

(1995) 08 DEL CK 0001

In the Delhi High Court

Case No : Civil Writ Appeal No. 391 of 1991

Ram Dev Prasad Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-08-1995

Acts Referred:

Army Act, 1950 — Section 39, 40, 41(1), 46, 63

Citation : (1995) 3 AD 622 : (1995) 59 DLT 693 : (1995) 34 DRJ 552

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : Sanjeev Anand, Kajal Chandra, E.X. Joseph and M. Oommen, for the Appellant;

Judgement

Usha Mehra, J.

(1) The petitioner, Shri Ram Dev Prasad Singh was appointed as Sepoy/ Driver with the respondent on 17th September, 1971. In May, 1973 he was converted to the post of Electrical Mechanical Engineer (E.M.E.), Secunderabad. The case as set up by the petitioner is, that in 1976 while on duty, he sustained injury effecting his ear and mental state of his mind. On account of certain incidents which took place he was subjected to punishment by his officers from time to time. . These punishments were totally unwarranted as the acts committed by the petitioner were not intentional. In May, 1984, on the basis of those punishments inflicted in the past, a show cause notice was served on him asking him as to why action be not taken. In June, 1984 petitioner was treated in the Military Hospital for unsoundness of his mind. In September, 1984 the petitioner was sent back to a unit in Bhopal from Lucknow retaining his medical category as Standard "A-I". Even when he was transferred from Bhopal to his Unit E.M.E. Secudarabad, he was kept for a month and half in the psychiatric wing of the Military Hospital. In the end of November, 1984, the petitioner was relieved from his services without affording him any opportunity or giving him any hearing. While relieving him the respondent handed over a site railway warrant and a

discharge book. The discharge book was incomplete. It was not signed by the issuing authority. The discharge book would show that the petitioner was discharged vide order dated 15th June, 1984 sanctioned by Comdt. 3 Eme Centre, Bhopal whereas he in fact was relieved w.e.f. 13th January, 1985. On the date of his discharge the petitioner had put in 14 years of service. Being mentally sick the respondent ought to have reduced his medical category from "A-I" to "E". Had the respondent reduced the medical category of the petitioner in 1976 itself or thereafter, the petitioner would have become entitled to various pensionary benefits under the Pension Regulations. Being aggrieved the present writ petition has been filed. By this petition, the petitioner has challenged the action of the respondent of discharging and relieving him from service and for not reducing his medical category.

(2) The respondent took the stand that services of the petitioner were no longer required. He had become undesirable hence discharged. As per the entry in his service record, he was inflicted with as many as eight punishments between September, 1975 to April, 1984 for various offences committed by him. Show cause notice dated 17th May, 1984 was based on the punishments inflicted on him for which purpose respondent found him undesirable and, Therefore, decided to discharge him from service. The punishment imposed on the petitioner was u/s 63 of the Army Act while serving in field. He had brought an unauthorised person (women) in Unit Lines for illegitimate purposes. Therefore, imprisoned for 28 days and 14 days detention in Military Custody. Again for using insubordinate language to his superior officer he was imprisoned for 28 days in Military Custody which was u/s 40(c) of the Army Act. He also suffered 28 days Ri in Military custody u/s 39(a) of the Army Act for absenting himself without due permission from the Unit Lines. For threatening the superior officer he was punished u/s 40(b) of the Army Act. He was found in unauthorised possession of 50 gms. of Bhang and, Therefore, suffered 28 days Ri in military Custody u/s 63 of the Army Act. The petitioner was awarded 14 days imprisonment in Military Custody because of using criminal force to a Santry on duty. He was awarded seven days detention u/s 46(a) of the Army Act because he urinated in a container in front of the Sentries and threw towards quarter guard of the day. This was treated as a disgraceful conduct of an indecent kind. He was awarded 7 days RI in Military Custody u/s 41(1) of the Army Act for disobedience to superior officers. He was imprisoned for seven days in the Military Custody for an act prejudicial to Good order and military discipline. He was awarded 10 days imprisonment in Military Custody u/s 39(a) of the Army Act for absenting himself without leave. In view of this conduct and utter bad disciplinary record of service, his retention in service was considered detrimental by his officer Commanding, who recommended for his discharge. This recommendation was sanctioned by the competent authority on 15th June, 1984. At the time of his discharge from service his total physical service in the Army was only 13 years, 3 months and 26 days. For an army person to become entitled for service pension a minimum of 15 years service was required. He was paid service gratuity and death- cum-retirement gratuity

