

FORM NO. 4
(See Rule 11 (1))
ORDER SHEET

COURT NO. 2, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

3.
OA 56/2012

Ex. Recruit Mukesh Kumar
Versus
UOI & Ors

..... Petitioner

..... Respondents

For petitioners : None
For respondent: Mr.S.P.Sharma Advocate

CORAM:-
HON'BLE MR. JUSTICE SUNIL HALI , MEMBER.
HON'BLE AIR MARSHAL J.N. BURMA, MEMBER.

ORDER
30.05.2014

Notes of the Registry	Orders of the Tribunal
30.05.2014	Vide separate judgment passed, the petition dismissed. No order as to costs.

(SUNIL HALI)
MEMBER (J)

(J.N. BURMA)
MEMBER(A)

New Delhi
30.05.2014
Brh

**COURT NO.2 ARMED FORCES TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

OA NO. 56 OF 2012

NO 3008666W EX.RECRUIT MUKESH KUMAR PETTIONER

VERSUS

UNION OF INDIA

RESPONDENTS

For the Petitioner : Mr. V D Sharma, Advocate

For the Respondents : Mr. S P Sharma, Advocate

CORAM :

HON'BLE MR JUSTICE SUNIL HALI, MEMBER

HON'BLE AIR MARSHAL J N BURMA, MEMBER

JUDGEMENT

30.05.2014

By Air Marshal J N Burma

1. The petitioner by this petition has prayed for the following:
 - (a) Quashing the conviction by SCM awarding dismissal from service.
 - (b) Reinstate the applicant to his original post with seniority in the service with consequential benefits, payment of arrears with 12% interest wef 10 September 2007 and onwards.

(c) Award the cost in favour of the petitioner and against the respondents.

2. Case of the petitioner is as follows:

(a) The petitioner was enrolled through unit headquarters quota at Rajput Regimental Centre on 27.05.2005 at the age of 20 years and 4 months after successfully clearing all examinations. He has successfully completed a service of 2 years 5 months and 15 days. During the period, applicant's general character was assessed as 'Very Good'.

(b) On 25 November 2005, the petitioner was served a Show Cause Notice whereby he was informed that his verification Roll had been received from the office of the District Collector Gurgaon (Haryana) with the remarks that a court case No. 196/04 under section 379 IPC was pending against the applicant and was still under consideration at the court and that the petitioner had wilfully given false declaration to the enrolling officer and that the petitioner was asked to give reply/explanation by 30 November 2005. The petitioner replied to the Show Cause Notice (SCN) accordingly.

(c) At the time of enrolment, the petitioner had been asked to fill an enrolment form and the question No. 8 therein was "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 a Magistrate or police for any offence? If so, give details." The petitioner gave the answer as "NO" because upto the date of enrolment, the appellant had neither been

imprisoned by civil authorities nor had the petitioner any personal knowledge of complaint, nor any report made to a magistrate or civil police for any offence. The petitioner came to know for the first time that a court case No. 196/04 under section 379 of IPC was pending against him when he received the Show Cause Notice cited above. In his reply to the SCM, the petitioner submitted that he was unaware of any FIR or complaint or case pending against him for any offence. Therefore, the information furnished by him at the time of enrolment was true to his personal knowledge and he prayed for sympathetic consideration. The petitioner had supported his plea by attaching statements of the complainants Raj Kumar and witness Gaurav Singh. Another Show Cause Notice was issued **vide** 5227/Trg Bn dated 14 Jun 2007 wherein it was stated that a court case number 196/2004 under section 379 of IPC was still under consideration by the Court. The petitioner in his reply had reiterated that whatever information had been given by him in the enrolment form was true and correct to the best of his knowledge at the time of enrolment.

(d) On 29 August 2007, the petitioner was given the chargesheet under Army Act section 44 and on 10 September 2007, he was tried by an SCM and awarded the punishment of "To be dismissed from service", Aggrieved by the findings and sentence of the SCM, the petitioner had submitted his post confirmation petition dated 28.06.2011 to the COAS under S164(2) of the Army Act which was rejected **vide** the impugned order C/08841/DV-3(8) dated 16 November 2011.

(e) The SCM had not accepted that the court case under section 379 IPC was false and baseless. The complainant in the civil case had given a testimony that the police had obtained his signature on blank papers and that he had made no statement implicating the petitioner. Criminal case No. 617 AD of 2004 had been dismissed in the Court of Hon'ble Judicial Magistrate I class **vide** judgment dated 03.11.09.

