

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

**A.F.R.
(Court No. 1)
List 'A'**

Original Application No. 113 of 2016

Monday, this the 17th day of April, 2017

**“Hon’ble Mr. Justice D.P. Singh, Member (J)
Hon’ble Air Marshal Anil Chopra, Member (A)”**

No. 5051012M Rect/ER Surya Kumar S/O Shyam Lal Unit 1st
Gorkha Rifle Regimental Centre (14 GTC), R/O H.No. 592/252
Rathindra Nagar, Telibagh, Lucknow-226002.

-Applicant

Ld Counsel for the applicant **-Shri TB Srivastava, Advocate**

Versus

1. Union of India, through the Defence Secretary, Ministry of Defence, South Block, DHQ, PO, New Delhi.
2. Chief of Army Staff, IHQ MoD (Army) South Block, DHQ, PO, New Delhi-110011.
3. Adjutant General (Recruitings) IHQ, MoD (Army), Sena Bhawan, DHQ, PO: New Delhi-110011.
4. The Commandant, 1st Gorkha Regimental Centre (14 Training Battalion) Subathu (Shimla Hilla), PIN-900295 C/O 56 Army Post Office, PIN-000-056.
5. Chief Records Officer, 14 Gorkha Records, PIN-900295, C/O 56 Army Post Office, PIN-000-056.
6. Director Recruiting, HQ Recruiting Zone, Lucknow (U.P.) PIN-908544, C/O 56 APO.

Ld. Counsel for the respondents **Dr. Shailendra Sharma Atal,
Advocate assisted by
Maj Piyush Thakran,
OIC Legal Cell.**

ORDER (Oral)

1. The present O.A. has been preferred by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 being aggrieved with order of dismissal.
2. Heard Shri T.B. Srivastava, Ld. Counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents assisted by Maj Piyush Thakran, OIC Legal Cell and perused the records.
3. The brief facts of the case are that the applicant was recruited in the Indian Army in Gorkha Rifles on 18.06.2013. He had undergone basic military training and despatched for trade training at Secunderabad for equipment repairs. He was paid salary from 15.07.2013 to 30.06.2014 i.e. for about twelve months. While undergoing trade training at Secunderabad, he was recalled and served a show cause notice on 11.04.2014 in pursuance to power conferred under Section 20 of the Army Act, 1950 read in conjunction with Rule 17 of Army Rules, 1954 for the charge of fraudulent enrolment regarding certain alleged fabricated documents.
4. It has been submitted by Ld. Counsel for the applicant that after receipt of reply to show cause notice, the show cause notice was cancelled by Col Kapil Sood, Training Battalion Command, copy of which has been filed as annexure No A-11. Order dated

12.04.2014 (Annexure A-11 to the O.A.) shows that Col Kapil Sood, Training Battalion Commander had cancelled the notice dated 11.04.2014 (Annexure A-10 to the O.A.).

5. It appears that on 16.07.2014 the applicant was asked to leave the training before attestation in Gorkha Regimental Centre and to refund a sum of Rs 8,400.00.

6. The applicant filed Writ Petition No 5532 of 2014 in High Court of Judicature at Allahabad, Lucknow Bench, Lucknow. The Division Bench of the Lucknow Bench of the High Court vide order dated 11.08.2014 passed in Writ Petition (supra) directed that since no notice was served, the applicant may file objection within one month which was directed to be disposed of expeditiously. For the period of one month or till the disposal of objection, status quo was directed to be maintained by the parties. Order dated 11.08.2014 for convenience sake is reproduced as under:-

“Heard learned counsel for the parties and perused the pleadings of the writ petition.

Admittedly, no notice was served upon the petitioner against the impugned notice.

Liberty is given to the petitioner to file objection within one month from today. In case, such an objection is filed as aforesaid, the same shall be decided after affording opportunity of hearing to the petitioner expeditiously say within a period of one month from the date of filing of the objection by a speaking and reasoned order and communicate the decision, so taken, to the petitioner.

For the period of one month or till the disposal of objection, whichever is earlier, status-quo as it exists today, shall be maintained by the parties.”

7. Ld. Counsel for the respondents Dr. Shailendra Sharma Atal submits that neither any pleading has been made nor any document has been brought on record by the applicant to show that in pursuance of order passed by the Division Bench of the High Court dated 11.08.2014 passed in Writ Petition No 5532 of 2014 (supra) the applicant had approached the competent authority including the District Magistrate/Collector, Barabanki and filed any objection against the alleged fraudulent act allegedly committed by the applicant in fabricating record for the purpose of enrolment in the Army.

