakes be condoned and he be allowed to serve further. Extracts of Show Cause Notice and reply received from applicant are reproduced as under:-

Show Cause Notice

"1. You have been awarded seven punishments, since your enrolment in the Army :-

Sr. No.	Date of offence	AA Sec	Punishment Awarded
(a)	30.09.2002	39 (b)	14 days RI (Red Ink)
(b)	20.12.2004	39 (b)	28 days RI+ days detention in military custody (Red Ink)
(c)	06.03.2008	48	14 days RI (Red Ink)
(d)	24.01.2009	63	07 days RI (Red Ink)
(e)	01.08.2010	Sec 48	28 days RI (Red Ink)
(f)	18.09.2012	Sec 39 (b)	02 days RI (Red Ink)
(g)	21.10.2012	Sec 48	Seven days pay fine (Black Ink)

2. Inspite of repeated instructions and punishment, you have failed to improve your personal discipline. In view of your persistent indiscipline, your further retention in the Army is not desirable. Before ordering your discharge from the service under the provisions of Army Rule 13 (3) item III (v) (read in conjunction with Army Rule 17) and Army HQ letter No 13210/159/AG (PS) 2(c) dt 28 Dec 1988), you are hereby given an opportunity to show cause as to why you should not be discharged from service.

3. Your reply should reach this HQ through your Commanding Officer within 30 days on receipt of this show cause notice, failing which it shall be assumed that you have no grounds to represent against the proposed action and the said action shall be proceeded with".

"Reply to Show Cause Notice"

Show cause Notice लेटर संख्या 429/8/ए 26 मार्च 2013.

श्रीमान निवेदन यह है कि मैं सैन्य संख्या 15481198फ सवार चिकने आबाराव रामदास मुख्यालय स्काइन में सेवारत हूँ। मेरी कुल सेवा 13 वर्ष हो गई है। मैं आज तक शराब का आदी था जिसकी वजह से मेरे पाँच रेड इंक एंट्रीस हो रखी हैं जिसके कारण मुझे कमांडिंग महोदय 48 कवचित रेजीमेंट द्वारा आपके सामने पेशी की गयी और मुझे एक माह का समय दिया गया।

मुझे अपनी गलती पर अफसोस है और मैं प्रतिज्ञा करता हूँ कि आगे से ऐसी कोई भी गलती नहीं करूंगा जिससे मेरे और मेरे यूनिट की बेजजती हो। मेरे परिवार में मेरे माता-पिता, पत्नी और तीन बच्चे हैं और इस नौकरी के अलावा परिवार का भरण पोषण करने का कोई दूसरा साधन नहीं है। मेरी आपसे प्रार्थना है कि मेरी गलतियों को माफ करते हुए मुझे सेना में नौकरी करने का एक मौका दिया जाय। मैं इसके लिए सदा आपका आभारी रहूँगा।"

10. Thus, from the above, an inference may be drawn that after receipt of Show Cause Notice dated 26.03.2013, applicant had submitted reply dated 27.04.2013 in which he himself had mentioned that he was a drunkard and he has accepted the offences committed. This reply was not considered satisfactory and accordingly keeping in view of his past track record, he was discharged from service as an undesirable soldier under Rule 13 (3) III (v) of Army Rules, 1954.

11. We further take a note that the applicant earned seven bad entries in his 12 years service which is a good

enough ground for his discharge but despite there being good ground for his discharge an inquiry was conducted and the applicant participated in that inquiry by giving reply to Show Cause Notice which is a part of the inquiry.

12. Maintenance of discipline is of paramount importance in the Army. Being a habitual offender with no regard to military discipline and maturity, applicant's retention in service was considered detrimental for the troops. Based on past record, a Show Cause Notice was served to applicant by the Brigade Commander, 34 Armd Bde before being discharged from service. Thereafter, the competent authority to sanction discharge passed order of his discharge as an undesirable soldier based on his track record of indiscipline which was considered detrimental to the unit.

13. In the light of the foregoing, we are of the view that the number of red ink entries alone is not the criteria for discharge under Army Rule 13(3) III (v). Four or more red ink entries are only a guideline. 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.

14. Moreover we would like to quote the relevant judgment of the Hon'ble Supreme Court in the case of **Sep Satgur Singh vs Union of India & Ors**, Civil Appeal No 1857 of 2018 decided on 02.09.2019 in which the following has been held in regard to discharge based on red/blank ink entries:-

"7. We do not find any merit in the present appeal. Para 5(a) of the Circular dated December 28, 1988 deals with an enquiry which is not a court of inquiry into the allegations against an army personnel. Such enquiry is not like departmental enquiry but semblance of the fair decision-making process keeping in view the reply filed. The court of inquiry stands specifically excluded. What kind of enquiry is required to be conducted would depend upon facts of each case. The enquiry is not a regular enquiry as para 5(a) of the Army Instructions suggests that it is a preliminary enquiry. The test of preliminary enquiry will be satisfied if an explanation of a personnel is submitted and upon consideration, an order is passed thereon. In the present case, the appellant has not offered any explanation in the reply filed except giving vague family circumstance. Thus, he has been given adequate opportunity to put his defence. Therefore, the parameters laid down in para 5(a) of the Army Instructions dated December 28, 1988 stand satisfied.

8. In reply to the show-cause notice, the appellant has not given any explanation of his absence from duty on seven occasions. He has been punished on each occasion for rigorous imprisonment ranging from 2 days to 28 days. A Member of the Armed Forces cannot take his duty lightly and abstain from duty at his will. Since the absence of duty was on several different occasions for which he was imposed punishment of imprisonment, therefore, the order of discharge cannot be said to be unjustified. The Commanding Officer has recorded that the appellant is a habitual offender. Such fact is supported by absence of the appellant from duty on seven occasions.

9. In view thereof, we do not find any error in the order of discharge of the appellant. Appeal is dismissed."

15. Thus, having considered all aspects of the matter, we find no grounds to interfere with the discharge of the applicant under Army Rule 13 (3) Item III (v). The O.A. is accordingly **dismissed**.

16. No order as to costs.

17. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 25.07.2022
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