

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIAL BENCH**

OA 2330/2013
MA 2671/2014

New Delhi this the 8th day of January, 2019

**Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr.S.N.Terdal, Member (J)**

Gurmej Singh, CMD-II (Two)
S/o Sh. Rishi Pal Singh (Discharged)
Served in 'C' Coy 5682 ASC
BN (MT) Pathankot Cantt.
R/o Dashmesh Colony, Near ITI College,
Dhaki Road, Pathankot (Pb).

... Applicant

(By Advocate: Mr. R.K.Jain)

VERSUS

1. Union of India, through Secretary,
Min. of Defence, Govt. of India,
South Block, DHQ PO,
New Delhi-110011.
2. The Chief of the Army Staff
COAS Secretariat, South Block,
DHQPO, New Delhi-110011
3. The Quarter Master General,
QMG Branch, Integrated HQ,
MoD (Army), New Delhi-110011
4. The Commanding Officer,
HQ 5682 ASC Bn (MT) Kalka
Cantt. (HR).
5. The Officer Commanding,
'C' Coy 5682 ASC Bn (MT),
Pathankot Cantt. ... Respondents

(By Advocate: Mr. Y.P.Singh)

O R D E R (ORAL)**(Hon'ble Mr. S.N.Terdal, Member (J):**

We have heard Mr. R.K.Jain, counsel for applicant and Mr. Y.P.Singh, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

"8.2 To set aside the Maj.Gen.C Prakash, GOC-in-Chief PH&HP (1) Sub Area, Ambala Cantt proposed Discharge Order No.1137/1/A3 (Disc) dt. 30 July 2011 and Lt. Col. Kuldeep Singh Coy Cdr 'C' Coy 5682 ASC Bn (MT) Discharge Order No. 588/ST-12/C Dt. 28 Sep 2011 in respect of the Applicant Sh. Gurmej Singh CMD-II (Two) discharged from service on 30 Sep. 2011. The Applicant may please be re-instated into Service immediately with full Civil Consequential Benefits, As the applicant is subject to the CCS (CCA) Rules 1965 for their Service Matters in Civil GT Units in the Army Supply Corps in the Army and do not govern under Rule 13(3)(1)(iii)(c) and Rule No. 13 (3)(III)(V) of the Army Rules 1954 to carry out Discharge from Service.

- (b) To cancel all the punishments awarded to the applicant as shown in Para 4.2 of this instant O.A. being the Status of the Applicant CMD (OG) equivalent to the Rank of Havildar and later Status to the Rank of Subedar, Junior Commissioned Officer, as Rigorous Imprisonment is not subject to him cannot awarded to him, And
- (c) Any allow the Cost of this Application.
- (d) Or Any Other relief which this Hon'ble Tribunal deemed fit in the Safeguard of the Applicant."

3. The relevant facts of the case are that the applicant was employed as Civilian Motor Driver (Original Grade), CMD (OG) Gp. 'C' post in the Civil GT Unit of the Army Service Corps on 22.11.1988 and thereafter he was confirmed and promoted. On 22.05.2011, a Show Cause Notice (SCN) was served on him under rule 13(3) III (V) of Army Rules 1954. The applicant submitted reply to show cause notice on 02.07.2011. After considering the grounds taken in his reply, the respondents passed an

order of termination on 20.08.2011 w.e.f. 31.12.2011 and his further appeals were dismissed by the Chief of Army Staff as well as Quarter Master General, Hq. MOD (Army), New Delhi. He approached Armed Forces Tribunal, Chandigarh Bench which was withdrawn by him on 17.10.2011. He filed OA no. 480/2012 before this Tribunal. This Tribunal vide order dated 16.10.2012 disposed of the said OA with a direction to the respondents to pass a reasoned and speaking order regarding the applicability of Army Act, 1950 to the applicant. The relevant portion of the order is reproduced below:

"It is seen that the applicant has already made an appeal against the impugned show cause notice and the impugned order of discharge, copies of the said appeal are part of this Original Application. Besides, the applicant has also issued a legal notice to the respondents which is also part of this Application. In view of the above facts and circumstances of the case, we direct the appellate authority to consider the submission of the applicant made in his appeal and legal notice that he is not amenable to the Army Act and he should have been subjected to the CCS (CCA) Rules, 1965. In case the Appellate Authority' order of discharging the applicant shall be treated as ab initio null and void and he shall be reinstated in service with all consequential benefits. In any case, the Appellate Authority shall pass a reasoned and speaking order under intimation to the applicant within a period of two months from the date of receipt of a copy of this order. In case the applicant is still aggrieved by the decision of the Appellate Authority, he shall be at liberty to challenge the same through appropriate fresh proceedings. There shall be no order as to costs."

4. The applicant filed Contempt Petition no. 06/13. The said CP was closed in view of the speaking order dated 19.3.2013. In this OA, the applicant has challenged the said speaking order dated 19.03.2013. The speaking order is a detailed and reasoned order. The respondents have considered every aspects of the matter including the law laid down by the Hon'ble Supreme Court in the cases of **Ram Sarup Vs. Union of India and Ors** (AIR 1965 SC 247), **OKA Nair Vs. UOI** (AIR 1976 SC 1679) and **R.Viswan and Others Vs Union of India and Ors.** (1983)(SCC(3) page

401) and held that the applicant is amenable to Army Act, 1950. The relevant portion is extracted below:

"WHEREAS, the issue of applicability of Army Act on the persons belonging to organization covered under section 4 of the Army Act in respect of whom the corresponding notification has been issued stood settled by the Apex Court in the cases of R Viswan Vs UOI 1983 SCC (3) Page 401 and OKA Nair V/s UOI 1976 SC 1679 wherein it has been held that Provisions of the Army Act will apply on Civilian members of such forces. Further, in the case of R Vishwan, the issue of section 4 being ultra-vires of the Constitution of India has also been upheld in favour of UOI. Earlier in the case of Ram Swarup the Apex Court in AIR 1965 SC 247 has upheld that each and every provisions of Army Act is valid."

5. At the time of hearing, the counsel for respondents brought to our notice AO 141/72 which also goes to show that applicant is amenable to Army Act, 1950. In view of the facts and circumstances of the case we do not find any reason to interfere with the impugned speaking order dated 19.03.2013.

6. Accordingly, OA is dismissed. No order as to costs.

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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