

ARMED FORCES TRIBUNAL REGIONAL BENCH, LUCKNOW

Original Application No. 83 of 2013

Monday, the 11th of April, 2016

**(Reserved)
Court No. 1**

**“Hon’ble Mr. Justice Abdul Mateen, Member (J)
Hon’ble Lt. Gen. A.M. Verma, Member (A)”**

Ex-Recruit Shyam Sunder Singh (Army No. 3005192-P) of Rajput Regimental Centre, Fatehgarh (U.P.), son of Shri Brij Bhushan Singh, resident of village Seer Ibrahimpur, Tehsil Fatehpur, P.O. Mawai, District Fatehpur.

..... Petitioner/Applicant

By Shri P.N.Chaturvedi, Counsel for the Applicant.

Versus

1. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110 011
2. Commandant, Rajput Regimental Centre, Fatehgarh (U.P.)
3. Commanding Officer, Training Battalion, the Rajput Regimental Centre, Fatehgarh.
4. Officer-in-Charge, Rajput Regiment Records, Rajput Regimental Centre, Fatehgarh (U.P.)

.....Respondents.

By Shri G.S.Sikarwar, Counsel for the Respondents alongwith Maj Soma John, Departmental Representative.

ORDER

1. This O.A has been filed seeking the reliefs of setting aside the Summary Court Martial (SCM) proceedings dated 5.3.2004 and setting aside the order of the Chief of the Army Staff (COAS) dated 16.6.2004.
2. Facts of the case are that the petitioner was enrolled in the Army at Fatehgarh on 4.9.2002. At the time of enrollment, the Enrollment Form was filled by the Enrolling Officer in which the answers provided by the petitioner were recorded. In reply to a question whether he had been imprisoned in civil jail earlier, the petitioner, as reported by the respondents, gave answer in negative which was recorded by the Enrolling Officer. The Verification Roll was sent by the respondents to the District Magistrate, Fatehpur for verification on 01.11.2002 and was received back from the District Magistrate's office vide their letter dated 17.12.2002. On receipt it was found that page No. 2 of the document had not been filled in. The respondents re-submitted the document for completion to District Magistrate, Fatehpur vide their letter dated 31.12.2002. A communication was received from P.S.Hussainganj vide their letter dated 31.1.2003, which indicated that the petitioner was involved in a criminal case No. 63/02, which had been registered on 4.4.2002 and that the said case was *sub judice*. The respondents sought clarification from the District Magistrate, Fatehpur with regard to Criminal Case No. 63/02 vide their letter dated 5.7.2003. In reply, a

letter dated 6.8.2013 was received which confirmed that there was a criminal case pending against the petitioner. In this response, the Verifying Officer did not indicate any criminal case pending against the recruit in his remarks. The enclosures, however, confirmed the existence of criminal case No. 63/02 under IPC Section 325/323/504 against the petitioner. On receipt of this information, a disciplinary case was instituted against the petitioner and he was tried by SCM on 5.4.2003 on the following charge:

*Army Act
Section 44*

MAKING AT THE TIME OF ENROLMENT A WILFULLY 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 Fatehgarh on 04 Sep 2002, when appearing before the Enrolling Officer, for the purpose of being enrolled for service in The Rajpur Regiment to the question put to him "Have you ever been imprisoned by the civil power or are you under trial for any offence or has any complaint or report been made against you to the Magistrate or Police for any offence"? If so, give details, answered "No Sir" whereas he was involved in Civil case No. 63/2002 under IPC section 325/323/504 registered with Police Station Hussainganj, Fatehpur (UP) on 04 Apr 2002 as per documents received from Police Station Hussainganj, Fatehpur (UP)."*

Place : Fatehgarh (UP)

Dated : 19 Feb 2004

Sd./ Illegible

(P K Singh)

Col

Trg Bn Cdr

The Rajput Regt Centre"

The petitioner pleaded not guilty, consequent to which statements of witnesses were recorded. The SCM recorded findings of guilty against the petitioner and he was dismissed from service on 5.4.2003.

3. The petitioner filed a writ petition bearing No. 12919 of 2004 in Allahabad High Court, which by their order dated 31.3.2004 directed the petitioner to avail the alternative remedy. The petitioner filed a petition before the COAS, which was decided by the COAS vide his order dated 28.2.2005, wherein he upheld the findings and sentence by the SCM. However, the COAS keeping in view the young age of the petitioner and purely on humanitarian ground, remitted the sentence of dismissal and directed that the petitioner be deemed to have been discharged from service with effect from the date his dismissal took effect.

