

A.F.R.
Court No. 2
Reserved Judgment

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

Original Application No. 171 of 2016

Wednesday this the 23rd day of August, 2017

Hon'ble Mr. Justice S.V.S.Rathore, Member (J)
Hon'ble Lt Gen Gyan Bhushan, Member (A)

Mukesh Kumar S/o Uday Raj, R/o Village Dashwatpur, Post-Beerampur, District Sant Ravidas Nagar (Bhadohi).

..... **Applicant**

By Legal Practitioner: Shri K.N. Bind, Advocate
Learned Counsel for the Applicant.

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.

Or

(Integrated Head Quarters of Ministry of Defence, Adjutant General's New Delhi).

2. Brigadier Commandant, 2 ASC Training Centre, Bangalore.

3. Staff Officer of Centre Headquarter Office 2 ASC, Training Centre, Bangalore-560007.

4. Army Recruit Officer, Varanasi.

..... **Respondents**

By Legal Practitioner: Dr. Shailendra Sharma Atal,
Learned Senior Standing Counsel
for the Central Government.

ORDER

Per Hon'ble Mr. Justice S.V.S. Rathore, Member (J)

1. The instant Original Application under Section 14 of the Armed Forces Tribunal Act, 2007 has been filed by No.14876474M Ex Rect/MT Mukesh Kumar (herein after referred to as the 'Applicant') with the following prayers :-

“(i) To issue a suitable order or direction in the nature of certiorari quashing the impugned order dated 23.04.2016 passed by respondent no.2 shown as Annexure No.1 to this original application in compilation no.1.

(ii) To issue a suitable order or direction by way of mandamus directing the respondents to permit the applicant for working on service and training in the respondent department.

(iii) To issue a suitable order or direction by way of mandamus directing the respondents to pay the regular month to month to the applicant.”

2. Brief facts necessary for the purposes of the instant case may be summed up as under :

3. The Applicant was enrolled in the Army on 23rd June 2015 from ARO Varanasi. After his recruitment, the Applicant reported to 2 ASC Training Centre, Bangalore on 10th January 2016 for technical training which commenced on 11th January 2016 and was undergoing training. Verification of the character form submitted by the Applicant was forwarded to the District Magistrate, District Bhadohi, U.P. by the Administrative Battalion vide letter dated 10th October 2015. The District Magistrate, District Bhadohi, U.P. vide his letter dated 2nd January 2016 reported that on verification of the Applicant's character and antecedents from police station Suriyawan, it has been found that the Applicant is involved in a criminal case vide case no.245/14 under Sections 325, 323, 504, 506 IPC. A Show Cause Notice was issued by the Commandant, 2

ASC Training Centre, Bangalore to the Applicant on 05th April 2016 stating therein that as per the remarks of the District Magistrate on verification form, the Applicant has not been recommended fit for service in the Army and the Applicant was given an opportunity to reply the said Show Cause Notice in writing within four days. The Applicant filed his reply on 8th September 2016 (this date appears to be wrong, but it is mentioned in O.A.) to the show cause notice dated 05th April 2016 stating therein that the Applicant has been falsely implicated in a dispute of land between his father and brother of his father and that the Applicant was not present at the time of occurrence. The Applicant came to know about his involvement in the criminal case only by knowledge and report of the District Magistrate at the verification roll. The Applicant has never been arrested by the police nor has been sent to jail and he has not been punished in any criminal case till date. Finding the explanation to be unsatisfactory, in exercise of powers under Section 8 of the Army Act, 1950, the Applicant was dismissed from service vide order dated 23.04.2016. Feeling aggrieved by the said order of dismissal, the instant O.A. has been filed by the Applicant.

4. The impugned order has been challenged mainly on the ground that his involvement in the criminal case was a fact which was not within his knowledge and he came to know about his involvement only through the verification report. The next ground of challenge is that the criminal case in which the Applicant is alleged to be involved is of a petty nature and keeping in view the petty nature of the offence, the competent authority ought to have condoned such an involvement and the order of dismissal is apparently wrong.

5. Learned counsel for the Applicant, in support of his submissions, has placed reliance on several judgments of the Hon'ble Apex Court, which shall be considered at the relevant part of the judgment.

