

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WP (C) No.1392/2004

% Reserved on : May 26, 2008
Date of decision: May 30, 2008

Ex-Sepoy Yogender Singh ...PETITIONER
Through: Major K. Ramesh, Advocate
for the petitioner.

Versus

UOI ...RESPONDENTS
Through: Mr. Ashwani Bhardwaj,
Advocate. For the
respondents.

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

MOOL CHAND GARG, J

The petitioner was enrolled as a Sepoy in Army Service Corps as a driver on 11.2.1997. He was posted to 5021 ASC Battalion in the capacity of a driver on 14.2.1997 till 13.4.2000. Thereafter, he was posted to 944 Transport Company from 21.4.2000. He has been discharged from service vide order dated 30.11.2002 on account of five red ink in his service career in a span of two years after giving show cause notice dated 14.6.2002.

2. To appreciate the correct facts it may be appropriate to reproduce the show cause notice dated 14.6.2002 which give details of the basis of the termination of petitioner from service:-

"CONFIDENTIAL"

HQ 12 Corps
C/o 56 APO

1952/A/A1

14 Jun 02

No. 14824080Y Sep/MT
Yogender Singh
Ex 5221 ASC Bn (MT)
Permt Att to 944 Tpt Coy ASC Type 'C'
C/o 56 APO

SHOW CAUSE NOTICE

1. It has come to the notice of this HQ that you have had a persistently bad record of service and have been conducting yourself in an unsatisfactory manner. It is on record that you have been punished for various offences committed by you under relevant sections of the Army Act and have earned following entries in your Fd Conduct Sheet (IAFF-3013):-

	Date	AA Sec	Sentence	Type of Entry in Fd Conduct Sheet
(a)	16 Apr 2001	39 (b)	14 days RI	Red
(b)	27 Sep 2001	39 (b)	14 days RI	Red
(c)	06 Apr 2002	39 (a)	14 days RI	Red
(d)	15 Apr 2002	39 (b)	14 days RI	Red
(e)	29 Apr 2002	39(a)	07 days RI	Red

2. In spite of repeated warnings and opportunities afforded to you, you have not shown any improvement in your conduct. You are, therefore, called upon to show cause as to why your services should not be terminated and you be discharged from service under Army Rule 13 (3) (III) (v).

3. Your reply to the Show Cause Notice should be submitted within 30 days of its receipt, failing which, it shall be assumed that you have nothing to urge in your defence against the action and exparte decision will be taken.

(Balbir Singh)
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3. Learned counsel appearing for the petitioner while accepting the first, second and fourth punishment has assailed the third and fifth punishment. In respect of third punishment it is stated that it pertains to the period after the petitioner was discharged from Base Hospital Delhi Cantt. i.e. 12.9.2001. After finishing of the formalities the petitioner boarded the train on 13.9.2001 and reached Ahmedabad. From there he had gone to LOC and has rightly reported on 16.9.2001. Thus, there was no question of his absence for four days for which he has been charged in this case except that he has not used a flight for reaching LOC as the petitioner was only having a railway warrant. As far as the fifth punishment is concerned, it has been stated that the previous incident shows that the petitioner was in quarter guard for 14 days RI w.e.f. 15.4.2002 till 29.4.2002 but still has been punished for seven days RI for absence without leave which is just impossible.

4. The petitioner has further submitted, that even his voluntary discharge application dated 29.6.2002 is also a fabricated document. It is also submitted, that the Commanding Officer made five red ink entries by practicing fraud so as to deprive the petitioner of his service.

5. The respondent in their counter affidavit have denied the allegations made by the petitioner. According to them, the punishment was awarded to the petitioner from time to time because he committed offence of remaining absent unauthorizedly by over staying his leave period or otherwise.

6. The stand of the respondent with regard to the various red entries is as under:-

1st red entry of 16 April, 2001

On 7th Feb, 2001 petitioner was granted 33 days bal. leave for the year 2001 w.e.f. 8th February, 2001 to 12th March 2001. He failed to join the duty till 13.4.2001. Thus he absented for 32 days and was awarded 14 days R.I. on 16th April, 2001 (Accepted by the petitioner).