4. The petitioner was represented by Shri P.N.Chaturvedi, his learned counsel. The petitioner has challenged the findings and sentence by the SCM on number of points. The petitioner states that the Enrollment Form had not been filled by him but by the Enrolling Officer. The petitioner also brings out that the P.S.Hussainganj had verified his character, which was not paid heed to by the Court. Further, the petitioner states that he had been acquitted by a civil court by its order dated 30.4.2004. The major point of challenge is non-compliance of Army Rule 22; in that, no competent witness had been examined. There was non-application of mind by the officer hearing the charge and the

witnesses, who had been examined, had nothing to do with the verification. The petitioner states that the competent witnesses should have been examined to establish that the entries made in the Enrollment Form were by the petitioner, which was not done. No evidence was brought before the Court to suggest that the entries in the Enrollment Form had been made by the petitioner. The rejection of his petition by the COAS was done in an illegal and arbitrary manner. Also, the petitioner claims that the friend of accused of his own choice had not been provided.

5. The respondents were represented by Shri G.S.Sikarwar, learned Standing Counsel, duly assisted by Maj Soma John, Departmental Representative. They stated the facts of enrollment of the petitioner and the process of verification. The respondents state that in answer to a question that the petitioner had been imprisoned, the petitioner had replied in the negative and in accordance with the existing practice, the Enrolling Officer made the entry in the Enrollment Form. After it had been established by the district administration that there indeed was a criminal case against the petitioner, for which he had been imprisoned and was out on bail, a Show Cause Notice was served to the petitioner on 25.9.2003 asking him to state as to why he should not be tried by a SCM for the offence he had committed. The petitioner did not reply to the Show Cause Notice. The charge under Army Rule 22 was heard by the Commanding Officer on 14.11.2003, in which three witnesses were

examined whom the petitioner declined to cross-examine. Summary of Evidence was recorded and thereafter the petitioner was tried by SCM on 5.3.3004, wherein he was found guilty and was awarded appropriate punishment. The respondents add that a letter had been sent to P.S.Hussainganj on 22.7.2012, in reply to which P.S.Hussainganj informed that in 2002, there was a criminal case against the petitioner and he was out on bail in the said case when the Verification Roll was sent to them.

6. Heard both sides and examined the document attached with the petition and by the respondents as also the original file of the SCM proceedings.

7. The charge for which the petitioner was tried by SCM is under Army Act Section 44 i.e. to make at the time of enrollment a willfully false answer to a question set forth in the prescribed form of enrollment, which was put to him by the Enrolling Officer, before whom he appeared for the purpose of being enrolled. The petitioner claims that he did not make the entry in the Enrollment Form himself. The procedure is that the entries in the Enrollment Form are made by the Enrolling Officer and not by the candidate and the Enrolling Officer does so on the basis of reply given by the candidate, who in the present case was the petitioner. The relevant issue is; had the petitioner filled in the Enrollment Form himself or had given the statement that he indeed had been imprisoned in civil prison and was out on bail, he would not have been recruited in the

Army. Hence, it is apparent that the petitioner provided wrong answer at the time of enrollment so as to seek enrollment. Providing false answer at the time of enrollment is an offence under the Army Act, for which he was tried by SCM.

8. As regards the infirmities with regard to Army Rule 22 mentioned by the petitioner, we have seen the proceedings of the hearing of tentative charge under Army Rule 22 and find no infirmity in the procedure. The witnesses, who had been examined, testified with regard to Verification Roll. The challenge by the petitioner with regard to evidence having not been brought to establish the charge lacks substance as the charge was established by documentary evidence.

9. The point about friend of accused has not been found to be sustainable as we find no evidence to suggest that the petitioner had asked for a particular officer as friend of accused. The charge-sheet was handed over to the petitioner on 19.2.2004 and he was tried by SCM on 5.3.2004, which gave him more than adequate time to prepare his defence.

10. The rejection of the appeal by COAS was done after considering all aspects of the case and on humanitarian ground, considering the young age of the petitioner, he converted the dismissal into discharge. We find no infirmity in this procedure either.

11 Over all, we find that the SCM was conducted as prescribed by law and the findings and sentence by the Court are just and appropriate. Accordingly, the O.A is dismissed lacking in merit. No order as to costs.

(Lt. Gen A.M. Verma)
Member (A)

(Justice Abdul Mateen)
Member (J)

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