

Reserved Judgment
Court No. 2

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 408 of 2022

Tuesday, this the 8th day of August, 2023

Hon'ble Mr. Justice Anil Kumar, Member (J)

Hon'ble Maj Gen Sanjay Singh, Member (A)

No. 15633015H Rect. Rinku Sharma
S/o of Late Shri Naresh Chandra Sharma,
R/o 65, Awas Vikas Colony, P.S. Kotwali – Sitapur,
Permanent address Village & Post – Bhaipur, District – Bulandshar

..... Applicant

Learned counsel for the : **Shri Arvind Kumar Jauhari**, Advocate
Applicant

Versus

1. Union of India through the Defence Secretary, Ministry of Defence, (Army) South Block, New Delhi.
2. Chief of Army Staff, IHQ Ministry of Defence (Army), South Block, New Delhi.
3. Brigadier/Commandant, Brigade of the Guards Regiment Centre, Kamptee, Nagpur.

..... Respondents

Learned counsel for the : **Dr. Shailendra Sharma Atal**, Advocate
Respondents. Central Govt. Counsel

ORDER

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

(a) *It is most respectfully prayed that order dated 03.09.2021 passed by Brigadier/Commandant, Brigade of the Guards Regimental Centre Training Battalion*

Office Centre, Kamptee, Nagpur may kindly be set aside.

- (b) An order or direction may kindly be issued directing the opposite party to allow the applicant to join the duty as he was working on the post at the time his dismissal.*
- (c) To issue any other order or direction in favour of the applicant which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the present case.*
- (d) Cost of the application may be allowed.*

2. Brief facts of the case are that applicant applied online recruitment in the Army in which Aadhar Card, Marksheet/Certificates of 10th and 12th and Domicile Certificate were attached. The applicant was selected in the Army and allotted Army No. 15633015H. The applicant was sent for training in Brigade of The Guards Regimental Centre Kamptee, Nagpur. On 26.02.2021, the applicant received a Show Cause Notice in which it was mentioned that during verification, address of the applicant is not found correct. The applicant submitted his reply to Show Cause Notice stating that he is resident of 65, Awas Vikas Colony, Sitapur which is given in Aadhar Card also and Domicile Certificate issued by the Sub Divisional Officer, Sitapur but without giving any further opportunity of hearing with regard to verification of address, the applicant was dismissed from service under Section 20(3) of Army Act, 1950 on the ground of unverified address. Being aggrieved with dismissal, the applicant has filed the present Original Application for reinstatement into service.

3. Learned counsel for the applicant submitted that the applicant applied for recruitment in the Army online in which Aadhar Card,

Marksheet/Certificates of 10th and 12th and Domicile Certificate were attached. The applicant was called for the interview and got selected in the Army and he was allotted Army No. 15633015H. The applicant was sent for training in Brigade of The Guards Regimental Centre Kamptee, Nagpur. On 26.02.2021, the applicant received a Show Cause Notice in which it was mentioned that during verification, address of the applicant is not found correct. The applicant submitted his reply to Show Cause Notice stating that he is resident of 65, Awas Vikas Colony, Sitapur which is given in his Aadhar Card also. The applicant also filed Domicile Certificate duly signed by the Sub Divisional Officer, Sitapur but without giving any further opportunity of hearing with regard to residential address, the applicant was dismissed from service under Section 20(3) of Army Act, 1950 on the ground of unverified address.

