

RESERVED
Court No.3
(Sl. No.12)

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

Original Application No. 585 of 2020

Wednesday, this the 05th day of July, 2023

Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Maj Gen Sanjay Singh, Member (A)

Vijay Pratap Yadav (Army Number- 15755491A)
Rank- Recruit, Ex- Lineman, Unit -2, Technical
Training Regiment, 1, Signal Training Centre, Jabalpur
(M.P), Pin-901124, C/o 56 APO.

Presently residing at village- Rampur Halwara Manjha,
Post- Sarai Rasi, Police Station- Kotwali Ayodhya,
Tehsil- Sadar, District- Faizabad (Ayodhya), U.P.

.....Applicant

Ld. Counsel for : **Shri Yashpal Singh**, Advocate
Applicant **Shri Sachindra Pratap Singh**,
Advocate

Versus

1. The Union of India, through the Secretary,
Ministry of Defence, Sena Bhawan, New Delhi.
2. Officer-in-Charge Records, Signals, Pin-901124,
C/o 56 APO.
3. Brigadier-1 Signal Training Centre, Jabalpur, M.P.
4. Commanding Officer, 2, Technical Training
Regiment, 1, Signal Training Centre, Pin-901124,
C/o 56 APO.
5. Company Commander, (2 Coy) Technical
Regiment, 1, Signal Training Centre, Jabalpur
(M.P.) Pin-901124, C/o 56 APO.

.....Respondents

Ld. Counsel for the : **Shri Asheesh Agnihotri**, Advocate
Respondents **Central Govt Counsel**

ORDER

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has sought the following reliefs:-

(a) To set aside the termination dated 20.07.2020 passed by the Commanding Officer, 2 Technical Training Regiment, 1 Signal Training Centre, Pin-901124, C/o 56 APO, whereby the applicant has been terminated from service.

(b) To issue directions to respondents to reinstate the applicant in service on regular basis with all consequential benefits;

(c) Issuing/passing of any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case;

(d) Allowing this application with cost.

2. Brief facts of the case are that the applicant was enrolled in the Indian Army (Corps of Signals) on 17.03.2018. In Enrolment Form applicant has mentioned that he was not involved in any criminal case. After completion of basic military training, he was posted to No. 2 Technical Training Regiment on 23.10.2018 for further trade training. Prior to attestation, verification roll dated 27.09.2018 was sent through which individual was found involved in court case for offences under Sections 323, 427, 452,

504 and 506 IPC. A Court of Inquiry (C of I) was conducted vide order dated 12.03.2019 in which applicant took part and agreed that he was involved in the court case under Section 323, 427, 452, 504 and 506 IPC. The C of I concluded that since the court case in respect of the applicant was sub-judice before a court of law at the time of enrolment and the same is still going on, he should be debarred from any Govt service. The C of I also declared the enrolment of applicant illegal and applicant was liable to be punished as per provisions of Section 44 of Army Act, 1950. Accordingly, he was awarded 28 days rigorous imprisonment w.e.f. 12.09.2019. Thereafter, Show Cause Notice dated 22.06.2020 was issued and on receipt of reply dated 04.07.2020 a speaking order dated 20.07.2020 was issued dismissing him from service under Section 22 of the Army Act, 1950 read with Rule 13 (3) (iv) of the Army Rules, 1954 for stating the falsehood during enrolment process. This O.A. has been filed for setting aside termination order dated 20.07.2020 and his re-instatement into service.

3. Learned counsel for the applicant submitted that the applicant was enrolled in the Army on 17.03.2018 through Army Recruiting Office, Amethi (UP). It was

further submitted that prior to enrolment in Army there was a land dispute between the family of the applicant and one Nirmala Devi wife of late Ram Karan Yadav in which a false FIR was registered in case crime No. 73/2015 under Section 452, 323, 504, 506 and 427 IPC at police station kotwali Ayodhya, District-Faizabad against the family members including the applicant on 21.01.2015 when he was studying in class 9th. It was further submitted that after passing basic military training he was to be sent to Jabalpur for further training and for that applicant submitted police report duly signed by Superintendent of Police, Faizabad (Ayodhya) dated 05.03.2018 mentioning therein that he was not involved in any criminal case.

