

Reserved
Court No. 2

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 208 of 2014

Thursday, this the 16th day of February, 2023

“Hon’ble Mr Justice Ravindra Nath Kakkar, Member (J)”

“Hon’ble Maj Gen Sanjay Singh, Member (A)”

Pravind Kuma Singh, Ex-Sepoy No. 4278151N, 7 Bihar Regt, S/O Sri Manendra Prasad Singh R/O Village: Bajitpur, Post: Gopalpur, P.S Naya Gaon, District: Chhapra, Bihar at present residing with his brother c/o Vijay Bahadur Singh R/O II - 17D, 40 Quarter Railway Colony Alambagh Lucknow – 226005.

..... **Applicant**

Ld. Counsel for the Applicant : Shri Shailendra Kumar Singh,
Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.
2. Commandant, 7 Bihar Regimental Centre, Danapur, Cantt Bihar.
3. Lieutenant General (Sena - Adhyaksha), Central Command Headquarters, Lucknow.

.....**Respondents**

Ld. Counsel for the Respondents. :Shri Dinesh Kumar Pandey,
Central Government Counsel.

ORDER**“Per Hon’ble Mr Justice Ravindra Nath Kakkar, Member (J)”**

1. The instant Original Application has been filed under Section 15 of the Armed Forces Tribunal Act, 2008 for the following reliefs:-

- (i) *To quash the order at 14.5.2013 for dismissal from service of petitioner and to quash the order for not eligible further in any Govt. Service as entry recorded in service discharge book by opp. Parties.*
- (ii) *To quash the order dated 30.08.2013 passed by the opposite party No. 3 in case No. 190105/Pet./M/AG/DV (Sep Pravind) served to petitioner through letter dated 29.09.2013 issued by the opposite party No. 2 contained in Annexure No. B of compilation No.1 to the Original Application.*
- (iii) *To quash the entire proceedings of summary court martial held on 14th May, 2007 against the appellant beyond period of limitation prescribed under the Army Act, 1950.*
- (iv) *In relief (i) after word “quash the order” ‘Date 14.5.2007’ be added.*

(v) *To issue any other order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case.*

(vi) *To award the cost of original application with cost.*

2. The admitted facts of this case are that the applicant was enrolled in Indian Army on 27.07.1999. At the time of enrolment he submitted false and fake Senior Secondary School Certificate. The matter was investigated and the certificates were found forged. The applicant was tried summarily and he was dismissed from service on 14.05.2007. He represented his case for re-instatement in service which was denied. Being aggrieved, applicant has filed instant O.A. with the prayer to quash the discharge order and to reinstate him in service with all consequential benefits.

3. Learned counsel for the applicant submitted that applicant was enrolled in Indian Army on 22.06.1999 as Soldier General Duty. He had completed 7 years, 9 months and 17 days of service while dismissed from service on the basis of allegation that he has submitted fake certificate of Matric pass. He was recommended for adjustment in the post of Soldier Tradesman as he was 9 class pass. During service, his conduct was appreciable. The applicant was married with Smt Arti Singh on

26.06.2004 and two children were born with their wedlock. The applicant was charged for fraudulent enrolment in army due to fake certificate of matric pass submitted by him at the time of appointment and after 8 years of service, enquiry was held and there were two options before the respondents. First to retain him in service in the public interest keeping in view the length of service, performance and exemplary record in terms of Army Headquarters letter No B/6001/R/Inf 6 (Pers) dated 29 July 1998. Second option was to take disciplinary action against the applicant in terms of Army Headquarters letter dated A/10064/Rgt (OR) (a) dated 29 June 1990 for discharge from service. Learned counsel for the applicant submitted that respondents have not considered first option for adjustment of applicant on the post of Soldier Tradesman in place of Soldier GD and accepted second option and applicant was dismissed from service after about 8 years of service. His application for adjusting in Soldier Tradesman category duly recommended by Commanding Officer was forwarded but HQ Central Command, Lucknow returned the application with direction to take disciplinary action against the applicant. Feeling aggrieved with the harsh action of respondents, wife of the applicant submitted application before the respondents which was dismissed. Respondents have not considered the case of the applicant

sympathetically and did not consider the option of adjusting of applicant on the post of Soldier Tradesman in place of Soldier GD. Learned counsel for the applicant pleaded that directions be issued to respondents to quash dismissal order and to allow the applicant to continue his service in Soldier Tradesman category.

