

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 396 of 2018**Wednesday, this the 27th day of October, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Ex No. 21000328 M Rect Rajendra Prasad S/o Sri Balak Ram,
R/o Village-Pure Sagar, PO-Siddhour, Tehsil-Haidergarh,
Distt-Barabanki (U.P)-225413.

..... Applicant

Ld. Counsel for the : **Shri DS Tiwari**, Advocate.
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ Post Office-New Delhi.
3. Officer-in-Charge Artillery Records (NE-I) Pin -908802 C/o 56 APO.
4. The Commanding Officer, 6/2 Training Regiment Artillery Centre, Hyderabad Pin 900398, C/o 56 APO.

.....Respondents

Ld. Counsel for the
Respondents.**Shri Namit Sharma**,
Central Govt. Standing Counsel

ORDER

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

(i) The Hon'ble Tribunal may be pleased to set aside the discharge order dated 19/09/2016 issued by respondent No.4 after summoning the same from the respondents as no certificate of discharge order has been given to the applicant and recovery order dated 17/10/2017 (Annexure A-1)

(ii) To direct the respondents to reinstate the applicant with effect from 19.09.2016 with all consequential benefits and allow him to complete the training of his trade.

(iii) Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.

(iv) To allow the original application with cost in favour of the applicant.

2. Brief facts of the case are that the applicant was enrolled in the Army on 22.12.2014. While applicant was undergoing advanced military training, a complaint against applicant was received from Shri Ram Adhar that case under IPC 452/324/323/504/506 was pending against him and he had concealed this fact at the time of recruitment. Later, it came to knowledge that the aforesaid complaint was lodged by Mr. Srivastava, Govt Counsel, the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench. Prior to his oath, a verification

roll (Annexure CA-1) was sent to civil authorities and the same was received with endorsement that he was involved in case under IPC 452,324,323,504 and 506 and this fact was concealed at the time of recruitment. A Show Cause Notice dated 26.08.2015 was issued to applicant and reply of which was received on 10.03.2016. Ergo, applicant was held guilty under Section 44 of the Army Act, 1950 and he was dismissed from service w.e.f. 19.09.2016. This O.A. has been filed for quashing of his dismissal order and re-instatement in service. An interim prayer has also been made to quash letter dated 17.10.2017 by which applicant has been asked to pay an amount of Rs 2,75,624/- on account of training expenses for applicant.

3. Learned counsel for the applicant submitted that applicant was illegally discharged from service and he was not given opportunity of hearing prior to discharge which ought to have been provided. His further submission is that discharge order was neither handed over to applicant nor it was delivered to him by post. Further contention of applicant is that respondents have given no heed to his appeal dated 02.02.2017. His other averment is that recovery memo of Rs 2,75,624/- should be quashed in terms of Hon'ble Apex Court judgment delivered in Civil Appeal No 11527 of 2014 (arising out of SLP (C) No. 11684 of 2012), **State of Punjab & Ors vs Rafiq Masih (white washer)**.

4. On the other hand, submission of learned counsel for the respondents is that on receipt of verification roll from District Magistrate, Barabanki, it was revealed that applicant was implicated under IPC 452, 324, 323, 504 and 506. He further submitted that at the time of enrolment he was on bail and case was subjudice. Further averment made by learned counsel for the respondents is that applicant was found guilty of concealment of facts at the time of enrolment under Section 44 of Army Act, 1950, and therefore he was rightly dismissed from service under Section 20 (3) of Army Act, 1950. He pleaded for dismissal of O.A.

5. We have heard both the learned counsel and perused material placed on record.

6. It is not disputed that applicant was enrolled in the Army on 22.12.2014. While he was undergoing training, a complaint against him was received with regard to his fraudulent enrolment. Verification Roll indicates that applicant was involved in civil offence at the time of enrolment and this fact was concealed by him at the time of enrolment.

7. On receipt of verification roll from District Magistrate, Barabanki it was established that applicant had concealed the material fact. In consequence thereto, a Show Cause Notice dated 26.08.2015 was issued which for convenience sake is reproduced as under:-

"1. You have been enrolled in the Army on 22 Dec 2014. You are undergoing AMT wef 06 Jul 2015 at 6/2 Trg Regt.

2. As per your service documents, you are a resident of village-Pure Sagar, Post Office-Siddhour, Police Station-Ansandra, Tehsil-Patti-Haidargarh, District-Barabanki, State-Uttar Pradesh, Pin-225413. Later a complaint against you has been received from Mr Ram Adhar, resident of E-35C, Badsahnagar, District-Lucknow, State-Uttar Pradesh that you have been enrolled in the Army fraudulently as a Civil Criminal case was held against you under IPC Section 452, 323, 324, 504 and 506 dated 10/2014 in Police Station Asandra at the time of enrolment which you did not disclose before the enrolling officer (complaint submitted by Mr. AK Srivastav, Govt Counsel, High Court, Lucknow).

