IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH

NEW DELHI

T.A NO. 688 OF 2009
(WRIT PETITION (C) NO. 7251 OF 2001)

NO. 4187609 Y EX.SEPOY ANAND SINGH,
17TH BATTALION
KUMAON REGIMENT
VILLAGE BAGARATI, P.O KHATIGAON (KANDA),
DISTT. BAGESHWAR (UTTARANCHAL)-263 631.

THROUGH:MR. V.S RATHI, ADVOCATE

…….. PETITIONER

VERSUS

1. UNION OF INDIA
   THROUGH THE SECRETARY,
   MINISTRY OF DEFENCE,
   SOUTH BLOCK, DHQ, NEW DELHI-110 011

2. CHIEF OF ARMY STAFF,
   ARMY HEADQUARTERS,
   SOUTH BLOCK, DHQ
   P.O NEW DELHI – 110 011.
3. OFFICER IN CHARGE RECORDS

KUMAON REGIMENT
RANIKHET – 263 645.

4. COMMANDING OFFICER
17TH BATTALION,
KUMAON REGIMENT, C/O. 56 APO.

THROUGH: MAJ. AJEEN KUMAR

.....RESPONDENTS

CORAM

HON'BLE MR. JUSTICE S.S KULSHRESHTHA, MEMBER
HON'BLE LT. GEN. S.S DHILLON, MEMBER

JUDGMENT
29TH JANUARY 2010

1. The petitioner prays for setting aside the SCM proceedings dated 29th September 1997, under which he was dismissed from service, and seeks to be reinstated with all consequential benefits.

2. The petitioner urged that he was enrolled in the Army on 30th December 1993, prior to which he was thoroughly examined for any medical infirmities and was declared fit in all respects. However, on 12th February 1994, while he was undergoing training, he was admitted to Military Hospital, Raniket, from where he was transferred to Command Hospital, Lucknow where he was diagnosed as a psychiatric case - "Schizophrenia 295". He was placed in medical category "EEE" and despite his repeated requests, he was boarded out from service on medical grounds on 22nd May 1994.

3. Notwithstanding this set back, the petitioner once again set out to achieve his ambition of serving in the Army and again appeared before the Recruiting Officer, Almora for enrolment. He qualified for enrolment, which included another thorough medical examination and was again found fit in all respects to be enrolled in the Army and was sent for recruit training to Kumaon Regiment Centre. He completed a year of strenuous and exacting training to become a soldier and performed all the desired recruit training,

including thorough medical examination without any hitch and on 8th November 1995, he was formally enrolled as a Sepoy and sent to 17 Kumaon. While serving with this battalion, the petitioner performed all required active military service to the best of his satisfaction as well as that of his superior officers. There was no complaint of any sort against the petitioner. However, on 24th February 1997, the Kumaon Regiment Centre sent intimation to his battalion to take necessary disciplinary action against him under Army Act Section 44 for fraudulent enrolment.

4. The petitioner contends that his Commanding Officer at that point of time, Col. L.L Andrews, did not take any action against him as he considered the soldier fit for all duties. It was only subsequently on 29th September 1997, when the battalion got a new Commanding Officer, Col. D.S Negi, that disciplinary proceedings against the petitioner under Army Act Section 44 were initiated. Two charges were framed for "making a willfully false answer to the question set forth in the prescribed form of enrolment, which was put

to him by the enrolling officer before whom he appeared for the purpose of being enrolled". Col. Negi found the petitioner guilty of both charges, tried him by SCM and sentenced him to suffer 4 months' rigorous imprisonment and dismissal from service. The petitioner pleads that the aforesaid charges are unsustainable and legally untenable because of the fact that there was no evidence and that he did not wilfully make any false answer to the question put forth to him. The petitioner has contended that he was not "enrolled" during his earlier service between 30th December 1993 and 22nd May 1994 and had been merely undergoing training.

5. The petitioner pleaded the following legal infirmities during the pre-trial and trial stage:

(a) That the findings of guilty on both counts are factually unsustainable and legally untenable, and that no evidence was produced to show that he had wilfully made false answers to the questions put to him at the time of enrolment.

(b) During the trial, his CO did not comply with the mandatory provisions of AR 115(2).

(c) His CO was swayed by the Kumaon Centre to take action against the petitioner and that this amounted to non-application of mind by his CO and indicative of bias against the petitioner.

(d) The petitioner was not given mandatory 96 hours between his arraignment and trial as required under AR 34. He was given only 48 hours to prepare his defence.

(e) No speaking order was given to him at the time of dismissal, which is a mandatory provision. Para 448 of the Regulations for the Army had been violated.

(f) He was awarded very severe punishment.

