

Reserved**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 391 of 2020**Friday, this the 28th day of April, 2023**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”****“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 7245219M Ex Recruit Jitendra Yadav, Son of Nb/Sub Ram Prakash (Retd), Village – Vishambhar Colony, PO - Bharthana, District - Etawah, PIN 206242

..... Applicant

Ld. Counsel for the Applicant : **Shri Raj Kumar Mishra, Advocate**

Versus

1. Union of India, Through Secretary, Ministry of Defence, South Block, New Delhi -110011.
2. Chief of the Army Staff, Army Headquarters, South Block, New Delhi - 110011.
3. Commandant, RVC Centre and College, PIN - 900468, C/o 56 APO

.....Respondents

Ld. Counsel for the Respondents.

**:Shri RC Shukla,
Central Govt Counsel.**

ORDER

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

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

(I) *Set aside the Show Cause Notice issued to the applicant on 19 Nov 2016 as to why the applicant should not be discharged from service under the provisions of Army Rule 13 (3) (III) (V) as “SERVICE NO LONGER REQUIRED”. **(Annexure – 4)**.*

(II) *Set aside the Discharge Order passed by Commandant RVC Centre and College under Army Rule 13 (3) (III) (V) as “SERVICE NO LONGER REQUIRED” vide their letter dated 15 Dec 16. **(Annexure A-6)**.*

(III) *Issue direction / orders to reinstate the applicant who has been illegally discharged under Army Rule 13 (3) (III) (V) as “SERVICE NO LONGER REQUIRED”.*

(IV) *Pass any other direction / orders deemed appropriate in the circumstances of the case in favour of the applicant.*

(V) *Allow the Original Application with cost.*

2. Brief facts of the case are that the applicant was enrolled in Army on 05.05.2015. Initially his verification was received satisfactorily. A complaint was made alleging that applicant was involved in criminal case before joining the army. Matter was investigated and re-verification was done in which District Magistrate, Etawah vide his letter dated 09.11.2016 intimated that applicant had criminal case against him under IPC Sections 498A, 323, 504 and 506. A show cause notice was issued and applicant was dismissed from service. Applicant filed representation against dismissal which was rejected. Being aggrieved applicant has filed this O.A. to quash impugned order of discharge dated 15.12.2016 and to reinstate him in service.

3. Learned counsel for the applicant submitted that the applicant was enrolled in Army on 05.05.2015. At the time of enrolment as per Rule 139 of Army Regulations 1962, the applicant was asked to submit verification roll. At point No 17 (i) a question was asked ***'If any case pending against you in court of law at the time of filing up this verification Roll'***. The applicant answered ***'NO'*** since there was no case pending/registered in the knowledge of the applicant. District Magistrate Etawah vide his letter dated 03.07.2015 confirmed the answer of applicant for point No. 17 (i) duly authenticated by S.P. Etawah. On 19.08.2016 a complaint was received against the

applicant that there was a criminal case pending against him under IPC Section 498A, 323/504 and 506 read with Section 3/4 of Dowry Acts. The case was registered in the year 2013 when applicant was student of class 9th and was just 15 years old. The said complaint was registered with Police Station Chakranagar and applicant is resident of police station Bharthana. Before joining army, neither police called applicant to police station nor applicant received any summon from Hon'ble Court. In these circumstances applicant replied as '**NO**' for point No 17 (i) of verification roll and for the same reason District Magistrate Etawah confirmed the answer of applicant as FIR was not registered in native police station of applicant. On receipt of complaint, a show cause notice dated 19.11.2016 was issued to the applicant. Applicant submitted his reply that he was not aware of said FIR being registered at Police Station Chakranagar as well as being Minor at the time of alleged incident and no legal action by police or court was taken till the applicant joined army hence, he replied as '**NO**' to point No 17 (i). Applicant was terminated from service vide letter dated 16.12.2016 under the provisions of Rule 13 (3) (III) (V) of Army Rule 1950 with clause "SERVICE NO LONGER REQUIRED" due to non submission of clear verification and involvement in criminal cases under IPC Sections 498A, 323, 504 and 506 read with Section 3/4 of Dowry Acts which are subjudice. Learned counsel for the applicant submitted that at that

time applicant was minor and dispute was solely between his elder brother and sister in law. Misuse of Dowry act is not a hidden fact in which the entire family irrespective of their involvement are being made accuse just to harass them. Learned counsel for the applicant pleaded that impugned order of dismissal dated 15.12.2016 be quashed and applicant be reinstated in service.

