

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

ORIGINAL APPLICATION No. 573 of 2020

Thursday, this the 25th day of November, 2021

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

Deepak Singh (No. 3020984M), SP Coy, 30th Rajput Regiment,
S/o Surendra Singh, R/O Village-Rudrapur, Post-Singhwara,
Sardaha, Distt-Azamgarh, Uttar Pradesh.

..... Applicant

Ld. Counsel for the : **Shri Gyan Singh Chauhan**, Advocate.
Applicant **Shri Ajeet Pratap Singh**, Advocate.

Versus

1. Union of India, through Chief of the Army Staff, Army Headquarters, Ministry of Defence, New Delhi.
2. Brigadier, Commander, HQ 351 Infantry Brigade, PIN-908351, C/o 99 APO.
3. Commanding Officer, 30th Rajput Regiment, PIN-912130, C/o 99 APO.

.....Respondents

Ld. Counsel for the : **Ms Appoli Srivastava**, Advocate.
Respondents. Central Govt. Counsel

ORDER (Oral)

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 an impugned order of dismissal and speaking order dated 29.04.2020 passed by respondent No 2 contained as Annexure No 1 of the present application, in the interest of justice.

(ii) To quash an impugned Discharge Certificate dated 29.04.2020 passed by Respondent No 3 contained as Annexure No 2 of the present application in the interest of justice.

(iii) Direct respondents to consider the case of applicant and restore applicant's services from where he is dismissed and discharged w.e.f. 30.04.2020 alongwith consequential benefits, in the interest of justice.

(iv) Costs and expenses of the application in favour of the applicant against all the opposite parties.

(v) Any other relief or reliefs which this Hon'ble Tribunal deems fit and proper in the circumstances of the case may also be granted.

2. Brief facts of the case are that the applicant was enrolled in the Rajput Regiment through Army Recruiting Office (ARO) Varanasi on 27.03.2018. During recruitment process, primary medical examination of the applicant was carried out on 15.12.2017 by the Recruiting Medical Officer which found him to be suffering from 'Hyper Hydrosis' and 'Fracture Restricted Supination (Lt) Upper Limb, Deformity Lower FO' and

accordingly, he was referred to Military Hospital, Allahabad with instructions to report to the hospital before 21.12.2017 for review. Applicant again reported to ARO Varanasi and deposited review certificate wherein he was declared medically fit for both the diseases/disabilities. After having been selected into the Army, he reported at the Training Battalion, Rajput Regimental Centre, Fatehgarh (UP) on 27.03.2018 and after completion of training he was posted to 30 Rajput on 14.02.2019. In September 2019, HQ UP & MP Sub Area forwarded letter dated 30.09.2019 with a list of 48 candidates who had got themselves enrolled into Army through fraudulent means, i.e. without conduct of review medical examination by the Medical Specialist at Military Hospital, Allahabad. The applicant was one of the 48 candidates mentioned in the list. He was medically examined by the specialist in 151 Base Hospital and was found medically unfit for the Army for the disease/disability 'Fracture Restricted Supination (Lt) Upper Limb' but was found medically fit for the disease/disability 'Hyper Hidrosis'. Since the applicant was found unfit for the Army service for the disease/disability 'Fracture Restricted Supination (Lt) Upper Limb', a Show Cause Notice (SCN) dated 24.04.2020 was served upon the applicant and after receipt of reply dated 26.04.2020 he was dismissed from service in terms of Section 20 (3) of Army Act, 1950 w.e.f. 29.04.2020. This O.A. has been filed to quash the dismissal order and dismissal certificate dated 29.04.2020 and

reinstatement of applicant in service with all consequential benefits.

3. Submission of learned counsel for the applicant is that applicant was enrolled in medically fit condition and whatever deformity/disability detected at the time of enrolment were reviewed by Medical Specialist and applicant was found fit in all respects. His further submission is that applicant has undergone rigorous military training and after that he was posted to 30 Rajput where he performed his duty to the entire satisfaction of superiors. He further submitted that since he was not suffering from any disease/disability, he may be allowed to undergo second medical board to decide his present medical category. He pleaded for quashing of dismissal order and reinstatement into service.

4. On the other hand submission of learned counsel for the respondents is that since the applicant got enrolled in the Army (Rajput Regiment) on 27.03.2018 by adopting fraudulent means, therefore he was dismissed from Army service w.e.f. 29.04.2020 by the order of Commander, 351 Infantry Brigade under the provisions of Section 20 (3) of Army Act, 1950 read in conjunction with Rule 17 of the Army Rules, 1954. His further submission is that applicant's medical examination was carried out by the Recruiting Medical Officer on 15.12.2017 in which he was found to be suffering from 'Hyper Hydrosis' and

'Fracture Restricted Supination (Lt) Upper Limb, Deformity Lower FO'. Accordingly, he was referred to Military Hospital, Allahabad alongwith review certificate but instead of reporting to Medical Specialist, applicant got his review certificate signed/completed by Nb Sub DSG Reddy of Military Hospital, Allahabad and produced it before Recruiting Officer, Varanasi and he completed his training and was posted to 30 Rajput. His further submission is that in September 2019 recruitment through fraudulent came to the knowledge of HQ UP & MP Sub Area and after investigation, disciplinary action was taken and applicant was dismissed from service w.e.f. 29.04.2020 in medical category A5. He pleaded for dismissal of O.A. on the ground that since the applicant was suffering from the deformity prior to enrolment, as has been mentioned by the Medical Specialist and fraud was committed while preparing review certificate.