6. Counsel for respondents vigorously opposed the stand of the petitioner and urged that it was a straight forward case of false enrolment of which there was no doubt. The petitioner was enrolled on 30th December 1993 and for the reasons as stated by him, he was boarded out on medical grounds in May 1994 for "Schizophrenia 295". However, when he again got enrolled at Almora on 23rd December 1994, he wilfully gave wrong answers to two specific questions. It would be pertinent to list out the questions and answers:

	QUESTION	**ANSWER**
10(a)	**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?**	**NO**
(b)	**Were you found to be suffering from any disability at the time of discharge and if so, state the disability?**	**NA**

7. The charges that were framed against the petitioner primarily relate to these two questions. The charges are appended below:

> **"<u>Army Act</u>**
> **<u>Sec. 44</u>**
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> **MAKING AT THE TIME OF ENROLMENT A WILFULLY FALSE ANSWER TO A QUESTION SET FORTH IN THE PRESFRIBED FORM 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 Almora on 23 Dec 94, when appeared before Col Vijay Singh, an Enrolling Officer, for the purpose of being enrolled for service in the Kumaon Regiment, to the question put to him, "Were you found to be suffering from any disability at the time of discharge and if so state the disability", answered "NO", whereas he was invalided out from service in medical category 'EEE' on 22 May 94 on account of 'SCHIZOPHRENIA – 295' by a release medical board held on 03 Mar 94, as he well knew.**
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> **<u>Army Act</u>**
> **<u>Sec. 44</u>**
>
> **MAKING AT THE TIME OF ENROLMENT A WILFULLY FALSE ANSWER TO A QUESTION SET FORTH IN THE PRESCRIBED FORM 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 Almora on 23 Dec 94 when appeared before Col Vijay Singh, an Enrolling Officer, for the purpose of being enrolled for service in the Kumaon Regiment, to the question put to him, "Have you ever served in the Indian Armed Forces, answered "NO", whereas he had served as he well knew in the Kumaon Regiment."

8. Counsel for the respondents reiterated that the false answers given by the petitioner were made deliberately with a view to conceal facts and to fraudulently get enrolled in the Army by suppressing vital and crucial information which would have debarred him from being enrolled. The petitioner knew about the fact that he had been enrolled on 30th December 1993 and had served in the Army till 3rd May 1994, during which period he had received salary, boarding and lodging, uniform, canteen and other facilities and cannot, therefore, state that he was not in service and was not 'enrolled'. This aspect has been amply clarified in Army Act Section 15, which reads as follows:

> "15. **Validity of enrolment**.—Every person who has for the space of three months been in receipt of pay as a person enrolled under this Act and been borne on the rolls of any corps or department shall be deemed to have been duly enrolled, and shall not be entitled to claim his discharge on theg round of any irregularity or illegality in his enrolment or on any other ground whatsoever; and if any person, in receipt of such pay and borne on the rolls as aforesaid, claims his discharge before the expiry of three months from his enrolment, no such irregularity or illegality or other ground shall, until he is discharged in pursuance of his claim, affect his position as an enrolled person under this Act or invalidate any proceeding, act or thing taken or done prior to his discharge."

9. There is a difference between enrolment and attestation. While enrolment entitles him to salary and other benefits of service, attestation marks his completion of training and acknowledges him as competent and capable of being a full-fledged soldier. Therefore, his concealing of the vital information that he had served in the Army Force was made wilfully with a view to deceive the enrolling officer. With regard to the second question, i.e. as to whether he was suffering from any disability at the time of his discharge from service, the answer given by him in the enrolment form is 'NA'. However, the

respondents were of the view that concealing the fact that he had a medical disability and that he was boarded out of the Army on medical grounds tantamounts to a wilfully wrong answer. They also contended that the disease “Schizophrenia 295” may not be patently visible at the time of medical examination and could surface at any time and that boarding out an individual for this disease was resorted to as it cannot be treated at a later stage. Therefore, it was denied that the petitioner was perfectly fit, physically and mentally, as contended by him.

10. Counsel for respondents negated the legal infirmities indicated by the petitioner as under:

(1) It was submitted that there was sufficient documentary evidence on record to prove the charges pointing towards the guilt of the petitioner without any doubt. The finding and sentence are, therefore, perfectly legal in their entirety. The petitioner was invalidated out of

service in the medical category “EEE” on 22.5.1994 on account of Schizophrenia 295” by release Medical Board. His hiding these facts of enrolment and consequent discharge indicates a malicious and deliberate falsehood. It was also averred that he has never chosen to challenge his invalidment from the Army in 1994 on account of Schizophrenia.

(2) The fact that the Commanding Officer acted without any pressure from the Kumaon Regiment Centre is supported by the fact that the Unit wrote to the Kumaon Regiment Centre asking for complete details of record of the enrolment vide letter dated 25.3.1997. After that, a Court of Inquiry was initiated on 10.4.1997. However, since the witnesses for the Court of Inquiry and the other documents of enrolment were available only at Raniket with the Kumaon Regiment Centre, the CO asked them to deal with the matter. It is, therefore, wrong to state that Col. Andrews did not take any action against the petitioner. By the time the complete enquiry was over, the matter was resolved by the new CO,

Col. D.S Negi, who took over the command of the battalion on 26.5.1997. This is a routine process and cannot be objected to on any grounds.

