

**RESERVED**  
**Court No. 1**

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

**Original Application No 791 of 2021**

**Monday, this the 23<sup>rd</sup> day of May, 2022**

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

(Army No. 3020390X) Recruit Gaurav  
S/o Shri Kundan Lal  
R/o Vill – Simriya Gausu, Post – Sakaula, Tehsil – Amriya, PS –  
Newriya, District – Pilibhit (UP) – 262001

..... Applicant

Ld. Counsel for the Applicant: **Mohd. Zafar Khan**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi-110011.
2. Chief of the Army Staff, IHQ of MOD (Army), Army HQ, South Block, New Delhi – 110011
3. Officer-in-Charge Records, The Rajput Regiment Centre, PIN-900427, C/o 56 APO.
4. Training Battalion Commander, The Rajput Regiment Centre, Fatehgarh, U.P.

..... Respondents

Ld. Counsel for the Respondents : **Shri Rajiv Pandey**,  
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 issue/pass an order or directions to set aside/quash the letter/order of the Rajput Regiment Centre No. 3020390X/G/CF/Trg Bn dated 22 Sep 2018 passed by

the respondent No. 4 annexed as Annexure No. 1 and the applicant may please be reinstated in service with all the consequential benefits in the interest of justice, after summoning the relevant original records.

- B. To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.
- C. To allow this original application with costs."

2. The brief facts of the case are that the applicant was enrolled in the Indian Army on 25.09.2017. The applicant was discharged from service on 22.09.2018 after issuing a Show Cause Notice dated 18.08.2018 by Commandant Rajput Regimental Centre, Fatehgarh on the ground that during training period character verification roll was received from District Magistrate, Pilibhit in which it was mentioned that a case crime No. 299/2015 under Section 147, 148, 452, 323, 504 and 506 of IPC and Section 3(1)10 of SC/ST Act is registered against the applicant and he is under trial before Special Judge, (SC/ST Act), Pilibhit. Being aggrieved with his discharge, 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 25.09.2017 from Army Recruiting Office, Bareilly. The applicant was discharged from service on 22.09.2018 after issuing a Show Cause Notice dated 18.08.2018 on the ground that during training period character verification roll was received from District Magistrate, Pilibhit in which it was mentioned that a case crime No. 299/2015 under Section 147, 148, 452, 323,

504 and 506 of IPC and Section 3(1)10 of SC/ST Act is registered against the applicant. The reply of the applicant to Show Cause Notice was not considered and applicant was discharged from service illegally against the provisions of Govt. of India letter dated 28.12.1988 which is against the principles of natural justice. As per para 5(a) of Circular dated 28.12.1988 before recommending discharge or dismissal of an individual the authority concerned will ensure preliminary enquiry which has not been conducted in the present case and no adequate opportunity to offer explanation has been given to the applicant, therefore, applicant's discharge is illegal and liable to be quashed as per Hon'ble Apex Court judgment in Civil Appeal No. 32135/2015, **Veerendra Kumar Dubey vs. Chief of Army Staff & Ors** followed in Civil Appeal No. 12179-80/2016, **Vijay Shanker Mishra vs. Union of India & Ors**.

4. Learned counsel for the applicant also relied upon judgment of Hon'ble Delhi High Court in W.P. (C) No. 6062/2017, **Mukesh Yadav vs. Union of India and Ors** in which the Court held that "*keeping in mind the fact that the object of the act is to ensure that no stigma is attached to a juvenile in conflict with law, in our view, once the juvenile has been extended a protective umbrella under the said enactment, there was no good reason for the respondents to have insisted that the petitioner ought to have disclosed the information relating to the allegations against him pertaining to an offence that was committed during his childhood where he was tried by the juvenile Justice Board and subsequently acquitted. We may add here that even when police verification in respect of the petitioner was*

*being conducted on the direction of the respondents, the concerned police official ought to have refrained from revealing the information pertaining to the petitioner in the case in question since he was juvenile at that point in time. There was in fact a gross breach of confidentiality contemplated under the Act.”*

5. The Hon’ble Supreme Court in the case of **Commissioner of Police & Ors vs. Sandeep Kumar** (2011) 4 SCC 644, considered a case where Sandeep Kumar’s candidature for the post of Constable was cancelled on the ground that he had concealed his involvement in the criminal case when he was about 20 years. The relevant portion of judgment (Para 8) is extracted hereunder :-

“8. We respectfully agree with the Delhi High Court that the cancellation of his candidature was illegal, but we wish to give our own opinion in the matter. When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often be condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.”

The said judgment has also been considered by the Full Bench of Hon’ble Apex Court in the SLP (C) No. 20525/2011 Titled as **Avtar Singh vs. Union of India and ors** and held that :

“It is true that in the application form the respondent did not mention that he was involved in a criminal case under Section 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified. At any event it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter.”