4. Learned counsel for the applicant further submitted that applicant was dismissed from service on the ground of non production of permanent domicile certificate. In this case, it is pertinent to mention that no permanent domicile certificate is issued by the authority concerned, though, it can be issued to a person who is residing at a place for more than 5 years or residing on rent in that area. The applicant at the time of recruitment in the Army was resident of Sitapur (living on rent) which can be verified by the landlord also. In such circumstances, the dismissal of the applicant is arbitrary and without jurisdiction as respondents have misinterpreted the definition of the domicile certificate. Therefore, provision of Section 44 of the Army Act, 1950 is not applicable in the case of the applicant. The domicile

certificate issued to the applicant reveals that it is not permanent Domicile Certificate rather it is general Domicile Certificate issued to the applicant as he was living in Sitapur on rent. The Sabhasad of Ward No. 14, Cantonment Nagar Palika Parishad, Sitapur has also issued a certificate on 24.05.2021 mentioning therein that applicant is resident of 65, Awas Vikas Colony, P.S. Kotawali, Sitapur. The verification report submitted by the concerned police Inspector clearly states that applicant was residing in the said house on rent but he is not permanent resident of Sitapur and no criminal record against the applicant is found registered in police station. The applicant, after receiving Show Cause Notice, also requested for re-verification of his address vide his personal letter dated 01.03.2021 but without considering his request, the Commandant of Brigade of The Guards Regimental Centre, Kamptee, Nagpur dismissed the applicant from service on 03.09.2021.

5. Learned counsel for the applicant further submitted that since there is no illegality in issuance of Domicile Certificate which is issued on the basis of proof of Aadhar Card and other evidentiary documents and applicant was not involved in any criminal or disciplinary case as per police report, therefore, applicant's dismissal from service is illegal, arbitrary and without jurisdiction. Hence, applicant should be reinstated into service to join duty in the post he was holding at the time of dismissal from service.

6. On the other hand, submission of learned counsel for the respondents is that applicant was enrolled in the Army on 02.10.2020

from ARO Bareilly. The training of the applicant commenced from 16.11.2020. Thereafter, verification process of the applicant was initiated and verification roll was forwarded to District Magistrate, Sitapur (UP) on 20.11.2020 vide Brigade of the The Guards Regimental Centre letter No. Trg Bn/485 dated 20.11.2020. The verification roll of the applicant was returned from DM Office, Sitapur on 30.01.2021 endorsing therein that. “अभ्यर्थी श्री रिकू शर्मा पुत्र श्री नरेश चंद्र शर्मा उपरोक्त के चरित्र एवं पूर्ववत सत्यापन के सम्बन्ध में पुलिस अधीक्षक सीतापुर से जांच कराई गई, जाँच आख्या के अनुसार अभ्यर्थी अंकित पता - 65 आवास विकास कालोनी में निवास नहीं करता है, संस्तुति नहीं की जाती है”। Thereafter, a Show Cause Notice was served to the applicant on 26.02.2021 and reply to Show Cause Notice was received from the applicant on 05.03.2021 in which applicant requested for fresh re-verification.

7. Learned counsel for the respondents further submitted that approval of re-verification was accorded by the Centre Commandant and a fresh verification of the applicant was forwarded to DM office, Sitapur vide letter dated 18.03.2021. Thereafter, a reminder was sent to DM Office, Sitapur on 26.06.2021. The reply on re-verification roll was received on 26.07.2021 alongwith remarks of Mr. Vikash Yadav, Inspector of Police, Kotwali Sitapur declaring the verification of the applicant as ‘Unverified’. It was also endorsed in the re-verification report of police that “रिक्रूट रिकू शर्मा पुत्र श्री नरेश चंद्र शर्मा जो C/51 आवास विकास कॉलोनी थाना कोतवाली नगर, सीतापुर में किराये के मकान में निवास करता

था जो उपरोक्त पते का मूल निवासी नहीं है, थाना स्थानीय में उपरोक्त का कोई आपराधिक इतिहास नहीं है, उक्त MVR की संस्तुति नहीं की जाती है, रिपोर्ट सेवा में प्रेषित है”। Thereafter, a letter for lodging of FIR against the applicant was written to Police Station, Juni, Kamptee vide letter dated 24.08.2021 but Incharge Police Station, Juni expressed his inability to lodge FIR in the ibid case and ARO Bareilly was also intimated. The applicant was dismissed from service on 03.09.2021 under the provisions of Army Act Section 20(3) read with Army Rule 17 due to submission of forged document (domicile/Resident certificate) during enrolment.