(f) Rule 22 of the Army Act was not complied with by the commanding officer.

(g) No defence counsel was provided to the petitioner which was a fundamental right of the petitioner.

(h) The punishment of dismissal is too heavy in comparison to the alleged fault/omission and is therefore unbearable.

3. The respondents in their counter affidavit submitted the following:-

(a) The petitioner is a resident of Haryana and a Delhi address was given to avail the jurisdiction of Principal Bench of Delhi. The application was not maintainable on account of jurisdiction.

(b) The petitioner had approached the Hon'ble High Court and the High Court had granted opportunity to approach the Army Authorities under section 164 (2) with the direction to pass a reasoned order which was done on 16.11.12. Therefore the SCM proceedings have become final and time barred.

(c) The petitioner was enrolled in the Rajput Regt on 27 March 2005. On receipt of the enrolment documents from the recruiting branch, Rajput Regimental Centre forwarded his verification roll to District Magistrate Gurgaon on 27 Jul 2005. On 28 Oct 2005, the verification roll was returned by the SP Gurgaon stating that investigations carried out by the local police authorities revealed that a court case No. 196/04 under IPC section 379 was registered against the petitioner with Police Station Sohna and was under consideration by the court. On 25 Nov 2005 a show cause notice was served on the petitioner for giving reasons for false answer to question No. 8 of Enrolment Form, which he had wilfully made at the time of enrolment. On 28 Jan 2006, in his reply to the SCN, the petitioner stated that the charge against him at PS Sohna was false and he had been dragged into a false case which had been intentionally framed by the police authorities. The petitioner also requested that his verification roll be re-submitted. The verification roll of the petitioner was resubmitted to DM Gurgaon *vide* 3008666/CF/Trg Bn dated 20 Mar 2007. The verification roll was received back from SP Gurgaon *vide* 635-VRC dated 14 May 2007 once again confirming that the petitioner was involved in a criminal court case No. 196/04 under IPC section 379. A second show cause notice was served on the petitioner on 14 Jun 2007. In his reply, the petitioner stated that he was not aware that a case had been registered against him and that in the past he had had a minor dispute which had been amicably resolved by the Panchayat. Since the reply of the petitioner

was not found to be satisfactory by the Training Battalion Commander, Rajput Regimental Centre, the petitioner was charged for an offence under section 44 of the Army Act for giving at the time of enrolment a wilfull false answer to a question set forth in the prescribed form which was put up to the petitioner by the enrolling officer before whom he appeared for the purpose of being enrolled. He was tried by an SCM on 10 Sep 2007 and was sentenced to be dismissed from service.

(d) Though the petitioner spent two years five months at Rajput Regimental Centre, he was not attested due to non-availability of police verification. Petitioner's verification roll received from the District Collector, Gurgaon stated that a court case No. 196/04 under section 394 IPC was pending against the petitioner. Therefore, the petitioner had wilfully given a false declaration to the enrolling officer. It is not believable that someone was named in a police case and he would not be aware about such case. It is also not possible that the police did not take the petitioner to the police station for investigation. Therefore, the conduct of the petitioner showed deliberate and intentional attempt to suppress the truth. The petitioner claims that he came to know of the court case only when he received the SCN. However in his reply to the SCN, he mentioned about statements of other parties in the civil court which showed that the petitioner was well aware of the court case. However, to be fair to the petitioner, his verification roll was re-submitted to District authorities on the

request of the petitioner. In reply to the re-verification, the district authorities re-confirmed that a case was registered against the petitioner.

(e) The SCM and dismissal from service on the petitioner was carried out in accordance with law as per the existing rules and regulations applicable to the Army. During the trial, the petitioner pleaded guilty after he was informed about the charge in the language he understood. The petitioner was informed of the general effect of the plea by the friend of the accused. A certificate to that effect was signed by the petitioner and acknowledged by the court. Since the petitioner had pleaded guilty, the meaning and impact of the word 'wilfully' was explained to the petitioner in detail since he had pleaded guilty wilfully. On verification and re-verification of character and antecedents of the petitioner by the District Magistrate and Superintendent of Police, Gurgaon, the petitioner was found to be involved in a court case No. 196/04 under IPC 379, registered at Police Station Sohna, Gurgaon, which was still under consideration of the court. Hence as per Army Rules and regulations, the petitioner was dismissed from service by a legally constituted SCM on 10 Sep 2007 under section 44 of the Army Act.