6. On behalf of the respondents, it has been argued that the show cause notice to the Applicant was issued on 07th April 2016 and not on 05th April 2016 and the reply to the same was given by the Recruit Mukesh Kumar on 11th April 2016 and not on 08th September 2016. It is submitted that the Applicant was dismissed from service on 23rd April 2016 by the orders of the Commandant, 2 ASC Training Centre, Bangalore in accordance with the instruction contained in Para 25 (a) of Integrated Headquarters of Ministry of Defence, Adjutant General's Branch letter No.A/04153/Rtg 5 (OR) (d) dated 13th November 1978.

7. It has also been pleaded that the action taken by the respondents is based on the report received by the District Magistrate, District Bhadohi on the verification roll of the Applicant. Copies of the verification roll, show cause notice given to the Applicant dated 07th April 2016 and explanation furnished by him have been annexed with the counter affidavit.

8. On behalf of the Applicant, a copy of the plaint of Civil Suit No.513 of 1987 pending in the Court of Addl. Civil Judge (Junior Division), Gyanpur District Bhadohi and a copy of the NCR and copy of the charge sheet filed in the case filed by the police after investigation of the case dated 19th April 2015 have been filed.

9. The submission of the Applicant is that the fact of pending criminal case was not within his notice and even otherwise the case was of such a petty nature, that it ought to have been ignored.

10. On the contrary, it has been argued on behalf of the respondents that it is not only a case where the Applicant has been found to be involved in a criminal case, but he has also suppressed an important information regarding his involvement in a criminal case in the verification form and this itself is a valid ground for the competent authority to exercise discretion against the Applicant.

11. Learned counsel for the Applicant in support of his arguments, has placed reliance on the pronouncements of Hon'ble the Apex Court in the case of **Secretary, Department of Home Secretary, Andhra Pradesh & others vs B. Chnnam Naidu** {2005 (2) SCC 746} and also on the pronouncement of Hon'ble Apex Court in the case of **Commissioner of Police vs. Sandeep Kumar** {2011 (4) SCC 644}.

12. Learned counsel for both the sides have also placed reliance on the pronouncement of the Hon'ble Apex Court in a recent judgment in the case of **Avtar Singh vs. Union of India & ors** {2016 (8) SCC 471}, whereby the point involved in this case has been decided by the Larger Bench of Hon'ble the Apex Court.

13. It is not undisputed that the Applicant was not involved in a criminal case, as mentioned above and this fact was not mentioned by him in the verification form. The defence of the Applicant is that the fact of his involvement was not known to him and secondly that the offence was of petty nature. It transpires from perusal of the judgment of the Larger Bench of the Hon'ble Apex Court in the case of Avtar Singh (supra) that because of the conflict of opinion in the various decisions of the Hon'ble Apex Court, as noticed by the Hon'ble Apex Court in the case of **Jainendra Singh vs. State of U.P. through Principal Secretary, Home & others** {2012 (8) SCC 748}, the question was referred to the Larger Bench, which is clear by the opening paragraph of the said judgment, which is reproduced as under :

"1. The cases have been referred to for resolving the conflict of opinion in the various decisions of Division Benches of this Court as noticed by this Court in Jainendra Singh v. State of U.P. through Principal Secretary, Home & Ors. (2012) 8 SCC 748. The Court has considered the cleavage of opinion in various decisions on the question of suppression of information or submitting false information in the verification form as to the question of having been criminally prosecuted, arrested or as to pendency of a criminal case. A Division Bench of this Court has expressed the opinion on merits while referring

the matter as to the various principles to be borne in mind before granting relief to an aggrieved party.”

14. After considering the several judgments of the Hon’ble Apex Court, the Larger Bench in the case of Avtar Singh (supra) has concluded as under :

“30. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

(1) Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

(2) While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

(3) The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

(4) In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted :

(a) In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

(b) Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

(c) If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

(5) In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

(6) In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.

(7) In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

(8) If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

(9) In case the employee is confirmed in service, holding Departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

(10) For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for."

