

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

**COURT NO. 1**

**O.A. No. 172 of 2016**

**Thursday, this the 20<sup>th</sup> day of July, 2017**

**"Hon'ble Mr. Justice D.P.Singh, Judicial Member  
Hon'ble Air Marshal Anil Chopra, Administrative  
Member"**

No 1492328W Rect (Ex) Sahendra Kumar son of Sadhu  
Unit BIT BN Present Address - Village Bhujari, Post Gauri  
P.S. - Khanpur, District - Ghazipur (U.P.), Place of  
posting Ahmad Nagar **-Applicant**

**Ld. Counsel appeared - Shri B.D. Mishra, Advocate  
for the Applicant**

Versus

1. Union of India Secretariat Ministry of Defence, New Delhi.
2. The Chief of Army Staff, New Delhi.
3. Commandant Battalion M.I.R.C.Ahmadnagar

**- Respondents**

**Ld. Counsel appeared -Shri R.C.Shukla,Advocate  
for the Counsel  
Respondent**

**OIC Legal Cell -Maj Salen Xaxa.**

**ORDER (Oral)**

1. This is a petition seeking setting aside of the impugned orders dated 02.11.1999 and 03.11.1999 contained in Annexure 2 of the O.A passed by respondent no 3 under Rule 13 (3) (iv) of the Army Rules.

2. The facts of the case in nutshell are that the Applicant was enrolled in the Indian Army on 28.10.1996 and was discharged from the service on 02.11.1999 under Army Rule 13 (3) (iv) on the grounds of "unlikely to become an efficient soldier".

3. The facts beyond the pale of dispute are that at the time of enrollment the Applicant had not disclosed in the required format that criminal case in case crime no 12 of 1996 under section 147, 323, 504 and 336 IPC and Sect 3 (i) (1) of the SC/ST Act registered at P.S. Khanpur District Ghazipur was pending against him. However, later-on, it transpired that the Applicant had been arrayed as accused in the FIR registered under the aforesaid sections of the Indian Penal Code and SC/ST Act. This led to passing order of discharge as aforesaid.

4. Learned counsel for the Applicant concedes that it was an inadvertent mistake that the Applicant did not disclose about the pendency of the criminal case in the required format at the time of enrollment but at the same

time, he submits that it should not be a ground for discharge from service in pursuance of Army Rule 13 (3) (iv). To prop up the above submissions, he has relied upon certain cases out of which two cases are of Delhi High Court and one case cited across the bar is of Hon'ble Apex Court and on that basis, he submits that the punishment awarded to the Applicant was unwarranted in the facts and circumstances of the case.

5. Per contra, it is contended by learned counsel for the respondents that non-disclosure of the offence which is of serious nature being under section SC/ST Act is fatal besides being violation of service condition of the Army. He also contends that it was incumbent on the Applicant to have disclosed the pending Criminal Case and since the Applicant has not disclosed the requisite information about pendency of criminal case at the time of enrollment and further since he himself has not brought it to the notice of the authority of the India Army, the discharge of the Applicant in pursuance of Army Rule 13 (3) (iv) on the ground of "unlikely to become an efficient soldier" cannot be faulted.

6. The learned counsel for the Applicant in reply submits that the Applicant has since been acquitted in the aforesaid criminal case in the year 2014. He also submits that the Applicant was falsely implicated in the

case and the acquittal does prove the false implication of the Applicant in the case. He also prays for benign view of the entire matter.

7. It is beyond any iota of doubt that before enrollment in the Army, the Applicant had been arrayed as accused in the FIR lodged at Police Station Khanpur District Ghazipur at case crime no 12 of 1996. It also brooks no dispute that the case pending against the Applicant culminated in acquittal in the year 2014. Thus, it leaves no manner of doubt that the Applicant had suppressed the material information which he was required to furnish in the required format at the time of enrollment.

8. The learned counsel for the Applicant has placed credence on a decision of Delhi High Court in **Manoj Vs Union of India and Ors reported in 2016 Law Suit (Del) 3945**. We have gone through the decision. It is a case in which incumbent selected and appointed in the Central Army Police Force had disclosed the information of pendency of criminal case. Hence, the Delhi High Court in ultimate analysis held that it was not a case of concealment of any material information at the time of recruitment. In this view of the matter, the case of Manjo is unavailing and cannot be imported for application to the facts of the present case.

