

(2009) 02 J&K CK 0012

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1045/2001

Arvind Singh

APPELLANT

Vs

Union of India and Ors.

RESPONDENT

Date of Decision : 11-02-2009

Acts Referred:

Army Rules, 1954 — Rule 13(3)

Citation : (2009) JKJ 254 Supp

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Advocate : Tashi Rabstan, Ajay Abrol, Advocates appearing for the Parties

Judgement

1. The petitioner has been dismissed from service by invoking Army Rule 13 (3) on 4.5.2000 on account of four redink entries recorded in his

service. Taking into account four red ink entries as basis, he has been discharged from the service by invoking aforementioned rules.

The petitioner's case is that respondents could not have terminated his services without serving him charge sheet and holding inquiry in the mater.

He has further submitted that the procedure provided for removal of undesirable and inefficient JCOs was issued in the year 1988 and the action

has been taken against him, the ground of earning of four red ink entries cannot become the basis for his dismissal, is the short grievance of the

petitioner.

On the other hand, respondents state that the petitioner has earned four red ink entries during the tenure of his service, which give sufficient cause

to the respondents for his removal from the service, as his retention in the army service is undesirable. The essence of the arguments is that on

account of his having earned four red ink entries, he stands discharged as undesirable and inefficient to the army service and no charge sheet was required to be issued in the matter.

I have heard learned counsel for the parties and perused the record.

There is no dispute that under the Army Rules, a person can be dismissed or discharged in case it is found that his retention is undesirable and he is an inefficient official.

In terms of the procedures provided for removal of undesirable and inefficient JCOs, discharge from service consequent to the four redink entries, is not mandatory. For legal requirements, other considerations are also required to be taken note of by the Commanding Officer. Notes 1 & 2 of the Army Headquarters order/communication dated 28.12.2998 are quoted herein below:

Note: 1. ""As far as possible, JCO, WO or OR awaiting dismissal orders will not be allowed to mix with other personnel.

2. Discharge from service consequent to four red ink/entries is not a mandatory or legal requirement. In such cases, Commanding Officer must

consider the nature of offences for which each read ink entry has been awarded and not be harsh with the individual, especially when they are

about to complete he 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.

The import of aforementioned provisions clearly states that merely because a person has earned four red ink entries does not mean automatic

termination of the service. Other facts have also to be considered as provided by the aforementioned procedures.

3. The petitioner has relied upon the judgment dated 2.12.2008 passed by the Coordinate Bench of this court in SWP No. 324/2003, entitled,

Naik Gulshan Singh vs. Union of India, wherein similar question has arisen. The operative portion of the aforesaid judgment is reproduced as

under:

.....In the present case, for the misconduct of the petitioner he stands awarded with four redink entries and, therefore, has suffered the

punishments awarded. On the basis of the said entries he could be considered for discharge from service, as being undesirable for retention in the

army. While according such consideration the Competent. Authority ought to have kept the factors indicated in Note 2 of instructions in view.

From the perusal of the record and other impugned it is not indicated that the said factors were kept in view and it appears that simply because the

petitioner had earned more than four red ink entries his discharge from service has been ordered. The order of discharge from service has been

ordered. The order of discharge impugned in the writ petition thus is unsustainable in law for being arbitrary and unreasonable as after all the

petitioner has suffered punishment on account of each offence of which each redink entry was recorded. If he was to be declared undesirable for

retention in service then consideration of the nature of the offences he committed besides his length of service and other relevant facts was

necessary. It is only after consideration of such factors by a speaking order he could be validly desirable for retention in the army.....

4. The aforementioned judgment of this Court also applies in the present case.

I, therefore, allow this writ petition and set aside the order impugned dated 4.5.2000, whereby the petitioner has been discharged from service.

The petitioner shall be reinstated in service with all consequential benefits.

Disposed of