

**RESERVED**  
**AFR**

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

**ORIGINAL APPLICATION No 241 of 2015**

, this the            day of August, 2022

**"Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)"**

Arjun Singh S/o Shri Rameshwar Singh, Resident of Village-  
Ailia, Post Bajrang Nagar, Tehsil- Karakat, District-Jaunpur.

..... Applicant

Learned counsel for the : **Shri Yashpal Singh**, Advocate.  
Applicant

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, South Block, Integrated Headquarters, Ministry of Defence, (Army), New Delhi-110011.
3. Commanding Officer, 87 Armoured Regiment, C/o 56 APO.
4. Officer Commanding 91, Independent Recce Squadron.

.....Respondents

Learned counsel for the Respondents. : **Ms Deepti Prasad Bajpai**, Advocate  
Central Govt. Counsel

## **ORDER**

### **Per Hon'ble Mr Justice Umesh Chandra Srivastava**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- I. *To quash/set aside the impugned dismissal order dated 24.10.2011 which was communicated to the applicant on 28.12.2013, passed by the opposite party No.1.*
- II. *To issue an order or direction to the respondents to reinstate the applicant in service*  
*Or*  
*To issue an order or direction to the respondents to grant/sanction pension to the applicant from the date he was illegally dismissed from service i.e. from 24.10.2011 and give arrears of pension and interest on the delayed sanction of pension.*
- III. *To issue an order or direction to the respondents authorities to give post retiral dues and other consequential benefits to the applicant.*
- IV. *To issue an order or direction that this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.*
- V. *Award the cost of the application to the applicant.*

2. Before we proceed with the matter, it would be appropriate to highlight the factual background and brief history of the case. Brief facts of the case are that the applicant was enrolled in the Army on 29.12.1994. After completion of training he was posted to 87 Armoured Regiment on 21.07.1996 where he served up to 08.02.1999. Thereafter, he was posted to Headquarters 23 Independent Armoured Brigade with effect from 08.02.1999 and served till 11.06.2002. After completion of his tenure he was reverted back to his

parent unit i.e. 87 Armoured Regiment. In November, 2002 he was attached to 94 Independent Reconnaissance Squadron on its new raising and subsequently was posted there w.e.f. 26.03.2008.

3. In the end December, 2006 there happened a theft case of 87 Identity Cards in 50 Armoured Regiment. A detailed investigation was carried by Army authorities at highest levels. During the course of investigation it was revealed that Lance Dafadar Babu Kathat of 50 Armoured Regiment was a prime suspect. Also, during further investigation, applicant's name figured for communicating with Pakistan Intelligence Operatives (PIO) (stationed at Gujranwala) as he received a call from there on 11.01.2007 and it was not reported to military authorities. Further, on analysing the calls, ground verification and interrogation it became more clear that the applicant had links in the loss of Identity Cards and was involved in an espionage network which was controlled by the ISI agent at Gujranwala (Pakistan). The applicant had also confessed that he received a call from Mobile Number 0092556795158, and he spoke to Ranjit, a resident of Sikar, who had also received conferencing calls from United States of America. On query the applicant denied to reveal the contents of the conversation that he made between Ranjit, and Lance Dafadar Babu Kathat of 50 Armoured Regiment who deserted the Army on 24.12.2006 and later was killed/committed suicide. The applicant is the last

person who spoke to main suspect late Lance Dafadar Babu Kathat on his mobile number 9896856006 which is an indicative that the applicant was deeply involved in loss of Identity Cards.

4. On further analysis of calls between late Lance Dafadar Babu Kathat and the applicant it was revealed that Lance Dafadar Arjun Kumar was in direct communication with Sanjeev Kumar Gangwar of 10 Armoured Regiment who had received conferencing calls from United States of America. The applicant also spoke to Ranjit of Sikar District (Rajasthan) who was receiving regular calls from United States of America and the Middle East and had spoken with late Lance Dafadar Babu Kathat on 12.01.2007 i.e. day after receiving call from Gujranwala (Pakistan). During the course of his leave between 23.01.2007 to 06.02.2007 his call details revealed that he was in contact with Lance Dafadar Babu Kathat whose location was found in Chandni Chowk, New Delhi after desertion. During the course of investigation the applicant stated that he had invested rupees three lakhs in share trading excluding three LIC policies.