Learned counsel for the respondents concluded that since dismissal of applicant was done as per rules following due process, the Original Application is liable to be dismissed on merit.

8. We have heard learned counsel for the parties and perused the material placed on record.

9. We find that applicant was selected in the Army on 02.10.2020 from ARO Bareilly through online test and further process of physical and medical tests. During training, verification of the applicant was done through District Magistrate, Sitapur (UP) on 20.11.2020 as per Brigade of the Guards Regimental Centre letter dated 20.11.2020. In the verification, it was endorsed by the police that applicant is not residing in the given address, 65 Awas Vikas Colony, Sitapur, whereas in re-verification report submitted by the Police Inspector of Kotwali Sitapur, it was mentioned that applicant was residing on rent but he is not permanent resident of Sitapur. In the report of Inspector, it is also

mentioned that there is no criminal record or any case filed/pending against the applicant.

10. Considering that applicant was issued Domicile Certificate by the authority concerned based on documentary proof/report of the concerned department, it is to be considered authentic and not forged. The applicant was holding Aadhar Card at the time of enrolment in the Army in which same address of 65, Awas Vikas Colony, Sitapur is mentioned, therefore, general Domicile Certificate issued to the applicant seems sufficient with regard to address proof for enrolment in the Army.

11. There is nothing on record to show that there was bad intention of the applicant in providing his domicile certificate. The domicile certificate provided by the applicant was not found to be a fabricated document. There is nothing to show that wilfully false document was provided. No criminal case has been registered against the applicant. Local police has reported that applicant was residing on rent but it was not his permanent address and on local police station, no criminal case is registered against him. Notwithstanding all above facts found to be correct verification of address cannot be ignored in any cost. As far as re-verification of address proof is concerned, it will be proper to direct the applicant to provide details of his permanent address of Bulandshar, present temporary address where he is residing and contact number (Mobile) to the respondents within a period of three weeks from the date of receipt of certified copy of this order. On receipt of aforesaid details from the applicant, the respondents will re-verify the antecedents of the

applicant, i.e. (permanent address of Bulandshar, temporary address where he was residing on rent at 65, Awas Vikas Colony, Sitapur at the time of enrolment in the Army and present address where he is residing after dismissal from Army) and also his criminal record of his permanent address of Bulandshar and temporary address of Sitapur. If both the addresses (permanent and temporary) are verified to its correctness and it is established that applicant was residing on rent at 65, Awas Vikas Colony, Sitapur at the time of enrolment in the Army and there is no criminal record against the applicant neither in his permanent address of Bulandshar nor his temporary address of Sitapur, then in that condition address given during enrolment in the Army to be taken into consideration for verification and if nothing adverse is found against the applicant in verification, then he will be liable to be reinstated into service.

12. Accordingly, Original Application is partly allowed and dismissal order dated 09.03.2021 is quashed with direction to the respondents to re-verify antecedents of the applicant including his permanent and temporary address and if the respondents are satisfied as per policy with the re-verification report with regard to his address and applicant is otherwise found fit, then applicant to be reinstated into service in the same rank/post in which he was dismissed from service. However, applicant shall not be entitled to any back wages or other benefits on 'no work no pay' basis from the date of dismissal from service till the date of joining at Brigade of The Guards Regimental Centre, Kamptee. The respondents are directed to complete the process expeditiously preferably

within a period of four months from the date of production of a certified copy of this order.

It is also clarified that in case, in verification if any inconsistency is found by the respondents and respondents are not satisfied then respondents are at liberty to make their decision and take necessary action as per rules.

13. No order as to costs.

14. Miscellaneous Application(s), pending if any, shall stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated: August, 2023
SB

(Justice Anil Kumar)
Member (J)