

**RESERVED****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****ORIGINAL APPLICATION No. 479 of 2020**Tuesday, this the 12<sup>th</sup> day of October 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**KRISHNA KUMAR SINGH (15362569(P) Ex Hav/Clk K.K. Singh  
S/o Shri Hanuman Singh, resident of Village and Post Atrauli,  
District – Hardoi.

..... Applicant

Ld. Counsel for the : **Shri Rama Kant Jayaswal**, Advocate.  
Applicant

Versus

1. The Union of India through Secretary, Ministry of Defence, Central Secretariat, New Delhi -11.
2. Chief of the Army Staff, Army Headquarters, New Delhi-11.
3. General Officer Commanding-in-chief, Headquarters, Southern Command (DV-3) Pune- 411001
4. Commanding Officer, Headquarters, Recruiting Zone-3, Rajendra Sinhji Road, Pune-411001.

.....Respondents

Ld. Counsel for the  
Respondents.**Dr. Shailendra Sharma Atal**,  
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) Please to issue/ pass an order thereby setting aside / quashing the impugned order dated 16-01-2002 passed by the Director Recruiting (Maharashtra and Gujarat).

(ii) Please to issue/ pass an order thereby directing the respondent to deem the applicant in service till his attaining the age of superannuation with all the benefits of promotion.

(iii) Please to direct the respondents to provide to the applicant pension, gratuity and other entitlements admissible to him

(iv) To allow this Original Application with costs.

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Army on 01.03.1988. He was promoted to the rank of substantive Hav on 01.09.1995. While posted at Zonal Recruiting Office (ZRO), Pune between 01.10.2001 to 06.10.2001 an allegation was made that he had forged medical documents and took an amount of Rs 12,000/- through Arjun Vishnu Khote. An FIR was lodged against three persons viz. Shri Koli Basavani Dulapa, Shri Shidne Mahendra Nivrutti and Shi Kashid Rajendra Shankar under Section 467, 468, 471, 472 and 420 IPC read with Section 34 for producing fabricated medical documents for their enrolment in the Army.

3. For the said offence, applicant was tried summarily and awarded punishment i.e. reduced to rank, 06 months rigorous

imprisonment in civil Jail and dismissal from service w.e.f. 16.06.2002. Against aforesaid punishment and dismissal order applicant had filed writ petition No 6200 (S/S) of 2002 before Lucknow Bench of the Hon'ble Allahabad High Court which was dismissed vide order dated 14.05.2004. Against dismissal of aforesaid writ petition, Special Appeal No 193 of 2004 was filed before Division Bench of Hon'ble Allahabad High Court in Lucknow which was also dismissed vide order dated 15.10.2004. Thereafter, Review petition No 322 of 2004 against dismissal of Special Appeal was dismissed vide order dated 11.05.2005. Applicant is stated to have filed many other petitions/applications which were also dismissed as stated in counter affidavit and not denied by applicant as no rejoinder affidavit has been filed.

4. In respect of same incident an FIR was lodged against some civilian(s) as stated in para 2 above and in the said FIR the main accused Arjun Vishnu Khote was acquitted in deficient evidence by a Criminal Court vide order dated 09.07.2015

5. Applicant has filed this O.A. on the strength of aforesaid acquittal and based on the reported judgment of Hon'ble Apex Court in the case of ***Ex-Sep Haradhan Chakrabarty vs Union of India & Ors***, (1990) 2 SCC 143, he pleaded for setting aside his order of dismissal with consequential benefits. This Tribunal vide order dated 10.08.2021 had directed applicant to file copies of judgments passed by the Lucknow Bench of the

Hon'ble High Court of Allahabad but applicant has failed to file the same citing records were not traceable.

6. Learned counsel for the applicant also submitted that the main accused Arjun Vishnu Khote involved in the case has been acquitted for want of evidence and in the acquittal it was held that he had not forged any document with the help of applicant with regard to medical fitness. He further cited Hon'ble Supreme Court judgments in the case of **Faguna Kanta Nath vs State of Assam**, 1959 supp (2) SCR 1:AIR 1959 SC 673 : 1959 Cri LJ 917 and **Tapandas vs State of Bombay**, (1955) 2 SCR 881, AIR 1956 SC 33 : 1956 Cri LJ 138 and submitted that the present case is identical to the aforesaid pronouncements therefore, applicant deserves relief.

7. On the other hand, learned counsel for the respondents submitted that on account of offence committed by applicant with regard to forged medical documents he was found guilty and was tried by Summary Court Martial under Section 63 of Army Act, 1950 in which he was awarded punishment to the extent of reduced to rank, 06 months jail in civil prison and dismissal from service. His further submission is that applicant had filed various petitions in the Hon'ble High Court of Judicature of Allahabad at Lucknow Bench and all the petitions were heard at length and dismissed. Further averment made by learned counsel for the respondents is that Special Appeal and Review Applications were also dismissed. His further

submission is that applicant's last petition No 14759 (S/S) of 2019 filed in Hon'ble High Court at Lucknow Bench was disposed off vide order dated 24.05.2019 with directions to approach the appropriate forum for redressal of his grievance. Respondent's learned counsel further submitted that since applications which were dismissed vide various orders and all original documents as well as various orders are held with the Hon'ble High Court Lucknow Bench, therefore this O.A. is not maintainable on the ground that it has been filed for same cause of action. He pleaded for dismissal of O.A.

8. Having heard both the parties at length we find that Arjun Vishnu Khote whom applicant calls the main accused was acquitted by a criminal court vide order dated 09.07.2015 on the ground of insufficient evidence which does show that the incident was fake. Moreover since applicant's name did not figure in the FIR, acquittal in respect of Arjun Vishnu Khote has no relation to applicant. On being found guilty, the applicant was tried by Summary Court Martial under Section 63 of Army Act, 1950 on the basis of Charge Sheet dated 12.01.2002 whereas charges were made against Arjun Vishnu Khote under Section 467, 468, 471, 472 and 420 of IPC.

9. It is submitted that since applicant being an Army person was dealt with Army Act and Arjun Vishnu Khote being a civilian was dealt with various sections of IPC, therefore, applicant's position being not similar to civilian in terms of conviction, he cannot be held acquitted based on judgment of criminal court which has acquitted the civilian and in these circumstances citations of the

Hon'ble Supreme Court quoted by applicant do not help the applicant.

10. We further observe that applicant has filed this O.A. on new grounds having lost the case at all forums which is an abuse of process of the court as held by the Hon'ble Apex Court in the case of ***Gian Singh vs State of Punjab & Anr***, SLP (CRL) No. 8989 of 2010 decided on 24.09.2012.

11. In view of the aforementioned circumstances this application deserves to be dismissed with exemplary cost for repeatedly approaching the court with the same cause of action despite dismissal of his various earlier petitions, as held by the Hon'ble High Court of Judicature at Allahabad in the case of ***Noor Hasan vs State of UP & Ors***, Writ Petition No 15696 of 2020 decided on 18.01.2021.

12. The O.A. is **dismissed** accordingly.

13. The cost is quantified to Rs 25,000/- which shall be deposited by applicant in the Registry and shall be utilised by AFT, Bar Association Library.

14. Miscellaneous applications, pending if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated: 12.10.2021

rathore