

ARMED FORCES TRIBUNAL REGIONAL BENCH, LUCKNOW

Original Application No. 16 of 2010

Thursday the 17th day of September, 2015

Reserved
(Court No. 2)

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

Brij Kishor Rect. Sol (GD) Army No14660345-Y, son of Sri Hari Lal,
resident of village & Post Bargahan, District Gorakhpur (Uttar Pradesh).

..... Applicant

By Shri M.K. Singh, Counsel for the Applicant.

Versus

1. Union of India through the Secretary, Ministry of Defence Secretariat New Delhi.
2. Chief of Army Staff New Delhi.
3. Commanding Officer, 1 TRG Bn, 1 Electrical Mechanical Engineering Centre Secundrabad Andhra Pradesh.

..... Respondents.

By Shri Bhanu Pratap Singh Chauhan, Counsel for the respondents
alongwith Capt. Soma John, Departmental Representative.

ORDER

1. The applicant has sought the following reliefs in this case:

“(i) Issue an order or directions in the nature of certiorari for quashing the impugned order dated 15.9.2009 passed by the opposite party no. 3 as contained in annexure no. 1 to the petition so far as it relates to the dismissal of the petitioner from service;

(ii) To issue an appropriate order or directions for commanding the opposite party to assign the duty on the post of Sol (Rect) (G.D) and pay him the salary regularly;

(iii) To direct the opposite party no. 2 to decide the pending appeal of the appellant as early as possible;

(iv) Issue any other order or directions which this Hon’ble Tribunal may deem fit just and proper in the circumstances of the case be also awarded to the petitioner against the opposite parties.

(v) To award the cost of this petition to the petitioner against the opposite parties.”

2. Facts of the case are that the applicant was enrolled in Corps of EME Secundrabad on 28.3.2003. Based on a complaint dated 18.6.2003 from one Mr. Krishna Kumar of Gorakhpur regarding earlier service of the applicant in the Army, the case was investigated and the applicant was tried by Summary Court Martial on the following charges on 17.9.2003:

“CHARGE SHEET

The accused, No 14660345Y RSol (GD) Brij Kishor of 1 Trg Bn, 1 EME Centre , Secunderabad is charged with:-

FIRST CHARGE

***WITHOUT HAVING OBTAINED A REGULAR
DISCHARGE FROM HIS CORPS ENROLLING
HIMSELF IN ANOTHER CORPS***

in that he,

at Varanasi, on 28 Mar 2003, without shaving first obtained a regular discharge from the Kumaon Regimental Centre, enrolled himself in Corps of EME.

SECOND CHARGE

**MAKING AT THE TIME OF ENROLMENT
WILFULL FALSE ANSWER TO A QUESTION TO
SET FOR THE INS THE PRESCRIBED FSORM 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 Varanasi, on 28 Mar 2003, when appeared before Sub Maj V Gaikwad an enrolling officer, for the purpose of being enrolled for service on the Corps of EME, to the question put to him "what is your date of birth", answered "15 Jul 84", knowing full well that his date of birth as given during enrolment at Kumaon Regimental Centre Ranikhet was 14 Jul 1979, which he will knew.

THIRD CHARGE

**MAKING AT THE TIME OF ENROLMENT
WILFULL FALSE ANSWER TO A QUESTION TO
SET FOR THE INS THE PRESCRIBED FSORM 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 Varanasi, on 28 Mar 2003, when appeared before Sub Maj V Gaikwad an enrolling officer, for the

purpose of being enrolled for service on the Corps of EME, to the question put to him "Have you ever served in the Indian Armed Force, the Serve, the Territorial Army, the force of any State, the Nepales Army, the British Gorkha Brigade, any police force or in any civil capacity under central Government, State Government or farmer Provincial Government ? If so, state in which and the cause of discharge", answered "No", whereas he was enrolled in the Kumaon Regimental Centre, which he will knew.

Station : Secunderabad

Dated : 10 Sep 2003

*Sd./-
(Sunil Kumar)
Colonel
Commanding Officer
1 Trg Bn
1 EME Centre"*

3. The charges having been found proved, the punishment awarded to the applicant was R.I for six months in civil prison and dismissal from service.