4. Learned counsel for the applicant further submitted that the applicant was required to fill-up a verification roll form for combatant recruit at Jabalpur in paragraph 15 (1) of the same, he was required to answer about his criminal history in which he had given all the answers in negative because during criminal proceedings which had been initiated in context of case crime No. 73/2015, he was only called once before the court and his counsel had told him

that his name shall be deleted from the array of the accused and he would never appear again. It was further submitted that applicant being inexperienced and novice believed that he was free from criminal proceedings and that was the reason he answered all questions in negative at the time of filling enrolment form. It was further submitted that the applicant had no intention to suppress any material fact and the aforesaid conduct happened due to lack of proper advice.

5. Learned counsel for the applicant further submitted that a Show Cause Notice dated 11.02.2019 was served upon the applicant directing him to submit reply by 20.02.2019. It was further submitted that it may be seen that the aforesaid notice was itself defective and contradictory because the charges levelled upon the applicant that 'have you ever been convicted by the court of law for any offence to which you had replied as no'. It was submitted that there was nothing wrong in saying that he was not convicted by any court of law for any offence till date.

6. Learned counsel for the applicant further

submitted that though the applicant was acquitted vide order dated 03.06.2019 by Chief Judicial Magistrate, Faizabad (Annexure A-6) and copy of this order was provided by the applicant to his Commanding Officer, yet his tentative charge sheet dated 11.09.2019 was prepared under Section 44 of the Army Act, 1950 for making at the time of enrolment a wilfully false answer to a question set forth in the prescribed form of enrolment which was put to him by the Enrolling Officer before whom he appeared for the purpose of being enrolled. It was further submitted that his summary trial was initiated on 12.09.2019 and he was awarded 28 days rigorous imprisonment on conclusion of the trial.

7. Learned counsel for the applicant also submitted that after about 08 months second Show Cause Notice dated 22.06.2020 in violation of the Army Act, 1950 was served upon the applicant on the same charge repeating therein to show cause as to why he should not be dismissed from service to which reply was given by the applicant on 04.07.2020 requesting his Commanding Officer to be merciful.

8. Further submission of learned counsel for the applicant is that since applicant was already acquitted by the court of law vide order dated 03.06.2019 and this fact being brought to the notice of the respondents, order dated 20.07.2020 should not have been passed as on that day he was not involved in any criminal case. Further, in re-verification roll dated 20.07.2019 police authorities have categorically mentioned that he was acquitted from all charges by learned CJM, Faizabad vide order dated 03.06.2019. He pleaded for applicant's re-instatement into service by quashing of order dated 20.07.2020.

9. On the other hand, learned counsel for the respondents submitted that the applicant was enrolled in the Army on 17.03.2018. He further submitted that during the course of basic military training, first verification roll dated 27.09.2018 was submitted in which facts came to the notice that the applicant was involved in court case for offences under Section 323, 427, 452, 504 and 506 IPC. It was further submitted that previously at the Army Recruiting Office, Amethi on 17.03.2018 during the process of his enrolment the applicant lied and hid the facts about his criminal case before the Enrolling Officer and this fact also came to

the knowledge of the authorities when his verification roll was received.

10. Learned counsel for the respondents further submitted that Court of Inquiry (C of I) was conducted in which applicant appeared and agreed that he was involved in the aforesaid case. It was further submitted that the applicant was punished for 28 days rigorous imprisonment under Section 44 of the Army Act, 1950 on account of concealing the fact at the time of enrolment. It was further submitted that on acquittal from his offences vide order dated 03.06.2019 his re-verification roll was sent on 20.07.2019 in which it was stated that he was acquitted from all offences.

11. Learned counsel for the respondents further submitted that based on false endorsement in enrolment form a Show Cause Notice dated 22.06.2020 was issued to the applicant and on receipt of reply dated 04.07.2020 he was dismissed from service under Rule 13 (3) (iv) of Army Rules, 1954. It was further submitted that the dismissal order has been passed by the competent authority after due application of mind and also keeping in mind the

relevant rules and regulations on the subject as such the same does not suffer from illegality and infirmity. He pleaded for dismissal of O.A. on the ground that in C of I applicant had admitted the fact of his involvement in criminal case as also he admitted that he had concealed the material fact at the time of filling of enrolment form on advice of his advocate.