5. A case was taken up with the higher authorities to dismiss the applicant from service on the ground of his involvement in espionage and anti national activities. The competent authority i.e. Chief of the Army Staff vide letter dated 24.10.2011 passed order for his dismissal under the provisions of Army Act Section

20 read with Army Rule 17 without issuing Show Cause Notice. Accordingly, he was dismissed from service w.e.f. 28.12.2013. This O.A. has been filed to quash order dated 24.10.2011, 28.12.2013 and reinstate the applicant in service and grant service pension alongwith consequential benefits.

6. Learned counsel for the applicant submitted that the applicant had received a phone call on 28.12.2006 which incidentally was made from Pakistan and he talked for about 33 seconds unknowingly and unintentionally. He further submitted that he did not make any call from his side. In February, 2007 the applicant was interrogated but nothing objectionable could be found. Again in December, 2008 he was further interrogated by the intelligence team but nothing adverse was found against the applicant. He submitted that the applicant was not aware that this call was made from Pakistan. The applicant, only when he was interrogated in the month of February, 2007, got to know that the call dated 28.12.2006 was made from Pakistan.

7. Learned counsel for the applicant further submitted that after interrogation by the intelligence department when nothing came into light against him the applicant thought that the matter came at rest and he continued to serve. However, suddenly on 28.12.2013 an antedated dismissal order dated 24.10.2011 was served upon him. In this regard he submitted that the impugned dismissal order dated 24.10.2011 was

passed by the respondents in a premeditated manner so as to dismiss him from service as the dismissal order was passed after a lapse of more than 2 years. He further submitted that the respondents have passed the dismissal order and thereafter they tried to gather the evidence to falsely implicate the applicant but when they could not collect any material against him then on a flimsy ground of 'suspected person' he was dismissed from service. It was further submitted that the dismissal order clearly shows that the same was passed way back in the year 2011 but the same was not served on the applicant in a planned manner so as to collect the evidences against him but when nothing could be found against the applicant, the respondents in the garb of Army Rule 17, dismissed him from service on vague charges of being a suspect person.

8. Learned counsel for the applicant further submitted that dismissal order dated 24.10.2011 which was served on the applicant on 28.12.2013 and during this period i.e. from 24.10.2011 to 28.12.2013 the applicant was allowed to continue in service and he was paid salary and other benefits. He further submitted that once the dismissal order was passed, respondents ought to have served the dismissal order at that moment rather than waiting for more than two years which shows malafide intention on the part of the respondents. He submitted that retrospective dismissal order dated 24.10.2011

was served to the applicant on 28.12.2013 which is not sustainable in the eyes of law as held in catena of judgments of the Hon'ble Supreme Court. He further submitted that since the applicant had put in pensionable service at the time of his dismissal, his dismissal may be converted to discharge to enable him to receive service pension as nothing concrete was found against him to show that he was involved in anti national activities. His other submission is that the applicant was in service and he could have been served Show Cause Notice but the respondents did not serve Show Cause Notice and dismissed him from service in an arbitrary manner and no opportunity was provided to the applicant to explain the charges on which he was dismissed from service. Thus, he submitted that respondents have violated principles of natural justice. In this regard reliance has been placed by learned counsel for the applicant on the Hon'ble Apex Court judgment in the case of **SN Mukherjee vs Union of India & Ors**, (1990) 4 SCC 549, in which it has been held that the requirement to record reasons can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. He pleaded that in these circumstances when the applicant has not been held guilty, as such the dismissal order under Section 20 (1) of the Army Act, 1950 is bad in law. It was further averred that since nothing adverse was found against the applicant, who had completed

pensionable service at the time of dismissal, he should either be re-instated in service or dismissal order be converted into discharge to enable him to receive service pension alongwith consequential benefits.

