

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****TRANSFERRED APPLICATION No 16 of 2016**Monday, this the 07th day of February, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. 2701189N Recruit Ashutosh Singh S/o Shri Ashok Singh
Presently R/o-Village Pandila, Post Office-Ismailganj, District-
Allahabad.

..... Petitioner

Learned counsel for the : **Shri JN Mishra**, Advocate.
Petitioner

Versus

1. Union of India Through Secretary, Ministry of Defence,
New Delhi-110011.
2. Chief of the Army Staff, Army Head Quarter, A-Wing,
Sena Bhawan, New Delhi.
3. COD UB Area, Through BRO, Bareilly.
4. Commandant-Cum-CRO, The Grenadiers Regimental
Centre & Records Jabalpur.

.....Respondents

Learned counsel for the : **Shri Amit Jaiswal**, Advocate
Respondents Central Govt Counsel

ORDER

1. Civil Misc Writ Petition No. 64025 of 2008 was filed by the applicant in the Hon'ble High Court of Judicature at Allahabad which was transferred to this Tribunal under Section 34 of Armed Forces Tribunal Act, 2007 and re-numbered as T.A. No. 16 of 2016. The petitioner has sought the following reliefs:-

- (I) *Issue writ order or direction in the nature of certiorari to quash the premature discharge order, which is allegedly passed on 17.01.2008 (Copy of the same is not served to the petitioner and quash the order dated 11.08.08 of the Chief of the Army Staff. (Annexure No.5 to the Writ petition).*
- (II) *Issue writ order or direction in the nature of mandamus directing the respondents to re-instate the petitioner with all the consequential benefit including award of the cost and compensation.*
- (III) *Issue any other writ order or direction which this Hon'ble court may deem fit and proper in the facts and circumstances of the case.*
- (iv) *to award the cost.*

2. Brief facts of the case are that the petitioner was enrolled in the Army (Grenadiers Regiment) through BRO, Bareilly on 28.01.2003. While in service, his verification roll dated 23.04.2003 was forwarded to the District Magistrate, Sitapur (U.P.) for verification of the address, character and antecedents as per address given by him at the time of his enrolment. The said verification roll was returned vide letter dated 23.07.2003 stating that the petitioner did not belong to and never resided at village-Imalia, Sultanpur, District-Sitapur (U.P.). On receipt of letter dated 23.07.2003, a Show Cause Notice dated

04.01.2004 was served upon the petitioner and on receipt of his reply dated 05.01.2004, which was held insufficient, he was discharged from service w.e.f. 16.01.2004 as 'unlikely to become an efficient soldier' under Rule 13 (3) III (IV) of Army Rules, 1954. Against discharge order dated 16.01.2004 applicant preferred a statutory appeal dated 16.03.2004 (page 38 of O.A.) to Chief of the Army Staff which was rejected vide order dated 11.08.2008 (Annexure RA-1). During pendency of the statutory complaint dated 16.03.2004 applicant filed Civil Misc Writ Petition No. 18421 of 2004 before the Hon'ble High Court of Judicature at Allahabad which was dismissed vide order dated 07.12.2007 (Annexure A-3) with directions to the petitioner to move a fresh statutory complaint and respondents were directed to decide the statutory complaint within a period of three months. Accordingly, the petitioner submitted fresh statutory appeal dated 21.12.2007 (Annexure A-4) and that too was rejected with reasoned order 11.08.2008 (Annexure A-5). Thereafter, the petitioner filed Civil Misc Writ Petition No. 64025 of 2008 in the Hon'ble High Court of Judicature at Allahabad, for setting aside discharge order dated 16.01.2004, which was transferred to this Tribunal under Section 34 of Armed Forces Tribunal Act, 2007 and re-numbered as T.A. No. 16 of 2016.

