FROM NO. 21
(SEE RULE 102(1))

ARMED FORCES TRIBUNAL , REGIONAL BENCH, KOLKATA

APPLICATION NO : O. A NO. 105 OF 2012

ON THIS 18 TH DAY OF SEPTEMBER, 2014

CORAM : HON'BLE JUSTICE RAGHUNATH RAY , MEMBER (JUDICIAL)

HON'BLE LT GEN KPD SAMANTA, MEMBER (ADMINISTRATIVE)

Md. Tuku Mondal No. 18006608A
T-22/10 Platoon, No. 2 Training Battalion,
Son of Badesh Ali Mondal,
Vill : Rangpur, PO Dighalkandi,
PS Murutia, Distr. Nadia

……Applicant

-VS-

1. Union of India through
The Secretary, Ministry of Defense,
New Delhi.

2. The Commanding Officer,
No. 2 Training Battalion, BEG & Centre,
Roorkee, PIN 247 667

3. The Major Adjutant for
Commanding Officer,
No. 2 Training Battalion, BEG & Centre,
Roorkee, PIN 247 667

4. The Captain, Company Commander
No. 2 Training Battalion, BEG & Centre,
Roorkee, PIN 247 667

…. …. Respondents

For the petitioner: Mr. Sankar Halder, Advocate

For the respondents: Mr.B K Das, Advocate.

O R D E R

PER HON'BLE LT GEN KPD SAMANTA, MEMBER (ADMINISTRATIVE)

The applicant Md. Tuku Mondal being aggrieved by his dismissal from Army service has approached this Tribunal praying for setting aside the dismissal order dated 15.05.2012 and consequentially for his re-instatement in service.

2. The applicant is a young man; passed Higher Secondary Examination in the year 2009 securing good marks. However, due to poor financial condition of the family he could not pursue higher studies and was trying for employment. He was eventually enrolled in the Army on 16.12.2010 and reported to Bengal Engineering Group and Centre, Roorkee for training. The applicant has stated that in the year 2009 (one year prior to his enrollment) he was falsely implicated in a criminal case under the influence of his neighbour when he was a minor. He was never arrested by the police and, therefore, he was not aware that a criminal proceeding was initiated against him on the basis of police case No.38/C/09. At the time of enrolment in the army, while filling up the attestation/verification form, against a question, 'whether any criminal proceeding was pending against you', he innocently answered as 'No'. Subsequently, while performing his duty in service he was issued with a show-cause notice on 16.04.2012 wherein it was stated that he (applicant) falsely stated in the verification form in reply to a question against para15(1)(g) as to whether any criminal proceeding was pending against him; he replied as 'NO'. It is a fact that such criminal proceeding was actually pending against him vide Complaint Case No.38/C/09 dated 05.02.2009 F for an offence u/s 323/34 IPC in the court of Ld. ACJM, Tehatta, Nadia. Such wrong information was in violation of Army Act Sec.44. Accordingly, the applicant

was asked to show-cause as to why his service should not be terminated for giving such false declaration. The applicant gave a reply to the said show-cause notice stating inter alia that due to inadvertence he wrote 'No' against the said column of the verification form and that it was inadvertent mistake and not intentional because at that point of time he had no knowledge that such case was pending against him.

3. However, the respondent authorities by an order dated 28.04.2012 intimated that appropriate action was being initiated against the applicant. Subsequently, by orders dated 30.04.2012 and 15.05.2012 the service of the applicant was terminated u/s 20(3) of Army Act read with Rule 17 of Army Rules vide Annex. E-series. The applicant preferred an appeal to the higher authority submitting that the pending criminal case was dismissed and he was acquitted and, therefore, at this stage, his prayer for re-instatement may be considered. Since no action was taken by the respondents, he has filed the instant application with a prayer for quashing the impugned orders dated 30.04.2012 and 15.05.2012 and for a direction upon the respondents to give him an opportunity of personal hearing to explain his position.