12. Heard Shri Yashpal Singh, learned counsel for the applicant and Shri Asheesh Agnihotri, learned counsel for the respondents and perused the record.

13. No. 15755491A Recruit (Lineman) Vijay Pratap Singh was enrolled in the Army (Corps of Signals) on 17.03.2018 through Army Recruiting Office, Amethi (UP). After completion of basic military training he was posted to 2 Technical Training Regiment on 23.10.2018. Verification roll dated 27.09.2018 was submitted to police authorities which was replied vide letter dated 06.10.2018 in which facts came to notice that the applicant was involved in court case for offences under Section 323, 427, 452, 504 and 506 IPC. C of I was conducted and applicant participated in the said C of I in which he disclosed the fact that he was involved in a criminal case and he falsely

answered the question in enrolment form. Accordingly, he was awarded 28 days rigorous imprisonment by the Commanding Officer on 12.09.2019 under the provisions of Section 44 of the Army Act, 1950.

15. Prior to enrolment applicant got certificate dated 05.03.2018 from Superintendent of Police, District-Faizabad with regard to his non involvement in any criminal case, which for convenience sake, is reproduced as under:-

“प्रमाण पत्र

प्रमाणित किया जाता है कि श्री विजय प्रताप यादव पुत्र/पुत्री/पत्नी जगत पाल यादव निवासी ग्राम रामपुर हलवारा थाना अयोध्या कोतवाली जनपद फैजाबाद के मूलनिवासी हैं | इनके चरित्र एवं आचारण की जांच स्थानीय थाने एवं अभिसूचना इकाई से करायी गई तो इनके विरुद्ध कोई आपराधिक अभियोग किसी प्रकार के पंजीकृत होना नहीं पाया गया है | इनका चाल/चलन चरित्र अच्छा पाया गया |

संख्या प्रा.वी.आर./330/2018 sd/- x x x x

दिनांक : 5.3.2018 वरिष्ठ पुलिस अधीक्षक

फैजाबाद

”

16. The case crime was registered in the year 2015 and the applicant after issue of certificate dated 05.03.2018 had a belief that his false implication in criminal case came to an end, therefore he would have filled 'No' in the enrolment form against pending criminal case.

17. Show Cause Notice dated 11.02.2019 (Annexure-5 of O.A.) was served upon the applicant and reply was

sought on or before 20.02.2019. Thereafter, respondents hiding the previous notice again issued Show Cause Notice dated 22.06.2020 after more than one year to which applicant replied on 04.07.2020. For convenience sake the aforesaid Show Cause Notice and its reply are reproduced as under:-

“SHOW CAUSE NOTICE

1. *Where you were enrolled in the Army on 17 Mar 2018 through Army Recruiting Office, Amethi (UP). Your verification Roll was forwarded to The District Magistrate, Ayodhya (UP) by 3 Military Training Regiment to verify the character and antecedents. After receipt of adverse verification roll, it was observed vide office of the District Magistrate, Faizabad vide their letter No 38/JA/Charitra Satyapan/2018 dated 06 Sep 2018 it was found that you were involved in Court case No -73/15 under section 323,427,504 & 506 of IPC in the Hon'ble District Magistrate 1st Class Court Faizabad were as subsequently you were acquitted by Hon'ble Court vide Court Order dated 28 Aug 2019 due to uncorroborated statement of hostile persons.*

2. *Whereas notwithstanding the acquittal order, on scrutiny of enrolment from and verification roll, it is observed that you have failed to disclose the correct facts of your involvement in a court case to the enrolling officer at the time of enrolment procedure and thus, answered in negative to the questions i.e. “is any case pending against you in any Court of Law at the time of filling up Enrolment From & verification Roll” put forth to you by the competent Authority whereas the Criminal Case was pending at that time.*

3. *Apropos, you are hereby given show cause notice to explain as to why you should not be **dismissed from service under Section 22 Army Act read with army Rule 13 (3)(IV)** for stating the falsehood during enrolment procedure at Army Recruiting office, Amethi (UP) which otherwise would have disentitled you to be enrolled in the service and also amounts to grave misconduct and fraud by intentional concealment of material fact during and post enrolment.*

4. *You are hereby asked to submit your written explanation on the above allegation to this office within*

30days i.e. by 10 July 2020, failing which it shall be assumed that you have no ground to urge against the proposed action and an ex-parte decision will be thereafter taken.

