

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No 716 of 2021

Monday, this the 23rd day of May, 2022

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

Ex Rect. (OR) Pooran Sharma
S/o Samaliya Sharma
Army No. 21000510M
VPO : Kanigarhi, Tehsil : Jewar,
Distt : Gautam Budh Nagar – 203135 (UP)

..... Applicant

Ld. Counsel for the Applicant: **Shri Om Prakash**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi-110011.
2. OIC Record, the Artillery Records, PIN-908802, C/o 56 APO.
3. Officer-in-charge, 5/2 Training Regiment, HQ Artillery Centre, PIN-900398, C/o 56 APO.

..... Respondents

Ld. Counsel for the Respondents : **Shri Sunil Sharma**,
Central Govt Counsel

ORDER

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

- “A. To allow the application of the applicant and set aside the order dated 18.02.2021 (Annexure A-1) passed by Respondent No. 2 vide which it has been intimated that applicant has been dismissed from service on 12.05.2016 being ‘Fraudulent Enrolment’.

- B. To issue suitable orders/directions commanding the respondents to re-instate the applicant, back in Army Service from the date of dismissal with all consequential benefits.
- C. Any other relief which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case, may be granted in favour of the applicant.
- D. Award the cost of original Application in favour of the applicant.”

2. The brief facts of the case are that the applicant was enrolled in the Indian Army on 29.12.2014. During verification of character and antecedents of applicant, an adverse report was received from Civil Police that a criminal case No. 37/2011 under Sections 323, 325, 332, 353 and 427 of IPC was pending against the applicant since 2011. Since the applicant was involved in a criminal case and thus, committed an offence under Army Act, Section 44 by giving false answer before the enrolling officer, it was decided by the Commandant Artillery Centre, Hyderabad that applicant is not eligible to continue in service and liable to be dismissed from service under Army Act, Section 20(3) and Army Act Section 44 read with Army Rule, 17. Thus, he was dismissed from service under Section 20(3) and 44 of Army Act, 1950 read with Rule 17 of Army Rules, 1954. Being aggrieved with procedure of his dismissal from service, the applicant has filed the present Original Application to re-instate him in service.

3. Learned Counsel for the applicant submitted that applicant was enrolled in the Indian Army on 29.12.2014. When the applicant was a

minor of 16 years and 4 months of age, a false case was registered at local Police Station of applicant's home town on 19.02.2011 by Mr. Hari Shankar, a bus conductor of UP Roadways for attacking and snatching money and ATM Card from him against the applicant and four teenagers of same age group vide case Crime No. 37/2011 under Sections 323, 325, 332, 353 and 427 of IPC. During verification of character and antecedents of applicant, an adverse report was received from Civil Police that a criminal case was pending against the applicant since 2011. Based on this report, Training Centre authorities, without any Show Cause Notice or pre-information decided to truncate the services of the applicant and issued a Clearance Certificate for exit from Army on 09.05.2016 and applicant was escorted upto home town and custody was given to applicant's father without any discharge/dismissal order. The pending Criminal Case No. 1549/2011 was finally decided on 21.01.2017 and the applicant was acquitted because applicant was not involved in the case. After acquittal, the applicant preferred an appeal to AG's Branch, IHQ of MoD (Army) against the dismissal order and requested to reinstate him in service being acquitted in the case which was falsely registered against him. The appeal of the applicant was rejected by the respondents stating his case being fraudulent enrolment.

4. Learned Counsel for the applicant further submitted that fraudulent enrolment is dealt under Section 43 of Army Act, 1950 and not under Section 44. The applicant in question No. 7 of enrolment form 'have you ever been imprisoned by the Civil Power' filled 'No'

because the applicant was not imprisoned. The punishment for false answers on enrolment is to be inflicted either in terms of Section 71 or 80 of Army Act, 1950 which is administrative dismissal/removal for which no charge sheet is mandatory but Rule 17 of Army Rules, 1954 is to be complied with. In the case of applicant, Rule 17 of Army Rules, 1954 has been grossly violated because no Show Cause Notice or pre information was given to the applicant before dispensing the services. He placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Nawab Khan Abbas Khan vs. The State of Gujrat*** in Criminal Appeal No. 83 of 1970, 1974 SCR (3) 427 decided on 09.02.1974 in which the Hon'ble Apex Court has held that an order which infringes a fundamental freedom passed in violation of the **audi alteram partem, is a nullity**. The Hon'ble Apex Court has further commented in Head Note that any order made without hearing the party affected is void and ineffectual to bind parties from the beginning if the injury is to a constitutionally guaranteed right. In the case of applicant, Rule 17 of Army Rules, 1954 was not at all complied with, hence, the principles of natural justice have been violated rendering the action under Section 20(3) of Army Act, 1950 as null and void.

