

**Court No. 2**  
**Reserved Judgment**

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

**ORIGINAL APPLICATION NO. 219 Of 2011**

**Friday this the 19<sup>th</sup> of January, 2018**

**Hon'ble Mr. Justice S.V.S.Rathore, Member (J)**  
**Hon'ble Lt Gen Gyan Bhushan, Member (A)**

Ex. Sgt. Gupteshwar Singh S No 710691 B Med Asst.  
C 27, Sec-13, Vasundhra GZB. .... **Applicant**

By Legal Practitioner: Shri R Chandra, Advocate  
Learned Counsel for the Applicant.

Versus

1. Union of India, through, Ministry of Defence,  
South Block, New Delhi.
2. Chief of Air Staff, Vayu Bhawan, Rafi Marg,  
New Delhi.
3. Wg. Cdr. M.S.Mathew,  
Asstt. Provost Marshal, 24 P & S (U), Air Force,  
C/O Vayu Bhawan, New Delhi.
4. Nb. Subedar B.K.Singh,  
JC 763254Y, ASC Depot,Ranchi in 2009,  
C/O Sena Bhawan, New Delhi.
5. Sqn Ldr Ms Ansu Mishra (Medical),  
C/o Chief of Air Staff, Vayu Bhawan,  
Rafi Marg, New Delhi 110001.
6. Lt Col S Mukherjee (ENT Spl),  
C/o Chief of Air Staff, Vayu Bhawan,  
Rafi Marg, New Delhi 110001. ... **Respondents**

By Legal Practitioner: Dr Chet Narain Singh,  
Learned Standing Counsel for the Central  
Government assisted by Wg Cdr Sardul Singh,  
Departmental Representative.

**ORDER**

**Per Hon'ble Mr. Justice S.V.S. Rathore, Member (J)**

1. The instant Original Application under Section 14 of the Armed Forces Tribunal Act, 2007 has been filed by the applicant with the following prayers :

- “(a) To quash the dismissal order dated 24 May 2010 passed by Hon'ble AOC-in-C.*
- (b) To quash the rejection order of statutory appeal dated 16.12.2010 received 20.12.2010.*
- (c) To direct the authorities to re-instate the Ptr./Applicant with consequential benefits.*
- (d) To award cost of this application.*
- (e) To pass any other order deem fit & proper in the facts of the case.”*

2. In brief, the facts necessary for the purpose of the instant O.A. are that the applicant was enrolled in the Indian Air Force on 05<sup>th</sup> August 1988 as an Airman and was assigned the trade of Medical Assistant. During his service period, he was working in 20 Wing, Air Force as Senior Non Commissioned Officer in-charge, Medical Examination from 28<sup>th</sup> November 2005 till 15<sup>th</sup> May 2009. While performing his duty as such, he contacted the candidates for recruitment as Airman, who appeared for medical examination directly and also on mobile phone and asked them to pay money to him for declaring them fit by the Medical Board. For this purpose, he procured some mobile Sims in fictitious names and received money from the candidates for getting them declared fit by the concerned Medical Board. Subsequently, a complaint was made by one Rajiv Kumar, a candidate for Airman, who appeared before the Medical Board. Money was demanded by the applicant by making a call on mobile phone. The complaint was made by Rajeev Kumar, who was resident of Bihar. His complaint is dated 04<sup>th</sup> May 2009 and was addressed to the President, Central Airman Selection Board, Brar Square, New Delhi making allegations against the applicant had demanded Rs.30,000/- from him and that he had paid Rs.29,000/- to him in order to

get his medical examination cleared. As per the version of the respondents, the applicant had made a confession and also an additional confession on 26<sup>th</sup> June 2009, which was recorded by Flt Lt VK Verma after giving due caution to the applicant. It was recorded in the presence of Flt Lt Kavita K, wherein the applicant had admitted that he had demanded money and received money from certain candidates. Thereafter, a court of inquiry was held and the said court of inquiry held the applicant guilty. Accordingly, on the basis of the said court of inquiry, the applicant was dismissed from service in exercise of powers under Section 20(3) of the Army Act.

3. The complaint was worded in a manner that it raised inference that the Doctors conducting the Medical Examinations were also involved in this racket. Therefore, this Tribunal vide order dated 19.09.2016 directed the respondents to look into the matter and hold enquiry against those, who were actually involved in the racket of recruitment, regard being had to the allegations made in the complaint. It was also observed in the order that in case the applicant is not the sole person as prima facie appears from the allegations in the complaint, and he was used by some other senior officers, then prima facie, he cannot be made scapegoat for major penalty like dismissal from service.

