

RESERVED**COURT NO. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****O.A. No. 64 of 2011****Thursday, this the 5th day of October, 2017****"Hon'ble Mr. Justice D.P.Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)"**

Vijay Kumar (Recruit No. 4202740W), son of Sri Dalvir Singh,
Resident of Village - Maligaon, Post Office - Lauthra, P.S. Sakit,
Tehsil & District - Etah, UP----- **Applicant**

Ld. Counsel appeared for the applicant - **Shri P.N. Chaturvedi,**
Advocate,

Versus

1. Union of India, through its Secretary to Ministry of Defence, Government of India, Sansad Marg, New Delhi.
2. Commander Training Battalion, the Kumaon Regimental Centre Ranikhet.
3. The Board of Enquiry, through its Chairman, Commanders-KRC, Ranikhet
4. The Commander-in-Chief, Central Command/GOC-in-Charge Central Command, Lucknow, UP
5. Ex Sub Sri Netra Pal Singh, JC No. 403605A. S/o Kamta Prasad, 17 GUARDS C/O 56 APO R/o : Magla Gangi Post & Police Station: Sakeet Distt : Etah (UP)
6. Pushpendra Kumar S/o Netra Pal Singh 12 GUARDS, c/o 56 APO R/o : Magla Ggangi Post & Police Station : Sakeet, Distt: Etah (UP)
7. The Commanding Officer, 12 GUARDS c/o 56 APO.
8. The Commanding Officer, 17 GUARDS, c/o 56 APO

----**Respondents**

Ld. Counsel appeared for the Respondents - **Shri Bhanu Pratap Singh,**
Advocate, & Shri Yash
Pal Singh, Advocate

Assisted by - **Maj Salen Xaxa,**
OIC Legal Cell.

ORDER**“Per Hon’ble Air Marshal Anil Chopra, Member (A)”**

1. This Present Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for setting aside the order dated 16.06.2009 and to restore him in service with retrospective effect.

2. The facts of the case in nutshell are that the Applicant was enrolled in the Indian Army at Ranikhet on 10.09.2008. At the time of recruitment, it is stated, the Applicant submitted the Educational certificate showing his date of birth as 01.07.1987 and a relationship certificate claiming to be the son of Subedar Dalveer Singh of 7 Guards while filling up Recruit Master Data Sheet. After enrolment, the relationship certificate submitted by the Applicant was transmitted to Records, the Brigade of Guards to ascertain the genuineness of the said certificate. The said certificate was intimated to be fake by the Records vide letter dated 17.11.2008 further intimating that the date of birth of the Applicant as noted in the Records of his father was 05.07.1984. On receiving the aforesaid intimation, a court of inquiry was convened on 18.03.2009. Subsequently, SCM was held under section 44 of the Army Act in which on the basis of pleading guilty, the Applicant was dismissed on 16.06.2009. Thereafter, the Applicant

filed O.A before the Central Administrative Tribunal which was dismissed. The Applicant then filed an appeal on 20.08.2010 to the General Officer Commanding-in-Chief Central Command which culminated in being rejected vide order dated 10.01.2011. It is in the above perspective that the present Application has been filed.

3. We have heard learned counsel for the Applicant as also the learned counsel for the respondents and perused the materials on record.

4. The main brunt of the arguments advanced by learned counsel for the Applicant is that the relationship certificate was given to him by his father but at the same time, the fact remains and there is no denying that the father of the Applicant Sub Dalveer Singh was the ex-serviceman and the date of birth which was shown as 01.07.1984 was already corrected in the records as shown in Annexure no 10 to the Application. He further submits that the so called fraud certificate was submitted by his father and but there is no denying of the fact that the relationship as contained in the relationship certificate was not found to be fake. It is also submitted that the date of birth as contained in the Recruit Master Data sheet is borne out from the High School Certificate produced by the Applicant at the time of recruitment and the same has not been found to be

incorrect. Even the date of birth as mentioned in the service record of his father was corrected but the corrected records were not produced by the witness before the SCM. He also criticised the finding of the SCM submitting that neither the father of the Applicant was called to explain the circumstances nor the records of the father of the Applicant was called for ascertaining the truth of the matter. It is also submitted that in fact, bonus marks were not required as the Applicant had obtained sufficient marks i.e. 124 marks to be recruited as direct candidate. It is also submitted that during SCM, he was made to sign papers treating him to have pleaded guilty.

5. Per contra, it is contended that the Applicant admittedly produced the fake relationship certificate which is borne out from Annexure CA II; that the date of birth as recorded in the service records of his father who was an ex serviceman was 05.07.1984 and not as contained in fake relationship certificate. During court of inquiry, it was admitted by the Applicant that he had obtained the fake relationship certificate from a civilian. During SCM, the Applicant again admitted the fact of having obtained the fake relationship certificate from a civilian. It is also contended that during SCM the Applicant pleaded guilty and was consequently dismissed from service.

6. The first and foremost question that surfaces for consideration is whether the date of birth as contained in the High School Certificate and produced at the time of enrolment would be taken to be final or it should be considered vis a vis the date of birth as recorded in the service Record of his father Sub Dalveer Singh, Ex Serviceman of the Army.