5. Learned counsel for the applicant pleaded that applicant's dismissal order by which applicant has been dismissed from service on 12.05.2016 be quashed and applicant be reinstated back in service with all consequential benefits.

6. On the other hand, Ld. Counsel for the respondents submitted that applicant has not challenged the order of dismissal dated

12.05.2016, rather he has challenged the order dated 18.02.2021 by which applicant's appeal against his dismissal has been rejected. He further submitted that as per existing policy, verification roll of the applicant was forwarded to the District Magistrate, Gautam Budh Nagar (UP) vide letter dated 22.04.2015 and verification roll was received back from police authority, Jewar, Gautam Budh Nagar stating that a case under IPC Section 332/353/323/427 and 216 has been lodged against the applicant which is subjudice before the Court. The applicant was interviewed by the Commandant, Artillery Centre, Hyderabad and was directed to proceed on leave to settle the case against him. However, the applicant was unable to settle the case even after sanctioning casual leave on four occasions. The applicant in his letter dated 04.01.2016 has confessed his involvement in the criminal case

7. Learned counsel for the respondents further submitted that since the applicant had committed an offence under Army Act, Section 44 by giving false answer before the enrolling officer, he was liable to face disciplinary action being involved in criminal case as such, he was not eligible to continue in service. The applicant was liable to be dismissed from service under Army Act, Section 20(3) and Army Act, Section 44 read with Army Rule, 17. Accordingly, he was discharged from service under Section 20(3) and 44 of Army Act, 1950 read with Rule 17 of Army Rules, 1954 and thereafter, he was handed over to his father.

8. Learned counsel for the respondents placed reliance on the judgments of the Hon'ble Apex Court in ***Avtar Singh vs. Union of***

India & Ors, Special Leave petition (C) No. 20525/2011, decided on 21.07.2016 and **State of Rajasthan & Ors vs. Chetan Jeff**, Civil Appeal No. 3116 of 2022, decided on 11.05.2022 and pleaded that applicant was well aware about the court case filed against him and deliberately concealed the information during his recruitment, therefore, in view of aforesaid judgments of the Hon'ble Apex Court, he has rightly been dismissed from service as per rules. He pleaded for dismissal of Original Application being misconceived.

9. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents and perused the record.

10. The Hon'ble Apex Court in **Daya Shankar Yadav vs. Union of India**, (2010) 14 SCC 103, had an occasion to consider the purpose of seeking the information with respect to antecedents. It is observed and held that the purpose of seeking the information with respect of antecedents is to ascertain the character and antecedents of the candidate so as to assess his suitability for the post. Thereafter, it is observed and held that an employee can be discharged from service or a prospective employee may be refused employment on the ground of suppression of material information or making false statement in reply to queries relating to prosecution or conviction for a criminal offence (even if he was ultimately acquitted in the criminal case). The Hon'ble Apex Court in para 16 has observed and held as under:

“16. Thus an employee on probation can be discharged from service or a prospective employee may be refused employment :

(i) on the ground of unsatisfactory antecedents and character, disclosed from his conviction in a criminal case, or his involvement in a criminal offence (even if he was acquitted on technical grounds or by giving benefit of doubt) or other conduct (like copying in examination) or rustication or suspension or debarment from college, etc.; and
(ii) on the ground of suppression of material information or making false statement in reply to queries relating to prosecution or conviction of a criminal offence (even if he was ultimately acquitted in the criminal case). This ground is distinct from the ground of previous antecedents and character, as it shows a current dubious conduct and absence of character at the time of making the declaration, thereby making him unsuitable for the post.”

11. The Hon’ble Apex Court in the case of **State of A.P. v. B. Chinnam Naidu**, (2005) 2 SCC 746, has observed that the object of requiring information in the attestation form and the declaration thereafter by the candidate is to ascertain and verify the character and antecedents to judge his suitability to enter into or continue in service. It is further observed that when a candidate suppresses material information and/or gives false information, he cannot claim any right for appointment or continuance in service.

12. The Hon’ble Apex Court in the case of **Devendra Kumar v. State of Uttaranchal**, (2013) 9 SCC 363, has held that while joining the training, the employee was asked to submit an affidavit giving certain information, particularly, whether he had ever been involved in any criminal case. The employee submitted an affidavit stating that he had never been involved in any criminal case. The employee completed his training satisfactorily and it was at this time that the employer in pursuance of the process of character verification came to know that the employee was in fact involved in a

criminal case. It was found that the final report in that case had been submitted by the prosecution and accepted by the Judicial Magistrate concerned. On the basis of the same, the employee was discharged abruptly on the ground that since he was a temporary government servant, he could be removed from service without holding an enquiry.