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

6. Ex Sepoy Deepak Singh got enrolled in the Army on 27.03.2018 through ARO, Varanasi. Prior to recruitment his primary medical examination was carried out by recruiting medical officer on 15.12.2017 in which he was found to be suffering from the disease/disability 'Hyper Hydrosis' and 'Fracture, Restricted Supination (Lt) Upper Limb, Deformity

Lower FO'. Accordingly, he was referred to Military Hospital, Allahabad alongwith review certificate. Instead of reporting to Medical Specialist at Military Hospital, Allahabad, applicant got his review certificate completed, declaring him fit, by Nb Sub DSG Reddy of Military Hospital, Allahabad and deposited the same with ARO, Varanasi. After having been selected in the Army, applicant was despatched to Rajput Regimental Centre, Fatehgarh where he completed his training and was posted to 30 Rajput.

7. Based on a pseudonymous complaint from Mr. Narender who levelled allegations against Nb Sub DSG Reddy of Military Hospital, Allahabad, a Court of Inquiry (C of I) was ordered which found that 16 candidates, out of randomly selected list, who were declared fit as per review certificate, were not examined by the concerned specialists for the medical aspect for which they were referred to Military Hospital, Allahabad by ARO, Varanasi. Thereafter, in accordance with the directions of the C of I, documents related to review certificates were scrutinised and it was found that 48 candidates including the applicant were not reviewed by Medical/Surgical Specialist of Military Hospital, Allahabad. Accordingly, units in which individuals were posted, were directed as under:-

(i) Get the individual medically examined for the medical disability for which he was referred to Military Hospital, Allahabad by ARO, Varanasi.

(ii) Thereafter, measures in accordance with the ruling on the subject to be taken for administrative termination of service, if need arises.

8. Accordingly, review medical examination of the applicant was conducted at 151 Base Hospital. Lt Col SK Rai, Classified Specialist (Orthopaedics) while giving his opinion on 'Fracture Restricted Supination (Lt) Upper Limb' endorsed that *"This individual was an old case of injury distal end of Radius and Ulna in childhood with grossly restricted supination and pronation Lt wrist, before recruitment in Army. With this kind of disability and grossly restricted supination and pronation Lt Wrist he is medically unfit for Army as per existing medical standard. In view of the above limitation and disability, it is now recommended to be invalided out of service in category A5"*.

9. It is pertinent to mention that applicant was declared 'fit' for the disease/disability 'Hyperhidrosis' on 06.12.2019 by Lt Col Parul Kamboj, Graded Specialist (Dermatology).

10. Since the applicant was found unfit for the Army service for the disease/disability 'Fracture Restricted Supination (Lt) Upper Limb' his services were terminated by following due

process in terms of Section 20 (3) of Army Act, 1950 read with Rule 17 of the Army Rules, 1954 for getting him enrolled into the Army through fraudulent means.

11. During the course of hearing in support of his contention, learned counsel for the respondents has cited AFT, Regional Bench Jabalpur judgment dated 20.03.2018 passed in O.A. No. 61 of 2015. We have gone through the aforesaid judgment and we find that case law cited by learned counsel for the respondents is identical in the case in hand. The operative portion of the aforesaid judgment is reproduced as under:-

"Therefore, there is no requirement in law that the competent authority in the cases of other ranks must take a decision why trial or court martial was inexpedient and impracticable before deciding the proceed by administrative action for removal of an individual belonging to the other ranks. Therefore, the said note was clearly inapplicable in the present case and there was no procedural lapse on the ground also.

In this view of the matter, we are satisfied that there was sufficient material for establishing the complicity of the applicants and for their removal as the action taken by the then ARO for facilitating their fraudulent enrolment to which he had admittedly pleaded guilty, could not have been taken without the active connivance and collusion of the applicants. Therefore, there is no force in these applications which are dismissed. No orders as to costs.

Before parting we would like to state that this case indicates the scale at which fraud in the matters of enrolment into the Army are possible and indeed being practiced. We must never lose sight of the fact that the Army and the forces are vital for preserving the security of the nation and its people. Corruption and fraudulent enrolments in any department are reprehensible, but corruption and fraudulent into the Armed Forces are wholly

unpardonable and call for deterrent action, if the procedure for selection is allowed to be vitiated by allowing undeserving persons to get selected by corrupt practices and by colluding with errant officials who are placed for long periods of time in key posts by accident or by collusion, our state and our lives will be in serious peril. We think that it is high time now that we show zero tolerance of such malpractices, misfeasance and fraud on immediately put in place a system to stem this root and to identify the bad elements who are manning such sensitive post and initiate stringent action and award deterrent punishment to persons who have facilitated such fraudulent practices, and ensure that such activities are never repeated in the future.”

12. We have been informed that disciplinary action against Nb Sub DSG Reddy of Military Hospital, Allahabad who committed fraud, has already been taken for forging review medical certificates in respect of individuals who were required to be reviewed by the Medical/Surgical Specialists.

13. It is well settled proposition of law that fraud vitiates the solemn act. In case a person is inducted in the Army by commission of fraud and collusive act then it shall vitiate the selection and the Army has right to dismiss or discharge such person whenever a fraud comes to light in the knowledge of appropriate authority. 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 misrepresentation 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 the case of ***Lazarus Estate Ltd. vs. Besalay***, 1956 All E.R. 349, the Court observed without equivocation that “no judgment of a Court and no order of a Minister can be allowed to stand if it has been obtained by fraud because fraud unravels everything.”

14. 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.”

15. 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”.

16. 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.

17. From the aforesaid it is clearly established that since the applicant got him enrolled fraudulently by forging medical documents therefore, he was rightly discharged from service in

medical category A5 having a disease/disability prior to enrolment.

18. In view of the above, O.A. is devoid of merit and is accordingly **dismissed**.

19. No order as to costs.

20. Pending miscellaneous applications, if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated:25.11.2021
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