9. Per contra, learned counsel for the respondents submitted that on being received a phone call from Gujranwala (Pakistan), an inquiry was conducted. He further submitted that there was a case of theft in 50 Armoured Regiment pertaining to loss of 87 Identity Cards in which during the course of investigation applicant's name came into light for having communication with Lance Dafadar Babu Kathat of 50 Armoured Regiment, who was one of the prime suspects of theft of the Identity Cards. On analysis of the calls, ground verification and interrogation it became more clear that the applicant had links in the loss of Identity Cards and was involved in an espionage network which was controlled by the ISI agent at Gujranwala (Pakistan). During the course of investigation the applicant had confessed that he received a call from Gujranwala (Pakistan) (009255675158) and he had also spoken to Ranjit, resident of Sikar (Rajasthan) who had also received conferencing call from United States of America. He further submitted that when the applicant was confronted with his involvement in the network, he denied candidly that he was not remembering the contents of the conversation of the call which he had received from Gujranwala (Pakistan). The applicant had also denied to reveal

the contents of the conversation that he made between Ranjit of District Sikar (Rajasthan), Lance Dafadar Sanjeev Kumar Gangwar of 10 Armoured Regiment and late Lance Dafadar Babu Kathat of 50 Armoured Regiment (courier of Identity Cards-killed/committed suicide).

10. Learned counsel for the respondents further submitted that the applicant is the last person who had spoken to main suspect on 23.12.2006 i.e. one day prior to his desertion from the unit. He submitted that with the above scenario the applicant was involved deeply in loss of Identity Cards. It was further submitted that the applicant's name figured in the call analysis during the time when the episode of theft case took place in 50 Armoured Regiment and he was the only person who received a direct call from Gujranwala (Pakistan). Further analysis of call details revealed as under:-

(i) From 12.12.2006 to 30.12.2006 the applicant had contacted number of times at Ajmer/Beawar (Rajasthan) mobile numbers which is the epicentre of the episode of loss of Identity Cards of 50 Armoured Regiment and where main security suspects lived i.e. Alladip, Anwar, Kalukhan, Babu Kathat and Suleman Kathat.

(ii) On 23.12.2006, the applicant called up Lance Dafadar Babu Kathat on Mobile Number 9234433620 for 77 seconds. On 24.12.2006, Lance Dafadar Babu Kathat deserted the unit.

(iii) On 31.12.2006, the applicant called on Lance Dafadar Sanjeev Kumar Gangwar of 10 Armoured Regiment on Mobile Number 9414949476 for 157 seconds who was receiving calls from United States.

(iv) On 11.01.2007, the applicant received a call from Gujranwala (Pakistan) from Mobile Number 0092556795158 for 33 seconds which he did not report intentionally and this clearly indicates his malafide intentions to hide the facts with ulterior motives.

(v) On 12.01.2007, the applicant called up Ranjit resident of Sikar on Mobile Number 9214129441 for 226 seconds who was regularly receiving conferencing calls from United States and had been contacting people in Beawar, village of Lance Dafadar Babu Kathat.

(vi) On 22.01.2007, the applicant proceeded on 15 days casual leave with effect from 23.01.2007 to 06.02.2007. On tracking of the mobile record of Lance Dafadar Babu Kathat it got revealed that he stayed in Delhi, Chandni Chowk area for 16 hours. In between it is possible that he might have visited Hisar to hand over the Identity Cards to the applicant which cannot be ruled out that he had received a call from the applicant one day prior to his desertion.

(vii) The applicant during the course of investigation/interrogation had also revealed that he had invested Rs 3 lakhs in share trading and three LIC policies.

11. Learned counsel for the respondents further submitted that there being a strong suspicion of the applicant's involvement in anti national activities and there being a prime suspicion of involvement in espionage activities, his further retention in service was considered a security risk to the nation, hence a case was taken up taken up with the highest authorities and his dismissal order dated 24.10.2011 was passed by Chief of Army Staff under Army Act Section 20 read with Army Rule 17.

12. Learned counsel for the respondents further submitted that though Chief of the Army Staff issued order of dismissal on 24.10.2011, it took long time to implement the same owing to Army's vast organisation having their own channel and procedure due to involvement of various agencies and deployment all over India. It was further submitted that the applicant was not prejudiced since the order of dismissal dated 24.10.2011 was promulgated on 28.12.2013 prospectively and he was paid his entitled dues till such time he was in the Army.

