2019 INSC 1064

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 7452-7453 OF 2019
[Diary No. 40813 of 2015]

Narain Singh .. Appellant

Versus

Union of India & Ors. .. Respondents

J U D G M E N T

M. R. SHAH, J.

1. Leave to appeal is granted.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 6.2.2015 passed by the Armed Forces Tribunal Bench at Jaipur, Rajasthan in T.A. No. 2 of 2011, by which the learned Tribunal has dismissed the application preferred by the appellant herein and has confirmed the order

passed by the respondents discharging the appellant from service under Rule 13(3)(III)(v) of the Army Rules, 1954, original applicant has preferred the present appeals.

3. The appellant was enrolled in the Indian Army as a Driver on 15.10.1980. He was promoted as ALD and lastly granted the rank of Lance Dafedar. That the appellant suffered four red ink entries during the period between 7.6.1993 and 3.5.1994. That for every red ink entry he was separately punished. That the respondents discharged the appellant under Rule 13(3)(III)(v) of the Army Rules from the Army solely on the ground of four red ink entries. At this stage, it is required to be noted that the appellant came to be discharged when he had served for 13 years 7 months and 6 days and before he could complete the pensionable service. That the appellant was discharged from service 1 year 5 months and 24 days before he could complete pensionable service. That the appellant challenged the order of discharge before the Armed Forces Tribunal. By the impugned judgment and order, the learned Tribunal has dismissed the said application. The appellant thereafter preferred the review

application, which also came to be dismissed. Hence, the present appeals.

4. Shri Shoumit Mukherjee, learned advocate appearing on behalf of the appellant has vehemently submitted that the appellant came to be discharged from service solely on the basis of four red ink entries which the appellant suffered after a period of 13 years of his service and that too during the period between 7.6.1993 and 3.5.1994. It is further submitted that it is a clear case of victimization and all the four red ink entries were awarded within a short span of one year. It is submitted that as the appellant did not comply with certain illegal directions given to the appellant by Captain D. Mahapatra, he was given the punishment.

4.1 Shri Mukherjee, learned advocate appearing on behalf of the appellant has taken us through the four red ink entries and the allegations/charge on the basis of which the red ink entries were made. He has vehemently submitted that on the basis of such four red ink entries, the appellant could not have been discharged from service and that too after rendering a service of

13 years or more and when he was about to complete the pensionable service.

4.2 Learned advocate appearing on behalf of the appellant has further submitted that the respondents have discharged the appellant from service mechanically and solely on the basis of four red ink entries. It is submitted that mere awarding of four red ink entries does not make the discharge mandatory. It is submitted that, as held by this Court in the case of ***Veerendra Kumar Dubey v. Chief of Army Staff and Others*** 2016 (2) SCC 627, the Commanding Officer after award of such entries is required to consider the nature of offence for which such entries are awarded; long service rendered by an individual etc. It is submitted that therefore the learned Tribunal ought to have set aside the order of discharge.

5. The present appeals are vehemently opposed by Shri K. M. Natraj, learned Additional Solicitor General of India appearing on behalf of the respondents.

5.1 It is vehemently submitted by the learned Additional Solicitor General appearing on behalf of the respondents that it is

an admitted position that there were four red ink entries awarded to the appellant and the same were not challenged by the appellant at any point of time. It is submitted that therefore the appellant was rightly discharged from service in exercise of powers under Rule 13(3)(III)(v) of the Army Rules. It is further submitted by learned Additional Solicitor General that before discharging the appellant, requisite procedure of law was fully followed. It is further submitted by the learned Additional Solicitor General that the appellant was discharged from service with a view to maintain the discipline in the Army. It is submitted that therefore the learned Tribunal rightly refused to interfere with the order of discharge which was passed in exercise of powers under Rule 13(3)(III)(v) of the Army Rules.

5.2 Making the above submissions, it is prayed to dismiss the present appeals.

6. We have heard the learned counsel for respective parties at length.

6.1 At the outset, it is required to be noted that at the time when the appellant was discharged from service in exercise of powers under Rule 13(3)(III)(v) of the Army Rules, he had served

for 13 years 7 months and 6 days. That, at the time of discharge from service, the appellant could not complete the pensionable service and he was discharged from service 1 year 5 months and 24 days before he could complete pensionable service. It is required to be noted that the appellant has been discharged from service under Rule 13(3)(III)(v) of the Army Rules, solely on the basis of four red ink entries awarded to him. It is required to be noted that from 1980 to 7.6.1993 there was nothing adverse found against the appellant. All these four red ink entries relate to the period between 7.6.1993 and 3.5.1994.

6.2 We have gone through the four red ink entries and the nature of allegations and the charge on the basis of which four read entries were awarded to the appellant. It appears that, out of four red ink entries, two entries pertain to 3.3.1994 and one entry pertains to 3.5.1994. Out of the aforesaid, with respect to one of the red ink entries, the allegation was that the appellant refused to take food when he was ordered. Considering the nature of offences for which the red ink entries were made, we are of the opinion that on the basis of such red ink entries, the appellant could not have been discharged from service and that

too after rendering 13 years of service and when he was about to complete the pensionable service. From the impugned judgment and order, it appears that the appellant has been discharged from service mechanically and solely on the basis of award of four red ink entries. As observed by this Court in the case of ***Veerendra Kumar Dubey*** (supra), mere award of four red ink entries does not make the discharge mandatory. It is further observed 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 further observed that it is one thing to qualify for consideration and an entirely different to be found fit for discharge. It is further observed that four red ink entries in that sense takes 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. It is further observed that the authority exercising the power of discharge is expected to take into consideration all relevant factors. That an individual has put in long years of service giving more often than not the best part of his life to armed forces, that he has been exposed to hard stations and difficult living conditions during his tenure and that he may be completing pensionable service, are factors which the authority competent to discharge would have even independent of the procedure been required to take into consideration while exercising the power of discharge.

6.3 Coming then to the case at hand, we find that there is nothing on record to suggest that the authority concerned has taken into consideration the long service rendered by the appellant. There is nothing on record to suggest that the nature of the mis-conduct 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. Even considering the offences for which the red ink entries were awarded, it cannot be said that the mis-conduct and/or offences

are such which would justify the discharge of the appellant. The offences for which the red ink entries are awarded, cannot be said to be such gross mis-conduct which would make the appellant indiscipline and liable to be discharged from service and that too, after a period of long service rendered by him.

6.4 Under the circumstances and in the facts and circumstances of the case, the order of discharge is wholly unjustified and not sustainable at law. While discharging the appellant from service, the Commanding Officer has failed to take into consideration the relevant aspects noted hereinabove and the order of discharge has been passed mechanically and on mere four red ink entries.

7. In the result, present appeals succeed and are hereby allowed. The order of discharge passed against the appellant is hereby set aside. The appellant shall be entitled to all consequential benefits as if the order of discharge was not passed. Benefit of continuous service for all other purpose shall be granted to the appellant including pension. The monetary benefits payable to the appellant shall be released expeditiously,

but not later than four months from the date of this order. No costs.

.....J.
(ARUN MISHRA)

.....J.
(M. R. SHAH)

New Delhi
September 20, 2019

.....J.
(B. R. GAVAI)