

**A.F.R**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,**  
**LUCKNOW**

**COURT NO. 2**

**O.A. No. 214 of 2013**

**Thursday, this the 18<sup>TH</sup> day of August, 2016**

**“Hon’ble Mr. Justice D.P.Singh, Judicial Member**  
**Hon’ble Air Marshal Anil Chopra, Administrative**  
**Member”**

Indra Shekhar Singh son of Ram Belas Singh Village  
Deogaon Tehsil and District Deoria U.P.

**..... Applicant**

Versus

1. Union of India through Chief of the Army Staff  
Army Head-quarters New Delhi-110066.
2. The Commanding officer, 116 Infantry Battalion  
(Territorial Army) Para C/O 56 APO.
3. The Adjutant, 116 Infantry Battalion (Territorial  
Army ) Para C/O 56 APO.

**.....Respondents**

**Ld. Counsel appeared - Shri V.R.Chaubey**  
**for the Applicant Advocate**

**Ld. Counsel appeared - Shri Ashish Saxena**  
**for the Respondents Central Government**  
**Add. Standing Counsel**

**ORDER (ORAL)**

1. This is an Application under section 14 of the Armed Forces Tribunal Act 2007 assailing the impugned order of discharge.
2. We have heard Shri V.R.Chaubey, learned counsel for the Applicant and Shri Ashish Saxena learned counsel for the respondents assisted by Col Kamal Singh, OIC Legal Cell. We have also been taken through the records.
3. The factual matrix is that the Applicant was enrolled in the Territorial Army on 31.01.2000. However, he was discharged from the service on 05.10.2000 on the ground that he had concealed the materials facts with regard to his being involved in criminal case at the time of recruitment. Consequently, he preferred a statutory complaint which culminated in being rejected. Subsequently, the Applicant preferred a writ petition in which the order of discharge was quashed on the ground that discharge was not preceded by issue of show cause notice. Subsequently, he was reinstated in service on 31.08.2002. After being reinstated in service, a show cause notice was issued on 13.09.2002 but it elicited no reply and hence, he was discharged from service on 07.10.2002.

A perusal of the impugned order would show that a case under section 323/504/506/352 IPC was pending against the Applicant which he did not disclose in the enrolment form during the course of recruitment.

4. The defence set up by the Applicant never knew that any criminal case was registered against him and that the S.O. of the concerned Police station conspired against him and registered the case behind his back when no such occurrence as alleged in the FIR had ever taken place.

5. Learned counsel for the Applicant vehemently submitted that the Applicant was honourably acquitted in the year 2009 by the judicial order in the case in question after due trial.

6. From a perusal of the record that the criminal case was registered at case crime No 134 of 1999 under section 323/504/506/352 IPC and it falls short of acceptability that at the time of recruitment he was not aware of pendency of any criminal case against him vis a vis the fact that the Applicant was enrolled in the territorial Army on 31.1.2000. At the time of enrolment, he was facing investigation/trial in a criminal case. By this reckoning, it is evident at the face of the record that the applicant has concealed the material facts with regard to pendency of criminal

case. What adds poignancy to it is the fact that even while approaching the Tribunal, the Applicant has not brought on record copy of the judgment whereby the criminal case ended up in acquittal. By this reckoning, it would clearly transpire that the Applicant has not come up with clean hands in this Tribunal. That apart, learned counsel for the respondents has invited our attention to the judgment of Hon'ble Apex Court in **Civil Appeal No 10613 of 2014 State of M.P.Vs Parvez Khan** in which Hon'ble Apex Court relied upon the decision of **Commissioner of Police V. Mehar Singh, 2013 (7) SCC 685** and reproduced its paras 29, 30, 33, 35. The above paras being relevant are quoted below being relevant are reproduced below.

*"29. In this connection, we may usefully refer to **Delhi Administration v. Sushil Kumar, (1997 (1) S.C.T. 474 : 1996 (11) CC 605**). In that case, the respondent therein had appeared for recruitment as a Constable in Delhi Police Services. He was selected provisionally, but, his selection was subject to verification of character and antecedents by the local police. On verification, it was found that his antecedents were such that his appointment to the post of Constable was not found desirable. Accordingly, his name was rejected. He approached the Tribunal. The Tribunal allowed the application on the ground that since the respondent had been discharged and/or acquitted of the offence*

*punishable under Section 304, Section 324 read with Section 34 and Section 324 IPC, he cannot be denied the right of appointment to the post under the State. This Court disapproved of the tribunal's view. It was observed that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable for the post under the State. This Court observed that though the candidate was provisionally selected, the appointing authority found it not desirable to appoint him on account of his antecedent record and this view taken by the appointing authority in the background of the case cannot be said to be unwarranted. Whether the respondent was discharged or acquitted of the criminal offences, the same has nothing to do with the question as to whether he should be appointed to the post. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof.*

*30. It was argued that Sushil Kumar must be distinguished from the facts of the instant case because the respondent therein had concealed the fact that a criminal case was registered against him, whereas, in the instant case there is no concealment. It is not possible for us to accept this submission. The aspect of concealment was not considered in Sushil Kumar at all. This Court only concentrated on the desirability to appoint a person, against whom a criminal case is pending, to a disciplined force. Sushil Kumar cannot be restricted to cases where*

*there is concealment of the fact by a candidate that a criminal case was registered against him. When the point of concealment or otherwise and its effect was not argued before this Court, it cannot be said that in Sushil Kumar this Court wanted to restrict its observations to the cases where there is concealment of facts.*