9. Yet another case relied upon by learned counsel for the Applicant is **Avtar Singh vs Union of India & Ors reported in 2016 LawSuit (SC) 735**. We have been taken through the aforesaid decision. In this case, Their Lordships of Supreme Court held that fraud and misrepresentation vitiates the transaction and in case employment has been obtained on the basis of forged documents, the same would be deemed to have been obtained fraudulently and incumbent may be terminated without holding any inquiry subject to a rider that in case employee is confirmed, holding a civil post and has protection of Article 311 (2), due inquiry has to be held before terminating the services. Undoubtedly applicability of Article 311 (2) relates to Government servant and not the members of the Armed Forces. While considering the question with regard to suppression of materials at the time of recruitment, the Apex Court held that though a person who has suppressed the material information, cannot have unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases. What yardstick is to be applied has to be applied while dealing with such matter, has been dealt with by the Apex Court and the law over the subject has

been summarized as contained in paras 27 and 28 of the aforesaid decision which being relevant are reproduced below for ready reference.

*"27. Suppression of 'material' information presupposes that what is suppressed that 'matters' not every technical or trivial matter. The employer has to act on due consideration of rules/instructions if any in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.*

*28. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by concerned authorities considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.*

10. A plain reading of aforesaid observation of the Apex Court indicates that while passing the order of termination of services, the employer shall take into

account the special circumstances of the case if any and shall take a decision in accordance with rules and instructions applicable to the employee at the time of taking decision. However, the Apex Court while laying down the criteria, observed that in case there is suppression or false information of involvement in a criminal case where acquittal or conviction has been recorded before filing of application or verification form, and such fact later comes to knowledge of employer, such cases be dealt with differently than the cases in which the matter is pending for adjudication. Coming to the facts of the present case, it would appear that at the time of recruitment, the aforesaid criminal case was pending, and the Applicant came to be acquitted only in the year 2014 after lapse of almost 16 years from the date of enrollment. It is evident from the observation of the Apex Court in the aforesaid decision that in case where there is deliberate suppression of facts with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper. It is also observed by the Apex Court that if Pendency of a criminal case is not known to the Applicant

at the time of filling of the form, may be a ground for retention in service in case it does not have adverse impact on the service career. It has also been observed by the Apex Court that before holding a person guilty of suppression of material information, knowledge of such fact must be attributable to him.

11. In view of the above, a person may be terminated from service keeping in view the gravity of material which he has suppressed at the time of recruitment. It also follows from the above decision that a case of trivial nature not involving moral turpitude may not make out a case for termination of service but where conviction has been recorded in a case which is of serious nature, the employer may cancel candidature or terminate services of the employee.

12. Section 44 of the Army Act deals with the subject where at the time of recruitment, some facts have been concealed. Section 45 of the Army Act deals with the unbecoming conduct. Both the aforesaid sections being relevant are reproduced below for ready reference.

**“44. False answers on enrolment.—** Any person having become subject to this Act who is discovered to have made at the time of enrolment a willfully false answer to any question set forth in the prescribed form of enrolment which has been put to him by the enrolling officer before whom he appears for the purpose of being enrolled shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.



NOTES

1. (a) An offence under this section should not be dealt with summarily under [AA.s.80](#), [83](#) or [84](#).

(b) 'Having become subject's —It will be observed that the wording of this section differs from the wording of the other penal sections. This is essential since at the time the offence is committed the person is not actually subject to AA; as he does not become so subject until he has signed the enrolment paper ([AA.s.14](#)).

2. A person charged with "fraudulent enrolment" under [AA.s.43\(a\)](#) should not also be charged under this section with "false answer" made on the occasion of such enrolment.

3. (a) The answer must be willfully false; thus where a person might reasonably have been mistaken as to the fact of his having "served", where, for instance, he was discharged as unfit before he had done duty or worn uniform, a conviction would not be upheld.

(b) Where the false answer is as to age, proof must be given by calling some one to prove that the accused is the person referred to in the birth-certificate or register; and a mere production of a birth-certificate or register is not sufficient.

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4. The falsity of the answer must be proved in accordance with the normal rules of evidence. The original enrolment paper must be produced at the trial, see [AA.s.141\(1\)](#).

5. If false answers are given to two or more questions in the enrolment paper, each false answer should be included in a separate charge.