4. The respondents have contested the application. It is stated in the written reply affidavit that the applicant was enrolled on 16.12.2010 and he reported to No.2 Training Battalion of BEG Center Roorkee for Basic Military Training that started on 27.12.2010. Verification roll was sent by the said Training Centre at Roorkee on 28.02.2011. The said verification roll was received back with delay from the concerned civil authorities in his home state. From the verification roll it revealed that the applicant was involved in a complaint case No.38/C/09 dated 05.02.2009 u/s 323/34 IPC which was pending before the Court of Ld. ACJM, Tehatta, Nadia. It is further stated that thus it is evident that at the time of enrolment the applicant had given false answer despite knowing that the above-stated complaint case was pending

against him. He answered the question at para 15 (1) (g) of the verification roll i.e. "if any case is pending against him in any court of law", he replied as 'No' and signed the verification roll before the Enrolment Officer. Thus, it is quite clear that the applicant knowingly gave false answer before the Enrolment Officer which is misconduct; perhaps being aware of the fact that had he revealed the truth he would have been disqualified from being enrolled. Therefore, a show-cause notice was issued on 16.04.2012 for explaining the position. On receipt of his reply to the said show cause notice, the competent authority decided to take administrative action against him by way of dismissal him from service. Accordingly, he was dismissed from service with effect from 15.05.2012 under Army Act Sec.20(3) read in conjunction with Army Rule 17 as also AG's Branch letter dated 29.06.1990 for giving false answer to the Enrolment Officer.

5. The applicant has filed a rejoinder affidavit in which he has reiterated that he had no knowledge about his involvement in the aforesaid criminal case and, therefore, he did not mention the same in the verification roll. It is also stated that ultimately he was acquitted of the alleged offence u/s 323/34 in the said complaint case as per judgement dated 19.07.2012 passed by the Ld. Addl. Chief Judicial Magistrate, Tehatta, Nadia.

6. Mr. Sankar Halder, ld. adv. appearing on behalf of the applicant has argued the case while Mr. B. K. Das, ld. adv. has represented the respondents. We have heard the ld. counsel of both sides at length. We have also gone through the departmental records that have been produced before us.

7. Mr. Halder, ld. adv. for the applicant has contended that the initiation of the complaint case and counter case by his relatives against the applicant and his family members resulted from a quarrel that ensued at the time of surveying of boundary

land by the surveyors deputed by the office of BLRO. The applicant was a minor at the relevant point of time. He was never arrested by the police and, therefore, being a minor he could not understand that any such complaint case was pending against him. Therefore, in good faith, he answered the ibid question in the verification roll in the negative.

8. From the documents filed by the applicant by way of a supplementary affidavit, it appears that the applicant was released on bail by the ld. Magistrate on 26.8.09 and, therefore, it cannot be said that the applicant was not aware of the fact of his involvement in the criminal proceeding. So far as the contention that the applicant was a minor at the time of the incident, we find that no such plea was taken before the Ld. Addl. Chief Judicial Magistrate, Tehetta during the course of trial that he was a juvenile offender and therefore, his trial should be held in the Juvenile court. Therefore, it is not now open for the applicant to take such plea.

9. Ld. counsel for the applicant has also submitted that the applicant was a young man and he gave such declaration through inadvertence for which he cannot be penalized by way of dismissing him from service and thrown out in the street without any employment and thus depriving him of his right to livelihood. He has also contended that even if it is admitted that he gave such wrong answer knowingly, that may be due to the fear that he might lose the job. For such minor aberration, he cannot be awarded maximum punishment of dismissal from service which will ruin his future as he would not be eligible to get any Govt. service. He has placed reliance on a decision of the Hon'ble Supreme Court in the case of **Commissioner of Police & Ors vs. Sanjib Kumar** decided on 17.03.2011 in Civil Appeal No.1430 of 2007 and submitted that following the ratio of this judgement which is pat on the point at issue, a lenient view should be taken and the applicant should be reinstated in service by

way of setting aside the impugned dismissal order. He has also taken a point that no opportunity of personal hearing was given to the applicant before ordering his dismissal which is against the principle of natural justice.

10. Mr. B.K.Das, ld. counsel for the respondents has, however, submitted that according to Army Act false declaration in the verification form is a punishable offence. The applicant knew very well that he was involved in a criminal proceeding as he was granted bail by the Ld. Judicial Magistrate. It is, therefore, unbelievable that he did not know about the pendency of the criminal case against him. In spite of that he gave false answer in the verification form before the Enrolment Officer. Therefore, the authorities after issuing him show-cause notice and considering his reply to the said show cause notice, decided to dismiss him from service by way of administrative action which is as per relevant provisions in the Army Act. A person who has knowingly committed wrong cannot claim equity from the Court of Law. Therefore, he was rightly dismissed from service by the competent authority. He, however, submits that there is no provision of personal hearing in such case because every aspects of the matter are based on records, which are undisputed.