6. Learned counsel for the applicant also submitted that as per Section of the Juvenile Justice (Care & Protection of Children) Act, 2000, “Section 21 prohibits publication of the name of the juvenile in

*conflict with law or a child in need of care and protection involved in any proceedings under the act and on the other hand, the section prescribes that his name or other particulars that can lead to identify him shall not be disclosed”.*

7. Learned counsel for the applicant also placed reliance on under mentioned judgments on the subject and pleaded that applicant’s case is squarely covered being similar in nature :-

- (a) The Hon’ble Supreme Court judgment in ***Pawan Kumar vs. Union of India & Anr***, Civil Appeal No. 3574/2022, decided on 02.05.2022, ***Umesh Chandra Yadav vs. The Inspector General and Chief Security Commissioner, R.P.F., Northern Railway, New Delhi & Others***, Civil Appeal No. 1964 of 2022, decided on 02.03.2022, ***Avtar Singh vs. Union of India*** (2016) 8 SCC 471 and ***Daya Shankar Yadav vs. Union of India*** (2010) 14 SCC 103.
- (b) The Allahabad High Court judgment in ***Shivam Maurya vs. State of U.P. and 5 others***, Special Appeal No. 1136 of 2018, decided on 10.04.2022 and ***Kishan Paswan vs. Union of India and 3 Others***, Writ-A No. 5044 of 2020, decided on 22.10.2020.

In view of aforesaid judgments, learned counsel for the applicant pleaded that applicant’s discharge order dated 22.09.2018 be quashed and he may please be reinstated in service with all consequential benefits in the interest of justice.

8. On the other hand, Ld. Counsel for the respondents submitted that applicant while appearing before the recruitment rally had submitted an affidavit dated 06.09.2017, sworn before public notary, addressed to Regional Recruiting Officer in which it is stated that “/

***hereby certify that I am not involved in any civil/criminal case”.***

The applicant had also submitted a character Pre-verification certificate dated 06.09.2017 issued by Gram Pradhan, Simriya Gasu, Amariya, Pilibhit (UP) stating that applicant bears good moral character and has never been imprisoned. Moreover, the applicant has also sworn in affidavit dated 06.09.2017 that he has not served any false/forged documents or has stated any misconceived information/statement to the official of the recruitment rally and in case the documents/information served by the applicant is found to be forged/incorrect by any means, his service will be terminated by Army as well as First Information Report may also be lodged against him and further legal action be initiated against him. Subsequently, a complaint received by Rajput Regimental Centre, Fatehgarh from Shri Sohan Lal & four others against the applicant that he has some criminal record and a court case is subjudice against him. Accordingly, applicant's verification roll was forwarded to District Magistrate, Pilibhit (UP) to verify his character and antecedents. A copy of Civil Case No. ST No. 187/2017 filed before Special Judge, (SC/ST Act), Pilibhit was also received from Shri Sohan Lal. Army Recruiting Office, Bareilly vide their letter dated 24.03.2018 processed the case with Rajput Regimental Centre, Fatehgarh stating that “In case during post enrolment verification, if the submitted certificate is found to be fake, necessary action can be taken against the applicant as per existing rules.” The District Magistrate, Pilibhit vide their letter dated 29.12.2017 intimated that as per verification report issued by Superintendent of Police & Local Intelligence Unit, charges under

Section 147, 148, 452, 323, 504, 506 and 427 of IPC have been found to be recorded at Police Station Nivoriya, Pilibhit and the same is also under trial with Special Judge, SC/ST Act, Pilibhit.

9. Learned counsel for the respondents further submitted that on receipt of verification roll of applicant, Commandant Rajput Regimental Centre, Fatehgarh issued Show Cause Notice dated 18.08.2018 to the applicant to show cause as to why he should not be discharged from service under the provisions of Army Act 13 (3) (iv) and IHQ of MOD (Army) letter dated 13.11.1978 since applicant was detained in civil custody at District Jail, Pilibhit on 14.03.2015 and he is under trial before Special Judge, SC/ST Act, Pilibhit. The applicant submitted his reply dated 11.04.2018 stating that due to his negligence he has not informed about the FIR/Court Case filed against him. The reply of the applicant was examined in the light of relevant rules, regulations and policy on the subject and his discharge was sanctioned by Commandant Rajput Regimental Centre, Fategarh vide reasoned and speaking order dated 22.09.2018 and accordingly, applicant was discharged from service on 22.09.2018 under Army Rule 13 (3) (iv) of Army Rules, 1954.

10. Learned counsel for the respondents pleaded that applicant was well aware about the court case filed against him and concealed the information during his recruitment knowingly, the Original Application deserves to be dismissed being devoid of merit.

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

12. 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.”

13. 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.

14. 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.

15. 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.

16. 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.”

17. 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.”

18. 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.

19. 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**.

20. No order as to costs.

21. 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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