4. On the other hand, learned counsel for the respondents submitted that the applicant was enrolled in Army on 05.05.2015. Verification from civil authority was carried out as per para 139 of Regulations for the Army 1987, Volume- 1 (Revised Edition). Civil verification in respect of the applicant was initially received satisfactory vide District magistrate, Etawah letter dated 03.07.2015. A complaint was received against the applicant alleging that applicant was involved in criminal case before joining Army service. On receipt of complaint re-verification was carried out and District Magistrate, Etawah vide letter dated 09.11.2016 informed that applicant had criminal cases against him under IPC Sections 498A, 323, 504 and 506 read with Section 3/4 D and cases were subjudice against him since 16.04.2013. Under the provisions of Para 26 of IHQ of MoD (Army) letter No A/04153/Rtg 5 (OR)/(d) dated 13.11.1978 retention of a recruit in service who has been adversely reported upon by the Civil authorities is solely on the discretion of the Centre Commandant. As per Army Rule 17, the applicant was provided opportunity to make his defence

before taking administrative action against him by issuing him show cause notice dated 19.11.2016 giving the details of criminal charges against him. Reply given by the applicant was examined by Centre Commandant and applicant was dismissed from service. As per Integrated Headquarters of MoD policy letter dated 13.11.1978 cause of discharge in the adverse verification cases will be recorded as "Services No Longer Required". Against the order of dismissal, applicant submitted complaint to Chief of Army Staff vide letter dated 01.02.2017 which was rejected vide letter dated 31.05.2017. Learned counsel for the respondents prayed that instant O.A. has no substance and is liable to be dismissed.

5. Heard learned counsel for the parties and perused the material placed on record.

6. The question before us to decide is "whether the applicant who has been dismissed from service due to non submission of clear verification regarding involvement in criminal cases is entitled for reinstatement in the service of armed forces"?

7. In the instant case, the applicant was enrolled in Army on 05.05.2015. FIR against the applicant was lodged on 25.01.2013 at Police Station Chakarnagar under IPC 498A/323/504. Based on a complaint, re-verification of the applicant was made and he was found involved in criminal cases whereas in verification roll at point No 17 (i) question was asked '***If any case pending against you***

in court of law at the time of filling up this verification roll” the applicant answered “**NO**”. If criminal case is pending against the applicant in any Police Station all over India, a trainee/probationer is liable to be dismissed from service. On perusal of documents available on record, it transpires that applicant was dismissed from service under the provision of Army Rule 13 (3) (III) (V) with clause ‘**Service No Longer Require**’ due to non-submission of clear verification and involvement in criminal cases under IPC Section 498B, 323, 504 and 506 read with Section 3/4D which are subjudice. The applicant did not furnish information regarding his involvement in these criminal cases and legal proceedings pending against him at the time of enrolment and deliberately hidden the same. As per Para 26 of IHQ of MoD (Army) letter dated 13.11.1978, recruit with adverse criminal record could be discharged from service by the power of Centre Commandant. Army authorities are duty bound to satisfy for character of each and every recruit before attestation as a soldier being a matter of national security. A recruit whose character is found adverse can be a threat to the discipline of the organization and national security. Accordingly, applicant was discharged from service by Centre Commandant.

8. The re-verification report of District Magistrate Etawah clearly establish that the applicant was involved in criminal cases before joining the army but he did not disclose this fact while filling

verification rollat the time of enrolment in the Army. Thus, a fraud was committed by the applicant.