7. It is settled position in law that the date of birth entered in the Matriculation certificate (High School) must be treated as final and presumed to have been done in accordance with law, subject to objection regarding fraud or forgery in the record. The entry made in the Matriculation certificate cannot be questioned on the ground of place of birth, that too in collateral proceedings. Accordingly, the date of birth of applicant shown in the High School certificate must be presumed to be correct one.

8. In a judgment (2011) 9 SCR 859 Shah Nawaj vs. State of U.P. and another Hon'ble Supreme Court reiterated that entry made in Matriculation certificate should be accepted and in its absence even High School certificate may be relied upon as proof in determining the age of a person.

9. In (2005) 12 SCC 201 Coal India Ltd and another vs. Ardhendu Bikas Bhattacharjee and others their Lordships of Hon'ble Supreme Court in the event of conflict with regard to date of birth in service record relied upon the entry made in Matriculation certificate. Their Lordships approved the date of birth on the basis of Matriculation certificate over and above the entry made in service book on the basis of other documents/ affidavit and directed to ascertain the real benefit on the basis of date of birth entered in the High School certificate but without any recovery of the amount already paid.

10. In view of above, we are of the considered opinion that the date of birth of applicant's son should be corrected on the basis of High School certificate by deleting the earlier entry, subject to verification of genuineness of Matriculation (High School) certificate. Let generation to come not suffer on account of fault, if any on the part of the parents.

11. The main brunt of the argument of the learned counsel for the respondents that the relationship certificate produced by the Applicant was admittedly fake and was not issued by the Unit as claimed by the Applicant. There is no denying of the fact that the relationship certificate produced was not issued by the Unit but at the same time

fact remains that the Applicant was the son of Ex Serviceman Sub Dalveer Singh and that at the time of enrolment, he had filed the correct educational certificate. The respondents have adverted to the finding recorded during court of inquiry as also during SCM that the Applicant had admitted the fact that he had obtained the relationship certificate from a civilian. In his Application as also in the rejoinder affidavit, the Applicant has denied to have admitted that the relationship certificate was obtained from a civilian. What he has stated is that the relationship certificate was given by his father to be produced at the time of enrolment. The main contention of the learned counsel for the Applicant that it was clearly brought home by the Applicant that it was the father of the Applicant who had obtained the relationship certificate and had given the same to the Applicant for being produced at the time of enrolment. In the circumstances, the SCM was under a duty to call Sub Dalveer Singh for examination but nothing was done by the SCM and converged to the conclusion that the Applicant was guilty of misconduct and was visited with major punishment. The Applicant has also stated that he had not pleaded guilty but he was forced to sign the paper containing the expression "Pleaded guilty".

12. The learned counsel for the Applicant submits that the date of birth was correctly recorded in the service record of

his father who was an ex serviceman. He also submitted that the respondent no 5 who was embroiled in landed dispute with the family of the Applicant deliberately produced a document which had not been corrected. In this connection, he adverted attention to the averments made in the counter affidavit filed by the respondent no 5 in which he had clearly indicated to landed dispute. The learned counsel also adverted attention to the supplementary rejoinder affidavit whereby the Applicant has brought on record four documents which are (a) relationship certificate dated 22.06.2006 issued by Commanding officer 17 Guards where the father of the Applicant was serving (Annexure R-1), (b) DO letter 1765.20/A dated 31.03.2007 written by Offg Commanding officer 17 Guards containing date of birth 01.07.1987 (Annexure R-2), (c) DO letter 1765/20/A dated 07.04.2005 written by Offg 21C of 17 Guards containing date of birth 01.07.1987 and (d) DO letter No 360/A dated 31.03.2007 written by Offg Commanding officer 17 Guards containing date of birth 01.07.1987 (Annexure R-4). From a close scrutiny of the aforesaid four documents, it would clearly transpire that the date of birth as recorded in the official records pertaining to the father of the Applicant Sub Dalveer Singh was 01.07.1987. It would thus crystallise that the date of birth as recorded in the official records

pertaining to the father of the Applicant was 01.07.1987 and not as 05.07.1984.

13. The only question that remains is why relationship certificate fake was produced by the Applicant at the time of enrolment and whether this fake certificate would be cogent and convincing ground for dismissal of the Applicant.

14. It is on record that the fake relationship certificate was produced at the time of enrolment. However, the fact remains that it was not a case where relationship was faked. Subsequently, it transpired that the Applicant was the son of Ex Serviceman Sub Dalveer Singh. The Applicant has disavowed the fact that he had obtained the certificate from a civilian as contained in the finding of the SCM. The documents produced in the Supplementary rejoinder affidavit (supra) did indicate that the Applicant was son of the Ex Serviceman Sub Dalveer Singh and his date of birth was 01.07.1987. It is the case of the Applicant that during court of inquiry and during SCM, neither father of the Applicant was called nor the relevant records were called for and thus, it is submitted, the SCM is vitiated and should be set aside.