3. Submission of learned counsel for the petitioner is that the petitioner was residing at his relative's place for the last four years when he was enrolled in the Army and this was the sole

reason that he declared his home address as Village-Imliya, District-Sultanpur (UP) when he was enrolled. His further submission is that at the place where he was residing, he was known by his nick name 'Pappu' and after illegal discharge while at home, i.e. the same address which he had declared during enrolment process, he received a registered letter dated 26.04.2004 enclosing therewith demand draft No. 279135 dated 22.04.2004 (Annexure A-2) related to final closure of his account during his service. His further submission is that the applicant had submitted the following proofs of his residence at the time of enrolment: -

- (i) Certificate from Gram Pradhan
- (ii) Certificate dated 16.10.2002 issued by District Magistrate, Sitapur (Annexure-6) showing residence as Village-Imliya, District-Sitapur.
- (iii) Certificate dated 16.10.2002 issued by Tehsildar showing residence as Village-Imliya, District-Sitapur (Page 48 of O.A.).
- (iv) Character certificates dated 16.10.2002 issued by Member Zila Panchayat showing residence as Village-Imliya, District-Sitapur (page 49 of O.A.).

4. Learned counsel for the petitioner further submitted that the aforesaid certificates were attached with the statutory complaint also but even then his plea was not heard and the Chief of the Army Staff has rejected his complaint in arbitrary manner. His other submission is that Shri Mahendra Pratap Singh, R/o Village-Imliya, Sultanpur District, Sitapur has given an affidavit dated 11.03.2004 mentioning therein that no enquiry was ever made with respect to the petitioner. His further submission is that the Gram Pradhan has also issued a

residential certificate dated 11.03.2004 (page 53 of O.A.) and has mentioned that due to petitioner's nick name being 'Pappu' he made a mistake and had earlier endorsed that the petitioner was not residing at Village-Imliya, District-Sitapur. Thus, he submitted that since the respondents have erred in discharging the petitioner, he be re-instated in service with all consequential benefits.

4. The respondents have filed counter affidavit and submitted that verification roll dated 23.04.2003 was forwarded to the District Magistrate, Sitapur to verify the address given by the petitioner which was returned by the District Magistrate, Sitapur vide letter dated 23.07.2003 (Annexure R-4) stating that the petitioner did not belong to that place. The respondents have further submitted that pursuant to report dated 23.07.2003 a Show Cause Notice dated 04.01.2004 was served upon the petitioner and on receipt of his reply dated 05.01.2004, which was considered insufficient, he was discharged from service under Rule 13 (3) III (IV) of Army Rules, 1954 being 'unlikely to become an efficient soldier'. He further submitted that the petitioner's statutory complaint dated 21.12.2007 was rejected by Chief of the Army Staff vide reasoned order dated 11.08.2008 (Annexure-5). His further submission is that keeping in view that address given by the petitioner at the time of enrolment was not verified by the authorities concerned, he

was discharged from service under Rules on the subject. He pleaded for dismissal of O.A.

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

6. No. 2701189N Ex Rect Ashotosh Singh was enrolled in the Army through Branch Recruiting Office (BRO), Bareilly on 28.01.2003. At the time of recruitment he submitted certain documents to Enrolling Officer (EO) with regard to his address and character. While undergoing military training, his verification roll dated 23.04.2003 was forwarded to the District Magistrate, Sitapur (UP) but it was returned vide letter dated 23.07.2003 mentioning therein that the petitioner did not belong to the place which he had given at the time of enrolment. Accordingly, a Show Cause Notice dated 04.01.2004 was issued to the petitioner and he was discharged from service w.e.f. 15.01.2004 being 'unlikely to become an efficient soldier'.

7. Contention of the petitioner, that he was residing at his relative's place for the last four years and this being his actual place of residence which was declared by the petitioner to the Enrolling Officer at the time of enrolment, seems to be genuine for the reason that domicile certificate dated 16.10.2002 was issued by the District Magistrate, Sitapur; Caste Certificate dated 16.10.2002 was issued by Tehsildar, Sitapur and Character Certificate dated 16.10.2002 was issued by Zila

Panchayat, Sitapur (Annexure-6) and these certificates were attached with the form at the time of enrolment.

8. Petitioner's other contention that village-Imliya, District-Sitapur is his actual place of residence is fortified by his submission that he received a registered letter dated 26.04.2004 issued by the respondent No. 4 (Annexure-2) at the same address which he had declared at the time of enrolment. His submission is that an amount of Rs 6,307/- was received through demand draft No. 279135 dated 22.04.2004 and this demand draft was enclosed with letter dated 26.04.2004. This submission of the petitioner also seems to be true.