9. It is well settled proposition of law that fraud vitiates even a 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 employment 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 **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."

10. 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.”

11. In ***SmtShrisht 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.”

12. 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.

13. 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.”

14. Applying the said maxim to the present case we find that applicant, who committed fraud at the time of enrolment, is not entitled for reinstatement as fraud was committed by the applicant at the time of recruitment in the Army. Further, in view of the pronouncement of the Hon’ble Apex Court in the case of ***Ex Sigman Kanhaiya Kumar vs. Union of India & Ors*** (Civil appeal No.1804 of 2018) decided on 09th January 2018, 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. The case law relied upon by the applicant is based on different facts and is of no help to him. Further, in a similar matter the Hon’ble Apex Court in Civil Appellate No 9913 of 2010, Arising Out of SLP (c) No 16989 of 2006, ***Daya Shankar Yadav Vs Union of India*** decided on 24.11.2010 has clarified the position by referring various judgments. Facts of the case are as under:-

Applicant Daya Shakar Yadav was appointed as a Constable in Central Reserve Police Force on 12.06.2003. Rule 14 (b) of Central Reserve Police Force Rules, 1955 required every newly recruited employee to

furnish factual information about himself. In view of it, the appellant was required to fill up and sign a Verification Roll, which he did on 06.07.2004. In view of said report, respondents issued a notice alleging that he had given false information in the verification form by concealing facts and called upon him to show cause why his services should not be terminated. The applicant sent a reply dated 04.05.2005 stating that the relevant clause in the verification form required him to disclose whether any criminal case registered against him was pending before any court and whether he had been convicted by any court, and that as he was discharged in the criminal case and as no case was pending against him before any court or authority, and as he was never sent to jail, he had answered the relevant query in the negative and that he had not misrepresented or suppressed any fact nor given false information. The Hon'ble Apex Court has held that:-

- (a) In such cases the employer may refuse to offer him employment or if already employed on probation, discharge him from service.***
- (b) Where the candidate was unaware of initiation of criminal proceedings when he gave the declarations in the verification roll, then the candidate cannot be found fault with, for not furnishing the relevant information. But if the employer by police verification learns about the involvement of the declarant, the employer can have recourse and refuse to offer him employment.***

15. On perusal of document enclosed, it reveals that applicant was enrolled in Army on 05.05.2015. FIR was lodged against him and his family on 25.01.2013 under IPC Section 498A, 323, 504 and 506. Thus, it is not disputed that cases were registered against the applicant before joining the army. In addition to that, a paper cutting has been annexed in which there is photograph of applicant alongwith police authorities of Auraiya. It is written in paper cutting that Jitendra Kumar son of Ram Prakash Yadav alongwith others was arrested by the Auraiya Police for involvement in theft case.

16. In the case underconsideration, the applicant was dismissed from service due to non-submission of clear verification and involvement in criminal cases which are subjudice. Verification of character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post or not. Suppression of material information and making a false statement in reply to queries relating to prosecution and conviction had a clear bearing on the character, conduct and antecedents of the employee and that where it is found that the employee had suppressed or given false information in regard to matters which had a bearing on his conduct, fitness or suitability to the post, he could be terminated from service during the period of probation without holding any inquiry. Submission of applicant that he was

falsely implicated in criminal case and he was not adult is not agreed. Respondents were justified in dispensing with services of the applicant for not being truthful in giving material information regarding his antecedents which were relevant for respondents in military service. Consequent to this consideration, and having perused documents available on record, we are of the view that applicant is not entitled for reinstatement in service. The case law referred by the applicant is based on different facts and is of no help to him.

17. In view of the aforesaid reasons and discussions, we do not find any substance in the present O.A. which deserves to be dismissed being devoid of merit. It is, accordingly **dismissed**.

18. No order as to costs.

19. Miscellaneous applications, pending if any, stand dismissed.

(Vice Admiral Abhay Atul Kumar Jain) (Justice Ravindra Nath Kakkar)
Member (A) Member (J)

Dated :28 April, 2023

Ukt/-