(3) The first dismissal of the petitioner was on the opinion of a Medical Board while on the second occasion he was dismissed from service after holding a Summary Court Martial. Therefore, there is no violation of Para 448 of the Regulations of the Army. There has been no arbitrary misuse of power or authority as alleged and lastly, the petitioner had pleaded guilty to both the charges unconditionally and unequivocally.

(4) Reply to the question, as framed in Charge No.1, whether answered by 'NO' or 'NA' projects the same meaning i.e. a desire to hide the facts. Therefore, the petitioner cannot hide behind the fact that he had stated 'NA' while the charge-sheet contains 'NO'. The fact of the matter is

that he had wilfully made a false answer to the question put to him and cannot be clouded by mere semantics.

(5) It has been vigorously contested by the respondents that Army Rule 115(2) was applied and that only 48 hour notice was given because it was a clear-cut case and did not require any great preparation by the defence. No speaking order is required to be given since the proceedings of the SCM are held in open Court and the petitioner was a part of the proceedings. In any case, these so-called legal inconsistencies cannot be held as a shield behind which the petitioner can seek to cloud the main issue, for which he was tried.

11. It has next been contended on behalf of the respondents that generally the declaration made at the time of enrolment in the Forces is considered as a gospel truth and if such declaration is found contrary, it is for the person who made such false declaration to rebut it. In this connection, much stress has been laid by learned counsel for the petitioner

that when the information with regard to the antecedent of a candidate is called for, it is intended to verify and cross check the information as to whether at any point of time he was earlier employed or not. Suffice it to mention that if the candidate indulges in *suppresso very* and *suggestio falsi*, it makes him unfit to be considered for employment, all the more so, if he is to be employed in public employment. He is also estopped by his conduct to stick to his wrongs. The apex Court in **Tata Iron & Steel Co. Ltd** v. **Union of India** (2001(2) SCC 41) in para 20, while dealing with the issue of estoppel by conduct, stated the law thus:

> "20. Estoppel by conduct in modern times stands elucidated with the decisions of the English Courts in Pickard v. Sears (1837) 6 Ad & El 469 : 112 ER 179) and its gradual elaboration until placement of its true principles by the Privy Council in the case of Sarat Chunder Dey v. Gopal Chunder Laha (1891-92) 19 IA 203 : ILR 20 Cal 296) whereas earlier Lord Esher in the case of Secton Laing Co. v. Lafone (1887) 19 QBD 68 : 56 LJQB 415 : 57 LT 547 (CA) evolved three basic elements of the doctrine of estoppel to wit:
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> > 'Firstly, where a man makes a fraudulent misrepresentation and another man acts upon it to its true detriment: Secondly, another may be where a man makes a false statement negligently though without fraud and another person acts upon it: And thirdly, there may be circumstances under which, where a misrepresentation is made without fraud and without negligence, there may be an estoppel.'

Lord Shand, however, was pleased to add one further element to the effect that there may be statements made, which have induced other party to do that from which otherwise he would have abstained and which cannot properly be characterized as misrepresentation. In this context, reference may be made to the decisions of the High Court of Australia in the case of Craine v. Colonial Mutual Fire Insurance Co. Ltd (1920) 28 CLR 305) Dixon, J. in his judgment in Grundt v. Great Boulder Gold Mines Pty. Ltd (1939) 59 CLR 641 (Aug HC) stated that:

> 'In measuring the detriment, or demonstrating its existence, one does not compare the position of the representee, before and after acting upon the representation, upon the assumption that the representation is to be regarded as true, the question of estoppel does not arise. It is only when the representor wished to disavow the assumption contained in his representation that an estoppel arises, and the question of detriment is considered, accordingly, in the light of the position which the representee would be in if the representor were allowed to disavow the truth of the representation.'

(In this context see Spencer Bower and Turner: Estoppel by Representation, 3rd Edn.)

Lord Denning also in the case of Central Newbury Car Auctions Ltd v. Unity Finance Ltd (1956) 3 All ER 905☹1957) 1 QB 371☹1956) 3 WLR 1068 (CA) appears to have subscribed to the view of Lord Dixon, J. pertaining to the test of 'detriment' to the effect as to whether it appears unjust or unequitable that the representor should now be allowed to resile from his

> representation, having regard to what the representee has done or refrained from doing in reliance on the representation, in short, the party asserting the estoppel must have been induced to act to his detriment. So long as the assumption is adhered to, the party who altered the situation upon the faith of it cannot complain. His complaint is that when afterwards the other party makes a different state of affairs, the basis of an assertion of right against him then, if it is allowed, his own original change of position will operate as a detriment (vide Grundt (1939) 59 CLR 641 (Aug HC)".

The petitioner made false representation with a view to mislead the authorities. He is, therefore, stopped from raising any plea putting blame on the authorities not to have verified their own records.

There is no merit in the petition. In the result, the petition is dismissed.

(S.S DHILLON)
MEMBER

(S.S KULSHRESHTHA)
MEMBER