

**SUPREME COURT OF INDIA**

Sep.Satgur Singh

Vs.

Union of India

C.A.No.1857 of 2018

(L.Nageswara Rao and Hemant Gupta,JJ.,)

02.09.2019

**JUDGMENT**

**Hemant Gupta,J.,**

1. The challenge in the present appeal is to an order passed on April 30, 2014 by the Armed Forces Tribunal, Chandigarh, Regional Bench at Chandimandir whereby, the discharge of the appellant on account of seven red ink entries during his 11 years 9 months and 15 days service was not found to be unjustified.

(d) U/s 39(b) of Army Act	07	days	RI	on	02.11.2000
(e) U/s 63 of Army Act	02	days	RI	on	15.11.2000
(f) U/s 39(b) of Army Act	05	days	RI	on	12.02.2004
(g) U/s 63 of Army Act	21	days	RI	on	25.05.2004

3. In response to such show-cause notice, the reply of the appellant was that he did not have any other source to look after the welfare of his children and that he has committed a blunder and mistakes due to his family problems and that he would not commit a single mistake again.

4. After considering the reply filed, the reasons for discharge have been recorded by General Officer Commanding 24 Infantry Division on November 26, 2004 wherein, it has been recorded that the appellant is habitual offender, therefore, he be discharged from service.

5. Learned counsel for the appellant relied upon judgment of this Court in *Veerendra Kumar Dubey v. Chief of Army Staff & Ors.* wherein, it has been held that the red ink entries by itself would not be sufficient to discharge any person, but the Commanding Officer is required to conduct an enquiry as required under para 5(a) of the Army Instructions dated December 28, 1988. The relevant part is reproduced below:

"Addl. Director General Personal Services (PS-2) Army Headquarters, Room No.

Sena Bhawan's Wing, DHQ PO New Delhi – 110011 A/21210/159/ps-4(C) 28  
Dec. 1988 Headquarters, Southern Command, Pune Eastern Command, Calcutta  
Western Command, Chandimandir Central Command, Lucknow Northern  
Command, C/o 56 APO

Procedure for dismissal/discharge of undesirable JCOs/WOs/OR:

5. xx xx xx

(a) Preliminary Enquiry.—Before recommending discharge or dismissal 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."

6. We do not find any merit in the argument that since no regular enquiry was conducted by the Commanding Officer as held by this Court in Veerendra Kumar Dubey, therefore, the punishment is not sustainable. This Court in the aforesaid judgment held as under:

"10. The Government has, as rightly mentioned by the learned counsel for the appellant, stipulated not only a show-cause notice which is an indispensable part of the requirement of the Rule but also an impartial enquiry into the allegations against him in which he is entitled to an adequate opportunity of putting up his defence and adducing evidence in support thereof. More importantly, certain inbuilt safeguards against discharge from service based on four red ink entries have also been prescribed. The first and foremost is an unequivocal declaration that mere award of four red ink entries to an individual does not make his discharge mandatory. This implies that four red ink entries is not some kind of Laxman rekha, which if crossed would by itself render the individual concerned undesirable or unworthy of retention in the force. Award of four red ink entries simply pushes the individual concerned into a grey area where he can be considered for discharge. But just because he qualifies for such discharge, does not mean that he must necessarily suffer that fate. It is one thing to qualify for consideration and an entirely different thing to be found fit for discharge. Four red ink entries in that sense take the individual closer to discharge but does not push him over. It is axiomatic that the Commanding Officer is, even after the award of such entries, required to consider the nature of the offence for which such entries have been awarded and other aspects made relevant by the Government in the procedure it has prescribed.

11. A careful reading of the above would show that the competent authority has made it abundantly clear to officers competent to direct discharge that before

discharging an individual, not only should there be a show-cause notice but an enquiry into the allegations made against the individual concerned in which he ought to be given an opportunity of putting up his defence and that the allegations must stand substantiated for a discharge to follow.

12. Para 5f)(2) underscores the importance of the truism that termination of the individual's service is an extreme step which ought to be taken only if the facts of the case so demand. What is evident from the procedural mandate given to the authorities is to ensure that discharge is not ordered mechanically and that the process leading to the discharge of an individual is humanised by the requirement of an impartial enquiry into the matter and fair opportunity to the concerned especially when he is about to complete his pensionable service. Equally significant is the fact that the authority competent to discharge is required to take into consideration certain factors made relevant by the Circular to prevent injustice, unfair treatment or arbitrary exercise of the powers vested in the authority competent to discharge. For instance Note 2 to Rule 5 requires the competent authority to take into consideration the long service rendered by the individual, the hard stations he has been posted to and the difficult living conditions to which the individual has been exposed during his tenure. It is only when the competent authority considers discharge to be absolutely essential after taking into consideration the factors aforementioned that discharge of the individual can be validly ordered.

18. Coming then to the case at hand, we find that no enquiry whatsoever was conducted by the Commanding Officer at any stage against the appellant as required under Para 5(a) of the procedure extracted above. More importantly, there is nothing on record to suggest that the authority competent had taken into consideration the long service rendered by the appellant, the difficult living conditions and the hard stations at which he had served. There is nothing on record to suggest that the nature of the misconduct leading to the award of red ink entries was so unacceptable that the competent authority had no option but to direct his discharge to prevent indiscipline in the force..."

(emphasis supplied)

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.