for the service rendered by him. Despite various punishments awarded, the petitioner did not improve his ways, thus he was considered rendered himself undesirable for the army service. He was discharged due to bad character and repeated commitment of offences. He was discharged after serving him with a show cause notice. At the time of discharge from hospital, he was in medical category of Aye which means the petitioner was mentally and physicaly in perfectly good condition. He was never admitted in Military hospital at Secunderabad in June,1984 or thereafter. Since the documents could not be received from his Unit, hence his discharge was delayed up to November, 1984. The petitioner was granted 60 days annual leave for the year 1984 w.e.f. 14th November,1984 to 12th January,1995. As regards the discharge book, only one book is issued to the individuals at the time of discharge as per rules. If the same had not been signed or incomplete, the petitioner could have approached Eme Record Officer for the rectifications. The said rectifications can even now be done. So far as the placement in appropriate medical category that is done by a constituted Medical Board of Officers after following medical study by the specialists concerned with the case.

(3) MR.SANJEEV Anand"s main thrust of arguments had been that the respondent before discharging the petitioner did not comply the procedure as circulated vide Army Head Quarters Letter No.13210/AG/PS 2(C) dated 23rd August,1965 dealing with the procedure for removal of undesirable and inefficient JCOs, WOs and ORs. The petitioner falls in the category of ORs. Mr. Sanjeev Anand drew the attention of this Court to Rule 4 of the said circular dealing with the procedure for dismissal/discharge of undesirable JCOs, WOs and ORs, which is produced as under:

RULE4:

AR13 and 14 provides that a JCO/WO/OP whose dismissal or discharge is contemplated will be given a show cause notice. As an exception to this, service of such a person may be terminated without giving him a show cause notice provided the Competent Authority is satisfied that it is not expedient or reasonably practicable to serve such a notice. Such cases should be rare, e.g. where the interest of a show cause notice is dispensed with the reasons for doing to are required to be recorded.

PRELIMINARY Enquiry:

(A)Before recommending dismissal or discharge 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 defense or Explanation and of adducing evidence in his defense.

FORWARDING of Recommendations:

(B)The recommendations for dismissal or discharge will be forwarded through

normal channels, to the authority competent to dismiss or discharge.

ACTION by Intermediate Authorities :

(C)Intermediate authorities through whom the recommendations pass will consider the case in the light of what is stated in (a) above and make their own recommendations as to the disposal of the case.

ACTION by Competent Authority:

(D)The authority competent to authorise the dismissal or discharge of the individual will consider the case in the light of what is stated in (a) above. If he is satisfied that the termination of the individual's service is warranted, he should direct that a show cause notice be issued to the individual in accordance with Ar 13 and Ar 17 as the case may be. No lower authority will direct the issue of a show cause notice. The show cause notice should cover the full particulars of the case of action against the individual. The allegations must be particulars must be specific and supported by sufficient details to enable the individual to clearly understand and reply to them. A copy of the proceedings of the enquiry held in the case will also be supplied to the individual and he will be afforded reasonable time to state in writing any reasons he may have to urge against the proposed dismissal or discharge.

ACTION on Receipt of the Reply to the Show Cause Notice

FINAL Orders by the Competent Authority

(F)The authority competent to sanction the dismissal/ discharge of the individual will before passing orders reconsider the case in the light of the individual's reply to the show cause notice.

(4) Relying on this Rule, Mr-Sanjeev Anand urged that at the time, the Competent Authority took decision to discharge the petitioner a second show cause notice ought to have been issued. But nothing of this was done. The alleged show cause notice dated 17th May, 1984 produced by the counsel for the respondent during the course of arguments, was never received by the petitioner. Hence) in the absence of compliance of the procedure laid down for discharge the order of discharge is liable to be set aside. This argument of Mr.Anand is belied from his own pleadings. Reference can be had to para No.3 of the writ petition wherein the petitioner has clearly admitted that he received a show cause notice in May, 1984. The show cause notice issued by the respondent is dated 17th May,1984, hence in para 3 of the petition, the petitioner could not have talked of any other show cause notice except the one which is relied by the respondent and produced during the course of arguments. It does not lie in the mouth of the petitioner to say that he never received any show cause notice or that the show cause notice now produced is fabricated or procured.