REPLY TO SHOW CAUSE NOTICE

1. Please refer to your Show Cause Notice No. PC/15755491A/Rect/VPY/Adverse dated 22 Jun 2020.

2. I would like to bring to your notice that I should not be dismissed from service as I have never committed an offence which debars me from enrolment in Regular Army of union of India. As far as my failure to disclose the correct facts to enrolling officer is concerned. I submit it very respectfully that I have never failed to disclose any fact to anyone. I am giving herewith the details in succeeding paragraphs and leave it to you to decide whether I actually failed to disclose the facts or otherwise.

3. Since my village is far away from city, I was living with my maternal Aunt in Faizabad city to complete my studies from Jun 2014. I came to know in Jan 2015 that partition of house and property is taking place amongst my parents and uncles. After completion of my exams in June 2015, I went to village where everything was normal. While enquiring about separation, I was told by my father that there was a dispute amongst them regarding small land in front of house. I returned to my Maternal Aunt's place after vacations and somewhere in September/October 2015 again went to village in Dussera vacations. My father informed me that the land dispute amongst my father and their brothers had almost been settled through Panchayat however one share holder has still not agreed and he has filed a case in the court.

4. Everything went normal and after 3 yrs, I got enrolled in Army on 17 Mar 2018 completed Basic Military training (BMT). I was undergoing advanced Military Technical Training when I was informed that I have been adversely verified. I immediately communicated to my father who after prolonged enquiry informed me that his brother who was not satisfied with settlement through Panchayat, instead of filing civil suit, had filed criminal case against my father and intentionally included names of all my family members. The case never came to light as it was not having any ground and hence we were totally unaware about it. However, my father met with authorities put facts before them, got my verification carried out accordingly.

5. Sir, I am really innocent and hence request you to be merciful towards me.

Thanking you."

18. Order dated 03.06.2019 acquitting applicant from criminal offence was passed by learned CJM, Faizabad and tentative charge sheet was prepared on 11.09.2019 i.e. after three months from the date of his acquittal. With regard to confirming his acquittal, letter dated 22.07.2019 was sent to District Magistrate, Ayodhya which was replied vide letter dated 28.08.2019 stating that he was acquitted from criminal case. For convenience sake, copy of letter dated 28.08.2019 is reproduced as under:-

"1. कृपया उपर्युक्त विषयक अपने कार्यालय के पत्र दिनांक 22.07.2019 का संदर्भ ग्रहण करने का कष्ट करें |

2. इस संबंध में अवगत कराना है कि श्री विजय प्रताप यादव पुत्र श्री जगत पाल यादव निवासी ग्राम रामपुर हलवारा , थाना कोतवाली अयोध्या, जनपद अयोध्या के चरित्र के संबंध में गोपनीय जांच वरिष्ठ पुलिस अधीक्षक के माध्यम से कराई गई | वरिष्ठ पुलिस अधीक्षक की आख्यानानुसार आवेदक के विरुद्ध मु.अ.सं.-73/15 धारा-0452, 323, 504, 506, 427 आई.पी.सी. का अभियोग पंजीकृत था जिसमें मा. न्यायालय द्वारा दिनांक 03.06.2019 को दोषमुक्त कर दिया गया है | इस हेतु वरिष्ठ पुलिस अधीक्षक की प्राप्त आख्या दिनांक 26.08.2019 मूलरूप में संलग्न कर आवश्यक कार्यवाही हेतु प्रेषित है |"

19. Thus, from the aforesaid we find that the applicant was acquitted from criminal offence prior to date of award of rigorous imprisonment of 28 days and dismissal from service. We further find that at the time the criminal case against applicant was registered he

was a student of class 9th and he may not be so matured to know about the consequences of said case.