2nd red entry of 27th September, 2001

When petitioner was in Meerut on C.L. from 7th August, 2001 to 21st August, 2001 he failed to rejoin duty thereafter and absented himself without sufficient cause and admitted himself at base camp hospital, Delhi Cantt. on 28th August, 2001. Period of absence was of 9 days from 22 August, 2001 to 27th August 2001. Hence he was awarded 14 days R.I. on 27 Sept. 2001. (Accepted by the petitioner).

3rd red entry of 6th April 2002

on 12th Sept. 2001 after having been discharged from base camp absented himself without leave enroute to unit LOC. He rejoined unit only on 16th Sept. 2001. Period of absence was of 4 days from 13th Sept. 2001 to 16th Sept. 2001. He was awarded 7 days R.I. on 6th April 2002.

4th red entry of 15th April, 2002

When petitioner was at Ahmedabad he was granted 5 days casual leave for the year 2001 w.e.f. from 17th Nov., 2001 to 21st Nov. 2001. However, he reported at the station head quarter only on 14th December, 2001. Thus he absented for 23 days from 22 Nov., 2001 to 14th Dec, 2001. Accordingly, he was awarded 14 days R.I. on 15th April, 2002.

5th red entry of 29th April, 2002

When petitioner was at Ahmedabad on 23rd March 2002 after having been dispatched by western command absented himself without leave enroute to unit LOC. He rejoined his duties only on 2nd April 2002. Period of absence was of 9 days from 23rd March 2002 to 2nd April 2002. He awarded 7 days R.I on 29th April 2002.

7. Thus the petitioner overstayed/absented himself without leave on five occasions and was awarded the punishment as under:-

- a) 13th March 2001 to 13th April 2001-awarded 14 days Rigorous Imprisonment on 16.4.2001.
- b) 22nd Aug. 2001 to 27th Aug. 2001-awarded 14 days Rigorous Imprisonment on 27 Sept. 2001
- c) 14th Sept. 2001 to 16th Sept. 2001-awarded 7 days Rigorous Imprisonment on 6 April 2002.
- d) 22nd Nov. 2001 to 14th Dec. 2001-awarded 14 days Rigorous Imprisonment on 15.4.2002.

e) *23rd March 2002 to 02nd April 2002-awarded 07 days
Rigorous Imprisonment on 29 April 2002*

Under these circumstances, the Show Cause Notice dated 14.6.2002 was issued to the petitioner in terms of Army Rule 13(3) (iii) (V).

8. In his reply to the show cause notice, the petitioner requested that he should be discharged from the service at the earlier as the ill health of his parent compelled him to overstay leave. The petitioner also stated that due to the ill health of his parent he is unable to serve in the Army. The said reply was voluntarily submitted by the petitioner and a copy of his reply is attached as Annexure E. Except that no other explanation is forthcoming.

9. After due consideration, the General Officer Commanding 2 Corps ordered the discharge of the petitioner from the Army and he was accordingly discharged on 13th November 2001.

10. We have considered the arguments submitted by the parties and have also perused the original records.

11. The records produced before us shows, that the petitioner absented at least on five occasions as stated in the show cause notice which resulted in five red ink entries in his service career. The petitioner has accepted three of them as correct and has only disputed entries at point C & E of the said show cause notice. However, from the records we do not find any reason to accept the case of the petitioner that those were fabricated or are false entries

made in his service career by the Commanding Officer so as to remove him from service. No case of any bias or animosity on the part of the Commanding Officer has been made out by the petitioner.

12. The learned counsel for the petitioner during the course of arguments and in the written submission placed by him conceded that at least three red ink entries which appears in the show cause notice i.e. entry shown at point A, B and D are accepted by the petitioner. This itself proves that the petitioner was habitual in absenting from service/over staying his leave. His submission that the third and fifth entries are not factually correct cannot be accepted, while exercising writ jurisdiction because in writ petition one cannot go into the disputed facts. In any event we even otherwise do not find any merit in the contention of the petitioner having gone through the record as produced by the respondent. No error has been found in the process adopted by the respondents to discharge the petitioner who has five red ink entries within a period of two years has been found. His discharge in the facts and circumstances of the case by the respondent which is a disciplined force does not call for any interference.

13. Accordingly, we dismiss the writ petition leaving the parties to bear their own cost.

MOOL CHAND GARG, J

MAY 30, 2008
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SANJAY KISHAN KAUL, J