

Court No.3**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****TRANSFERRED APPLICATION NO 825 of 2010**Monday, this the 1st day of February 2016**Hon'ble Mr. Justice D.P. Singh, Member (J)**
Hon'ble Air Marshal Anil Chopra, Member (A)Shri Om Prakash No 14358446P. Sepoy S/o Shri Ram Kumar
Resident of Village – Akhaoli, Police Station – Bishalpur,
District - Pilibhit

...Petitioner

Ld. Counsel for the: **Shri P.N. Chaturvedi, Advocate**
Petitioner

Versus

1. The Union of India, through Secretary, Ministry of Defence,
New Delhi.
2. The Directorate General, D.S.C. Army headquarters,
DHQ,
Post Office New Delhi
3. The Officer Commanding 557, D.S.C. Platoon, DRDE,
Jhansi Road, Gwalior.
4. District Magistrate, Pilibhit.

.....Respondents

Ld. Counsel for the : **Shri Shyam Singh, Central**
Respondents. **Govt Counsel assisted by Lt Col**
Subodh Verma, OIC Legal Cell

ORDER ORAL

1. Being aggrieved with the impugned order of discharge while serving Defence Security Corps (DSC), the petitioner has preferred Writ Petition No 35171 of 2000 in the High Court of Judicature at Allahabad, which has been transferred to this Tribunal in pursuance to provision of Section 34 of the Armed Forces Tribunal Act, 2007 and re-numbered as T.A. No. 825 of 2010.
2. We have heard Ld. Counsel for the parties and have perused the record.
3. Admittedly, the petitioner joined the Indian Army as Sepoy on 21.07.1981. After completing about 18 years of colour service, the petitioner retired on own request on 01.02.1997. However during course of retirement, he submitted an application for enrolment in DSC. He joined DSC on 04.05.1999. After completing basic training and character certificate he was permitted to discharge duty. However after joining, the respondents received certain information according to which, the petitioner has concealed material facts while joining DSC. Notice dated 30.09.1999 was served on the petitioner, a copy of which has been annexed as Annexure No 2 to the T.A. The notice received from DSC Record Kannanore contains information of the District Magistrate Pilibhit according to which the petitioner did not possess good

conduct and some cases against him are pending in Civil Court. After receipt of this information, the petitioner was directed to submit reply and show cause why he may not be discharged on account of concealment of material facts while joining DSC. After receipt of the notice, the petitioner submitted reply and contended that on false allegations, certain cases have been lodged against him. It was also informed that while serving Indian Army a case was registered against him which is pending for decision. It has also been stated by the petitioner that in case by the competent Court allegations are found to be true and he is convicted, then he may be discharged from DSC.

4. An affidavit was also filed by the Deputy Collector Pilibhit which indicates that the petitioner was charged for committing dacoity with murder and in another case, he was charged under Section 307 and 504 IPC and yet in another case, he was charged under Section 395/397 IPC i.e. dacoity. For convenience sake, paragraph 4 of the affidavit filed by the Deputy Collector Pilibhit is reproduced as under:-

“4. That in reply to the contents of paras 15 and 16 of the writ petition, it is stated that the respondent no. 3 vide his letter dt. 22.7.98 to verify the character of the petitioner. In pursuance of the same the District Magistrate, Pilibhit directed the S.P. Pilibhit to enquire about the character of Sri Om Prakash (petitioner). The S.P. Pilibhit got the matter enquired through L.I.U. and from the concerned Police Station and reported that the petitioner is a bad character and had criminal record of

murder and Dacoity etc. and at present a case under Crime NO. 452/95 u/s. 307/504 IPC registered against the petitioner and in both cases charge-sheet were already submitted before the court concerned which is still pending and prior to it a Case Crime NO. 283/90 u/s 395/397 IPC was registered against the petitioner in which the petitioner was acquitted on 27.4.1997 by the competent court. The matter was informed through a Army Officer to the C.J.M. Pilibhit and in the year 1996 a warrant of arrest was also communicated to his unit. A photo copy of the letter dt. 25.1.1999 sent by the D.M.Pilibhit to Commanding Officer and a copy of the report dated 11.9.2000 are being filed herewith as Annexure CA-1 and 2 to this counter affidavit.”

5. Shri P.N. Chaturvedi, Ld. Counsel for the petitioner, while assailing the impugned order of discharge submits that the petitioner has been acquitted in all the pending criminal cases of which the respondents have no information since the petitioner has been discharged from the DSC. Ld. Counsel further submitted that since he has brought on record that the petitioner was acquitted, the impugned order of discharge suffers from vice of arbitrariness.

6. However, the fact remains that the petitioner has not brought to the attention of the Army authorities the fact that certain criminal cases (supra) were pending against him while he was in service. Thus, the petitioner seems to have committed fraud to continue in service. Ld. Counsel for the petitioner relied upon Section 43 and Section 44 of the Army

Act, 1954 according to which in case a person is fraudulently enrolled in Army may be convicted by the court martial to serve severe imprisonment for a term which may extend upto 5 years. Argument advanced by Ld. Counsel for the petitioner could have been looked into to remit the matter back in case offence committed by the petitioner would have been brought on record while serving in the Army or DSC. But once the petitioner had concealed material facts, which seems to be proved from record, then he seems to have committed fraud.

