

SUPREME COURT OF INDIA

Union of India

Vs.

794898 T. Ex.Corporal Abhishek Pandey

C.A.No.4780-4781 of 2018

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

08.11.2019

JUDGMENT

L.Nageswara Rao,J.,

1. These Appeals are filed against the judgment of the Armed Forces Tribunal, Regional Bench, Lucknow (hereinafter, 'the Tribunal') by which the order of discharge of the Respondent dated 17.01.2013 was set aside. The Tribunal directed the payment of back wages to the extent of 25 per cent.

2. The Respondent was enrolled in the Indian Air Force on 28.09.2004. A warning was issued to the Respondent on 18.04.2012. By that time, there were seven entries of punishment (3 Red Ink and 4 Black Ink) in the Conduct Sheet of the Respondent. The Respondent was informed by the said letter dated 18.04.2012 that he was already in the category of habitual offender. In accordance with the Habitual Offenders Policy, the habitual offenders can be considered for discharge from service under Rule 15 (2) (g) (ii)/ Rule 15(2)(k) read in conjunction with Rule 15(2) of the Air Force Rules, 1969 (hereinafter, 'the Rules'), under the Clause "His Service No Longer Required Unsuitable for Retention in the Air Force". The Respondent was cautioned and counselled to mend himself and desist from acts of indiscipline. He was also warned that any addition of another punishment entry would render him liable for discharge from service under Rule 15 (2) (g)(ii)/ Rule 15(2) (k) read in conjunction with Rule 15(2) of the Rules.

3. A notice was issued to the Respondent on 11.07.2012, directing him to show cause as to why he should not be discharged from service under Rule 15 (2) (g) (ii) of the Rules. There was a reference to the warning letter dated 18.04.2012 in the show cause notice. Even after the issuance of the warning letter dated 18.04.2012, the Respondent indulged in acts of indiscipline on 10.06.2012 and was awarded 'Severe Reprimand' on 13.06.2012 by his Commanding Officer. As the Respondent was not showing any improvement, he was found to be a poor Airman material and not amenable to service discipline. The Respondent submitted his explanation on 05.08.2012 in which he admitted that he had indulged in acts of indiscipline due to bad company. He requested for a final chance to

improve. After considering the explanation submitted by the Respondent, the Air Officer-in-Charge approved the discharge of the Respondent from service under Rule 15 (2) (g) (ii) of the Rules as he was found unsuitable for the Indian Air Force.

4. The Respondent challenged his discharge before the Tribunal by filing Original Application No.125 of 2013. He relied upon a Policy dated 16.12.1996 governing the habitual offenders/ potential habitual offenders. He contended before the Tribunal that he was entitled for a second warning before an order of discharge could have been passed against him in accordance with the Policy. The Tribunal accepted the submission made by the Respondent and allowed the application. The order of discharge was set aside. The Respondent was held to be entitled to all consequential benefits, including back wages which were restricted to 25 per cent. The Review Application filed by the Appellant was rejected by the Tribunal.

5. The only point that arises for our consideration in the present case is the interpretation of the Policy dealing with habitual offenders. The Air Force Policy dated 16.12.1996 was issued by the Air Force Headquarters, prescribing the procedure to be followed while processing the cases of habitual offenders. According to the Policy, an Airman is entitled to be issued a precautionary warning (being a habitual offender). The Airman has to be informed that he would be getting another opportunity to mend himself and any addition of another punishment entry, either Red or Black, would result in his discharge from the service. Para 2 (b) of the Policy provides that whenever the case of an Airman is considered by the competent authority for final orders and he is afforded one more chance, a warning letter is required to be issued to him by his Commanding Officer again. The said warning letter shall be treated as a second time warning. Para 3 of the Policy postulates that habitual offenders shall be served with a show cause notice calling upon them to explain the reasons as to why the proposed action of discharge from service shall not be taken against them. The habitual offenders are entitled for an opportunity to submit their explanation before an order of discharge is passed.

6. The Tribunal was of the opinion that the Respondent was given only one warning. As the second warning which is mandatory according to the Policy was not given to the Respondent, the Tribunal was of the view that the order of discharge was vitiated. The Tribunal failed to take into account the fact that para 2 (b) provides for a second warning only when the competent authority considers issuance of final orders but is also of the opinion that another chance should be given to the Airman. The requirement of the second warning letter would be only in such circumstances.

7. The Respondent was initially a potential habitual offender before he was considered as a habitual offender. He was entitled for a warning to be issued in 2008. Admittedly, there was a delay in issuance of the warning letter. Ultimately, the warning letter was issued on 18.04.2012. The Respondent did not mend himself for which reason a show cause notice was issued to him. Even in the explanation to the show cause notice, the Respondent did not dispute the allegations of misconduct made against him. He, in fact, admitted to having indulged in acts of indiscipline and sought for another opportunity to correct himself. The

show cause notice issued to the Respondent is in accordance with the Habitual Offenders Policy. A second warning letter is not required when it is decided to pass a final order without giving another chance. There is no violation of the procedure prescribed by the Policy dated 16.12.1996.

8. For the aforementioned reasons, the judgment of the Tribunal is set aside. Accordingly, the Appeals are allowed.