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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-564-2024
Reserved on: 20.11.2024
Date of decision: 29.11.2024

HARMESH SINGHPetitioner
Versus
UNION OF INDIA AND OTHERS ...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. R.S. Manhas, Advocate for the petitioner.

Mr. Bharat Bhushan Sharma, Sr. Panel Counsel
for UOI/respondents.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner prays for quashing/setting aside of the order dated 20.11.2023 (Annexure P-2), as became passed by the learned Armed Forces Tribunal concerned, wherebys, the application filed by the petitioner for grant of pensionary benefits in terms of Regulation 132 of the Pension Regulations for the Army, 1961 was rejected.

Factual Background

2. The petitioner joined Army on 24.12.1994 and after rendering 13 years and 243 days of his service in the rank of Vet Rfn/HK(Sepoy), he was discharged from service under Army Rule 13(3) Item III (v) of the Army Rules, 1954 “*being undesirable to serve*”.

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3. After the discharge of the petitioner from his service, he submitted his explanation vide letter dated 31.07.2008, whereby, he rendered an explanation to the ground (supra) raised by the present respondent. However, the act of the petitioner was not condoned, whereby, he was discharged from Army on 22.08.2008 by the Order of the Commanding Officer issued under Army Rule 13(v).

4. It has been averred that the petitioner was denied pensionary benefits, on the pretext that he did not have the requisite qualifying service for grant of service pension and his shortfall in service cannot be condoned. Moreover, the said denial became embedded on the ground that he had earned six red entries in his service record for committing misconducts like 'Over Staying Leave' (OSL), intoxication etc.

5. Feeling aggrieved, respondent No.1 filed O.A., before the learned Armed Forces Tribunal concerned, whereby he cast a challenge to the aforesaid rejection order(s). The said O.A., became dismissed vide order dated 20.11.2023. The operative part of the said order, is extracted hereinafter:-

“The applicant was discharged w.e.f. 22.08.2008 after having served for 13 years and 243 days on account of his being an undesirable soldier. He had incurred six red ink entries during his service for various offences. The present OA has been filed for grant of pensionary benefits in terms of Regulation 132 of the Pension Regulations for the Army, 1961.

The present OA has been presented on 16.10.2023.

Thus, there is an inordinate delay of 5254 days in filing the

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present OA. An application for condonation of delay has been filed but all that is stated therein is that delay is neither intentional nor deliberate. No facts have been brought to the notice of this Court to substantiate the averment that the delay was neither intentional nor deliberate. Thus, the delay cannot be condoned.

In view of the above, the OA is dismissed on the ground of limitation.”

6. Feeling aggrieved from the aforesaid order as passed upon the O.A. (supra), by the learned Armed Forces Tribunal concerned, the petitioner has filed thereagainst the instant writ petition before this Court.

Submissions of the learned counsel for the petitioners

7. Learned counsel for the petitioner submits that the petitioner has rendered his services with utmost honesty and due diligence at various places both at field as 'OP RAKSHAK' (J&K) and in peace area which included high altitude/classified areas with adverse climate conditions. During his entire period of service, the petitioner performed his duty to the entire satisfaction of his superior officers. He submits that the petitioner has been denied pensionary benefits on the mere pretext, that he did not have the requisite qualifying service, thus for grant of service pension and that his shortfall in service cannot be condoned, as he has earned six red entries in his service record for petty mis-conducts like '*Over Staying Leave*' (OSL), intoxication etc. Since the above petty misdemeanors were condonable, therebys, the petitioner being discharged from service with an entry of his being *undesirable to*

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serve as became founded upon the said minimal mis-conducts, thus is required to be interfered with.

8. Further, the learned counsel for the petitioner submits, that the case of the petitioner was not considered sympathetically, thus in accordance with the letter dated 28.12.1998 of the Army Authorities, which provides for the removal of undesirable and inefficient JCO's, WO's and Ors. The relevant para 5 (f) note 2 is extracted hereinafter.