(5) So far as holding of preliminary enquiry as prescribed under Rule 4 quoted above, to my mind, that was not the requirement of keeping in view the facts of

this case. Holding of preliminary enquiry is contemplated when the dismissal or discharge is based on certain "allegations". Allegations leveled against an individual on the basis of which action is proposed require investigation, but not when the discharge is implicate based on the mis-conduct of the individual for which he has already been punished and which punishment became final. The allegations when on investigation found justified and culminated into punishments then if the Competent Authority decides to take action on the basis of these proven cases it can be said that these cases are still in the realm of "allegations". Of course, if the case of the petitioner had been in the realm of "allegations", then the respondent was duty bound to hold the preliminary enquiry. However, the case in hand is not in the realm of allegations. Here the show cause notice was based on punishments already inflicted on the petitioner under various provisions of Army Act and which punishments became final as no appeals were preferred against the same. Having been found guilty in as many as eight cases, if the Competent Authority considered him to be undesirable, to my mind, it was not the requirement to hold any preliminary enquiry in all those eight cases for which he had already been found guilty. For those eight cases which were relied in the show cause notice no further enquiry was required. Nor there was any question of issuing him a second show cause notice. It would also be not out of place to mention that the petitioner was considered to be undesirable on account of various acts of commission and commission committed by him for which he was punished. His Officer Commanding recommended him for discharge and the Competent Authority accorded the sanction on 15th June, 1985.

(6) Mr. Sanjeev Anand's reliance on the decision of the Andhra Pradesh High Court in the case of V.Y.Thomas Vs. Commandant A.D.C. Centre, Secunderabad 1982 LAB. 1.C. 632 is misplaced. There are no two opinions that the rules have to be followed strictly. But as pointed out above in this case, the procedure as laid down and as quoted above was followed. It being a discharge implicate was sanctioned by the Competent Authority after ensuring that the petitioner had been served with a show cause notice. Petitioner inspired by the receipt of show cause notice in May, 1984 did not reply to the same. In the absence of any reply, the respondent could not have done anything else except discharging him from service. There was no necessity to hold enquiry or to serve second show cause notice in the facts of this case. There cannot be any quarrel with the proposition laid down by this Court in the case of Dinesh Kumar Vs. Union of India & ors. 1993 (1) D L 243 when it was held that when grounds of mis-conduct are mentioned then it does not remain a case of discharge simplicitor. In that case the petitioner was alleged to have been discharged but in fact his services were terminated on account of mis-conduct being an inefficient member of the Force. This allegation if proved would amount to mis-conduct. For dismissal or termination on ground of mis-conduct it required holding of enquiry. It could not be treated as discharge simplicitor. But in the present case, the discharge was based on the facts duly proved and for which he was found to be guilty. It was

under these circumstances he was found to be undesirable in the army service. Hence the observations of this Court in the case of Dinesh Kumar (*supra*) do not apply.

(7) So far as the petitioner's grievance that his discharge slip was in complete or the allegations on the basis of which he has been discharged have not been mentioned, to my mind, this grievance is without basis. Mr. Joseph explained that in the discharge slip the reasons for discharge are never given. If any reasons are mentioned it would amount to dismissal which is punitive in nature. Discharge implicate being not punitive does not require furnishing of reasons. Nor the army rules provides mentioning of reasons of discharge on the discharge slip. petitioner was served with a show cause notice. This, to my mind, afforded reasonable opportunity to the petitioner to put up his defense but the petitioner did not avail of the same. He did not reply to the show cause notice. Now at this stage, he cannot be allowed to say that he was not given any reasonable opportunity. In fact after being discharged the petitioner settled his dues. He never made any protest rather he approached the District Soldiers' Board in Laharia Sarai, Darbhanga, Bihar for alternative job as ex- service man. The same he could not get because his discharge book was in-complete. Hence there was no proof of his being ex-service man or that he was discharged from service. Similarly, in September, 1988 he went to a resettlement: Cell for ex-service men named as "Bihar & Orissa Re- settlement Cell" at Patna for job. There also in the absence of his discharge book being complete in all respects, he could not be treated as an ex- service man. In the absence of any proof of his being ex-service man no action was taken for his re-settlement. These attempts for obtaining job or re-settlement as ex-service man by the petitioner clearly show that he took his discharge without protest. This also clearly proves that the discharge implicate was accepted by the petitioner after he had been served with a show cause notice. He knew why was he discharged. The only justified grievance of the petitioner is that the discharge book was in-complete in all respects. To this Mr Joseph pointed out that non- completion of the discharge book must have been due to clerical error. The same can even be rectified at this stage. No doubt this mistake can be rectified even now but on account of this mistake on the part of the respondent the petitioner has suffered. Had the discharge slip been complete, in all respects he would have got alternative job by this time. For this act of the respondent they cannot be let scot free. Directions are accordingly given to the respondent to complete the discharge slip issued to the petitioner within two weeks from today. Because of this careless act on the part of the respondent the petitioner could not apply for resettlement and has in face been dragged into this litigation. Hence respondents are burdened with cost of Rs.5000.00 which should be paid within two weeks from today. The contention of Mr Joseph that the petitioner could have approached the respondent for completion of the discharge slip has no force. It was the duty of the respondent to ensure that the discharge slip is complete in all respects at the time the same was issued. Having not done so respondent must compensate the petitioner.

(8) With these observations, the petition stands disposed of.