4. The applicant was represented by Shri M.K.Singh, his learned counsel. The applicant states he was enrolled in EME. Krishna Kumar, a person hailing from the applicant's village, sent a complaint to the Ministry of Defence and without ascertaining identity of the complainant, the respondents initiated Court Martial proceedings against the applicant. Charge-sheet was given to him on 10.9.2003. During trial, he was not given any opportunity to cross-examine the witnesses. The applicant claims he is innocent and has committed no offence as alleged. He filed Writ Petition No. 50173 of 2004 in Allahabad High Court, which was dismissed on 22.9.2008 on the ground of alternative remedy being

available to him. Accordingly, the applicant says he submitted petition on 16.10.2008, to which he has received no reply. In this petition, copy of which has been annexed as Annexure-4 to this O.A, the applicant has admitted that he was first enrolled in Kumaon Regiment, where he fell ill and was unable to complete his training and, therefore, left. His date of birth was 14.7.1979 as told to him by his parents, who are illiterate. In the second enrollment he gave his correct date of birth, which is 15.7.1984. The applicant says his family is facing starvation and prays that the reliefs requested by him be allowed.

5. The respondents were represented by Shri B.P.S.Chauhan, learned Standing Counsel, assisted by Capt Soma John, Departmental Representative. According to the respondents, on 18.6.2003 a complaint was received by EME Centre from Krishna Kumar in which it was stated that the applicant had earlier been enrolled in the Army. The applicant confessed that he had earlier been enrolled in Kumaon Regiment and had deserted. After deserting the service, he had appeared in High School Examination again with a different date of birth. The relevant details were obtained from Kumaon Regimental Centre and Recruitment Directorate, and it was found that the applicant had given false information at the time of his second enrollment.

6. Heard both sides and examined the documents.

7. There are two enrollment forms; the first one is dated 13.1.2000, in which date of birth of the applicant has been recorded as 14.7.1979 and his educational qualification as 10th. This was before the Recruitment Officer at Lucknow. The second enrollment form is dated 28.3.2003 before the Recruiting Officer at Varanasi, in which in answer to a question, *“Have you ever served in the Indian Armed Forces, the Reserve, the Territorial Army, the forces of any State, the Nepalese Army, the British Gorkha Brigade, any police force or in any civil capacity under Central Government, State Government or former Provincial Government? If so, state in which and the cause of discharge”*, he stated *“No”*, which is false information since he had earlier been enrolled in Kumaon Regiment. Then his date of birth recorded in the second enrollment form is 15.7.1984 and educational qualification as 10th. Clearly either the date of birth given in his first enrollment form or in the second enrollment form is correct. Considering his date of first enrollment i.e. year 2000, date of birth as 14.7.1979 would appear to be correct as at the time of enrollment he would have been less than 21 years old. Therefore, it is clear that the applicant provided wrong information at the time of enrollment on 28.3.2003. The same was confirmed by obtaining the requisite details from Kumaon Regimental Centre, who vide its letter dated 16.8.2003 stated that the applicant was enrolled on 13.1.2000 and deserted on 21.1.2000. His photographs and enrollment forms were received from the Recruiting Officers concerned and

compared. It was clearly established that the same person had enrolled twice. Also the applicant in his own petition has admitted that he was earlier enrolled in Kumaon Regimental Centre and that he had fallen ill and had left.

8. Thus, from the above, it is quite clear that the applicant has concealed some material facts before entering into the second job of the Army. He did not disclose that earlier he was enrolled in Kumaon Regiment and not only that, he changed his date of birth from 14.7.1979 to 15.7.1984 at the time of second enrollment. The case of the defence has been proved against the applicant beyond reasonable doubt, as such the applicant is not entitled to any relief as prayed.

9. In view of the above, nothing remains of the applicant's case. The charges against him stand proved beyond reasonable doubt. Accordingly, we dismiss this O.A lacking in merit. No order as to costs.

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

(Justice Abdul Mateen)
Member (J)

LN/-