15. We have carefully gone through the entire judgment in the case of Avtar Singh (supra). It is clear from perusal of the said judgment that the two case laws, which have been mentioned above and relied upon by the learned counsel for the Applicant, have been considered in this case and not only these two cases, but the Hon'ble Supreme Court has considered several other cases and because of the difference of opinion of different Benches, Larger Bench has concluded as above. Therefore, the conclusions of the Hon'ble Larger Bench shall prevail.

16. Before proceeding further in this matter, we would like to bring on record the Verification Roll which the applicant was

required to fill at the time of his enrolment, which is reproduced as under:

“Appendix ‘D’

(Refer to Para 23 of Army HQ letter No
A/04153/Rtg 5 (OR) (d) dated 13 Nov 78)

VERIFICATION ROLL-AMENDMENT TO

The following amendments are made in the verification of Combatant (IAFK-1152(Revised)):-

Heading

- (a) Delete the present heading and substitute as under:-

‘Verification Roll for Combatant Recruits’

- (b) Column 15.

Delete the existing entry and substitute as under :-

- | | |
|---|--------|
| (a) Have you ever been arrested? | Yes/No |
| (b) Have you ever been prosecuted? | Yes/No |
| (c) Have you ever been kept under detention? | Yes/No |
| (d) Have you ever been bound down? | Yes/No |
| (e) Have you ever been fined by a Court of Law? | Yes/No |
| (f) Have you ever been convicted by a Court of Law for any offence? | Yes/No |
| (g) Have you ever been debarred from any Examination or rusticated
By any University or any Educational Authority/Institution? | Yes/No |
| (h) Have you ever been debarred/dis-qualified by any public Service
Commission for any of its Examination/selection? | Yes/No |
| (j) Is any case pending against in any court of law at the time
Of filling up this verification Roll? | Yes/No |
| (k) Is any case pending against you in any University or any other
Educational Authority/ Institution at the time of filling up this
Verification Roll? | Yes/No |
- (i) If the answer to any of the above mentioned questions is ‘Yes’ give Full particulars of the case/arrest/detention/fine/conviction/sentence/punishment etc. and/or the nature of the case pending in the Court/University/Educational Authority etc. at the time of filling up this Roll.

NOTE : Specific answers to each of the question should be given by striking out ‘Yes’ or ‘No’ as the case may be.

WARNING : The furnishing of false information or suppression of any factual information in the verification roll would be a disqualification, and is likely to render the candidate unfit for employment under the Government.”

- (c) Under column 16 above the signature of enrolling officer
Add : ‘Signature of the candidate’

Admittedly, the Applicant in this case has given answer 'NO' in reply to Column 15(i)(j). Apart from it, there was a specific warning that in case any false information is given, then it is likely to render the candidate unfit for employment. Thus, the Applicant from the very beginning was aware of the consequences of concealment of such a fact.

17. Learned counsel for the respondents has drawn our attention towards conclusion nos. (4) A and (8) of the Avtar Singh's case (supra). The first defence of the learned counsel for the Applicant is that the fact of pendency of the criminal case was not within the knowledge of the Applicant, but this aspect is covered by conclusion no.(8). Even in such cases, it is the discretion of the competent authority to take decision after considering the seriousness of the crime. Therefore, even if the defence of the Applicant is taken to be true, then also the competent authority had a discretion to consider the verification report and take a decision. It is also the case of suppression/giving false information at the time of enrolment and this aspect is covered by conclusion no.(4). Admittedly in the facts of the instant case, the criminal case is still pending and has not been decided. A perusal of the NCR shows that all the four named accused persons have committed offence in furtherance of their common intention. However, the police after investigation, has filed charge sheet against the three accused persons under Sections 308, 325, 504, 323 and 506 IPC and against the accused applicant Mukesh Kumar, the charge sheet has been filed under Sections 323, 504 and 506 IPC. Learned counsel for the Applicant has not filed the statements of the witnesses recorded during investigation to show on what basis the police came to such a conclusion that the role of the applicant was distinguishable from the other accused persons. A perusal of the plaint of the civil suit shows that the civil suit was pending between Ram Khelawan vs Shri & others from the year 1987, while the incident in which the Applicant