11. We have considered the submissions made by both sides. In this case, the facts are not in dispute. It is undisputed that the applicant did give an incorrect declaration in the verification form that no criminal case was pending against him while the fact remains that such a case was pending. From the documents furnished by the applicant in his supplementary affidavit filed on 07.03.2014, it appears that the applicant was accused No.1 in the ibid complaint case for offences punishable u/s 323/34 IPC. It is another matter that he was ultimately acquitted of all the offences vide judgement dated 11.07.2012 passed by the Ld. Addl. C.J.M., Tehatta, Nadia. The fact remains that the applicant had full knowledge about the pendency of the complaint case, yet he

gave incorrect answer to the Enrolment Officer to the question appearing at Para15 (g) of the verification form (Annex. R1 to the reply) against the query "if any case was pending against him in any Court of Law", the applicant tick- marked against 'No'.

12. We find from the original records produced by the respondents that not only in the verification form but also in the enrolment form, which was filled at the time of enrolment before the Enrolment Officer, against column 8, the applicant gave same answer i.e. No to the same query. Therefore, it is evident that the applicant repeated the same mistake of giving false answer firstly at the time of enrolment while filling up enrolment form and signed the same on 16 Dec 2010 and then subsequently while filling the police verification form. It was only after police report received from civil authorities that the false answer came to light and action was taken accordingly.

13. According to the show cause notice dt. 16 Apr 2012 (annexure-C), giving false answer to any question set forth in the prescribed form of enrolment is a punishable offence u/s 44 of Army Act and on conviction by court martial for committing such offence; the offender is liable to suffer imprisonment for a term up to five years or less. It will be useful to quote Sec. 44 of the said Act as under:-

> "**44. False answers on enrolment** – Any person having become subject to this Act who is discovered to have made at the time of enrolment a willfully false answer to any question set forth in the prescribed form of enrolment which has been put to him by the enrolling officer before whom he appears for the purpose of being enrolled shall, on conviction by court martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned"

14. We have noted that the applicant committed the mistake of giving false answer in the Enrolment Form. Subsequently, he repeated same mistake in the verification form. Although in the show cause notice, false answer in the enrolment form was not specifically mentioned but verification form is also part of enrolment procedure and,

therefore, giving false answer in the said form also amounts to an offence under the Army Act. It may be mentioned that under Sec 13 of Army Act, while filling enrolment form, the candidate is cautioned that if any false answer is given, he will be liable to punishment under the Army Act. Verification form is filled immediately after enrolment in terms of Regulation 139 of Regulations for Army. However, in this case, no court-marital proceeding was held. May be taking into account the fact that the applicant was young and newly recruited soldier still undergoing training, the authorities at that stage felt that a court martial proceeding against him would have been harsh under the circumstances. The competent authority therefore, decided to take administrative action against him which is permissible under Sec. 20 (3) of the Army Act read in conjunction with rule 17 of Army Rules.

15. For ease of understanding Sec. 20 of Army Act and Rule 17 of Army Rules are quoted below :-

> ‘**Sec 20. Dismissal, removal or reduction by the Chief of the Army Staff and by other officers**.
>
> (1) The Chief of the Army Staff may dismiss or remove from the service any person subject to this Act, other than an officer.
>
> (2) The Chief of the Army Staff may reduce to a lower grade or rank or the ranks, any warrant officer or any noncommissioned officer.
>
> **(3) An officer having power not less than a brigade or equivalent commander or any prescribed officer may dismiss or remove from the service any person serving under his command other than an officer or a junior commissioned officer.**
>
> (4) *** ***
>
> (5) *** ***
>
> (6) *** ***
>
> (7) **The exercise of any power under this section shall be subject to the said provisions contained in this Act and the rules and regulations made thereunder**.
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> *** *** ***
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> **<u>Army Rule 17 :</u>**

> "17. **Dismissal or removal by Chief of the Army Staff and by other officers**. - Save in the case where a person is dismissed or removed from service on the ground of conduct which has led to his conviction by a criminal court or a court-martial**, no person shall be dismissed or removed under subsection(1) or subsection (3) of Section 20; unless he has been informed of the particulars of the cause of action against him and allowed reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from the service** :
>
> Provided that if in the opinion of the officer competent to order the dismissal or removal, it is not expedient or reasonably practicable to comply with the provisions of this rule, he may after certifying to that effect, order the dismissal or removal without complying with the procedure set out in this rule. All cases of dismissal or removal under this rule where the prescribed procedure has not been complied with shall be reported to the Central Government."