Para 5 (f) NOTE 2 : Discharge from the services consequent to six red ink entries is not mandatory or a legal requirement. In such case, Commanding Officer must consider the nature of offences for which such red ink entries have been awarded and not be harsh with the individuals, especially when they are about to complete pensionable service. Due consideration should be given to the long service, hard stations and difficult living conditions that the OR has been exposed to during his service, and the discharge should be ordered only when it is absolutely necessary in the interest of service. Such discharge should be approved by the next higher Commander.

9. On the basis of the above extracted relevant portion of the letter (supra), he submits that the discharge of the present soldier from service on the premise of his earning six red entries, thus was not peremptory nor was required to remain un-condoned, as the nature of the mis-conduct committed were minimal, whereby, when the (supra) extracted relevant portion of the letter makes expressions, that the said minimality of mis-conduct committed by the errant soldier, it is to be

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to be favourably exercised vis-a-vis the soldier for his being discharged as an *undesirable soldier*.

10. Moreover, he submits that since it is also expressed in the supra relevant portion of the letter, that adequate weightage is to be assigned to the long service, hard stations and difficult living conditions, to which the soldier is exposed to, besides adequate weightage is also to be assigned, that the discharge on the ground of the soldier being un-desirable rather may be avoided, when he is about to complete the pensionable service, as therebys he would be deprived of pensionary benefits. However, he submits that all the above beneficent effects of the supra relevant contents of the letter (supra) have not been endowed to the present soldier, wherebys, gross injustice has been perpetrated upon him.

11. He submits that the soldier committed minimal misdemeanors, inasmuch as, his over staying leave, intoxication, etc. and the said minimal misdemeanors were committed respectively in the years 2002, 2004, 2005 and in the year 2008. Therefore, when the said entries were earned by the soldier concerned respectively in the years 2002, 2004 and 2005, whereafters, he then became retained in service, than his becoming imposed the harsher punishment of discharge. Therefore, he submits that therebys, there is but condonation of the present soldier earning the said red entries. In sequel, when the soldier was nearing completion of qualifying service for his earning pension, therebys, discretion was required to be endowed vis-a-vis the present

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the qualifying tenure of service for thereby his earning pension, than his merely on the condoned red entries (supra), especially when condonation thereof arises from the ground of his being retained in service.

12. To support the above said submission, he relied upon a judgment of Hon'ble the Supreme Court of India rendered in case titled as **Veerendra Kumar Dubey vs. Chief of Army Staff and others**, to which Civil Appeal No. 32135 of 2015 became assigned. The Hon'ble Apex Court, in the said verdict, set aside the discharge order passed against the soldier therein, who had been awarded four red ink entries during his service in the Army. The relevant paragraphs, as occur in the said verdict are extracted hereinafter.

39. Having regard to the nature of the misconduct alleged against the appellant we are of the view that the ends of justice would be met if we set aside the order of discharge and treat the appellant herein to have been in service till the time, he could be said to have completed the qualifying service for grant of pension. We are inclined to pass such an order with a view to do substantial justice as there is nothing on record to indicate that the nature of the misconduct leading to the award of four Red Ink entries was so unacceptable that the competent authority had no option but to direct his discharge to prevent indiscipline in the force.

40. The order of discharge passed against the appellant herein is hereby set aside. The appellant shall be treated to have been in service till the time he would have completed the qualifying service for grant of pension. We are informed that only six months were left for the qualifying

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service to be completed before the appellant came to be discharged. No back wages shall, however, be admissible. The benefit of continuity of service for all other purpose shall be granted to the appellant including pension.

Submissions of the learned counsel for the respondents

13. On the other hand, learned counsel for the respondent(s)/Union of India argued that the petitioner had become a perpetual offender and despite some reminders given to him for not repeating such behaviour in future, he got two more Red Ink Entries afterwards. Hence, Commander, Headquarters 33 Mountain Brigade vide letter dated 19.05.2008 served a Show Cause Notice to the petitioner to show cause, as to why he should not be discharged from service, being undesirable soldier under Rule 13(3) iii (v) of Army Rule-1954. He was advised to reply within ten days from receipt of the *ibid* show cause notice.

