

**ARMED FORCES TRIBUNAL CHANDIGARH REGIONAL BENCH AT  
CHANDIMANDIR**

**O.A. No 13 of 2010**

**Suresh Chand** ... **Applicant**

**Vs**

**Union of India and others** ... **Respondents**

**ORDER**

**15 -07-2010**

**Coram : Justice Ghanshyam Prasad, Judicial Member.**

**Lt Gen H S Panag (Retd), Administrative Member.**

For the Applicant (s) : Mr. B.S. Sehgal ,Advocate.

For the respondent(s) : Dr.(Ms) Amarpreet Kaur. ,C.G.C.

**Justice Ghanshyam Prasad**

This application has been filed for setting aside the punishment awarded to the applicant by the Commanding Officer of 180 Air Defence Battery and to reinstate him in service from the date of discharge/ dismissal with all consequential benefits and also to set aside the order dated 28.10.2009 passed by the Respondent No. 3 being illegal, null, void and contrary to the directions of the **Division Bench of Punjab & Haryana High Court given in LPA No 173 of 2008 decided on 13 July 2009.** Alternatively, it has been prayed that service pension be granted to the petitioner after condoning the deficiency in service.

The petitioner was enrolled in the Indian Army on 15.11.1980. He was promoted to the rank of L/Nk in 1987 and Naik in 1990. However, during 05.05.91 to 18.06.1992, he was punished thrice. Thereafter, a Court of Enquiry was held and upon the report of Court of Enquiry, the petitioner was discharged from service w.e.f 05.05.1994.

The petitioner moved High Court through Civil Writ Petition bearing No 16199 of 1995 challenging the discharge and issue of directions for reinstatement with continuity in service. The petition was partly allowed by the Single Bench vide order dated 14.03.2008 (Annexure P-8). The petitioner then preferred LPA bearing No 173 of 2008 against the order of Single Judge. After hearing both the parties, GOC-in-C HQ Western Command was directed to reconsider the matter and review the punishment of the discharge from the service which was harsh and disproportionate to the allegations leveled against the petitioner vide order dated 13.07.2009 (Annexure P-9). However, GOC-in-C Western Command vide letter dated 28.10.2009 without considering the matter rejected the claim of the applicant and refused to give any relief as directed by the Division Bench.

Thereafter, the petitioner filed present application before this Tribunal. This Bench vide order dated 16.12.2009 directed the Competent Authority to reconsider the matter keeping in view of the directions given in paragraph 9 and 10 of the order of the Division Bench, passed in LPA No 173 of 2008. The Competent Authority, (the Chief of Army Staff) vide order dated 29.04.2010 refused to give any relief in the light of the directions of Hon'ble Division Bench against the order of discharge (Annexure R-6).

Reply has also been filed by the respondents supporting the order dated 29.04.2010 and also the order of discharge w.e.f 05.05.1994.

Heard the learned counsel for both the parties.

In order to appreciate the matter properly, it would be appropriate to quote relevant paragraphs of the Division Bench Order (Annexure P-9) which are as follows :

***“7. Sequence of facts noted above clearly shows that the allegation of overstaying leave was during the first year and thereafter the appellant was given promotion and he had rendered more than 12 years of service. During the said period of 12 years, only allegation is of shouting during roll call or absence for 30 minutes or representing to authorities, which could hardly call for such harsh view as has been taken. The appellant had already been given other punishments. On completion of 15 years of service, he would have been entitled to pension. He had already worked for 13 years.***

***8. While normally this Court may not interfere with the orders of Army Authorities in disciplinary matters as under our constitutional scheme, fundamental rights, in their application to members of Armed Forces, can be restricted under Article 33. Still, persons subject to Army Act are also citizens of this Country and there is no bar to judicial review if action of an authority is irrational or illegal. Reference may be made to judgments of the Hon’ble Supreme Court in UOI Vs. Major A. Hussain 1998 (1) SCC 537 and Prithi Pal Singh Vs. UOI, AIR 1982 SC 1413.***

***9. In view of above, we are of the view that punishment of discharge from service was harsh and disproportionate to the allegations leveled.***

***10. We, therefore, direct that the matter may be reconsidered by the General Officer Commanding, Headquarters Western Command, Chandimandir, who is said to be the competent authority, to review the matter, within two months from the date of receipt of a copy of this order.***

From the above paragraphs it is quite apparent that Hon’ble High Court did not uphold order dated 05.05.1994 regarding discharge of the petitioner from service as being harsh and disproportionate to the allegations. Accordingly, directions were given to the GOC-in-C Western Command, to review the matter within two months. In other words, the

Competent Authority had to amend the order of discharge w.e.f. 05.05.1994 and award any other lesser punishment proportionate to the allegations.

Admitted fact is that the matter was referred twice before the Competent Authority to reconsider the punishment in the light of directions of the Hon'ble Division Bench but they refused to amend the order of discharge of the petitioner from service w.e.f. 05.05.1994.

Here we would like to point that in our Constitutional frame the order of the Court has got prominence. Each and every authority and person, how so high he may be, is bound to obey the order and directions of the Court. In this case we find that the concerned authority has failed to appreciate the basic concept of law and constitution and refused to obey the directions of the Hon'ble Division Bench. It is unfortunate.

In the above circumstances, we are left with no option but to pass ourself appropriate order in the light of directions of the Division Bench. The petitioner is out of active service for last 16 years. Therefore, at this stage, it would not be proper to reinstate him in the service. However, the petitioner has already rendered 13 years in active service. Therefore, under the facts and circumstances, the purpose of justice can be met by amending the date of discharge of the petitioner in such a manner that the petitioner may get the service pension. Accordingly, the order of discharge dated 05.05.1994 passed by Competent Authority is hereby modified and it is directed that it will take effect from the date of completion of 15 years in service, the minimum period of service required for grant of service pension. However, the petitioner shall not be entitled

to get any payment, pay and allowances etc. for the extended period of discharge.

With above directions and modification in the impugned order of discharge, this application stands disposed of.

**(Justice Ghanshyam Prasad)**

**[ Lt Gen H S Panag(Retd)]**

**15-07-2010**

**‘sns’**