

AFR
Court No. 2
Reserved Judgment

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

Original Application No. 200 of 2013

Friday this the 24th day of November, 2017

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

Dinesh Kumar [No. 15435668H Rect/NA] son of Shri Ram Balee Yadav, resident of Village-Hathauda (Madai), Post Office-Rampur, Police Station - Khanpur, Tehsil - Saidpur, District - Ghazipur (Uttar Pradesh).

..... **Applicant**

By Legal Practitioner: Shri Yashpal Singh, Advocate
Learned Counsel for the Applicant.

Versus

1. Union of India, through the Secretary to Government of India, Ministry of Defence, New Delhi.
2. General Officer Commanding-in-Chief, Central Command, Lucknow.
3. Commanding Officer, No. 2 Military Training Battalion, AMC Centre and College, Lucknow.

..... **Respondents**

By Legal Practitioner: Shri Amit Sharma, Learned Standing
Counsel for the Central Government.

ORDER

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

1. The instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers :-

“(a) Issuing/passing of an order or direction to the respondents setting aside the proceedings and sentence of the Summary Court Martial dated 10.05.2012 held by the Commanding Officer, No. 2 Military Training Battalion, AMC Centre and College, Lucknow; and the order dated 14.01.2013 passed by the General Officer Commanding-in-Chief, Central Command, Lucknow whereby the petition/appeal of the applicant against his dismissal from service has been rejected.

(b) Issuing/passing of an order or direction to the respondents to grant all consequential service benefits to the applicant including reinstatement and continuity of service and payment of arrears of salary from the date of his dismissal from service with interest at the prevailing rate.

(c) Issuing/passing of any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(d) Allowing this Original Application with cost.”

2. The facts necessary for the purposes of instant Original Application may be summarised as under :

3. The Applicant was enrolled on 25.06.2011 in the Army Medical Corps of the Indian Army. On 21.01.2012, a tentative charge sheet was issued against the applicant under section 44 of the Army Act, 1950 alleging that at the time of enrolment he wilfully gave false answer to a question about the pendency of a criminal case against him. Summary of Evidence was recorded on 10.02.2012. On 02.05.2012, a charge sheet was issued against the applicant under section 44 of the Army Act, 1950 alleging that at the time of enrolment he wilfully gave false answer to a question about pendency of the criminal case in any Court of Law. Summary Court Martial (SCM) was held on 10.05.2012, the applicant pleaded guilty,

as such, the Court proceeded on the plea of guilty and the applicant was sentenced with the punishment of dismissal from service on the same day. The applicant submitted a petition on 10.06.2012 to the GOC-in-C, Central Command against the punishment inflicted by the SCM. On 09.08.2012, a supplementary petition was again submitted during pendency of the earlier petition where applicant has raised some additional grounds. Ultimately, the GOC-in-C, Central Command vide order dated 14.01.2013, rejected the above mentioned two petitions of the applicant. Hence the present Original Application.

4. Learned counsel for the applicant has not alleged any procedural irregularity in conduct of the SCM proceedings. His arguments are two folds. He has submitted that the two other recruits who faced the similar charges were given different punishment ie. imprisonment only and will not dismissed from service. He has also argued that the applicant was only 16 years of age at the time of his enrolment and at present he is only 27 years of age. Because of the dismissal order, he is not considered eligible for any Government job. The main emphasis of the learned counsel for the applicant is that in the Battalion of the applicant similar charge was faced by two other recruits, namely Lalu Prasad and Siya Ram. The Commanding Officer, however, awarded them punishment of 45 days rigorous imprisonment but they were retained in service. Thus the applicant has been discriminated on the point of punishment.

5. **Per contra**, learned counsel for the respondents has submitted that the case of Lalu Prasad, recruit was entirely different because his case was acquitted prior to his enrolment while the case of the other recruit Siya Ram was tried by the other Commanding Officer who took a different view on punishment. His submission is that the applicant has to make out his own case and he cannot seek parity on the point of punishment because the punishment is based on several factors which has to be considered by the authority concerned. It

has also been pleaded that if argument of the learned counsel for the applicant is accepted then it would mean that in all such types of cases, the punishment of dismissal from service cannot be given and only punishment of imprisonment can be inflicted for such concealment.

6. Learned counsel for the applicant has placed reliance of the pronouncement of the Hon'ble The Apex Court in the case of **Commissioner of Police and other vs Sandeep Kumar** reported in 2011 (4) of SCC 644.

7. On issue of determining suppression or false information in attestation/verification form there was difference of opinion expressed by Coordinate Benches of the Hon'ble The Apex Court, therefore, a larger Bench was constituted to consider this point. The larger Bench in the case of **Avatar Singh vs. Union of India and others 2016(8) SCC 471** after considering all the cases 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.”

8. 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 case law, which has been mentioned above and relied upon by the learned counsel for the applicant, has been considered in this case and not only that case, 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.

9. In the facts of the instant case, the applicant has admitted during the SCM that he has concealed this fact, however, he has requested for the lenient punishment. Since no procedural illegality for violation of any mandatory provisions is alleged by the applicant during course of his arguments, therefore the only point remains to be considered is the quantum of punishment.

10. Learned counsel for the applicant has laid much emphasis on the ground that the criminal 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 has 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. 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.

11. 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 standard has to be maintained because the Members of the Armed Forces are expected not only to

be different, in their official life, but also in their personal life. The Members of the Armed Forces are required to be honest and fair in their day to day life as also in public dealings. Involvement in a criminal case coupled with the suppression of the said information, while joining the service makes the conduct of the Applicant serious.

12. 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 his trial by SCM, he was dismissed from service by the Commanding Officer.

13. 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 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 the order of dismissal would have been the appropriate order.

14. We find substance in the submission of the learned counsel for the respondents that the difference in quantum of punishment with regard to two recruits was because that two different commanding officer inflicted the punishment and no parity from the said punishment can be prayed as a matter of right. We are in agreement with the alternative submission of the learned counsel for the applicant that the punishment of dismissal from service is too harsh. We are of the view that this submission has substance and keeping in view the aforementioned pronouncements of The Apex Court. We are of the considered view that the order of dismissal deserves to be modified to discharge from service.

15. Accordingly, this Original Application deserves to be partly allowed and is hereby **partly allowed**. The finding of the SCM is hereby confirmed, however, the punishment of dismissal from service is hereby modified to discharge from service. With the aforesaid modification, this Original Application No. 200 of 2013 stands finally disposed of.

16. No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

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

Dated: November , 2017.

RPM/-