9. We have observed that domicile certificate, character certificate and caste certificate dated 16.10.2002 were prepared and issued by various authorities prior to petitioner's enrolment in the Army since he was enrolled on 28.01.2003.

10. Shri Jameel Ahmed, village Pradhan vide his letter dated 15.06.2003 (Annexure R-II) has stated that the petitioner was not a resident of Village-Imliya, District-Sitapur and based on this certificate the police authorities and District Magistrate, Sitapur issued letter dated 23.07.2003 intimating that he was not a resident of that place. Further, when it came to the knowledge of village Pradhan that the petitioner was discharged from service due to wrong verification, he issued a certificate dated 11.03.2004 as under:-

“निवास प्रमाण पत्र

प्रमाणित किया जाता है कि श्री आशुतोष सिंह पुत्र श्री अशोक सिंह उर्फ पप्पू मेरे ग्राम पंचायत इमलिया सुल्तानपुर में लगभग चार वर्ष से अपने रिस्तेदार महेन्द्र प्रताप सिंह पुत्र श्री गणेश सिंह जो यहाँ रहते हैं इनका नाम यहाँ पर पप्पू के नाम से पुकारा जाता था इस कारण जानकारी नाम की नहीं थी, जांच के दौरान इसी कारण लिखना पड़ गया कि आशुतोष नाम का कोई व्यक्ति यहाँ पर नहीं रहता है | मगर वह चार वर्ष से लगातार अपने रिस्तेदार के यहाँ रह रहे हैं |

दिनांक : ११.०४.२००३ (

sd/- xxxxxx

जमील अहमद)

ग्राम पंचायत, इमलिया

सुल्तानपुर, जिला-सीतापुर”

11. Thus, from the aforesaid submission of the village Pradhan it may be believed that he first denied that the petitioner was not a resident of village-Imliya on the reason that the petitioner was known by his nick name 'Pappu' in that village and later when he came to know his error he corrected his mistake by issuing aforesaid certificate.

12. It is also relevant to mention that Shri Mahendra Pratap Singh, R/o village-Imliya, Sultanpur, District-Sitapur has given an affidavit mentioning therein that no inquiry was ever made with him in regard to the petitioner. From the above, a conclusion may drawn that the enquiry was made with village Pradhan who knew petitioner's name as 'Pappu', but the fact is that due to false verification the entire career of the petitioner has demolished and he has been forced to litigate w.e.f. 2004 due to misconceived confusion.

13. Perusal of record (Annexure R-II) indicates that on 15.06.2003 the Village Pradhan Shri Jameel Ahmed issued a document mentioning therein that the petitioner was not a

resident of Village-Imlia only because of the reason that the petitioner was known by his nick name 'Pappu'. It appears that the Village Pradhan did not make any enquiry with Shri Mahendra Pratap Singh who is petitioner's relative. The Village Pradhan issued certificate with regard to the petitioner straightway which shattered his life.

14. The petitioner in his reply to Show Cause Notice dated 04.01.2004 has mentioned that he be allowed to proceed home for obtaining correct verification roll apprehending that he was known by his nick name 'Pappu' and most personnel of the village including the village Pradhan did not know his actual name, but he was not permitted. In view of the above, an inference can be drawn that the unfortunate petitioner has suffered a lot due to fault on the part of village Pradhan/respondents. In our view the respondents could have got his antecedents verified independently by sending a representative from the Army, on their own, if they were indeed serious. But alas such a simple course of action did even cross their minds.

15. Thus, we are clear that the address which the petitioner gave to the Enrolling Officer at the time of his enrolment is his actual address to which he belongs as the letter dated 23.04.2004 sent by the respondent No. 4 was received by him at the same address two months after his discharge from

service. The petitioner cannot be held responsible for erroneous action done by others.

16. In view of the above, the O.A. deserves to be allowed, hence **allowed**.

17. Since, the petitioner was enrolled in the year 2003 and being an unattested soldier at the time of discharge he cannot be re-instated into service after passage of so many years, but he deserves compensation for the lapses on the part of the system which is quantified to Rs 10 lacs (Ten lacs only).

18. The respondents are directed to release the aforesaid amount to the petitioner within a period of three months from today, failing which it shall carry interest @ 8% p.a.

19. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 07.02.2022

rathore