

**Reserved
Court No. 1**

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

Original Application No. 322 of 2017

Monday, this the 22nd day of April, 2019

**Hon'ble Mr. Justice SVS Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)**

Bijendra Singh (No. 6374499M Ex Sepoy), son of late Shri Roop Singh, resident of Village Lalgarhi, Post Office Nagla Sanja, District Mathura (Uttar Pradesh)

.....Applicant

Ld. Counsel for the applicant: **Shri Yashpal Singh, Advocate.**

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.
2. Director General of Supplies and Transport (ST-12), Quartermaster General's Branch, Room No. 320, Integrated Headquarters of Ministry of Defence (Army) 'A' Wing, DHQ Post Office, New Delhi – 110105.
3. Officer-in-Charge, ASC Records (Supply), Bangalore – 560 007.
4. Principal Controller of Defence Accounts (Pension), Allahabad.

.....Respondents

Counsel for the Respondents : **Dr Shailendra Sharma Atal,
Central Government Counsel.**

ORDER.

“Per Hon’ble Mr Justice SVS Rathore, (Member-J)”

1. The applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

“(a) Issuing/passing of an order directing the respondents to consider case of the applicant for grant of disability pension and provide the same from due date i.e. 01.01.1992 including arrears thereof with interest, and also the benefit of rounding off and other consequential benefits of ex-serviceman.

(b) issuing/passing of any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.

(c) allowing this Application with cost”

2. Admitted fact position in this case is that the applicant was enrolled in the Army on 11.02.1979 having qualification of Intermediate and date of birth of 01.07.1958. During service period, he was superseded for promotion to the rank of Naik due to not having the mandatory Military Education Standards i.e. English-II and Hindi-II. Subsequently, his Matriculation Certificate and Mark Sheet were forwarded to erstwhile ASC Records (Supply) by his then Unit 503 ASC Battalion vide letter dated 31.08.1988. On perusal of his Matriculation Certificates, the ASC Records (Supply) detected the following irregularities:

(a) Date of birth had been amended to read as 01.07.1958 instead of original date of birth 01.07.1955.

(b) Subject in mark sheet were amended and mandatory subject “English” was added in the Certificate in place of “Civics”

Consequently, the matter was taken up with the Uttar Pradesh Education Board, Allahabad by applicant's parent Unit i.e. 340 Company ASC (Supply) vide letter dated 17.11.1988 for verification of his Matriculation Certificate. Said Education Board, Allahabad vide letter dated 05.01.1990 confirmed that the actual date of birth of the applicant is 01.07.1955 and not 01.07.1958. It was also informed by the Education Board that the applicant had passed Matriculation Examination with Hindi, Mathematics, Civics, Economics and Sanskrit. Accordingly, the Officiating Commander, Headquarter, Ambala Sub-Area issued Show Cause Notice vide letter dated 02.07.1991. The applicant in reply to the Show Cause Notice, confessed his guilt, consequently, his services were terminated by the competent authority on administrative grounds vide order dated 01.01.1992 under Section 20 (3) of the Army Act, 1950 in conjunction with Rule 13 (iii) (v) of the Army Rules, 1956 for having forged the documents. At the time of termination/discharge, the applicant was brought before the Release Medical Board (RMB) which assessed the applicant's disability "BRONCHIAL ASTHMA 493.9". The RMB further opined that the disability of the applicant was not attributable to but aggravated by Military service due to stress and strain of the service. The RMB assessed the disability at 20% for two years. Applicant's claim of disability pension was accordingly rejected by the competent authority. Now the applicant is before us with the prayer of grant of disability pension.

3. Learned counsel for the respondents vehemently argued that applicant's initial enrolment in the Army was based on fraud, inasmuch as, if he would have mentioned his correct date of birth, he would not have been within the qualifying zone to appear for enrolment in the army, therefore, the applicant, by claiming disability pension, wants to take advantage of his own fraudulent enrolment in the Army for which he was not entitled from the very inception.

4. However, learned counsel for the applicant made a feeble attempt to argue that that since the applicant had served the Army for a long period and was discharged from service, and his at the time of discharge his disability was found by the RMB to be aggravated by military service, as such, he is entitled for disability pension. To augment his submission, learned counsel for the applicant has placed reliance on a co-ordinate Bench decision of this Tribunal in *TA No. 888 of 2010, (Ex Sepoy-Cook) Ranbir Singh vs. Union of India & ors* decided on 04.07.2017.