13. With regard to non issuance of Show Cause Notice, learned counsel for the respondents submitted that para 17 of the Army Rule stipulates to issue Show Cause Notice except when the authority competent to order such dismissal or

removal considers it inexpedient to give such notice as stipulated in the proviso to the rule. He submitted that since it was not expedient to serve him with a Show Cause Notice, therefore, it was not served upon the applicant as per order dated 24.10.2011. He pleaded for dismissal of O.A. on the ground that the applicant was suspected to be involved with anti national elements and was considered to be a potential security risk being involved in espionage network as per investigation carried by highest authorities at Army Headquarters.

14. Heard Shri Yashpal Singh, learned counsel for the applicant and Ms Deepti Prasad Bajpai, learned counsel for the respondents and perused the material placed on record including original documents produced in Court.

15. Applicant Lance Dafadar Arjun Singh while serving with 94 Independent Reconnaissance Squadron received a phone call on 11.01.2007 from Gujranwala (Pakistan) (Mobile Number 0092556795158) and talked for about 33 seconds. He did not report this matter to his superior officers. There was a theft case of 87 Identity Cards pertaining to 50 Armoured Regiment in which Lance Dafadar Babu Kathat was a prime suspect with whom the applicant was also associated and talked him frequently in addition to Ranjit of Sikar (Rajasthan) who had links with Lance Dafadar Sanjeev Kumar of 10 Armoured Regiment who was in contact with United States of America.

Before the investigation/interrogation could take place, Lance Dafadar Babu Kathat deserted the unit on 24.12.2006 and later was killed/committed suicide.

16. The theft incident being related to national security, a thorough investigation was carried out at the highest level and related personnel were interrogated. After the inquiry was over, it was revealed that the applicant was in direct communication with late Lance Dafadar Babu Kathat and Sanjeev Kumar Gangwar of 10 Armoured Regiment who was receiving conferencing calls from United States of America. Call analysis also revealed that the applicant is the only person who had received a call from Gujranwala (Pakistan) and he was associated with late Lance Dafadar Babu Kathat (who deserted the Army after theft of Identity Cards and was killed/committed suicide).

17. The applicant was suspected to be involved with anti national elements and was considered to be a likely security risk and an undesirable soldier for his suspected involvement in an espionage network as per investigations carried out by Military Intelligence Directorate at Army Headquarters. The highest military authority i.e. Chief of the Army Staff vide order dated 24.10.2011 ordered applicant's dismissal from service keeping in view high risk of national security. For convenience sake, order dated 24.10.2011 is reproduced as under:-

*"1. Whereas, Number 15467075K Lance Dafadar Arjun Singh of 87 Armoured Regiment is strongly suspected*

*of being involved in anti-national activities. He is considered to be potential security risk and an 'undesirable soldier' for his suspected involvement in espionage network.*

*2. Whereas, in the interest of national security, the continued retention of Number 15467075K Lance Dafadar Arjun Singh, in service is not desirable.*

*3. Whereas, taking into consideration the entire circumstances of the case, it is not expedient to serve him with a show Cause Notice, under the provisions of Army Rule 17.*

*4. Now therefore, in exercise of the powers conferred on me under Army Act Section 20 (1) read with Army Rule 17, I hereby dispense with the issue of Show Cause Notice to Number 15467075K Lance Dafadar Arjun Singh and order his dismissal from service with effect from the date of communication of this order to him."*

18. Applicant's contention that he being found not guilty should not have been dismissed from service under Section 20 of the Army Act, 1950 read with Rule 17 of the Army Rules, 1954. We have perused the aforesaid Act and Rule which for convenience sake are reproduced as under:-

*"Army Act Section 20-Dismissal, removal or reduction by the Chief of the Army Staff and by other officers.*

*(i) The Chief of the Army staff may dismiss or remove from the service any person subject to this Act other than an officer.*

*(ii) The Chief of the Army Staff may reduce to a lower grade or rank or the ranks, any warrant officer or any non-commissioned officer.*

*(iii) An officer having power not less than a brigade or equivalent commander or any prescribed officer may dismiss or remove from the service any person serving under his command other than an officer or a junior commissioned officer.*