7. It is well settled proposition of law that fraud vitiates even solemn act. Any decision or order obtained through commission of fraud shall be nullity in law. It is also settled proposition of law that where an applicant gets an order by making mis-representation or playing fraud upon the competent Authority, such order cannot be sustained in the eyes of law. "Fraud avoids all judicial acts ecclesiastical or temporal." (Vide **S.P. Chengalvaraya Naidu (dead) by L.Rs. vs. Jagannath (dead) by L.Rs. & ors.**, AIR 1994 SC 853. In **Lazarus Estate Ltd. vs. Besalay**, 1956 All E.R. 349, the Court observed without equivocation that "no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything."

8. In **Andhra Pradesh State Financial Corporation vs. M/s. GAR Re-Rolling Mills & Anr.** AIR 1994 SC 2151, and **State of Maharashtra & Ors. Vs. Prabhu** (1994) 2 SCC 481,

the Hon'ble Apex Court has observed that a writ Court, while exercising its equitable jurisdiction, should not act as to prevent perpetration of a legal fraud as the Courts are obliged to do justice by promotion of good faith. "Equity is, also, known to prevent the law from the crafty evasions and sub-letties invented to evade law."

9. In ***Smt Shrisht Dhawan vs. Shaw Brothers***, AIR 1992 SC 1555, it has been held as under:-

"Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct."

10. In United ***India Insurance Co. Ltd. vs. Rajendra Singh & ors.***, (2000) 3 SCC 581, the Hon'ble Apex Court observed that "Fraud and justice never dwell together" (fraus et jus nunquam cohabitant) and it is a pristine maxim which has never lost its temper over all these centuries.

11. The ratio laid down by the Hon'ble Apex Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud by entertaining the petitions on their behalf. In ***Union of India & ors. vs. M. Bhaskaran***, 1995 Suppl. (4) SCC 100, the Hon'ble Apex Court, after placing reliance upon and approving its earlier judgment in ***District***

Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram & Anr. vs. M.Tripura Sundari Devi, (1990) 3 SCC 655, observed as under:-

“If by committing fraud any employment is obtained, the same cannot be permitted to be countenanced by a Court of Law as the employment secured by fraud renders it voidable at the option of the employer.”

12. Similar view has been reiterated by the Apex Court in **S. Partap Singh vs. State of Punjab**, AIR 1964 SC 72; **Ram Chandra Singh vs. Savitri Devi & Ors.**, (2003) 8 SCC 319; and **Vice Chairman, Kendriya Vidyalaya Sangathan & Anr. vs. Girdharilal Yadav**, (2004) 6SCC 325. The Common Law doctrine of public policy can be enforced wherever an action affects/offends public interest or where harmful result of permitting the injury to the public at large is evident. Moreso, if initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. *“Subla Fundamento cedit opus” – a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent court. “Nullus Commodum capere Potest De Injuria Sua Propria”.* (Vide **Union of India & Ors vs. Major General Madan Lal Yadav (Retd.)**, AIR 1996 SC 1340). The violators of law cannot be

permitted to urge that their offence cannot be subject matter of injury, trial or investigation. (Vide ***Lily Thomas & Ors vs. Union of India & Ors.***, JT 2000 (5) SC 617.

13. The Latin maxim fraud et jus nunquam *cohabitant* means fraud and justice never dwell together. Applying the said maxim to the present case for the purpose of judicious application, since the petitioner has committed fraud and there is no denial of factual matrix on record that he has concealed pendency of criminal cases against him, like dacoity with murder and dacoity. May be he was acquitted at later stage after filing Writ Petition in the High Court but that shall not attract the provisions contained in Sections 43 and 44 of the Army Act, 1954. Army has right to discharge or dismiss such persons under administrative powers.

14. Ld. Counsel for the petitioner submitted that the petitioner should have been dismissed instead of being discharged. Since the order of discharge has been passed on account of fraud played by the petitioner, discharge of the petitioner seems not to suffer from any legal impropriety or illegality.

15. Ld. Counsel for the petitioner has relied upon the decision rendered by this Tribunal in ***Original Application No. 152 of 2014: Ex-Recruit (MP) Harendra Kumar vs. Union of India & ors***, decided on 24.08.2014. The said case is not applicable in the facts and circumstances of the present case for the reason

that the petitioner is guilty of fraud and is not entitled for any indulgence by the Tribunal.

16. It is a case where the petitioner has wasted valuable time of the High Court as well as this Tribunal and thus, we are of the view that it is a fit case where the petitioner should be saddled with cost. In the factual matrix of the case, we quantify the costs to Rs. 5000/- which shall be deposited by the petitioner in this Tribunal within two months. In case cost as directed above is not deposited, the same shall be recovered by the District Magistrate, Pilibhit (U.P.) as arrears of land revenue and shall deposit the same in this Tribunal within two months thereafter.

17. In view of our observations made above, we are of the view that the T.A. lacks merit and is accordingly **dismissed**.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

anb

(Justice D.P. Singh)
Member (J)