(f) It is not a material fact in this case whether the court case No. 196/2004 under section 371 IPC was false and/or baseless. The fact in issue was as to whether the petitioner wilfully and knowingly suppressed the fact that a case was pending against him. During the trial, the petitioner pleaded guilty after he was informed about the charge in the

language that he understood. The petitioner was informed of the general effect of the plea of guilty by the friend of the accused and a certificate to this effect signed by the petitioner formed a part of the court martial proceedings. Whether the case filed in the civil court was false and baseless has no relevance on the case of the petitioner as regards the court martial. The fact in issue is that there was an FIR and a case against the petitioner, which he did not disclose wilfully. The judgement of the civil court clearly brings out that there was a case against the petitioner. It is not the case of the petitioner that he had never been informed of the same by the police or his family members that he had been implicated in the police case which had resulted in the FIR. The order of the Judicial Magistrate of 03 Nov 2009 has no bearing on this case since the petitioner had been dismissed from service for hiding the facts and giving false answers at the time of enrolment.

(f) There was no violation of Army Rule 22 by the Commanding Officer as evident from 'Appendix A' to AO 24/94 filled by the Training Battalion Commander which forms the part of the court martial proceedings. Judgement of the Hon'ble Supreme Court in the case of **Col Prithipal Singh Bedi Vs UOI, AIR 1983 SC 1430**, has no relevance to this case. The petitioner suffered no prejudice during the entire trial. The opportunity to hire a legal advisor or choose an officer as 'Friend of the Accused' was offered to the petitioner **vide** 300856/CF/Trg Bn dated 07 Sep 2007 and

the petitioner elected Major P Basu as his friend during the SCM for his defense.

(g) The punishment of dismissal is not heavy in comparison to the alleged offence. The petitioner had wilfully given a false answer to the question set forth in the prescribed form during enrolment and he was tried by a Summary Court Martial duly constituted in accordance with Army Act section 44 and was dismissed from service.

4. We have perused all relevant records and heard the arguments of both the counsels. Our views are given in the following paragraphs.

5. Since the petitioner is presently residing in the territory of Delhi, which is within the territorial jurisdiction of the Principal Bench, this court has jurisdiction to hear the case.

6. The delay has been condoned by a coordinated bench of the tribunal and we endorse the case.

7. Having heard the arguments from both sides and perusal of the court martial proceedings, we are of the opinion that the Summary Court Martial was carried out in accordance with the provisions of the Army Act and no prejudice had been caused to the petitioner.

8. The respondents have taken all possible steps and even after re-verification, it was evident that the petitioner was involved in a criminal case and an FIR had been registered against the petitioner. Having perused the documents of the civil court and

the details of the FIR and relevant records, it is most improbable that the petitioner was not aware of the fact that an FIR had been lodged against him.

9. When the petitioner, under Army Rule 23 (3) was asked “Do you wish to make any statement? you are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be given in evidence, the petitioner stated “I am involved in a Court Case No. 196/04 under section 379 IPC. I made a false statement to Lt Col Amit Mathur, the enrolling officer of the Rajput Regimental Centre, Fatehgarh at the time of enrolment. As it was my last chance for enrolment so I got enrolled by giving false answer. Verification conducted by Superintendent of Police Gurgaon (Haryana) stating that I am involved in a court case No. 196/04 under section 379 IPC is also correct.” Under the circumstances and as evident from the records there is no reason for us to doubt the veracity of the above.

The standard of integrity and discipline expected for a citizen aspiring for a career in the Armed Forces has to be at a higher pedestal keeping in view that the security of the nation is vested in their hands. Therefore, offences specific to the members of the Armed Forces have been specified in their respective Acts alongwith the punishments and the procedures for their trial. If there has been an enquiry and trial consistent with the rules and in accordance with the principles of natural justice, what punishment would meet the ends of justice is a matter within the jurisdiction of the competent authority. The Tribunal in its power of judicial review should interfere with the punishment only if it appears either illegal or grossly disproportionate, which in our opinion is not the case here.

In view of the above, we are of the opinion that the case merits no intervention by us. The appeal is dismissed.

No order as to the costs.

**(SUNIL HALI)
MEMBER (J)**

**(JN BURMA)
MEMBER(A)**

New Delhi
30 .05.2014
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