6. 'Enrolling Officer': see [AR7](#).

**45. Unbecoming conduct-** Any officer, junior commissioned officer or warrant officer who behaves in a manner unbecoming his position and the character expected of him shall, on conviction by court-martial, if he is an officer, be liable to be cashiered or to suffer such less punishment as is in this Act mentioned; and, if he is a junior commissioned officer or a warrant officer, be liable to be dismissed or to suffer such less punishment as is in this Act mentioned.

NOTES

1. An offence under this section should not be dealt with summarily under [AA.s.83](#) or [84](#).

2. For behaviour to be blameworthy under this section, it must be unbecoming both the accused's position and the character expected of him as an officer/JCO/WO i.e., his refusal to be swayed by considerations other than duty to the service does not, as the word is commonly understood, admit of different degrees or standards at any rate in that class and cannot therefore vary with his position i.e., the rank or appointment held by him except when the behaviour complained of is of a social character i.e., it offends the accepted rules of social behaviour and thus is unbecoming the character from a moral view point, in which case the culpability would depend upon the position held by the accused. Where behaviour complained of is not punishable under this section, a charge may lie under [AA.s.63](#), if such conduct is prejudicial both to good order and military discipline.

3. The offence under this section must be distinguished from the offence of disgraceful conduct of a cruel, indecent or unnatural kind under [AA.s.46\(a\)](#). As a rule a charge should not be preferred under this section where such behaviour amounts to a specific offence under any other section of AA. The conduct is not brought within the scope of this section by merely applying to it the statutory language; and a court is not warranted in convicting unless of the opinion that the conduct proved was unbecoming of the accused's position and the character expected of him as an officer etc., having regard to its nature and to the circumstances in which it took place.

4. This section is not applicable to civilians with relative rank and subject to AA under sec. [2\(l\)\(i\)](#).

5. This section is frequently invoked in cases where an officer has given stumer cheques. Such a charge should only be preferred where it is clear from the evidence from the bank that the officer acted in such reckless manner as is tantamount to fraud.

6. There can be no attempt to commit this offence as unbecoming conduct would include the act as well as an attempt to do such act."

13. Section 44 itself shows that concealment or suppression of facts must be willful while giving answer

to the information sought in the application format. The same principle seems to appear from the judgment of the Apex Court (supra).

14. In the present case, involvement of applicant in a serious offence like the case under the SC/ST Act seems to be a crime of grave nature which the Applicant has concealed at the time of enrollment. Section 44 of the Army Act is a statutory provision and keeping in view the gravity of offence and willful non disclosure, there was no option with the respondents except to pass an order discharging the Applicant from the service in accordance with Rules.

15. Another case relied upon by learned counsel for the Applicant is **Chairman Food Corporation of India and others vs Sudarsan Das (2007) 14 SCC 766**. In the aforesaid case, the incumbent was dismissed from service on ground of his conviction in a criminal case for offence under section 323 IPC. However, later-on, criminal revision filed in that case was allowed and his conviction and sentence were set aside on the ground of that case being of no evidence. In such situation, the Supreme Court directed the incumbent to be reinstated in service on the ground of his acquittal in criminal case. In our view, the aforesaid case is based on different set of

facts and circumstances and is unavailing to the facts and circumstances of the present case.

16. However, the judgment of the Apex Court in **Avtar Singh** (supra) seems to be very well applicable inasmuch as a plain reading of the judgment indicates that where incumbent has fraudulently suppressed the material that too of his being involved in a serious case like the present one, then option is open to the authorities to terminate the services in accordance with law. Hence, respondents have rightly dispensed with the services of the Applicant.

17. Apart from the above, section 44 of the Army Act imposes a duty on the Army to dispense with the services of such person in case some material of serious charge has been concealed willfully. In the present case, there appears to be no room for doubt that concealment of facts was willful on the part of the Applicant. There is another reason why we do not propose to interfere with the present case and it is that keeping in view the fact that suppression of material information with regard to pendency of criminal case is not disputed and a period of almost 16 years has rolled by from the date of discharge. Thus, it is not a fit case where a lenient view is called for on some equitable ground.

**Order**

18. As a result of foregoing discussion, the petition being devoid of merit is dismissed.

19. There shall be no order as to costs.

**(Air Marshal Anil Chopra)  
Member (A)**

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

**Dt. July 20, 2017.**

MH/-