

SEP. SATGUR SINGH

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v.

UNION OF INDIA & ORS.

(Civil Appeal No. 1857 of 2018)

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SEPTEMBER 02, 2019

[L. NAGESWARA RAO AND HEMANT GUPTA , JJ.]

Service Law:

Discharge from service - On account of seven red ink entries - Plea that discharge order since passed without conducting enquiry as required under Para 5(a) of Army Instructions dated 28.12.1988, was not sustainable - Held: The nature of enquiry as contemplated under Para 5(a) is a preliminary enquiry and not a regular enquiry - The test of preliminary enquiry is satisfied if explanation of the personnel is submitted and an order is passed thereon - Thus, as per Para 5(a) adequate opportunity is granted to the personnel to put his defence - Order of discharge cannot be said to be unjustified.

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Dismissing the appeal, the Court

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HELD: 1. Para 5(a) of the Army Instructions/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

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A down in para 5(a) of the Army Instructions dated December 28, 1988 stand satisfied. [Para 7] [1028-E-G]

2. 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. [Para 8] [1028-H; 1029-A-B]

Veerendra Kumar Dubey v. Chief of Army Staff & Ors.
(2016) 2 SCC 627 : [2015] 10 SCR 1013 - distinguished.

Case Law Reference

D [2015] 10 SCR 1013 distinguished Para 5

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1857 of 2018.

E From the Judgment and Order dated 30.04.2014 in TA No. 286 of 2010 (arising out of CWP 13268 of 2009)/order dated 21.02.2017 of the Armed Forces Tribunal, Chandigarh Regional Bench at Chandimandir in MA No. 3876 & 3877 of 2016 in T.A. No. 286 of 2010 (arising out of CWP No. 13268 of 2009)

Aftab Ali Khan, Adv. for the Appellant.

F Ms. Madhavi Divan, ASG, A. K. Sharma, Vimla Sinha, Vanshdeep Dalmia, Suchakshu Jain, Mukesh Kumar Maroria, Advs. for the Respondents.

The Judgment of the Court was delivered by

G **HEMANT GUPTA, J.**

1. The challenge in the present appeal is to an order passed on April 30, 2014 by the Armed Forces Tribunal¹, Chandigarh, Regional Bench at Chandimandir whereby, the discharge of the appellant on

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account of seven red ink entries during his 11 years 9 months and 15 days service was not found to be unjustified. A

2. The appellant was served with a show-cause notice on September 22, 2004 that the appellant has proved himself undesirable and retention in service is not considered suitable, in respect of seven punishments: two in the year 1995; one in the year 1998; two in the year 2000; and two in the year 2004. The details of his punishments seven times are as under: B

(a) U/s 39(a) of Army Act 21 days RI on 02.09.1995

(b) U/s 51 of Army Act 28 days RI on 07.09.1995 C

(c) U/s 39(a) of Army Act 21 days RI on 04.08.1998

(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 D

(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. E

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. F

5. Learned counsel for the appellant relied upon judgment of this Court in *Veerendra Kumar Dubey v. Chief of Army Staff & Ors.*² 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: G

² (2016) 2 SCC 627

A “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

B 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:

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C 5. xx xx xx

(a) Preliminary Enquiry.-Before recommending discharge or dismissal of an individual the authority concerned will ensure-

D (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.”

E 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:

F “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

G 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

H some kind of *Laxman rekha*, which if crossed would by itself

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A 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.

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C 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)

E 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.

H 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 A
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 B
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.

Kalpana K. Tripathy

Appeal dismissed.