14. The learned counsel for the respondent(s)/Union of India further argues, that since the petitioner was a perpetual offender, who was maligning the image of the Army and was setting a bad example to the troops of the Battalion. Therefore, the Commandar Headquarter 33 Mountain Brigade did not accept the request of the petitioner and directed to contemplate his discharge which was sanctioned on 16.08.2008. Consequently, the petitioner was discharged from service w.e.f. 22.08.2008 under Rule 13(3) iii(v) of Army Rules, 1954 being an undesirable and inefficient soldier.

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Inferences of this Court

15. Since all the red ink entries but when do fall in the genre of punishments becoming inflicted upon the soldier, which however are lesser, than from his becoming removed from service or his being dismissed from service. However, yet the petitioner was discharged from service on account of the said red ink entries. Nonetheless, the said order of discharge was not required to be passed. The reason for so stating becomes founded on the hereinafter made hinges.

16. In the said regard, the offences and punishment(s) awarded to the petitioner during his service tenure in the Army become extracted hereinafter.

Sr. No.	Offence	AA Section	Punishment awarded	Red/Black Ink entries	Date of award
1.	Over Stayed Leave	AA Sec 39(b)	28 days RI	Red	30 Nov 02
2.	Over Stayed Leave	AA Sec 39(b)	14 days RI and 14 days pay Fine	Red	19 Aug 04
3.	Over Stayed Leave	AA Sec 39 (b)	28 days RI	Red	03 Jan 05
4.	Intoxication	AA Sec 48	07 days RI and 14 days Pay fine	Red	04 Feb 05
5.	Intoxication	AA Sec 48	21 days RI and 07 days Pay fine	Red	13 Apr 08
6.	Over Stayed leave	AA Sec 39 (b)	14 days RI and 14 days Pay fine	Red	04 Aug 08

17. Though, in immediate proximity to the order of discharge being made upon the present soldier, he had not improved his conduct wherebys, he was declared to be a perpetual offender. However, though proximate to the present soldier becoming discharged from service, he thus committed minimal misdemeanors. Therefore, the minimality of the misdemeanors which purportedly were committed by the present

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soldier, which but also remained un-inquired into, wherebys, the principles of natural justice became breached, thereupon the said purported minimal misdemeanors, as became committed by the present petitioner thus, *prima facie*, become inconsequential.

18. Moreover, though the said unproven minimal mis-conduct, as become purportedly committed by the present petitioner, also though happened thus, proximate to his earning the qualifying period of service for his concomitantly qualifying himself for earning service pension. Resultantly, when the above inter-se proximity inter-se the unproven entries and the soldier being discharged from service, thus satisfy the supra extracted relevant portion of the letter (supra), wherebys, discretion is bestowed upon the Army Authorities, to not peremptorily discharge the soldier from service, therebys too, the effect of the said entries but becomes waned.

19. In nutshell, for all the above stated reasons, this Court is of the profound view, that the said vested discretion in the competent authority, rather has not been appropriately exercised vis-a-vis the soldier. In sequel, when he has been prevented from completing the qualifying period of service for earning service pension, despite his nearing the end of his qualifying period of service, therebys in terms of the supra extracted relevant portion of the letter dated 28.12.1998, he was not required to be discharged.

20. Moreover, reiteratedly, since it also appears that the making of the said red entries became not preceded by an intensive

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committed by the soldier concerned. Therefore, the inference therefroms, but is that, the minimal misconducts (supra) remained unproven. Resultantly, the makings of the corresponding thereto red ink entries, though required adherence to be made to the principles of natural justice, but when the said adherence has not been made. As such, *prima facie*, they were required to be also discarded than an order of discharge becoming made.

Final Order of this Court

21. In aftermath, this Court finds merit in the writ petition and with the observations aforesaid, the same is allowed.
22. The order of discharge passed against the petitioner herein is quashed and set aside. The petitioner shall be treated to have been in service till the time he would have completed the qualifying service for grant of pension. However, no back wages shall, however, be admissible to the present petitioner.
23. Moreover, the benefit of continuity of service for all other purposes shall be granted to the petitioner including service pension.
24. Since the main case itself has been decided, thus, all the pending application(s), if any, are disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

29.11.2024
kavneet singh

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No