13. The Hon'ble Apex Court in **Jainendra Singh vs. State of U.P.**, (2012) 8 SCC 748, in para 29.4, has observed and held that "a candidate having suppressed material information and/or giving false information cannot claim right to continue in service and the employer, having regard to the nature of employment as well as other aspects, has the discretion to terminate his services. In para 29.6, it is further observed that the person who suppressed the material information and/or gives false information cannot claim any right for appointment or continuity in service. In para 29.7, it is observed and held that "the standard expected of a person intended to serve in uniformed service is quite distinct from other services and, therefore, any deliberate statement or omission regarding a vital information can be seriously viewed and the ultimate decision of the appointing authority cannot be faulted.

14. After reproducing and/or reconsidering para 38.5 of the decision in **Avtar Singh** (supra), in **Abhijit Singh Pawar** (supra), in para 13, the Hon'ble Apex Court has observed and held as under:

"13. In **Avtar Singh** [Avtar Singh v. Union of India, (2016) 8 SCC 471, though this Court was principally concerned with the question as to nondisclosure or wrong disclosure of information, it was observed in para 38.5 that even in cases where a truthful disclosure about a concluded case

was made, the employer would still have a right to consider antecedents of the candidate and could not be compelled to appoint such candidate.”

15. The Hon'ble Apex Court in its recent judgment in **State of Rajasthan & Ors vs. Chetan Jeff**, Civil Appeal No. 3116 of 2022, decided on 11.05.2022 has held in paras 6,7,8&9 that suppression of material fact by a person in respect of his criminal antecedents and making a false statement in the enrolment form will result cancellation/rejection of his candidature or dismissal from service. The relevant paras are reproduced below :-

“6.1 At the outset, it is required to be noted that the post on which the writ petitioner is seeking the appointment is the post of constable. It cannot be disputed that the duty of the constable is to maintain law and order. Therefore, it is expected that a soldier should be honest, trustworthy and his integrity is above board and that he is reliable. An employee in the uniformed service presupposes a higher level of integrity as such a person is expected to uphold the law and on the contrary any act in deceit and subterfuge cannot be tolerated. In the present case the applicant has not confirmed to the above expectations/ requirements. He suppressed the material facts of his involvement in criminal antecedents. He did not disclose in the enrollment form that against him a civil/criminal case/FIR is pending. On the contrary, in the enrolment form, he made a false statement that he is not involved in any civil/criminal case and not facing any trial. Therefore, due to the aforesaid suppression, his candidature came to be rejected by the appropriate authority. Despite the above, the learned Single Judge allowed the writ petitioner and directed the State to consider the case of the original writ petitioner for appointment as a constable mainly on the ground that the offences were trivial in nature and the suppression of such offences should have been ignored. The same has been confirmed by the Division Bench.

6.2 The question is not whether the offences were trivial in nature or not. The question is one of suppression of material fact by the applicant in respect of his criminal antecedents and making a false statement in the enrolment form. If in the beginning itself, he has suppressed the material fact in respect of his civil/criminal antecedents and in fact made an incorrect statement, how can he be appointed as a constable. How can he be trusted thereafter in future? How it is expected

that thereafter he will perform his duty honestly and with integrity?

6.3 Therefore, as such the authorities were justified in rejecting the candidature of the respondent for the post of constable.

7. Applying the law laid down by this Court in the aforesaid cases, it cannot be said that the authority committed any error in rejecting the candidature of the original writ petitioner for the post of constable in the instant case.

8. Even otherwise it is required to be noted that subsequently and during the proceedings before the learned Single Judge as well as the Division Bench, there are three to four other FIRs filed against the original writ petitioner culminating into criminal trials and in two cases he has been acquitted on the ground of compromise and in one case though convicted, he has been granted the benefit of Probation of Offenders Act. One more criminal case is pending against him. Therefore, the original writ petitioner cannot be appointed to such a post of constable.

9. In view of the above discussion and for the reasons stated above, both, the learned Single Judge as well as the Division Bench have erred in directing the State to consider the case of the respondent for appointment as a constable. The judgment and order passed by the High Court is unsustainable, both, on facts as well as on law. Under the circumstances, the same deserves to be quashed and set aside and is accordingly quashed and set aside. It is held that the candidature of the respondent - original writ petitioner for the post of constable had been rightly rejected by the appropriate authority. Present appeal is accordingly allowed. In the facts and circumstances of the case, there shall be no order as to costs.”

16. In view of above, we find that offence of the applicant for not disclosing the information of his involvement in civil/criminal case in enrolment form during his recruitment in the Indian Army is not of a trivial nature but it is of a serious nature, therefore, suppression of such material facts at the time of enrolment or after recruitment cannot be ignored and therefore, in view of aforesaid judgments of the Hon'ble Apex Court, applicant has rightly been discharged from service by the respondents.

17. In view of the above, we do not find any illegality or violation of any rule and regulation in discharging the applicant from service. The O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed.**

18. No order as to costs.

19. Pending Misc. Application(s), if any, shall stand disposed of.

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

Dated: May, 2022

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