X x x x x x x x x x

*33. So far as respondent Mehar Singh is concerned, his case appears to have been compromised. It was urged that acquittal recorded pursuant to a compromise should not be treated as a disqualification because that will frustrate the purpose of the Legal Services Authorities Act, 1987. We see no merit in this submission. Compromises or settlements have to be encouraged to bring about peaceful and amiable atmosphere in the society by according a quietus to disputes. They have to be encouraged also to reduce arrears of cases and save the litigants from the agony of pending litigation. But these considerations cannot be brought in here. In order to maintain integrity and high standard of police force, the Screening Committee may decline to take cognizance of a compromise, if it appears to it to be dubious. The screening Committee cannot be faulted for that.*

X x x x x x x x x x

*35. The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It*

*must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee. The decision of the Screening Committee must be taken as final unless it is mala fide. In recent times, the image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in public domain and are a matter of concern. The reputation of the police force has taken a beating. In such a situation, we would not like to dilute the importance and efficacy of a mechanism like the Screening Committee created by the Delhi Police to ensure that persons who are likely to erode its credibility do not enter the police force. At the same time, the Screening Committee must be alive to the importance of the trust reposed in it and must treat all candidates with an even hand."*

7. Hon'ble Apex Court relying on the aforesaid decision in **Commissioner of Police V Mehar Singh**

(supra), made the following observations as contained in Para 13 which being relevant is reproduced below.

*"From the above observations of this Court, it is clear that a candidate to be recruited to the police service must be worthy of confidence and must be a person of utmost rectitude and must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was completely exonerated. Persons who are likely to erode the credibility of the police ought not to enter the police force. No doubt the Screening Committee has not been constituted in the case considered by this Court, as rightly pointed out by learned counsel for the Respondent, in the present case, the Superintendent of Police has gone into the matter. The Superintendent of Police is the appointing authority. There is no allegation of mala fides against the person taking the said decision nor the decision is shown to be perverse or irrational. There is no material to show that the appellant was falsely implicated. Basis of impugned judgment is acquittal for want of evidence or discharged based on compounding."*

8. It is not a case that the Applicant got involved in a criminal case during the service of Territorial Army. It is a case in which the Applicant did not divulge the factum of pendency of criminal case while filling up the Enrolment Form during recruitment. As already observed, the plea that the Applicant was not aware of



pendency of any criminal case against him, fell short of acceptability. In the facts and circumstances of the case, we converge to the view that the Applicant was guilty of concealing material facts with regard to pendency of criminal case against him and thus, he was rightly discharged in view of the provisions contained in Regulation 14 (b) (ii) of the Territorial Army Regulations 1948 read with Regulation 15 (1) of the Territorial Army Regulations, 1948.

9. In view of the above, the O.A lacks merit and is accordingly dismissed.

10. Now we come to the question of imposing cost in the case for not coming up with clean hands in the instant case. In the case of Vijay Syal and Anr vs State of Punjab and Ors, (2003) 9 SCC 401, Hon'ble Apex Court has held that filing of false affidavit and not disclosing material facts amounts to contempt of Court. The observation of the Apex Court is reproduced below.

*"In order to sustain and maintain sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the court, when a court is considered as a place where truth and justice are the solemn pursuits. If any party*

*attempts to pollute such a place by adopting recourse to make misrepresentation and is concealing material facts it does so at its risk and cost. Such party must be ready to take consequences that follow on account of its own making. At times lenient or liberal or generous treatment by courts in dealing with such matters are either mistaken or lightly taken instead of learning proper lesson. Hence there is a compelling need to take serious view in such matters to ensure expected purity and grace in the administration of justice".*

11. In view of the above, the applicant is guilty not only of concealing material facts at the time of enrolment with regard to pendency of investigation or trial in a criminal case (supra), but also guilty of concealing material facts and not disclosing the factum of pendency of criminal case against him while approaching the Tribunal. It is only through counter affidavit filed by the respondents and on his being confronted with the averments of the counter affidavit that the correct facts were made known to the Tribunal that the Applicant was charged with criminal offence under the Indian Penal Code (supra) and later-on he was purged of the charges in the year 2009 by a judicial verdict. We intended to record the statement of the applicant but learned counsel appearing for the applicant fairly and candidly admitted that the applicant was acquitted of the charges in the criminal case in the year 2009. It appears that there has been a

deliberate omission and commission on the part of the applicant for matter of that on the part of the counsel appearing for the applicant to divulge the factum with regard to pendency of criminal case (supra).

12. Since the concealment of facts from the court or Tribunal amounts to committing contempt and since Tribunal is a court under the Act, the applicant is held guilty of perjury. However keeping in view the young age and his statement of unemployment, we feel called to take a lenient view.

13. Now coming to question who should be burdened with the cost, we feel called to say that since relevant material facts have not been disclosed by the learned counsel himself while drafting pleading on record, it shall be appropriate that the counsel should be burdened with the cost which we propose to impose in this case. Another reason for imposing the burden of cost on the counsel is that till last moment of the argument, the learned counsel tried to defend the action of the applicant submitting that the applicant was not at fault, without admitting the guilt fairly at the very threshold of the arguments.

14. Taking cue from the aforesaid case, we feel called to impose cost in the instant which we quantify at Rs 1000/-. The cost shall be deposited by the counsel for

the Applicant within one month. The cost shall be deposited with the Registry of this Tribunal and remitted to Armed Forces Tribunal Bar Association for being utilised for upgradation of its Library.

**(Air Marshal Anil Chopra)**  
**Member (A)**

**(Justice D.P. Singh)**  
**Member (J)**

**MH/-**