

**RESERVED****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****COURT NO. 1 (List A)****O.A. No. 63 of 2010****Friday, this the 24<sup>th</sup> day of March, 2017****“Hon’ble Mr. Justice D.P.Singh, Judicial Member  
Hon’ble Air Marshal Anil Chopra, Administrative Member”**

No. 180000869X (Rec. Rupesh Vardhan) son of Shri sachachidanand Kumar resident of Village Tiril, Ashram, Thana Dhruva, District Ranchi (Jharkhand).

.....**Applicant**

Versus

1. Union of India through Secretary, Ministry of Home, Govt. of India, New Delhi.
2. Commanding Officer, No. 2 Training Battalion, Bengal Engineer Gp & Centre, Roorkee – 247567.

.....**Respondents**

**Ld. Counsel appeared for the Applicant - Shri R Chandra, Advocate**

**Ld. Counsel appeared for the Respondents - Shri Bhanu Pratap Singh, Advocate, C.G.S.C**

**Assisted by OIC Legal Cell - Maj Soma John**

**ORDER****(Per Hon'ble Air Marshal Anil Chopra, Member (A))**

1. Present Application has been preferred under section 14 of the Armed Forces Tribunal Act, 2007 being aggrieved by the order of dismissal dated 01.09.2008. The main relief sought is to set aside the order of dismissal dated 01.09.2006 as contained in the letter dated 21.05.2009.

2. The facts as are necessary for adjudication of the present case are that the Applicant was enrolled in the Indian Army on 14.04.2007 through Army Recruiting Office Ranchi Jharkhand. It is alleged that the enrolment of the Applicant was subject to verification of various documents including the domicile certificate issued by Civil Authority of District Ranchi (Jharkhand) dated 10.04.2007 and after enrolment the Applicant was sent for basic Military Training to Bengal Engineer Group and Centre Roorkee. All the documents pertaining to his recruitment was transmitted to Bengal Engineer Group Records, Roorkee for verification and further maintenance. On domicile certificate being sent for verification to civil authority, District Ranchi Jharkhand, it was informed that the aforesaid domicile certificate No 66 dated 10.04.2007 was not issued from the office of Residential Magistrate Hatia (Ranchi). Pursuant to it, a show cause notice dated 08.04.2008 was issued. In the course of the aforesaid proceeding, another domicile certificate dated 17.04.2008 was received from District Magistrate Ranchi. On receipt of another

domicile certificate dated 17.04.2008, the Commanding officer sought reply to following queries from the Sub Divisional Magistrate Ranchi vide letter dated 22.04.2008 which being relevant are quoted below.

*"(a) Issue a letter stating that the above mentioned individual is residing at the given address for past two years.*

*(b) Check and clarify whether letter issued by Residential Magistrate Hatia is valid or not. In case there is some miscommunication at your end kindly clarify otherwise the above mentioned individual would be discharged from Army."*

In reply to the above queries, a letter dated 01.10.2008 was received from the Judicial Magistrate Ranchi confirming that the domicile certificate No 66 dated 10.04.2007 issued under the signature of Residential Magistrate, Hatia was not valid. In the light of receipt of the aforesaid letter dated 01.10.2008, the matter was taken up for further direction from Officer Incharge Bengal Engineer Group Records, Roorke. In ultimate analysis, the punishment of dismissal from service was approved by competent authority as per section 20 of the Army Act, 1950 read with Rule 17 of the Army Rules 1954 and AO 28/2001 on 22.08.2008 dismissing the Applicant from the service with effect from 01.09.2008 attended with the action of handing over the Applicant to Civil Police.

3. We have heard learned counsel for the Applicant and also learned counsel for the respondents at prolix length and have also been taken through the materials on record.

4. The submission quintessentially advanced across the bar by learned counsel for the Applicant is that on being issued a show cause that the domicile certificate No 66 dated 10.04.2007 produced by the Applicant was fake, he immediately protested with the Civil Authority who on account of some mistake at the end of his office rectified the same and issued a fresh domicile certificate No 88 dated 17.04.2008 and the same was transmitted by the Civil Authority to the Commanding officer. The said domicile certificate was admittedly received and was acted upon. It is further submitted that what transpired between the commanding officer and the Civil Authority was not known to the Applicant as the Applicant was not involved at any stage by way of explaining. He further submits that a show cause notice dated 08.04.2008 was served while dismissal order was passed vide order dated 01.09.2008. Immediately after the issue of show cause notice another domicile certificate issued by civil Authority was received at the end of the Commanding officer from the end of the Civil Authority, on 17.04.2008 and was also acted upon the Applicant was rest assured that after acceptance of domicile certificate bearing No 88 dated 17.04.2008, no further action was required as no further explanation was called for from the Applicant. In the course of hearing, it is argued that as a matter of fact the domicile

certificate dated 10.04.2007 was inadvertently shown to bear sl No 66 as on account of error of the office of Residential Magistrate, the same was incorrectly issued showing Sl. No 66. It is not the case that the signatures affixed on the certificate no 66 were forged. He further submits that he was orally intimated that his services were no longer required and was not served any dismissal order.