4. On the other hand, learned counsel for the respondents submitted that applicant was enrolled in Indian Army on 27.07.2000 and dismissed from service on 14.05.2007 by Summary Court Martial. The applicant was charged under Army Act Section 44 for making false answer to question set forth in the prescribed form of enrolment. He was enrolled by producing false and fake SSC Certificate. When the army authorities verified the certificates, it was revealed that mark sheet of matriculation submitted by the applicant are fake. A detailed report was submitted to Additional Director General (Recruiting 5 OR), Army Headquarters. Commandant Bihar Regimental Centre (BRC) advised to Commanding Officer 7 Bihar on two opinions available to deal with the case. First option was to retain the applicant in service by invoking provision of Army Headquarters letter dated 29.07.1998. Second option was to take disciplinary action against the applicant under provisions of Army Headquarters letter dated 29.06.1990. The case was taken up by

BRC on 19.02.2006 for retention of the applicant in service but Headquarters Central Command turned down the request by Headquarters Central Command on 29.08.2006 regarding retention along with order to hold Summary Court Martial (SCM). SCM was held and applicant was dismissed from service on 14.05.2007. Applicant submitted Statutory complaint dated 26.11.2012 against dismissal which was rejected being time barred. He has also argued that in this case admittedly the applicant's enrolment was fraudulent and, therefore, he is not entitled to any relief.

5. We have heard learned counsel of both the parties and perused the documents available on record.

6. The question before us to decide is 'whether the order of dismissal of the applicant is liable to be quashed and applicant can be re-instated in service after adjusting him in Soldier Tradesman category?'

7. We find that applicant was enrolled in army against unit quota centre enrolment. A complaint was filed by Shri BK Singh against the applicant alleging that Sep Pravind Kumar Singh was enrolled in the army on fake matriculation certificate. The matter was investigated and it was established that the applicant was enrolled in army on fake matric certificate. During Court of Inquiry applicant pleaded

guilty to the charges labelled against him and he was dismissed from service. He also admitted in his defence in his statement at the Summary of Evidence. Against aforesaid punishment wife of the applicant submitted statutory complaint dated 18.02.2013 to Chief of the Army Staff indicating her grievances. The same was rejected by a reasoned and speaking order dated 30.08.2013. The Court after complying with provisions of Army Rule 115 (2) and 2 (A) found the applicant guilty and sentenced him to be dismissed from service. In addition, he also managed fake verification report from school in his favour so that no action is taken against him. Thus, his good character was of no relevance to condone his offence of fraudulent enrolment. His trial was conducted in accordance with the provisions of the Army Act and Army Rules. Entries in discharge book are in accordance with the interest on the subject promulgated vide Defence Service Regulations (DSR) para 170. The case of the applicant was not considered by adjusting him in Soldier Tradesman due to weak moral character shown by him by enrolling himself on fake education certificate and dishonesty displayed by him by giving false answers to enrolling officer.

8. As far as adjusting in Soldier Tradesman is concerned, applicant had already put in more than seven years of service. As per para 6 (d) of Army order 4/2008/MP re-mustering of a soldier in another trade can only be done within two years of the date of

mustering as trained soldier and not more than six years of total service. Hence his re-mustering in Soldier Tradesman was not done.

