

**AFR**  
**Court No. 2**  
**Reserved Judgment**

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

**Transferred Application No. 44 of 2016**

**Friday this 19th day of January, 2018**

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

**Hon'ble Lt Gen Gyan Bhushan, Member (A)**

Sundra Singh son of Shri Kalyan Singh  
R/o Basantpur, Danda, P.O. Dijunda,  
District-Badaun.

..... **Petitioner**

By Legal Practitioner: Shri PN Chaturvedi, Advocate  
Learned Counsel for the Petitioner.

Versus

1. The Union of India, through, Ministry of Defence,  
New Delhi – 110001.
2. The Chief of the Army Staff,  
Army Head Quarter, R.K. Puram,  
New Delhi – 110001.
3. The Commanding Officer,  
2/1 Training Regiment Artillery Centre,  
Hyderabad.

..... **Respondents**

By Legal Practitioner: Shri Ashish Agnihotri,  
Learned Standing Counsel for the Central  
Government assisted by Maj Rajshri Nigam,  
Departmental Representative.

**ORDER**

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

1. Initially Writ Petition No.3327 of 2003 was preferred by the petitioner before the Hon'ble High Court of Judicature at Allahabad and under the order dated 26.05.2016 of the Hon'ble High Court of Judicature at Allahabad, it was transferred to this Tribunal and registered as T.A.No.44 of 2016 in pursuance of the provisions contained in Section 34 of the Armed Forces Tribunal Act, 2007 and now processed for hearing after exchange of affidavits.

2. By means of the instant T.A., the petitioner has made the following prayers:-

*“(i) to issue a writ, order or direction in the nature of certiorari quashing the impugned sentence awarded by respondent no.3 (Annexure 3),*

*(ii) to issue a writ order or direction in the nature of mandamus commanding the respondent no.2 to pass an appropriate order on the application/representation made by the petitioner dated 23.05.2002 (Annexure No.4 to the writ petition),*

*(iii) to issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case,*

*(iv) to award the cost to the petitioner.”*

3. The admitted facts as per the pleadings of the parties, are that the petitioner was enrolled in the Indian Army from BRO, Bareilly on 09<sup>th</sup> October 2000. He was despatched to Hyderabad Artillery Centre for his training and the Commanding Officer thereafter after completion of the documentation was allotted Army No.15145468F. During training period, the petitioner fell ill, so on his own request, he was discharged from the Army on 22.10.2000 i.e. after few days of his enrolment. The petitioner reported to Battery at Hyderabad for Advance Training from 31.12.2001. He was interviewed by the Bry Cdr the petitioner was called by Subedar Harjinder Singh and told him all detail. The allegations against the petitioner is that when he was enquired after enrolment regarding his previous enrolment in any Armed Forces, then in the reply to the said query, he answered NO. When the fact of earlier enrolment came to the

notice, then the petitioner was tried by the Summary Court Martial (herein after referred to as the “SCM”) was charge sheeted as under:

**CHARGE SHEET**

*The accused No. 15145468F Rect/Gnr(GD) Sundra Singh of 2/1 Training Regiment, Artillery Centre, Hyderabad-31 is charged with :-*

**AA Sec 44      *MAKING AT THE TIME OF ENROLMENT A WIL-FULLY FALSE ANSWER TO A QUESTION SET FORTH IN THE PRESCRIBED FORM OF ENROLMENT WHICH WAS PUT TO HIM BY THE ENROLLING OFFICER BEFORE WHOM HE APPEARED FOR THE PURPOSE OF BEING ENROLLED***

*in that he,*

*at Arty Centre, Hyderabad-31 on 11 Jul 01, when appeared before, Enrolling Offr for the purpose of being enrolled for service in the Regt of Arty as a Soldier GD, the question put to him by the enrolling officer as to ‘Have you ever served in the Indian Armed Forces, the Reserve, the Territorial Army, the forces of any State, the Nepalese Army, the British Gorkha Brigade, any Police force or former Provincial Government? If so, state in which and the cause of discharge’. Answered ‘No, which he knew was false and got himself re-enrolled.*

*Station : Hyderabad – 31*

*Date : 15 Feb 2002*

*Sd/-x-x-x-x-x*

*(SS Kingra)Colonel  
Commanding Officer  
1 Training Regiment  
Artillery Centre  
Hyderabad-31*

4. In the Summary of Evidence, statement of PW1 BHM Rambir Singh PW2 Subedar Harjinder Singh and PW3 Hav (Clk) Sugunan EB were recorded. The petitioner was given opportunity to cross-examine these witnesses. However, he declined to cross examine these witnesses. In the SCM proceedings, the petitioner pleaded guilty and gave the following statement “I have lot of problems at home and under these compulsion, did this mistake. I want to serve in the Army and I must be permitted to do so. I will never do this type of mistake again.” On the basis of this plea of guilty, the petitioner was punished by the SCM and was also sentenced to undergo imprisonment for one month and 15 days.