4. We have been informed that in pursuance of the aforesaid order of this Tribunal, a subsequent court of inquiry was held. Notice of the same was also sent to the applicant. However, he did not appear before the subsequent court of inquiry. The said court of inquiry held that the other officers, whose names appeared in the complaint were not at all guilty. The Doctors only said that once they have declared the applicant unfit, then they cannot declare him fit and advised the complainant to approach the appellate Medical Board.

5. The applicant is before us challenging his dismissal under Section 20(3) of the Army Act.

6. Learned counsel for the applicant, during the course of arguments, has not challenged the findings of the court of inquiry. He has only challenged that the sentence awarded to the applicant was

disproportionate to the mistake committed by him. The competent authority while awarding punishment, has failed to consider the unblemished long service record of the applicant. Learned counsel for the applicant has also argued that the applicant was only a junior employee assisting the Medical Board and the power to declare any candidate fit or unfit after their medical examinations was exclusively with the doctors. Since the doctors were very seniors in rank to the applicant, therefore, he was not in a position to influence them. Thus, the submission of the learned counsel for the applicant is that keeping in view the role of the applicant in getting a candidate declared fit or unfit, the sentence inflicted on the applicant was too severe and disproportionate to the offence committed by him. It is submitted that because of order of punishment of 'dismissal from service', he has not only lost his job, but because of order, he is also not entitled for any post retiral benefits including pension, which has resulted into great hardship to him and also his family.

7. Learned counsel for the respondents has argued that the applicant was engaged in a recruitment racket in the Air Force, therefore, the sentence was appropriate and no interference is required by this Tribunal.

8. Learned counsel for the applicant has placed reliance on the pronouncement of Hon'ble the Apex Court in the case of **S.Mathu Kumaran vs. Union of India and Ors.** (2017 (4) SCC 609). The case before Hon'ble Apex Court was also a case of recruitment racket and the appellant in that case was dismissed from service in exercise of powers under Section 20(3) of the Army Act. The order of dismissal from service was upheld by the Armed Forces Tribunal. While hearing the appeal against the said order, the Hon'ble Apex Court has observed in Para 11 as under :

*"11. No doubt, the dismissal order passed against the Appellant was within the powers of the concerned authorities. However, as far as the dismissal from service is concerned, it is an extreme punishment imposed against the Appellant. The Appellant has to thrive in civil life by doing an appropriate job suitable to his qualification. In the facts and circumstances of the present case, we are inclined to modify the punishment of dismissal from service into discharge from service. The modification of the sentence of dismissal from service into that of discharge will not change the position of the Appellant, so as to claim any re-instatement into service. Even if he was discharged from service, in lieu of dismissal from service, the Appellant cannot seek for any*

*employment or re-employment into the Army. Therefore, there would not be any grievance for the Respondents in the event of punishment of dismissal being modified into that of discharge. At the same time, interest of justice would be served as the Appellant would get the benefits like gratuity and other attendant benefits for the service rendered by him and the Appellant would also get an opportunity to lead honourable life in the society.”*

9. In the facts of the instant case as per the counter affidavit, the applicant was enrolled in the Indian Air Force on 05<sup>th</sup> August 1988 and he was dismissed from service vide order dated 24<sup>th</sup> May 2010. Thus, he has more than 20 years of service to his credit. As per the impugned order dated 24<sup>th</sup> May 2010, there was no previous adverse service record of the applicant. It has nowhere been pleaded in the counter affidavit that even on earlier occasions, the applicant was involved in such type of misconduct and has a bad service record. A perusal of the impugned order shows that this aspect was not considered by the competent authority. Therefore, keeping in view the aforesaid facts, the applicant is considered entitled to the benefit of the pronouncement of the Hon'ble Apex Court (supra) and accordingly, the punishment of dismissal from service deserves to be modified to the discharge from service.

10. Accordingly, this Original Application No.219 of 2011 is **partly allowed**. The order of dismissal from service is modified to the discharge from service. The impugned orders stand modified to this extent only. Consequence of discharge from service shall follow as per law, rules and regulations.

No order as to costs.

(Lt Gen Gyan Bhushan)  
Member (A)

(Justice S.V.S.Rathore)  
Member (J)

Dated: January , 2018.  
PKG