8. Evidence with regard to commission of fraud is based on factually disputed facts, but in spite of liberty granted by the High Court, the applicant has not filed any objection with the District Magistrate/Collector concerned or even with Army authorities. In consequence thereto the decision taken by the respondents with regard to commission of fraud does not seem to suffer from impropriety or illegality. The opportunity granted by the High Court by judgment and order dated 11.08.2014 has not been availed by the applicant for reasons best known to him. In case the District Magistrate/Collector concerned or the Army authorities would have been approached by the applicant and they would not have had decided the issue/dispute, then option with the applicant was to file a contempt petition in view of Article 215 of the Constitution of India or under the Contempt of Courts Act. In case the applicant would have moved appropriate application before the District Magistrate/Army,

then the factual controversy with regard to alleged fraud could have been sorted out. It is trite law that ‘fraud vitiates solemn act’. Accordingly, even if there are certain irregularities committed by the respondents, since the applicant has not made any effort to clear the picture with regard to alleged fraud in spite of judgment of the High Court, it shall be presumed that the decision taken by the Army authorities with regard to dismissal from service on account of alleged commission of fraud seems to be based on correct findings of fact, and in such situation we do not feel it proper to interfere with the decision taken by the respondents so far as dismissal from service based on material on record is concerned.

9. Ld. Counsel for the respondents placed reliance upon Section 23 of the Army Act, 1950. Section 23 (supra) is reproduced as under:

“Certificate on termination of service.-
Every junior commissioned officer, warrant officer, or enrolled person who is dismissed, removed, discharged, retired or released from the service shall be furnished by his commanding officer with a certificate, in the language which is the mother tongue of such person and also in the English language setting forth-

- (a) *the authority terminating his service,*
- (b) *the cause of such termination, and*
- (c) *The full period of his service in the regular Army.”*

(Emphasis supplied)

10. Ld. Counsel for the respondents submitted that Section 23 of the Army Act, 1950 would not be applicable since the applicant was

not attested at the time when his services were dispensed with. Apart from it, he submitted that part II order has already been passed which indicates that the applicant has been dismissed from service.

11. A plain reading of Section 23 (supra) indicates that it applies to junior commissioned officer, warrant officer as well as 'enrolled person' who is removed or discharged from service. Though the applicant was not attested, but he was enrolled in the Army and in consequence thereto he has undergone different trainings with salary for about a year.

It is well settled proposition of law that while interpreting statutory provision, it should be considered word by word, para by para and no provision or fraction of provision should be made redundant. Meaning should be given to each and every word used by Legislature. In the present case, the Legislature in its wisdom has used the word 'enrolled person', hence it is not open to exclude these words while giving meaning to Section 23 of the Army Act, 1950. The applicant being enrolled person seems to be entitled to communication of the order by the respondents keeping in view the letter and spirit of Section 23 of the Army Act, 1950.

12. So far as issuance of Part-II order is concerned, it is a ministerial act liable to be complied with at later stage by publication in official Gazette. Part-II order cannot be substitute of provision contained in Section 23 of the Army Act, 1950. Section 23 (supra) is mandatory in nature and its non-compliance may be fatal.

13. At this juncture, we may notice that while filing counter affidavit, the respondents have not given any reply to the pleadings contained in Para 4 (c) of the O.A. with regard to non service of dismissal order, hence an inference may be drawn that order of dismissal in compliance of Section 23 of the Army Act, 1954 has not been served.

12. In view of above, though we are satisfied that provision of Section 23 of the Army Act, 1950 has not been complied with, but we refrain to set aside the order of dismissal keeping in view the fact that the judgment of the High Court (supra) has not been complied with and the applicant has not approached the concerned authority to clear the alleged allegation of fraud. However, we direct the respondents to communicate the order of dismissal to the applicant keeping in view the letter and spirit as contained in Section 23 of the Army Act, 1950, expeditiously, say, within a period of six weeks from today. OIC Legal Cell shall communicate the order to the appropriate authority. After receipt of order, it shall be open to the applicant to approach the appropriate forum for redressal of his grievance, if advised.

13. With the aforesaid direction we **dispose** of the O.A. finally.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

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

Dated: April 17, 2017
anb