5. Admittedly, the petitioner has not preferred any statutory petition before the competent authority and has challenged the punishment inflicted by the SCM by filing the aforementioned writ petition. The submission of the learned counsel for the petitioner is that there is defect in the charge sheet, wherein wrong particulars of the petitioner have been mentioned. He has also argued that his enrolment in the Army has not been proved, as per

Section 141 of the Army Act. He has also argued that there was violation of Army Rule 115 (2) and that copy of the enrolment form was not given to him as such and in view of the aforementioned procedural defects, the SCM proceedings stands vitiated.

6. On behalf of the respondents, it has been argued that there is a minor defect in the charge sheet and keeping in view of the admitted facts, the petitioner has failed to show that he was in any manner prejudiced in his defence by such mistake in the charge sheet. It has also been argued that in this case the petitioner has been convicted on the basis of his plea of guilty and, therefore, keeping in view the admitted facts, there was no need to prove the said fact by providing copy of the enrolment form as the fact that the petitioner was enrolled twice is an admitted fact.

7. We have also examined the original record. It is an admitted fact that the petitioner was initially enrolled in the Indian Army and after training for few days, he was discharged on his own request and thereafter he was again enrolled after about eight months. When he was enquired about his previous enrolment in any of the Armed Forces, then said query was replied by him in negative.

8. Learned counsel for the petitioner has drawn our attention towards Section 141 of the Army Act, which reads as under :

*“141. **Enrolment paper.** —(1) Any enrolment paper purporting to be signed by an enrolling officer shall in proceedings under this Act, be evidence of the person enrolled having given the answers to questions which, he is therein represented as having given.*

*(2) The enrolment of such person may be proved by the production of the original or a copy of his enrolment paper purporting to be certified to be a true copy by the officer having the custody of the enrolment paper.”*

9. Learned counsel for the petitioner has vehemently argued that the enrolment of the petitioner can only be proved by filing enrolment form, which has not been done and this mistake vitiates the entire proceedings.

10. We have carefully examined this submission of the learned counsel for the petitioner. The charge sheet has been filed against the petitioner regarding his wrong answer during enrolment. It is not in dispute that the

petitioner was enrolled in the Indian Army on two occasions, so the fact that the petitioner was enrolled in the Indian Army was not indispute. It is an admitted fact that the petitioner was enrolled in the Indian Army twice, therefore, the respondents were not obliged to provide copy of the enrolment form to him. At this stage, we would like to quote Section 58 of the Indian Evidence Act, which is reproduced as under :

*“58 Facts admitted need not be proved. —No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:*

*Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.”*

11. Learned counsel for the applicant has also argued that in view of the provision of Section 15 of the Army Act, the petitioner’s enrolment was final and he could not have been dismissed or discharged from service. Section 15 of the Army Act reads as under :

*“15 . Validity of enrolment— Every person who has for the space of three months been in receipt of pay as a person enrolled under this Act and been borne on the rolls of any corps or department shall be deemed to have been duly enrolled, and shall not be entitled to claim his discharge on the ground of any irregularity or illegality in his enrolment or on any other ground whatsoever; and if any person, in receipt of such pay and borne on the rolls as aforesaid, claims his discharge before the expiry of three months from his enrolment, no such irregularity or illegality or other ground shall, until he is discharged in pursuance of his claim affect his position as an enrolled person under this Act or invalidate any proceeding, act or thing taken or done prior to his discharge.”*

12. A perusal of the aforesaid section, shows that the submission of the learned counsel for the petitioner is misconceived. Section 15 of the Army Act deals with the right of the petitioner to seek his premature discharge. He cannot claim his discharge after three months on the grounds mentioned in the section. It does not restrict the power of the Commanding Officer to dismiss or discharge him pursuant to any army/civil offence committed by him. Therefore, this submission has no substance.

13. Law is settled on the point that the facts admitted need not to be proved. During course of arguments, on a query, learned counsel for the petitioner has fairly admitted that the petitioner was enrolled twice in the Indian Army. After his first enrolment, he requested for his discharge only after few days of his enrolment and he was discharged on his own request. In this factual back-ground, how the learned counsel for the petitioner can claim that the petitioner may be prejudiced in his defence by not providing

the copy of the enrolment form. It has nowhere been argued on behalf of the petitioner that his plea of guilty was not voluntary or it was obtained under pressure or coercion. The SCM proceedings are conducted on a prescribed proforma and it has been duly completed. Entire procedure provided after the plea of guilty has been followed and thereafter the SCM has recorded its finding and punishment as stated earlier has been awarded to the petitioner. So simply because the enrolment form was not provided to him, it cannot be said to be a ground to vitiate the SCM proceedings, keeping in view the peculiar factual background of this case.