16. Thus, it is seen that the provision is available in the Army Act and Army Rules for dismissal from service under administrative action. A plain reading of the above provisions would show that the same does not envisage conduct of any enquiry into the facts constituting the cause of action against him before an order of dismissal or removal from service can be made. All that is required is that the official concerned is informed of the particulars of the cause of action and allowed reasonable time to state in writing the reasons he may have to urge against his dismissal or removal. Proviso to Section 17 in fact makes it clear that even the requirement of informing the official concerned of the particulars of the cause of action against him may be dispensed with provided the officer competent to order the dismissal records a certificate to the effect that it is not expedient or reasonably practicable to comply with the same. There is no provision of giving any personal hearing to the individual.

17. We have gone through the departmental file produced before us. We find that decision was taken to initiate administrative action by the commanding officer and thereafter show-cause notice was issued. On receipt of reply, final decision was taken by the competent authority. Therefore, there was no procedural irregularity or infirmity in the impugned order of dismissal.

18. The ld. counsel for the applicant has relied on a decision of the Hon'ble Apex Court in the case of **Commissioner of Police & Ors –vs- Sandeep Kumar**, 2011(3) SLR 680(SC). In that case the respondent Sandeep Kumar was a candidate for the post of Head Constable in response to an advertisement by the appellant police organization In the application form, in respect to an query whether he was ever arrested, prosecuted or kept under detention etc, he gave answer in the negative while actually he was involved in a criminal case u/s 325/34 IPC. His candidature was cancelled after issuing a show cause notice. Against such decision he went before CAT, Principal Bench and lost. He then approached the Hon'ble Delhi High Court which allowed his writ petition. Against that decision, the appellant Govt. filed an appeal before the Hon'ble Apex Court. In that context, while dismissing the appeal, the Hon'ble Apex Court made the following observations:-

> "10. We respectfully agree with the Delhi High Court that the cancellation of his candidature was illegal, but we wish to give our own opinion in the matter.
>
> 11. When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often been condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.
>
> 12. In this connection, we may refer to the character 'Jean Valjean' in Victor Hugo's novel 'Les Miserables', in which for committing a minor offence of stealing a loaf of bread :3: for his hungry family Jean Valjean was branded as a thief for his whole life.
>
> 13. The modern approach should be to reform a person instead of branding him as a criminal all his life.
>
> 14. We may also here refer to the case of Welsh students mentioned by Lord Denning in his book 'Due Process of Law'. It appears that some students of Wales were very enthusiastic about the Welsh language and they were upset because the radio programmes were being broadcast in the English language and not in Welsh. Then came up to London and invaded the High Court. They were found guilty of contempt of court and sentenced to prison for three months by the High Court Judge. They filed an appeal before the Court of Appeals. Allowing the appeal, Lord Denning observed :-
>
> > "I come now to Mr. Watkin Powell's third point. He says that the sentences were excessive. I do not think they were excessive, at the time they were given and in the circumstances then existing. Here was a deliberate interference with the course of justice in a case which was no concern of theirs. It was necessary for the judge to show - and to show to all students

> everywhere - that this kind of thing cannot be tolerated. Let students demonstrate, if they please, for the causes in which they believe. Let them make their protests as they will. But they must do it by lawful means and not by unlawful. If they strike at the course of justice in this land - and I speak both for England and Wales - they strike at the roots of society itself, and they bring down that which protects them. It is only by the maintenance of law and order that they are privileged to be students and to study and live in peace. So let them support the law and not strike it down.
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> But now what is to be done? The law has been vindicated by the sentences which the judge passed on Wednesday of last week. He has shown that law and order must be maintained, and will be maintained. But on this appeal, things are changed. These students here no longer defy the law. They have appealed to this court and shown respect for it. They have already served a week in prison. I do not think it necessary to keep them inside it any longer. These young people are no ordinary criminals. There is no violence, dishonesty or vice in them. On the contrary, there was much that we should applaud. They wish to do all they can to preserve the Welsh language. Well may they be proud of it. It is the language of the bards - of the poets and the singers - more melodious by far than our rough English tongue. On high authority, it should be equal in Wales with English. They have done wrong - very wrong - in going to the extreme they did. But, that having been shown, I think we can, and should, show mercy on them.
>
> We should permit them to go back to their studies, to their parents and continue the good course which they have so wrongly disturbed." [Vide : Morris Vs. Crown Office, (1970) 2 Q.B. 114]
>
> In our opinion, we should display the same wisdom as displayed by Lord Denning.
>
> As already observed above, youth often commit indiscretions, which are often condoned.

15. It is true that in the application form the respondent did not mention that he was involved in a criminal case under Section 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified.