is involved, took place in the year 2014 i.e. after about 24 years of the said case. Therefore, the pendency of the said civil dispute cannot be said to be an immediate motive for such an offence or false implication. It is pertinent to mention here that neither the Applicant nor his father Udai Raj Yadav is a party in the said civil suit nor the complainant or any of the accused in the criminal case was a party in the said civil suit. It is unbelievable that the involvement of the Applicant was not known to him while his other family members were also accused in that case. We cannot lose sight of the ground reality that registration of a criminal case with the police is a notorious event in rural areas which is known to all the persons of the village particularly when the family members of one and the same family are involved.

18. Learned counsel for the Applicant has laid much emphasis on the ground that the case against the Applicant was of a petty nature and the Hon'ble Supreme Court, while concluding Avtar Singh's case (supra), has mentioned that cases of petty nature may be ignored. Hon'ble Supreme Court has considered the cases trivial in nature, wherein conviction had been recorded, such as shouting slogans at young age of a petty nature. In the instant case, the applicant was arrayed as an accused in a criminal case which after investigation was found to be under Sections 308, 325 IPC, though the police after investigation has not found the involvement of the applicant under Section 308 IPC. Admittedly in the verification form, the Applicant has specifically mentioned his reply in negative to the question whether he was engaged or associated with other subversive/criminal activities. It is nowhere the defence of the Applicant that the verification report is false.

19. The competent authority has exercised its discretion against the Applicant. Unless and until the discretionary powers have been exercised in such a manner which shocks the conscience of the Court or Tribunal, normally a Court or Tribunal refrains from

substituting its opinion after reappraisal of facts. When the character or the previous antecedents of a person joining the Armed Forces are concerned, a different and highest standards have to be maintained because the Members of the Armed Forces are expected not only to be different, in their official life, but in their personal life also. The Members of the Armed Forces are required to be honest and fair in their day to day life and public dealings also. Involvement in a criminal case coupled with the suppression of the said information, while joining the service makes the conduct of the Applicant serious.

20. Procedure for enrolling a person in the Army is provided under Section 13 of the Army Act, 1950, which reads as under :

*“13. **Procedure before enrolling officer.**—Upon the appearance before the prescribed enrolling officer of any person desirous of being enrolled, the enrolling officer shall read and explain to him, or cause to be read and explained to him in his presence, the conditions of the service for which he is to be enrolled and shall put to him the questions set forth in the prescribed form of enrolment and shall, after having cautioned him that if he makes a false answer to any such question he will be liable to punishment under this Act, record or cause to be recorded his answer to each such question.”*

After initial recruitment, if a person is found to be fit in service, he has to be attested as per the mode of attestation provided in Section 17 of the Army Act, 1950. A perusal of Section 17 of the Act provides that a person if declared fit for duty, shall be attested. In the facts of the present case, the Applicant, because of the adverse report on the verification, showing his criminal antecedents, was reported to be not fit for service and after giving a departmental notice seeking his explanation, in exercise of powers under Section 13(3)(iv) of the Table of the Army Act, he was dismissed from service by the Commanding Officer.

21. The submission of the learned counsel for the Applicant is that the order of dismissal is disproportionate to the mistake committed by the Applicant. Since the Applicant has been dismissed from service, he is not eligible to get any Government job

throughout his life. In similar circumstances, the Hon'ble Supreme Court in the case of **Sanjay Kumar Bajpai vs. Union of India & others** (1997) 10 SCC 312 wherein on a verification report submitted by the District Magistrate, Lucknow against the petitioner, he was discharged from service and the said order of discharge was upheld by the Hon'ble High Court and also by the Hon'ble Supreme Court. Therefore, keeping in view the facts and circumstances, in our considered view the order of discharge instead of order dismissal would have been the appropriate order.

22. Accordingly, this O.A. deserves to be partly allowed.

23. This O.A. is hereby **partly allowed**. The punishment of dismissal from the service is hereby modified to discharge from service.

24. In the circumstances of the case, no order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

(Justice S.V.S.Rathore)
Member (J)

Dated: August , 2017.

PKG