5. In *Ranbir Singh's* case (supra), the applicant had shown his place of residence to be 'hill area'. The Army standards for inhabitants of hill area so far as it related to height, were lesser when compared to inhabitants belonging to 'plains'. In said case the order of discharge had come up for consideration before the coordinate Bench of this Tribunal which is distinct from an order rejecting claim of disability pension. While setting aside the order of discharge, it was observed by the coordinate Bench that the impugned order of discharge was passed without following due procedure whereas in the

instant case the applicant is not challenging his discharge but is seeking disability pension. During course of arguments, learned counsel for the applicant fairly conceded that as per the correct date of birth, the applicant was not even entitled for enrolment in the Army.

6. Learned counsel for the applicant has placed reliance on Section 122 of the Army Act, 1950 in support of his submission that after lapse of certain period, under Section 122 of the Army Act, 1950, even fraudulent enrolment cannot be challenged. Section 122 (supra) reads thus:-

“122. Period of limitation for trial.— (1) *Except as provided by sub-section (2), no trial by court-martial of any person subject to this Act for any offence shall be commenced after the expiration of a period of three years [and such period shall commence.-*

(a) *on the date of the offence; or*

(b) *where the commission of the offence was not known to the person aggrieved by the offence or to the authority competent to initiate action, the first day on which such offence comes to knowledge of such person or authority, whichever is earlier; or*

(c) *where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the authority competent to initiate action, whichever is earlier.]*

(2) *The provisions of sub-section (1) shall not apply to a trial for an offence of desertion or fraudulent enrolment or for any of the offences mentioned in section 37.*

(3) *In the computation of the period of time mentioned in sub-section (1), time spent by such person as a prisoner of war, or in enemy territory, or in adding arrest after the commission of the offence, shall be excluded.*

(4) *No trial for an offence of desertion other than desertion on active service or of fraudulent enrolment shall be commenced if the person in question, not being an officer, has subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years with any portion of the regular Army.”*

7. Learned counsel has drawn our attention mainly towards subsection (4) of Section 122 (supra). Said provision is with regard to trial for charges of fraudulent enrolment, but said case is not before us. The point involved in the instant petition is, whether a person who has committed fraud for obtaining enrolment in the Army, is entitled to be granted disability pension? This point was not considered by the coordinate Bench in the aforesaid case relied upon by the learned counsel for the applicant. Thus, we are of the considered opinion that the applicant is not entitled to the benefit of Section 122 of the Army Act, 1950 for the reason said Section deals with “trial” only.

8. Now the sole point which remains for our consideration is, whether a person who commits fraud and on account of such fraud gets himself enrolled in the Army, can he be permitted to take advantage of his own fraud? Hon’ble Apex Court in the case of ***Kusheshwar Prasad Singh vs. State of Bihar and others***, reported in (2007) 11 SCC 447 has observed that it is well settled principle of law that a person cannot be permitted to take undue and unfair advantage of his own wrong. In paras 14, 15 and 16, their Lordships observed thus:-

“14. In this connection, our attention has been invited by the learned counsel for the appellant to a decision of this Court in ***Mrutunjay Pani & Another v. Narmada Bala Sasmal & Another***, AIR 1961 SC 1353, wherein it was held by this Court that where an obligation is cast on a party and he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. This is based on the Latin maxim ‘*Commodum ex injuria sua nemo habere debet*’ (No party can take undue advantage of his own wrong).

15. In ***Union of India & Ors. v. Major General Madan Lal Yadav (Retd.)***, (1996) 4 SCC 127, the accused-army personnel

himself was responsible for delay as he escaped from detention. Then he raised an objection against initiation of proceedings on the ground that such proceedings ought to have been initiated within six months under the Army Act, 1950. Referring to the above maxim, this Court held that the accused could not take undue advantage of his own wrong. Considering the relevant provisions of the Act, the Court held that presence of the accused was an essential condition for the commencement of trial and when the accused did not make himself available, he could not be allowed to raise a contention that proceedings were time-barred. This Court referred to *Broom's Legal Maxims* (10th Edn.) p. 191 wherein it was stated;

"it is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in Courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure".

16. It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrong doer ought not to be permitted to make a profit out of his own wrong".