16. At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter.

17. For the reasons above given, this Appeal has no force and it is dismissed. No costs."

19. However, we find that this was case of appointment in the Police Force where service conditions are governed by civil laws and the action was taken at the very initial stage by cancelling the candidature. Army personnel are governed by Army Act and Army Rules and other policy decisions. It is well known that considering the nature of job, environment and discipline of the Army, such laws are more stringent than in civil organizations. Therefore, the ratio of the above decision cannot be squarely applicable to the case of army personnel like the applicant especially when it

relates to maintenance of discipline. In the Army there are specific provisions in Sec. 13 and Sec. 44 of the Army Act about punishment for giving false answer before the enrolment officer, which is not there in civil side.

20. In this context reference may be made to the decision of the Hon'ble Supreme Court in the case of **Sanjay Kumar Bajpai –vs- UOI & Ors, (1997) 10 SCC 312** where the facts are similar. The appellant, who was working as MER/Nursing Assistant in Army Medical Corps, was discharged from service for giving false information in the enrolment form that no criminal case was pending against him while the fact was that such a case was pending before the Special Judicial Magistrates (Pollution Control) for offences u/ss 147,452,323,324 of IPC. Hon'ble Apex Court rejected the appeal filed by the appellant being without merit.

21. Reference may also be made to the decision of the Hon'ble Delhi High Court dt. 5th July 2006 in the case of **Balbinder Singh –vs- UOI & Ors** (unreported). In that case, the petitioner was appointed as a constable in CISM which is a para military force of the Union. In the attestation form, he gave wrong information that no case was pending against him while as per police report it was revealed that a case was registered vide Police case No. 64/2001 u/s 420/461/471 IPC. He was discharged with one month's notice. The Hon'ble Delhi High Court rejected the petition and relied on the decision of the Hon'ble Apex Court in **R.Vishwanatha Pillai –vs- State of Kerala** where it was held that" a person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favour." It was also observed that the –

> "16……..It is, therefore, established from the aforesaid factual matrix that the petitioner not only suppressed material and factual information in the attestation form but also furnished false information. No information was given by the petitioner regarding the institution and pendency of the aforesaid

criminal case against him in which even a charge sheet is filed against him …" Reference was also made to the decision of the Hon'ble Apex Court in **Ram Saran –vs- IG of Police, CRPF**, (2006) 2 SCC 541 where in para it is observed as follows:-

> "The courts should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in **Associated Provincial Picture Houses Ltd. –v- Wednesbury Corporation** commonly known as **Wednesbury case**, the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in the decision making process and not the decision (see **V.Ramana –vs- AP SRTC**, 2006 SCC (L & S) 69)"

22. In the instant case, we have already observed that there was no infirmity in the decision which was taken after following procedure prescribed in the statutory rules and in exercise of powers vested as per Army Act. It is also worthwhile to note that in the verification form itself a 'warning' clause is there which states that "furnishing of false information or suppression of any factual information in the verification roll would be a disqualification and is likely to tender the candidate unfit for employment under the Government." It is not of much relevance that the applicant was subsequently acquitted in the criminal case but the fact of the matter is that he knowingly gave false information both in the enrolment form as well as in the verification form. Therefore, as per Army Act as also in terms of warning in the verification form, he is liable for suitable action which has been taken against him by competent authority after following due procedure. If a person who has just joined the army, can behave like this which defies the high standard of discipline and moral values in the Army, then such a person whose background is based on falsehood is unlikely to become an efficient soldier in future. We, therefore, find no reason to interfere with such decision. However, considering the fact that the alleged offence was a complaint case relating to family land disputes and at that point of time the

applicant was very young and was also subsequently acquitted of the charges, we are of the view that dismissal from the Army on this ground, should not stand as a bar to his getting future employment under any Government or even in Army as per his eligibility.

23. In the result, the application fails being devoid of any merit. Accordingly, the OA stands dismissed. However, it is made clear that dismissal of the applicant from Army Service on the ground of giving incorrect declaration, will not stand as a bar for the applicant to get any employment under the Union Govt. or any other State Government including Armed Forces in future, if otherwise eligible. No costs.

24. Let original records be returned to the respondents on proper receipt.

25. Let a plain copy of the order duly countersigned by the Tribunal Officer be furnished to both sides on observance of usual formalities.

(LT. GEN. K.P.D.SAMANTA)
ADMINISTRATIVE MEMBER

(JUSTICE RAGHUNATH RAY)
JUICIAL MEMBER