5. Per contra, it is stated that by letter dated 01.10.2008, it was categorically confirmed that the certificate No 66 dated 10.04.2007 was not valid and that at Sl No 66, the domicile certificate issued to one Amit Kumar Singh. It is further contended that once it was established that the domicile certificate no 66 initially deposited by the Applicant was fake, in terms of integrated Headquarters of Ministry of Defence (Army) letter dated 05.03.2004, the Applicant was rightly dismissed from Army attended with action of handing him over to the nearest police authority. He further contended that it was amply proved that the individual got himself enrolled in the Army on the basis of fake/forged documents which brought into play the provisions of section 20 (3) of the Army Act, 1950 and Rule 17 of Army Rules 1954.

6. We have gone through the materials on record including the reply received from the Civil Authority dated 01.10.2008 which mentioned that the domicile certificate no 66 of 10.04.2007 was not valid and that Domicile certificate No 66 was issued to one Amit Kumar Singh and not to the Applicant. From a close scrutiny of the aforesaid letter, it does not

mention at any place that the said domicile certificate contained forged signature of Residential Magistrate Hatia. This fact has to be read in the light of the oral submissions of the learned counsel for the Applicant that on account of inadvertence of the office of Residential Magistrate Hatia, the domicile certificate was not entered in the requisite register and it was wrongly numbered as 66. This fact has also to be read in the light of the fact that subsequent certificate bearing no 88 of 17.04.2008 was issued certifying to the domicile of the Applicant mentioning the same address as mentioned in the domicile certificate dated 10.04.2007.

7. One of the arguments advanced by learned counsel for the Applicant is that after domicile Certificate no 88 dated 17.04.2008 was received at the end of the Commanding Officer, the Commanding officer sought reply to certain queries quoted above. The reply to query was not intimated to the Applicant nor was subjected to any disciplinary proceeding vis a vis the fact that the second domicile certificate received from the Civil Authority certified to the residential address of the Applicant as contained in the certificate no 66 dated 10.04.2007. This fact lends cogency to the submission of the learned counsel for the Applicant that on account of inadvertence of the office of Residential Magistrate Hatia, the domicile certificate no 66 dated 10.04.2007 was not entered in the requisite record and was issued bearing an incorrect domicile certificate no 66 which was issued to one Amit Kumar Singh particularly regard being had to the fact that in the

reply dated 17.08.2008 received from the Civil Authority, it nowhere mentions that the domicile certificate issued to the Applicant at No 66 had forged signatures of the Residential Magistrate.

8. In Para 6 it is averred that when the domicile certificate was sent for verification, a reply was received from the Civil Authority that the said domicile certificate was not issued from its office and thus it was established that the applicant produced the bogus certificate at the time of his enrolment. In Para 7, it is averred that a show cause notice was issued on 08.04.2018 which was followed by receipt of domicile certificate dated 17.04.2008. The Commanding officer upon receipt of domicile certificate no. 88 sent a letter containing certain queries to be replied by the civil authorities which are quoted above. In Para 10, it is averred that upon receipt of reply, dismissal order was passed. It is conceded that upon receipt of reply dated 24.09.2008, no show cause notice was issued to the Applicant for explaining his position vis a vis the certificate no. 66 dated 10.04.2007. Admittedly, the show cause notice was issued prior to receipt of domicile certificate no. 88 dated 17.04.2008 and thereafter much water had flowed down the river and position underwent a sea change. Under changed circumstances, it was incumbent upon the authority to have confronted and called upon the Applicant to show cause. Thus, in the facts and circumstances, it would be deemed that no opportunity of being heard was afforded nor

any proper enquiry or investigation was conducted with due participation of the Applicant.

9. Learned counsel for the respondents assisted by OIC Legal Cell on being confronted conceded to the fact that the second domicile certificate No. 88 dated 17.04.2008 was received and accepted and that the Applicant was not subjected to any disciplinary proceeding and was out-rightly dismissed from the service without following the due procedure prescribed. On being further confronted, learned counsel for the respondents conceded vis a vis the fact that the reply dated 01.10.2008 was not intimated and no further show cause notice or disciplinary proceeding was undertaken. Further, it is clear that the applicant was actually a resident of the address mentioned in the certificate. Having received the second (correct) certificate from the relevant civil authorities, the authorities had no reason to proceed against the applicant who had no role in the preparation of the certificate no 66 dated 10.04.2007.

10. Thus, in the above conspectus, we veer round to the view that the order of dismissal dated 01.09.2008 cannot be sustained and is liable to be set aside.

11. Now the question arises what relief should be granted to the Applicant pursuant to setting aside of dismissal order. The Applicant at present is aged about 29 years. On being asked whether Applicant can be taken back in the Army as he has



already undergone basic training, learned counsel for the respondents assisted by OIC Legal cell did not object to it.

12. We have also heard learned counsel for the parties on payment of back wages. Learned counsel for the Applicant submits that the Applicant was dismissed from service without any valid reason and without there being any fault on his part and he is entitled to full back wages. On the other hand, learned counsel for the respondents objected to it submitting that he is not entitled to any back-wages as he has not performed any duty during the interregnum.

13. As a result of foregoing discussions, the O.A is allowed and the impugned order of dismissal dated 01.09.2008 is set aside. The Applicant shall be permitted to resume duty within three months from the date of production of a certified copy of this order. The Applicant would be entitled to back-wages to the extent of 50% for the period he remained out of Army service. The back-wages shall be paid to the Applicant within three months from the date of production of a certified copy of this order.

14. There shall be no order as to costs.

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

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

**Dated: March, , 2017**

MH/-