

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

O.A NO. 97 OF 2011

EX RECRUIT ARVIND SINGH

...APPELLANT

VERSUS

UNION OF INDIA AND OTHERS

...RESPONDENTS

ADVOCATES

**MR. S.S PANDEY FOR THE APPELLANT
MR. ANIL GAUTAM FOR THE RESPONDENTS**

CORAM :

**HON'BLE MR. JUSTICE S.S.KULSHRESTHA, MEMBER
HON'BLE LT. GEN. Z.U SHAH, MEMBER**

J U D G M E N T

16.03.2011

1. The applicant, by virtue of this O.A, is seeking quashing of the Summary Court Martial proceedings, whereby he was found guilty of the charge under Army Act Section 44 and was sentenced to be dismissed from service.

2. The factual matrix leading to the case, as set out by the applicant, is: On 29.6.2005, when a marriage procession was going on,

some unidentified persons fired in the air which led to causing injuries to two individuals. The applicant, who was at the place of the incident, was arrested by the civil police of Wazirganj Badayun Police Station and a case was registered against him. He was tried for having committed the offences under Section 338 of the Indian Penal Code and under Section 25 of the Arms Act by the Judicial Magistrate of Badayun (UP). Subsequently, he was acquitted of both the charges. It attained finality as no appeal against acquittal was filed.

The applicant applied for his enrolment in Army through Area Recruiting Office, Bareilly. After having cleared all mandatory tests, including physical, medical and the written test, he was enrolled in the Rajputana Rifles Regiment on 24.9.2009. At the time of recruitment, certain questions were asked to the applicant, which included the question "whether you are under trial for an offence". The applicant answered in negative. Later, based on the verification report as to the character and antecedents of the applicant, a show cause notice was issued to him stating why disciplinary proceedings should not be taken against him. He gave reply narrating the entire incident and tried to impress upon the authorities as he had acted

under a bona fide belief. Finding no substance, a tentative charge sheet was issued to him on 26.6.2010 alleging an offence under Army Act Section 44. No opportunity to cross examine the witnesses was supposedly given to the applicant. Subsequently, he was served with the charge sheet dated 22.7.2010. It reads:

ARMY ACT SEC. 44

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 ARO Barailly on 24 Sep 2009, when appeared before Colonel SP Singh, an enrolling officer, for the purpose of being enrolled for service in the 'RAJPUTANA RIFLES REGIMENT' to a question put to him, "Have you ever been imprisoned by the Civil Power or are you under trial for an offence or has any complaint or report been made against you to the magistrate or police for any offence?" If so give details? Answered 'No' well knowing it to be false since case were filed against him at Police Station Wazirganj Badaun (UP) case No 471/09 under IPC Section 338 and case No 502/09 under IPC Section 25.

On 2.8.2010, he was made to sign certain documents and informed that consequent to his trial, he had been awarded the punishment of dismissal from service. Hence this O.A.

3. Counsel for the applicant has pointed out that findings of the SCM are illegal as there was violation of the principles of natural justice. It failed to take into consideration the fact that the applicant had already been acquitted of both the charges by the Magistrate. The query that was put to him was with regard to the pendency of any case. By that time, the applicant was under the misconception that since the criminal cases had attained finality, there was no need to disclose about the cases as he was acquitted of those charges. As on the date of filling up the application form, no case was pending against the applicant. Even if the applicant was punished for the offence, it was not incumbent upon the authorities to exercise the power under Army Act Section 20(3) for the same charge.

4. Counsel for the respondents, on the other hand, vehemently contended that in the enrolment form against the question “have you ever been imprisoned by the civil power or are you under trial for an offence or has any complaint or report been made against you to the Magistrate or Police for any offence?” (Question No.15(a)), the applicant gave answer in negative. This

formed the basis for the charge in question and he was rightly dismissed from service for making misrepresentation of facts.

5. From the appeal, it appears to be an admitted position that the applicant was tried for the offences under Section 338 of the Indian Penal Code (Case No.471/09) and under Section 25 of the Arms Act (Case No. 502/09). So far as Question No.15(a) is concerned, which pertained to the antecedents of the candidates, though the applicant was acquitted of both the charges, the fact is that he was earlier arrested by the civil police and put to trial by the Magistrate. However, the applicant had concealed this fact while submitting the enrolment application. On verification by the authorities, this fact had come out. The fact remains that the applicant was arrested and put to trial by the Magistrate.

6. It has next been contended by learned counsel for the applicant that the enrolment form and the queries were not made known to him. Suffice it to mention that the enrolment form bore the signature of the applicant and thus there is the strong presumption under Section 114 of the Evidence Act. The applicant could not rebut

this presumption. The applicant is thus guilty of *suppressio veri* and *suggestio falsi*. It was obligatory on the part of the applicant to clear the position as to whether he was arrested or tried by the Magistrate.

7. Further, it was contended that the SCM failed to adopt the due procedure and arbitrarily held the applicant guilty of the charge. Moreover, it was not a case where such severe action was required. In this regard, reference was made by learned counsel for the respondents to the statement of PW 1 Sub Balwan Singh of Chhelu Coy, Trg Bn that though in the enrolment form, the applicant denied of his arrest by the civil police or trial by the Magistrate, on verification his statement was found to be wrong. It was stated by him that to Question No.15 as to the antecedence of the applicant, he disclosed no information but answered in the negative. The evidence of this witness stood unchallenged. Further, the applicant has not denied his arrest by the civil police and trial by the Magistrate under Section 338 of the Indian Penal Code and under Section 25 of the Arms Act.

8. It was then contended by learned counsel for the applicant that no opportunity was afforded to the applicant by the SCM to cross examine the prosecution witnesses. It is the admitted position that the applicant had concealed the material fact with regard to his arrest by the civil police and trial by the Magistrate for the offence under Section 338 of the Indian Penal Code and under Section 25 of the Arms Act, at the time of his enrolment in the Army. It is settled law that a person who approaches the Court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case. In other words, he owes a duty to the court to bring out all the facts and refrain from concealing/suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence. If he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of administration. Analogy may be drawn where the misrepresentation of facts is made in the Court, the Court not only has the right but a duty to deny relief to such person (see **Oswal Fats & Oils Ltd v.**

Additional Commissioner (Administration), Bareilly Division, Bareilly and others (2010(3) JT 510). Further, it would be useful to refer to the observations made by the apex Court **Dalip Singh v. State of U.P and others** (C.A No. 5239 of 2002 decided on 3.12.2009). They are:

“For many centuries, Indian society cherished two basic values of life, i.e. ‘Satya’ (truth) and ‘Ahimsa’ (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has over-shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure foundation of justice with tainted hands, is not entitled to any relief, interim or final.”

It is the admitted fact that the applicant made misrepresentation of facts at the time of enrolment and so, he has no right to insist upon for his continuance in service merely because he was acquitted in the criminal cases.

9. On the question of sentence, learned counsel for the applicant submitted that the punishment awarded to the applicant is disproportionate to the gravity of the offence and since he had already been acquitted of both the charges, a lenient view is solicited. As we have already stated, the applicant made a misrepresentation. His conviction, therefore, does not require any interference. However, in the place of dismissal, he shall be deemed to have been discharged from service from the date of dismissal. The appeal is accordingly disposed of.

(Z.U SHAH)
MEMBER

(S.S KULSHRESTHA)
MEMBER