3. Verification report recd from 'District Magistrate' Barabanki reveals that you was a permanent resident of Barabanki, as such your verification has been obtained from Barabanki. Subsequently, fresh verification has been fwd to 'District Magistrate' Barabanki to verify your character and antecedents. Civ auth Barabanki returned the verification roll duly endorsed with their remarks that a case under IPC Section 452, 323, 324, 504 and 506 dated 10/2014 in Police Station-Asandra has lodged against you which is subjudiced before Govt Counsel, High Court Lucknow.

4. Since you have been enrolled in the Army fraudulently as a civil criminal case was held against you under IPC Section 452, 323, 324, 504 and 506 dated 10/2014 or giving a false answer to the question set forth in the verification roll or enrolment form is an offence under AA Sec 44, you are hereby advised to show cause as to why you should be retained in service and also give your justification/comments on the ibid case pending against you.

5. Your reply should reach this office by 01 Sep 2015."

8. Reply to above Show Cause Notice was received on 10.03.2016 in which applicant had accepted that the aforesaid case was registered against him and he was on bail at the time of enrolment. Thereafter, as per Integrated Headquarters of Ministry of Defence (Army) letter dated 13.11.1973, Army Act Section 44 and Army Act Section 20 (3) the competent authority i.e. Commandant Artillery Centre, Hyderabad took decision on 19.09.2016 to dismiss the applicant. For

convenience sake, order dated 19.09.2016 ordering applicant's dismissal is reproduced as under:-

"1. No 21000328M Rect (Clk/SD) Rajendra Prasad has not disclosed pending case against at the time of enrolment. The individual as on date has not been acquitted by the court. Hence he does not meet the verification/attestation requirements.

2. On perusal of reply to show cause notice received from No 21000328M Rect (Clk/SD) Rajendra Prasad of 2 Training Regiment, Artillery Centre, Hyderabad and taking the above into consideration, I sentence the accused No 21000328M Rect (Clk/SD) Rajendra Prasad to be dismissed from service under Army Act Section 20 (3) read in conjunction with Army Rule 17 for giving a false answer at the time of enrolment which is offence under Army Act Section 44."

9. As per Section 44 of Army Act, 1950 any person, subject to this act who gives false answer to questions set forth at the time of enrolment, is liable to suffer imprisonment for a term of five years or can be dismissed from service. For convenience sake, Section 44 of Army Act, 1950 is reproduced as under:-

"44. False answers on enrolment.— Any person having become subject to this Act who is discovered to have made at the time of enrolment a wilfully false answer to any question set forth in the prescribed form of enrolment which has been put to him by the enrolling officer before whom he appears for the purpose of being enrolled shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

NOTES

1. (a) An offence under this section should not be dealt with summarily under AA.s.80, 83 or 84.

(b) 'Having become subject's —It will be observed that the wording of this section differs from the wording of the other penal sections. This is essential since at the time the offence is committed the person is not actually subject to AA; as he

does not become so subject until he has signed the enrolment paper (AA.s.14).

2. *A person charged with "fraudulent enrolment" under AA.s.43(a) should not also be charged under this section with "false answer" made on the occasion of such enrolment."*

3. (a) *The answer must be willfully false; thus where a person might reasonably have been mistaken as to the fact of his having "served", where, for instance, he was discharged as unfit before he had done duty or worn uniform, a conviction would not be upheld.*

(b) *Where the false answer is as to age, proof must be given by calling someone to prove that the accused is the person referred to in the birth-certificate or register; and a mere production of a birth-certificate or register is not sufficient."*

4. *The falsity of the answer must be proved in accordance with the normal rules of evidence. The original enrolment paper must be produced at the trial, see AA.s.141(1).*

5. *If false answers are given to two or more questions in the enrolment paper, each false answer should be included in a separate charge.*

6. *'Enrolling Officer': see AR7."*

11. During the course of hearing, learned counsel for the applicant cited T.A. No. 1402 of 2010, **Anurag Singh vs Union of India & Ors**, decided by this Tribunal on 01.12.2017. It was argued that the aforesaid case is similar to the instant case and on the strength of **Anurag Singh** (supra), this O.A. should be allowed. We have perused the judgment and we find that the aforesaid case is not similar to the case in hand as in that case applicant had manoeuvred his medical documents for his enrolment.

11. In view of the above, applicant was rightly dismissed from service w.e.f. 19.09.2016 and a final statement of account in

his respect was prepared which showed a debit balance of Rs 2,75,624/- against him and a letter dated 17.10.2017 to this effect was sent to him for making payment.

12. On the point of amount to be recovered from applicant vide order dated 17.10.2017, we hold that the aforesaid amount should not be recovered from applicant in view of Hon'ble Apex Court judgment rendered in Civil Appeal No. 11527 of 2014.

13. In view of the above, since applicant had concealed the fact of his involvement in civil offence at the time of enrolment, he was rightly dismissed from service under Section 20 (3) of Army Act, 1950 by following due process.

14. The respondents are directed not to recover amount of Rs 2,75,624/- from applicant, intimation of which was given vide order dated 17.10.2017. Order dated 17.10.2017 is quashed.

15. The O.A. is partly **allowed**.

16. No order as to costs.

17. Pending miscellaneous applications, if any, shall stand disposed off.

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

Dated: 27.10.2021
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