9. Hon'ble Apex Court in a case where an employee had produced a fake certificate for seeking employment, the bench of Hon'ble **Mr Shah and BV Nagarathna J** has held that producing the false / fake certificate is a grave misconduct and dismissal of service is a justified punishment in such cases. The court observed that ***“The question is one of the TRUST. How can an employee who has produced a fake and forged marksheet/certificate, that too, at the initial stage of appointment be trusted by the employer? Whether such a certificate was material or not and/or had any bearing on the employment or not is immaterial. The question is not of having an intention or mens rea. The question is producing the fake/ forged certificate. Therefore, in our view, the disciplinary authority was justified in imposing the punishment of dismissal from service.”***

10. Learned counsel for the applicant has placed reliance on the pronouncement of a judgment passed by this Tribunal in the case of Sunil Kumar Singh vs Union of India, O.A. No 139 of 2015 decided on 03.02.2016, wherein dismissal of the applicant was set aside. The facts of that case are quite different as statutory provisions were not followed in that case.

11. The issue involved in this case is squarely covered by a recent pronouncement of the Hon'ble Supreme Court in the case of **Ex Sigmn Kanhaiya Kumar Vs Union of India** decided on 24 July 2018. Paras 3 and 4 of the said judgment show the facts of that case, which reads as under:

“3. The facts giving rise to this appeal are that the appellant was enrolled in the Army as Sepoy/Washerman on 19.01.2009. About 6 years of service a show cause notice was issued on 08.10.2014 alleging offence of fraudulent enrolment i.e. enrolment in the Army based on a fake relationship certificate. On 13.03.2015, the respondent authorities dismissed the appellant from service under Section 20(3) of the Army Act. The appellant submitted representation before the respondents which was not considered in time due to which he filed O.A. No. 773/2015 before the AFT and the same was disposed of with a direction to decide the representation of the appellant. On 09.08.2016 the respondents rejected the representation of the appellant. The appellant preferred the original Application under Section 14 of the Armed Forces Tribunal Act, 2007 challenging the order dated 09.08.2016.

4. It may be noted that without admitting the formal original application, the AFT had directed the respondent to produce the relevant documents. In compliance with the said direction, the Relationship Certificate dated 09.08.2004 was produced vide reply dated 05.11.2014 submitted by the appellant to the show cause notice issued by the establishment. In the reply so submitted the appellant had specifically admitted the fact that his father was not an Ex-serviceman and, in fact, he had produced and relied on a fake Relationship Certificate. The records pertaining to Army No. 14224588 made available by the

respondents clearly showed that number is in respect of Onkar Mal Gujar.”

In this factual background, Hon'ble Apex Court held as under :

“14. In the aforesaid scenario, the argument of the appellant that there should have been an inquiry into the matter as per the provisions of the Army Act, 1950 is totally untenable. Even otherwise, when the appellant himself has admitted that Relationship Certificate produced by him is fake, the procedure as laid down in Section 20 of the Army Act, 1950 would be an empty formality.

15. In Union of India v. Major General Madal Lal Yadav (Retd), this Court opined that a person having done wrong cannot take advantage in his own wrong and plead bar of any law to frustrate the lawful trial by a competent court and, in the process, the Court invoked the Latin dictum “Nullus Commodum Capere Protest De Injuria Sua Propria”.

12. In the case before the Hon'ble Supreme Court, the applicant was dismissed from service and his dismissal order was not interfered with by the Hon'ble Supreme Court because admittedly his enrolment itself was fraudulent. Therefore, the aforesaid pronouncement of the Hon'ble Supreme Court applies in full force to the facts of the instant case. Hon'ble Apex Court has approved the administrative dismissal order under Section 20(3) of the Army Act, 1950.

13. Thus, in view of the pronouncement of the Hon'ble Apex Court, quoted above, it is clear that where admittedly the initial

enrolment is fraudulent, then the relationship of master and servant from the very inception becomes illegal and, therefore, the applicant cannot claim any benefit of any procedural defects provided in the Army Act.

14. For all the aforesaid reasons, we see no ground to interfere with the impugned order. This O.A. has absolutely no force, deserves to be dismissed and is hereby **dismissed**.

15. No order as to costs.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated : 16 February, 2023
Ukt/-