

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Reserved.
(Court No. 2)

Transferred Application No. 167 of 2009

Wednesday the 4th day of November, 2015

“Hon’ble Mr. Justice Abdul Mateen, Member (J)
Hon’ble Lt. Gen. A.M. Verma, Member (A)”

Avadhesh Kumar, son of Jagannath, resident of Village Somvanshi, Post Office Lalganj, Tehsil Lalganj, Disgtrict Raebareli.

..... Applicant/Petitioner

By Shri R. Chandra, counsel for the applicant.

Versus

1. Union of India through Secretary, Home, Civil Secretariat, New Delhi.
2. Lt. General Officer, Commanding-in-Chief, Headquarter Southern Command, Poone-1.
3. Col. Commanding Officer, Training Battalion, District Kamptee, Maharashtra Pradesh.

..... Respondents

By Shri Ashutosh Kumar Srivastava along with Capt. Soma John, Departmental Representative.

ORDER

1. By means of this petition, filed before the Lucknow Bench of the Hon’ble Allahabad High Court being Civil Misc. Writ Petition No. 6571 (S/S) of 2000 and subsequently transferred to this Tribunal on 11.12.2009

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and renumbered as T.A. No. 167 of 2009, the petitioner has prayed for quashing of the impugned order dated 23.2.1998, passed in SCM proceedings, impugned rejection order dated 18.11.1998, passed in appeal of the petitioner, reinstatement in service, and to award cost of the petition.

2. The facts of the case, in brief, are that the petitioner was enrolled on 28.12.1996 at Amethi and reported to the Guards Regimental Centre, Kamptee, on 30.12.1996. According to the respondents, a police verification roll was sent to the District Magistrate, Raebareli, which was received back stating therein that there were two criminal cases, Case No. 217 of 1994 and Case No. 54 of 1995, pending against the petitioner. The petitioner was thereafter tried by SCM on the following charge :

“CHARGE SHEET

The accused No 13697700M Recruit Awadesh Kumar of Training Battalion (Tipu Training Company), Brigade of The Guards Regimental Centre is charged with :-

Army Act *MAKING AT THE TIME OF ENROLMENT A WILLFULLS*
Section 44 *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

In that he,

At Amethi, on 28 Dec 96, when appeared before Subedar Major Rai Singh Kanwar, an enrolling officer, for the purpose of being enrolled for service in the Brigade of the Guards Regiment, to the question put to him “Have you ever been imprisoned by the civil power or are you under trial for any offence or has any complaint or report been made against you to the Magistrate or Police for any offence? If so, give details”, answered “No”

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whereas he had two criminal cses No 217/1994 and 54/95 pending against him in the criminal court.”

3. In SCM the petitioner was awarded punishment of dismissal from service. He, thereafter, sent a petition to the GOC-in-C, Southern Command, Pune, which was rejected vide order dated 18.11.1998.

4. The petitioner was represented by Shri R. Chandra, learned counsel. According to the petitioner during enrolment the Enrolling Officer, viz. Sub. Major Raj Singh Kanwar, only asked him his name, address and date of birth. He was asked no other question and was unaware of various columns in the enrollment form. He was asked to sign the enrolment form which was in English language and he was not very proficient in English language. The petitioner states that his enemies complained against him and two criminal cases were allegedly held to be pending against him. Summary of Evidence was recorded on 17.2.1998, during which he was not allowed to cross-examine any witness. Copies of the charge-sheet and Summary of Evidence were given to the petitioner on 20.2.1998 and the trial took place on 23.2.1998 in a most mechanical manner. During the trial he was advised by the friend of the accused, Major Rai Singh, to plead guilty. The petitioner says that no witness regarding filling up enrolment form was produced. He claims that his name is not there in the charge-sheet of case No. 54 of 1995.

5. The respondents, represented by Shri Ashutosh Kumar Srivastava, Standing Counsel, and Capt. Soma John, Departmental Representative, stated that during the enrolment procedure number of questions were asked by the Enrolling Officer and not just the name, address and date of birth of

the petitioner. In reply to question No. 8, the petitioner stated that no criminal case is pending against him. The respondents state that the petitioner knows English language as his qualification was Matric pass and he would have passed the examination with English as one of the subjects. On the petitioner's arrival in the Guards Regimental Centre his verification roll was sent to the District Magistrate, Raebareli, which was received back stating that there were four criminal cases were pending against the petitioner. On enquiry, it was revealed that the petitioner had given false statement in reply to question No. 8 during enrolment. The respondents also state that some complaints from the petitioner's village were received regarding petitioner's involvement in criminal cases. The petitioner was accordingly served with a charge-sheet on 20.2.1998 and was tried by SCM on 23.2.1998. The Summary of Evidence was conducted, as prescribed by law, in the presence of the petitioner. The respondents denied that any pressure was exerted by the Friends of the Accused on the petitioner to plead guilty. The SCM proceedings were reviewed by DJAG, HQ, Southern Command, vide letter dated 14.3.1998. During the trial the petitioner pleaded guilty and asked for lenient punishment. As regards witnesses, the respondents state that there is documentary proof in the form of report of SHO, Sarbaini, District Raebareli, that two criminal cases, being Case Nos. 217 of 1994 and 54 of 1995 were pending against the petitioner and, therefore, no witnesses were needed.