14. The next submission of the learned counsel for the petitioner is regarding the defect in the charge sheet. We have examined the charge sheet carefully. Admittedly, the petitioner was on training at Artillery Centre, Hyderabad when this SCM proceedings were conducted. A careful examination of the charge sheet shows that virtually it is a mistake of not putting a 'comma' after the words 'Hyderabad 31'. So it was only a typographical error which has not mislead the petitioner, as the language of the charge sheet is clear enough to convey the exact charge which the petitioner has to face. What would be the effect of such defect in the charge sheet. **Keeping in view the language used in the charge sheet, it is clear that no charge of desertion was framed, nor the language used in charge is misleading or confusing.** Charge sheet conveyed the exact charge to the applicant which he had to face. Even under the The Code of Criminal Procedure, 1973, no error, mistake in the charge is considered to be fatal for the trial. We would like to reproduce Section 464 of The Code of Criminal Procedure, which reads as under :-

*“464. Effect of omission of frame, or absence of, or error in , charge. – (1) No finding , sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.*

*(2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may –*

*(a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge.*

*(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit”*

*Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.”*

15. Learned counsel for the petitioner, during the course of arguments, has not made any submission, substantiated by record, that the petitioner's defence was prejudiced in any manner by such mistake in the charge sheet. When he has pleaded guilty, then he has fairly admitted that he has made this mistake because of certain compelling reasons and he shall never repeat it again. Thus, this statement of the petitioner itself shows that he has fully understood the charge which he had to defend. Therefore, in this perspective, we do not find that defect in the charge sheet was of such nature due to which the petitioner's defence was prejudiced. Thus, Law is settled on the point that mere defect in the charge sheet, would not by itself vitiate the trial, unless and until the accused can show that his defence has been prejudiced in any manner.

16. The next submission of the learned counsel for the petitioner is that the punishment awarded to the petitioner was disproportionate. It is admitted that the petitioner has already served out the period of sentence awarded to him by the SCM. It has been argued that the petitioner's dismissal from Army is stigmatic, therefore, the petitioner becomes disentitled from any job in civil because of such dismissal from service. On this point, we would like to examine the legal position. On the point of adequate punishment, we would like to refer the pronouncements of Hon'ble Apex Court in the case reported in AIR 1992 SC (417) **Ex Naik Sardar Singh vs. Union of India & Ors** their Lordship of the Supreme Court have held as under :-

*"This principle was followed in Ranjit Thakur v. Union of India, (1987) 4 SCC 611: (AIR 1987 SC 2386) where this court considered the question of doctrine of proportionality and it was observed thus (at p.2392 of AIR): "The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the conclusive province of the court-martial, if the decision of the court even as to sentence is outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review.*

*(Emphasis supplied)*

17. Hon'ble Supreme Court in the case of **State of Punjab & ors vs Ram Singh Ex. Constable** reported in (1992) 3 SCR 634,

had an occasion to consider what a misconduct means? It has been held that the word misconduct though not capable of precise definition, its reflection receive its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour, unlawful behaviour, wilful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve.

18. Keeping in view the facts of the instant case, the petitioner has only concealed that he was earlier enrolled in the Indian Army. The intention of such concealment, may be to ensure his subsequent enrolment, but a very high standard of administration of truthfulness is expected to maintain the highest degree of discipline in Army, therefore, such a concealment assumes importance, but keeping in view the facts of the instant case and keeping in view the age of the petitioner at that time, discharge from service would have been a more appropriate sentence.

19. Keeping in view the aforementioned legal position, we are of the view that the dismissal from service on this very ground was disproportionate to the offence committed by him. It is true that the stigma of dismissal from service would debar him from getting any other job during his life time Therefore, this Transferred Application deserves to be partly allowed and it is considered appropriate to modify the sentence of dismissal from service to discharge from service. So we hereby consider it appropriate to modify the order of dismissal from service into discharge from service.



20. Accordingly, this Transferred Application No. 44 of 2016 is **partly allowed**. The findings of the SCM are confirmed. The sentence awarded to the applicant is hereby modified only to the extent that his dismissal from service is hereby converted into discharge from service. Applicant is not entitled to any other relief.

No order as to costs.

**(Lt Gen Gyan Bhushan)**  
**Member (A)**

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

Dated: January, 2018.

PKG