15. It would appear that inspite of the statement of the Applicant to the effect that the impugned certificate was

obtained by his father, he was not summoned; it has prejudiced the applicant's case. In case any witness as required was not produced, it was incumbent upon the members of GCM to issue summons for examination of such witness in terms of provisions contained in Sections 133, 136, 137 and 138 of the Army Act. Closing statement given by the applicant in writing was not read keeping in view of the provisions of Army Rule 154. It would also transpire that in the statutory reply, it was specifically submitted that it was his father who had obtained the certificate and that date of birth was accordingly corrected in the record pertaining to the service of his father an Ex serviceman in terms of High School certificate.

16. Yet another ground urged is that the Applicant was not provided the assistance of any legal practitioner or next friend.

17. Learned counsel for the Applicant has referred to Prithi Paul Singh's case (AIR 1982 SC 1413) : 1983 Cri LJ 647 to urge that the petitioner like other citizens of the country was entitled to all the fundamental rights and could not have been treated differently. The Supreme Court in Prithi Paul Singh's case (supra) held that a person by enlisting or entering armed forces does not cease to be a citizen as to be wholly deprived of his rights under the Constitution. It

was further observed that in the larger interest of national security and military discipline the Parliament has the power to restrict or abrogate such rights in their application to the armed forces. No doubt, while dealing with the cases pertaining to the armed forces it has to be kept in mind that the army cannot play its role effectively in defending the country if its discipline is jeopardised or allowed to be interfered with on the grounds of technicalities of procedural law. However, the rule of law in this democratic set up is acknowledged and all the actions of the State and the authorities are subject to it. In Prithi Paul Singh's case (supra), the Supreme Court recommended that "with the expanding horizons of fair play in action even in administrative decision, the universal declaration of human rights and retributive justice being relegated to the uncivilised days, a time has come when a step is required to be taken for at least one review and it must truly be a judicial review as and by way of appeal to a body composed of non-military personnel or civil personnel. Army is always on alert for repelling external aggression and suppressing internal disorder so that the peace living citizens enjoy social order based on rule of law". The Supreme Court further observed, "We, therefore, hope and believe that the changes all over the English speaking democracy will awaken our Parliament to the changed

value system. This must be remedied in order to ensure that a disciplined and dedicated Indian army may not nurse a grievance that the substance of justice and fair play is denied to it." Despite the concern expressed by the Supreme Court, the army law stands as it was before Prithi Paul Singh's case and has to be administered under the Act, rules there-under and the guidelines issued from time to time. . It was ruled in a case reported in Joga Singh v. Union of India, 1996 Lab IC 677 (Delhi); that trial is vitiated if proper friend is not made available to the accused. Friend should be of choice of the accused if possible, which should be asked for before detailing any one as such.

18. It has been argued on behalf of the Applicant that right to be defended by a counsel or next friend of choice of the accused is a right arising out of Articles 20 & 21 of the Constitution and as the petitioner has been deprived of his right to get a counsel of his choice and a defending officer, the whole of the proceedings are liable to be quashed.

19. We have gone through the entire summary court martial proceeding from which it does not appear that the Applicant was provided any legal assistance by way of next friend. In this view of the matter and regard being had to the case of Prithi Paul (supra), we are of the view that the

interest of the Applicant has been overwhelmingly prejudiced by not providing the legal assistance by way of next friend.

20. It may be noted that the only ground writ large on record for dismissal of the Applicant was that he had produced a fake relationship certificate. It has not been taken into consideration by calling relevant records that the contents of the alleged fake certificate were found to be authenticated as stated supra. Had the Authority called for records, the truth of date of birth would have come out. In our considered view, the aforesaid fake certificate would lose its importance when its contents were found to be correct from the records pertaining to the service of the father of the Applicant. Even if it be assumed that the Applicant was guilty of producing the fake certificate, a lenient was called for in awarding punishment regard being had to the statement of the Applicant in the statutory appeal as also in the statement in the court of inquiry as well as in the SCM that it was his father who had obtained the said certificate. The father of the Applicant was an ex serviceman and he was never called to explain under what circumstances he had obtained the certificate. This having not been done, in our view, the guilt attributed to the Applicant would stand diluted.

21. Yet another aspect worthy of consideration is that the fake relationship certificate dated 22.03.2006 was reportedly issued by Army Authorities under the signatures of Col Commanding officer 17th Bn Brigade of Guards (ATGM) affixed with stamp. The startling aspect is that if such a fake certificate was issued by the Army Authority, how it could be issued without the tacit help of some insider. If such a fake certificate is issued with the tacit support of any insider then why no inquiry or action has been taken against such an individual. Inaction in this regard is not comprehensible.

22. As a result of the foregoing discussion, the SCM proceeding cannot be sustained and is liable to be set aside.

23. Thus, the O.A is allowed and the SCM proceeding and consequent order of dismissal 16.06.2009 shall stand set aside with all consequential benefits. Let all consequential benefits including reinstatement in service be provided to the Applicant within a span of four months from the date of submission of a certified copy of this order.

24. There shall be no order as to costs.

(Air Marshal Anil Chopra)
Member (A)

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

Dated : October, ,2017

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