6. Heard both the sides and examined the documents.

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7. Question No. 8 of the Enrolment Form is with respect to whether or not the candidate has been imprisoned by Civil Power, is the candidate under trial for any offence or has any complaint or report been filed against the candidate before a Magistrate or police. In the space against this question it is recorded as 'No', which has been recorded by the Enrolling Officer based on reply given by the petitioner at the time of enrolment. SHO, Sarbaini, District Raebareli, on Verification Roll has endorsed his remark against "whether or not recruit has criminal record". The remark is not entirely legible, except 'Sections 323/504/506/308 IPC' can be clearly made out. It can also be made out from this remark that the case is '*Vicharadhin*', i.e. under consideration. The police report says '*Aiyogya*' in Hindi and against 'whether or not' recruit is 'fit for service in Army/Navy'.

8. The court order on case No. 217 of 1994, passed by the Chief Judicial Magistrate, Raebareli, dated 12.8.1997 is against four persons, viz. Jagannath, Ganeshi, Hira Lal and Jai Prakash. The name of the petitioner, viz. Avadhesh Kumar, does not figure in the list. The FIR in case No. 54 of 1995 dated 23.4.1995 by Ramesh Kumar, son of Lalu Ram, is against Hira Lal, Sahdeo Prasad and Jai Prakash. In this FIR too there is no mention of the petitioner's name.

9. The petitioner had produced a copy of Parivar Register authenticated by Gram Panchayat Vikas Adhikari of Bhajpur, district Raebareli, dated 24.4.2015, according to which Ganeshi Prasad born in the year 1962, Sahdeo Prasad born in the year 1972, Jai Prakash born in the year 1974 and

the petitioner born in the year 1979 are sons of Jagannath and Smt. Maharaja Devi. We find that according to the enrolment form the date of birth of the petitioner is 15.7.1979, which corroborates the Parivar Register.

10. The respondents claim that Jai Prakash and the petitioner are the same person, i.e. the petitioner is also known as Jai Prakash. The respondents have produced a copy of Kindred Roll in respect of the petitioner which names Jagannath and Maharaja Devi, Ganesh Prasad, Hira Lal, Ayodhya Prasad, Sahdeo Pratap, Ram Prakash and Ramawati. There is no mention of Jai Prakash in this list, which, according to the respondents, re-inforces their point that Jai Prakash and the petitioner are the same person. Parivar Register on the other hand names Jai Prakash as one of the brothers of the petitioner. The name of Jai Prakash also appears in the court order in Case No. 217 of 1994 and FIR, of case No. 54 of 1995. Kindred Roll is based on information provided by the recruit and recorded by an official of the Regimental Centre. It is likely that the name of Jai Prakash may have been omitted by the person recording the family details at the Regimental Centre. We also find that there is a discrepancy between the said Kindred Roll and Parivar Register in that name of Ayodhya Prasad appears in the Kindred Roll, whereas this Ayodhya Prasad's name is absent in the Parivar Register.

11. From the available documents we are inclined to believe that Jai Prakash and the petitioner are two different persons and are perhaps brothers. In the two criminal cases, i.e. case Nos. 217 of 1994 and 54 of 1995, the petitioner's name does not find figure. As such, we are of the firm

opinion that there was no case pending against the petitioner at the time of enrolment, as alleged by the respondents, relating to case Crime Nos. 217 of 1994 and 54 of 1995, neither he was arrayed as an accused nor tried. Therefore, there is no question of conviction or acquittal of the petitioner. During SCM the petitioner may have been intimidated and may have pleaded guilty. He was just over 18 years of age and may have been overawed by the environment and the SCM. We are of the view that the petitioner had not given false statement at the time of enrolment. Accordingly, the entire SCM proceedings are liable to be quashed.

12. The copy of the charge-sheet and Summary of Evidence was admittedly handed over to the petitioner on 20.2.1998. There is also a letter on record, which is dated 20.2.1998, and under which copies of the two documents were given to the petitioner. The trial was held on 23.2.1998. Army Rule 34(1) requires that the time interval between the accused being informed of the charge and the trial shall not be less than 96 hours. Army Rule 34(1) reads as follows :

“34. Warning of accused for trial. – (1) The accused before he is arraigned shall be informed by an officer of every charge for which he is to be tried and also that, on his giving the names of witnesses or whom he desired to call in his defence, reasonable steps will be taken for procuring their attendance, and those steps shall be taken accordingly.

The interval between his being so informed and his arraignment shall not be less than ninety-six hours or where the accused person is on active service less than twenty-four hours.”

13. In the instant case it is clear that the time gap between the handing over of the charge-sheet and the trial was less than 96 hours as the trial on 23.2.1998 had commenced at 1050 hours. Hence on this count too the trial is legally invalid and liable to be quashed.

14. Accordingly, the Transferred Application is partly allowed and the SCM proceedings as also the rejection order of the appeal are hereby quashed. The petitioner will be deemed to be notionally in service till he attains the service which entitles him to receive pension, where after he shall be paid the normal pension. We, however, make it clear that the petitioner shall not be entitled to any salary during the period of notional service. No order as to costs.

(Lt. Gen. A.M. Verma)
Member (A)

(Justice Abdul Mateen)
Member(J)

PG.