*(iv) Any such officer as is mentioned in sub-section (3) may reduce to a lower grade or rank or the ranks, any warrant officer or any non-commissioned officer under his command.*

*(v) A warrant officer reduced to the ranks under this section shall not, however, be required to serve in the ranks as a sepoy.*

*(vi) The Commanding Officer of an acting non-commissioned officer may order him to revert to his permanent grade as a non-commissioned officer, or if he has no permanent grade above the ranks, to the ranks.*

*(vii) The exercise of any power under this section shall be subject to the said provisions contained in this Act and the rules and regulations made thereunder.*

*Army Rule 17- Dismissal, removal or reduction by the Chief of the Army Staff and by other officers.*

*Save in the case where a person is dismissed or removed from service on the ground of conduct which has led to his conviction by a criminal court or a court martial, no person shall be dismissed or removed under sub-section (1) or sub-section (3), of section 20, unless he has been informed of the particulars of the cause of action against him and allowed reasonable time to state in writing any cause of action against him and allowed reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from the service.*

*Provided that if in the opinion of the officer competent to order the dismissal or removal, it is not expedient or reasonably practicable to comply with the provisions of this rule, he may, after certifying to that effect, order the dismissal or removal without complying with the procedure set out in this rule. All cases of dismissal or removal under this rule where the prescribed procedure has not been complied with shall be reported to the central Government”.*

Notes

*(a) A show cause notice is required to be given under this rule to the individual whose dismissal or removal from service is contemplated, except when the authority competent to order such dismissal or removal considers it inexpedient or impracticable to give such notice as stipulated in the proviso to the rule.*

*(b) Show cause notice will not be necessary when the dismissal or removal is sought on grounds of misconduct for which the person has already been convicted by a criminal court or court-martial.*

*(c) When a dismissal or removal of a person is sought on grounds of misconduct for which he has not been convicted by a criminal court or a court-martial, the authority competent to order such dismissal or removal should satisfy itself that trial by court-martial of such a person is inexpedient or impracticable for reasons other than probable failure to establish the charge, and that further retention in service of the individual is undesirable.*

*(d) All cases of dismissal/removal under this rule where the prescribed procedure has not been followed are to be reported to the Central Government”.*

19. Chief of the Army Staff, taking into consideration the entire circumstances of the case, did not find it practicable to serve him with a show Cause Notice, under the provisions of Army Rule 17. There being a strong suspicion of the applicant’s involvement in anti national activities and there being a prime

suspicion of involvement in espionage activities, his further retention in service was considered a security risk to the nation, hence a case was taken up taken up with the highest military authorities and his dismissal order dated 24.10.2011 was passed by Chief of Army Staff under Army Act Section 20 read with Army Rule 17 which as per our opinion seems to be in order.

20. We have minutely perused all the records including notings along with original documents produced by the Officer-in-Charge, Legal Cell. On perusal and scrutiny of all these materials it is evidently clear that the inquiry against applicant was initiated by lower unit/formation which travelled to Director General of Military Intelligence, Army Headquarters and finally reached to Chief of the Army Staff who ordered dismissal of the applicant vide order dated 24.10.2011 keeping in view his involvement in espionage activities.

21. In a case reported in ***Union of India and Ors vs Major S.P. Sharma and Ors***, Civil Appeal No 2951-2957 of 2001 decided on 6.03.2014, their Lordships of the Hon'ble Apex Court has held that "in our considered opinion as far as security is concerned, the safeguard available to civil servants under Article 311 is not available to defence personnel. In cases where continuance of Army personnel in service is not practicable for security purposes and there is loss of confidence

and potential risk to the security issue then such personnel can be removed under the Army Act/Rules.

22. Thus, analysing entire facts of the case and the material produced in Court and upon an exhaustive consideration of the matter, we are of the definite opinion that the dismissal order dated 24.10.2011 promulgated on 28.12.2013 does not suffer from any illegality, bias or malafide which needs no interference.

23. In view of the above, the O.A. is liable to be dismissed. It is accordingly, dismissed.

24. No order as to costs.

25. Miscellaneous applications, pending if any, stand disposed of.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

Dated:04.08.2022  
rathore

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**