

Reserved

E-Court No-1

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

TRANSFER APPLICATION No. 40 of 2017

Thursday, this the 3rd day of March, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 15389151 W, Lakhan Singh S/o Shri Ajit Singh, R/o
Village - Tikri, PS-Tundla, District- Firozabad.

..... Petitioner

Learned counsel for the : **None for the Petitioner.**
Petitioner

Versus

1. Union of India through, Secretary Ministry of Defence, New Delhi.
2. The Chief of the Army Staff, Army Head Quarter, New Delhi.
3. Commanding Officer H.O. 2 STC, 5 TTR, Panji, Goa.

.....Respondents

Learned counsel for the: **Dr. Shailendra Sharma Atal,**
Respondents. **Central Govt. Counsel**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. This Civil Misc Writ Petition No 22500 of 2004 has been received by this Tribunal by way of transfer under Section 34 of the Armed Forces Tribunal Act, from Hon’ble High Court of Judicature at Allahabad and renumbered as Transferred Application No. 40 of 2017.

2. By means of the instant T.A., the petitioner had originally made the following prayers:-

(1) Issue a writ, order or direction in the nature of certiorari quashing the impugned discharge order dated 06.01.1997 passed by Respondent No. 3 (Annexure No.1 to this writ petition).

(2) Issue writ order or direction in the nature of mandamus commanding the Respondents to permit the petitioner to rejoin his services/duties in Indian Army as constable as he has been acquitted from the crime case 122 A / 95 under section 147,148 ,307,323, 149 IPC vide judgement dated 3.09.2003.

(3) Issue a writ order or direction in the nature of mandamus commanding the respondents to allow the appeal/ representation dated 25.09.2003 and reinstated the petitioner in service as constable in Indian Army.

(4) Issue any other writ, order or direction which this Hon’ble Court may deem fit and proper in the circumstances of the present case.

(5) Award the costs of petition in favour of the petitioner.

2. Learned counsel for the petitioner is not available and the case is decided on merit on the basis of documents available on record.

3. Brief facts of the case giving rise to this application are that the petitioner was enrolled in the Army in December 1994. On 17.03.1995 FIR was lodged against the petitioner and his family. His police verification was received on 30.10.1995 and petitioner was found involved in criminal case. He was discharged from service vide discharge order dated 06.01.1997 under Rule 13 (3) item (iv) of Army Rule 1954 being 'unlikely to become an efficient soldier'. Petitioner was acquitted in criminal case. After acquittal, he represented his case for reinstatement in service which was rejected. Being aggrieved, petitioner has filled this petition to reinstate him in service.

4. The petitioner was enrolled in the Army in December 1994. At the time of filling up the form in December, 1994 he declared that there is no case pending against him. Due to family dispute, name of the petitioner was falsely implicated in a criminal case under Section 307 IPC. In the year 1994, at the time of filling of form, there was no case registered against the petitioner hence in the column given in the form the petitioner rightly filled up that no criminal case is pending against him.

The petitioner completed his training in May 1996 and was posted in unit. Police verification was sent by the respondents to verify the conduct of the petitioner from concerned police station. The police reported to the respondents regarding pendency of criminal case under Section 307 of IPC against the petitioner. After receiving police verification report, without any notice and without any opportunity to explain the situation, petitioner was discharged from service. The petitioner approached the higher authorities and explained the matter that when the form was filled up there was no case registered against him at the time of filling up the form and he had rightly filled up the column, that no criminal case was pending. Petitioner was discharged from service vide order dated 06.01.1997 on the ground that he concealed the fact that he was implicated in criminal case under Section 307 IPC. Petitioner was acquitted in criminal case vide order dated 03.09.2003 passed by Additional Session and Session Judge, Ferozabad. Petitioner filed representation dated 25.09.2003 for re-instate him in service but neither his representation was decided nor any information was given to the petitioner. Criminal case against the petitioner was registered due to family dispute and the name of petitioner was falsely implicated and petitioner was acquitted from the criminal case, hence

respondents be directed to re-instate the petitioner in service with all consequential benefits.