9. In the case of ***Inderjit Singh Grewal vs. State of Punjab and another***, reported in (2011) 12 SCC 588, their Lordships of Hon'ble Apex Court observed thus:-

"17. It is a settled legal proposition that where a person gets an order/office by making misrepresentation or playing fraud upon the competent authority, such order cannot be sustained in the eyes of the law as fraud unravels everything. "Equity is always known to defend the law from crafty evasions and new subtleties invented to evade law". It is a trite that "Fraud and justice never dwell together"(fraus et jus nunquam cohabitant). Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. Fraud and deception are synonymous. "Fraud is an anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine". An act of fraud on court is always viewed seriously. (Vide: Meghmala & Ors. v. G. Narasimha Reddy & Ors., (2010) 8 SCC 383)

22. Respondent no.2 herself had been a party to the fraud committed by the appellant upon the civil court for getting the decree of divorce as alleged by her in the impugned complaint. Thus, according to her own admission she herself is an abettor to the crime. A person alleging his own infamy cannot be heard at any forum as explained by the legal maxim "*allegans suam turpetudinem non est audiendus*". No one should have an advantage from his own wrong (*commondum ex injuria sua memo habere debet*). No action arises from an immoral cause (*ex turpi cause non oritur action*).

Damage suffered by consent is not a cause of action (volenti non fit injuria). The statements/allegations made by the respondent no.2 patently and latently involve her in the alleged fraud committed upon the court. Thus, she made herself disentitled for any equitable relief.”

In the aforesaid cases, their Lordships of Hon’ble Apex Court have clearly held that no person can be permitted to take advantage of his own fraudulent act.

10. Hon’ble the High Court, Allahabad in Civil Misc. Writ Petition No. 16443 of 1998, **Umesh Kumar Mishra vs Union of India, through Secretary, Ministry of Home Affairs, New Delhi & ors**

decided on 27.09.2006 has observed:-

“On the other hand Sri K.C. Sinha, Additional Solicitor General has placed very heavy reliance upon a division bench judgment of the Allahabad High Court reported in Ramesh Prasad Patel Vs. Union of India & Ors. 2006 (3) ESC 1669. The facts of this case squarely applies to the present case. In this case also the delinquent employee had obtained employment in Army by furnishing false declaration at the time of his enrollment, to the effect that no criminal case was pending against him and on verification it was found to be incorrect and as such was dismissed from service. The Division Bench of this Court considering the entire case law on the subject held that as the petitioner has suppressed material information and had made a false statement in seeking the employment, he cannot be permitted to reap the fruits of his own mistakes and as such his dismissal from service was upheld. The High Court further held that in such cases of misrepresentation or making a false declaration, amounts to playing fraud and as such even opportunity of hearing is not required to be given and it would be a futile exercise in view of the admitted fact that the declaration was false. The above view is fully supported by two other division bench decisions of this Court in case of Ashok Kumar Vs. DIG, C.R.P.F. & Ors. 2006 (1) ESC 615 (Alld.) (DB) and Arvind Kumar Vs. State of U.P. & Ors. 2006 (7) ADJ 241 (DB) wherein in similar circumstances the employee, guilty of suppression of material fact and furnishing false information was not given any relief even though he was acquitted in the criminal case and the order of dismissal from service was maintained.”

11. We have given our anxious consideration to the prayer of the applicant and are the considered view that a person who has committed fraud and on the basis of such fraud has got himself

enrolled in the Army, whereby the initial enrolment in the Army was based on his own fraud and, therefore, subsequently he cannot get any advantage of such fraudulent act through grant of disability pension, or any other service benefit. Entitlement of pension of any kind presupposes the legal relationship of 'master and servant' between the Army and the applicant, which in the facts of the present case, is absolutely missing as the enrolment of the applicant was based on his own fraud. Keeping in view the pronouncements of Hon'ble Apex Court in the above quoted decisions, we are of the considered view that the applicant cannot be permitted to take advantage of his own fraudulent act. If the prayer of the applicant is given any weightage, then it would impliedly mean to recognize the fraudulent act in breach of the well settled legal maxim. "fraud vitiates every act".

12. A conceptous of our above observations is that the applicant has not been able to make out a case and the petition deserves to be dismissed.

13. It is accordingly **dismissed**.

No order as to cost.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated: April , 2019
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