20. While filing counter affidavit the respondents in Para 10 and 11 have admitted that after receipt of report from District Magistrate, Ayodhya vide letter dated 09.12.2019 intimating his acquittal from criminal offence, permission was sought for the applicant to appear in the technical trade training board but the Commandant 1 Signal Training Centre ordered for issue of Show Cause Notice to be given to the applicant for concealment of facts during enrolment for which he was already punished for 28 days rigorous imprisonment. Thus, we find that the applicant has been penalised twice for the same offence.

21. Contention of learned counsel for the applicant is that termination of services of the applicant is barred by principle of Double Jeopardy as provided under Article 20 (2) of Indian Constitution. Against this learned counsel for the respondents submitted that principle of double jeopardy does not apply in such type of matter.

22. Article 20 (2) of Indian Constitution provides that 'No person shall be prosecuted and punished for the

same offence more than once'. In the case in hand the charge against the applicant is that he has given false statement before Enrolling Officer during his enrolment procedure at Army Recruitment Office, Amethi (UP). At the time of his enrolment he has failed to disclose the correct fact regarding his involvement in criminal case. For this charge on 12.09.2019 a proceeding of criminal trial has been initiated against the applicant and after conclusion of the summary trial he was found guilty and was punished to undergo rigorous imprisonment of 28 days.

23. In pursuance of aforesaid offence applicant had undergone 28 days rigorous imprisonment. Thereafter, he was again taken in service and started to discharge his duty.

24. After about 08 months show cause notice was served to the applicant on 22.06.2020 on the same fact constituting the offence of not disclosing the correct fact of his involvement in criminal offence and after taking his reply he was terminated from service. Thus, this amounts to punish the applicant for the same offence of not disclosing true fact before enrolling officer. It comes under the principle of double jeopardy

which is barred under Article 20 (2) of Indian Constitution.

25. On symmetrical background in the case of **Ex Rect Vighne Bali Ram vs UOI & Ors**, O.A. No. 158 of 2009 decided on 10.05.2011, AFT (PB), New Delhi has quashed the discharge/dismissal order of the applicant and passed order for re-instatement of the applicant without back wages. For convenience sake, relevant part of the aforesaid judgment is reproduced as under:-

"Suffice to mention that once appellant was already tried for those offences, second action of the same charge was not legally permissible and it would be construed to be barred by Article 20 (2) of the Constitution of India and 300 (1) of the Code. Further, it is said that the conviction of the appellant had already been recalled and so that would not be taken to be an earlier trial of the appellant. As has already been mentioned that said judgment had already been acted upon and sentence was served by the Appellant. Moreover, appropriate authority after undergoing the period of sentence by the accused had no jurisdiction to recall the judgment which had already been acted upon. Further, as the decision was given by the competent court of jurisdiction, it was accepted by the accused himself as he had undergone the sentence that alone would be decisive factor to constitute the bar of the fresh trial of the accused-appellant."

26. In **State of Bihar vs Murad Ali Khan**, (1988) 4 SCC 655, the Hon'ble Supreme Court has observed that 'broadly speaking, a protection against a second or

multiple punishment for the same offence, technical complexities aside, includes a protection against re-prosecution after acquittal, a protection against re-prosecution after conviction and a protection against double or multiple punishment for the same offence. These protections have since received constitutional guarantee under Article 20 (2)'.

27. Under such circumstances, there appears to be no inhibition for attesting the appellant to be a full-fledged soldier after receipt of second verification dated 20.08.2019. In the result, the O.A. is **allowed**. Show Cause Notice and the punishment for discharge from service are set aside. Applicant shall be reinstated into service on the post he was holding at the time of dismissal and to be attested as a full-fledged soldier based on second verification report and shall be inducted in second phase of training within a period of three months from the date of receipt of certified copy of this order. However, he shall not be entitled for any back wages.

28. No order as to costs.

29. Miscellaneous application(s), if any, stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated : 05.07.2023
rathore

(Justice Anil Kumar)
Member (J)