5. On the other hand, learned counsel for the respondents argued that petitioner had enrolled himself by giving false declaration that he was not implicated in criminal case which is an offence under the Army Act. The petitioner filled up form in December, 1994 and thereafter he was implicated in criminal case on 17.03.1995. The petitioner joined duty on 28.04.1995, after his implication in criminal case whereas it was his duty to inform the authorities about his implication in criminal case. The petitioner concealed this information from 17.03.1995 till the date of receipt of police verification report in the concerned unit. Due to involvement of petitioner in criminal case, he was dismissed from service. Acquittal of the petitioner occurred on 03.09.2003 which further substantiates that he was implicated in the criminal case. Learned counsel for the respondents submitted that in May 1996, petitioner completed only first phase of his training. FIR was lodged against the petitioner on 17.03.1995 and until the police verification was carried he had not disclosed his involvement in the incident. Learned counsel submitted that the competent authority has rightly discharged the petitioner from service and petitioner is not entitled for

reinstatement in service. The Transferred Application does not need interference and deserves to be dismissed.

6. Heard Learned counsel for the respondents and perused the material placed on record. We have also gone through the order dated 25.09.2003 passed by Additional Session Judge, Firozabad and order dated 15.07.2005 passed by Hon'ble High Court, Allahabad.

7. The question before us to decide is whether petitioner on acquittal in criminal is entitled for re-instatement in service?

8. In the instant case, petitioner was enrolled in the army in December 1994 and at that time he mentioned in the application form that he is not involved in any criminal case. The petitioner was implicated in a criminal case on 17.03.1995. He was discharged from service vide discharge order dated 06.01.1997. He was not directed to fill up any fresh declaration form and there was no requirement in the Rules or Regulations for having made a fresh declaration at the time of joining the training. The petitioner was bailed out and was not required to explain his conduct during the period after his recruitment and before he joined for training. The petitioner was not given any show cause notice nor called upon to explain the circumstances in which he was implicated in a criminal case. He was acquitted

in Sessions Trial No 26 of 1997 by judgment dated 03.09.2003 delivered by Additional Sessions Judge, Firozabad. After acquittal the petitioner made representation with a request to allow him to join duty which was not accepted by the respondents.

9. We find that statement of petitioner at the time of filling up the application form in December 1994 that there was no case pending against him, is not a false statement. In case the respondents had discovered only after the police verification that petitioner was indeed implicated in a crime, the respondents were in the interest of justice required to at least inform the petitioner of allegations against him and also seek his written explanation. This was not done. The respondents have therefore, grossly violated the principle of natural justice. The stand taken by the respondents that the petitioner was required to inform the authorities about his implication in a criminal case is not supported by any statutory rule or regulations. He was not required to make any such disclosure. Anyhow, since the petitioner was eventually acquitted, it is established that petitioner was falsely implicated in the said criminal case. It is a cardinal principle of law that no one can be punished without giving him an opportunity for defence. The

petitioner may have explained and satisfied the army authorities that he was falsely implicated, which was anyhow established in the criminal trial.

10. In view of the fact that petitioner was acquitted in Criminal case and his appeal to reinstate him into service was allowed by Hon'ble High Court Allahabad, dismissal of the petitioner is bad in eyes of law. Otherwise also, the petitioner was dismissed from service without serving show cause notice or without providing opportunity of hearing. He was falsely implicated in the said criminal case and as no criminal case was registered at the time of filling up the application form, it was rightly declared by the petitioner that no case is pending against him. Accordingly, Transferred Application is liable to be allowed and order of dismissal dated 06.01.1997 passed by the respondents is liable to be quashed. In view of the judgment of Hon'ble the Supreme Court in **Union of India and others Vs. Jaipal Singh, 2004(1) SCT 108 = 2003 Supp(5) SCR 115** in case a person is discharged on account of criminal proceedings and conviction, he cannot claim back wages for the period he was not in service. The State cannot be made liable for the period for which it could not avail the services of the respondents. It is, therefore, clear from the above discussion

that Hon'ble the Supreme Court has laid down the principle that in case there is no work, no pay shall be paid as back wages for the period the petitioner was out of service in view of the orders passed.

11. In the result, the Transferred Application succeeds and is partly **allowed** and the impugned order dated 06.01.1997 dismissing petitioner from service is set aside. The respondents are directed to notationally reinstate the petitioner in service from the next date of dismissal till completion of minimum period for pensionable service. Petitioner shall not be entitled pay and allowances for the period he was out of service on the principle of 'No work no pay'. However he will be entitled to pension assuming he has served for the minimum pensionable service and was discharged in the rank normally attained by such a soldier by efflux of time. Let necessary exercise be done in compliance with this order by the respondents within a period of four months from today. Default will invite interest @ 9% per annum.

12. No order as to costs.

13. Pending applications, if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 03 March, 2022

UKT/-