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S. MUTHU KUMARAN

v.

UNION OF INDIA AND ORS.

(Civil Appeal No.352 of 2017)

B

JANUARY 17, 2017

[DIPAK MISRA AND R. BANUMATHI, JJ.]

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Service Law – Dismissal from service – Of delinquent employee in Army – On the allegation that he was involved in fraudulent recruitment racket – Confessional statement of the employee – General Commanding Officer dismissed the service of the employee – The order affirmed by Armed Forces Tribunal – On appeal, held: GOC in exercise of his rights u/s.20(3) of Army Act r/ w. r.17 of Army Rules passed the order of dismissal – The provisions of Army Act and Rules as also principles of natural justice were

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complied with – The Tribunal also rightly appraised the evidence and the law while affirming the dismissal order – However, in view of his 17 years of unblemished service, punishment of dismissal is extreme – Therefore, the same is modified to discharge from service – Army Act, 1950 – s.20(3) – Army Rules, 1954 – r. 17 – Principles of Natural Justice.

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Partly allowing the appeal, the Court

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HELD: As per Section 20(3) of the Army Act, 1950 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. Rule 17 of the Army rules, 1954 requires the dismissal/removal order to be a reasoned one. In the present case, the General Officer Commanding 26 (GOC), Infantry Division initiated administrative action against the appellant on the ground of being allegedly involved in fraudulent recruitment. Show cause notice was duly issued to the appellant and he was afforded an opportunity of filing reply to the show cause notice as well as an additional reply. The provisions of the Army Act and Rules thereof, as well as the mandate of natural justice was duly complied with in the case of the appellant.

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Henceforth, the GOC exercised his right under Section 20(3) of

the Act coupled with rule 17 of the Rules, and dismissed the appellant from services w.e.f. 10.07.2011. After having rightly appraised the evidence on record and the law dealing with the subject, the Armed forces tribunal dismissed the application filed by the appellant, thereby affirming his dismissal from service. There is no perversity in the findings of the Tribunal. [Para 9] [553-G-H; 554-A-C]

2. However, as far as the dismissal from service is concerned, it is an extreme punishment imposed against the appellant. When the dismissal order was passed in case of the appellant, the GOC could have taken into account the unblemished service record of the appellant and his long service. If an order of discharge would have been inflicted against the appellant, he still would have been restricted from continuing in service and at the same time, the appellant, who had served diligently for more than 17 years, would have been granted with the benefits accrued on his service rendered so far. Therefore, the punishment of dismissal from service is modified into discharge from service. [Paras 10, 11] [554-D-F; 555-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 352 of 2017.

From the Judgment and Order dated 06.05.2016 of the Armed Forces Tribunal, Regional Bench at Jaipur in O.A. No. 96 of 2011 and 30.05.2016 in M. A. No. 320 of 2016 in O.A. No. 96 of 2011.

Mohan Kumar, V. Sivasubramanian, Advs., for the Appellant.

Atmaram N. S. Nadkarni, ASG, R. Bala Subramanian, Santosh Kumar, Ananya Mishra, Ms. Aarti Sharma, Mukesh Kumar Maroria, Advs. for the Respondent.

The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. The present appeal is filed under Section 30 of the Armed Forces Tribunal Act, 2007 assailing the judgment and order dated 06.05.2016 in O.A. No. 96 of 2011, as well as order dated 30.05.2016 in M.A. No.320 of 2016 in O.A. No.96 of 2011 passed by the Armed Forces Tribunal, Regional Bench at Jaipur, dismissing the original application filed by the appellant seeking reinstatement in service with all consequential benefits.

A 2. In a nutshell, the facts leading to present appeal are as follows.
The appellant was inducted in the Indian Army on 26.04.1994 on the
post of Havildar/Clerk. The appellant is alleged to have been involved in
fraudulent recruitment racket and obtaining illegal gratification in lieu of
the same, during his posting in Jammu and Kashmir in the month of
September, 2006. Accordingly, the appellant was served with a show
B cause notice dated 07.06.2010 alongwith a copy of his confessional
statement dated 28.09.2006 asking as to why action be not taken against
him. The confessional statement of the appellant was made in his own
handwriting and bore his signatures too. In his confessional statement,
the appellant is said to have admitted that in collusion with Dafadar/
C Clerk KNS Rao of ARO Jammu and others he had fraudulently enrolled
around six candidates and obtained illegal gratifications from them in
lieu of the same.

3. The appellant, *vide* his reply dated 05.07.2010 denied the
allegations made against him in the show cause notice and submitted
D that the concerned authority had already held an inquiry in this regard
and after recording the evidence had concluded that no charges are
proved against the appellant. The appellant was served with a subsequent
show cause notice dated 19.12.2010 asking him to submit additional reply,
if any. The appellant submitted additional reply dated 27.12.2010, stating
E that he was forced to give self incriminating confessional statement
which deserves to be discarded on account of being false and made
under coercion. The officiating officer had opined in favour of dropping
the proceedings against the appellant. In his opinion dated 26.12.2010,
the officiating Commanding Officer submitted that the appellant had
already been acquitted from the concerned case by the competent
F authority and thus, re-opening of the case on hearsay evidence of a
proven culprit, Dfr/Clk KNS Rao is unwarranted.

4. Based on the materials available against the appellant, inclusive
of the reply and additional reply of the appellant, the General Officer
Commanding, 26 Infantry Division terminated the services of the appellant
G *vide* order dated 18.02.2011 under Section 20(3) of the Army Act read
with Rule 17 of the Army Rules. Challenging the termination order dated
18.02.2011, the appellant filed an application under Section 14 of the
Armed Forces Tribunal Act, 2007 before the Armed Forces Tribunal on
02.06.2011. The matter was listed for admission on 03.06.2011. Even
when the matter was pending before the Tribunal, the appellant filed
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S.B. Civil Writ Petition No.5999 of 2011 before the Rajasthan High Court at Jodhpur. *Vide* order dated 08.07.2011, the High Court disposed of the Writ Petition with liberty to the appellant to file representation before the concerned authority. However, the appellant did not prefer any representation before the concerned authority thereof. A

5. The Tribunal took note of the entire facts and circumstances, more specifically, the retracted confessional statement of the appellant and *vide* its order dated 06.05.2016, dismissed the appellant's application as being devoid of any merit. The Miscellaneous Application (M.A. No.320 of 2016 in O.A. No.96 of 2011) filed by the appellant seeking leave to appeal to the Supreme Court under Section 31 of the Act was also dismissed *vide* order dated 30.05.2016. Aggrieved thereof, the appellant approached this forum by filing an appeal under Section 30 of the AFT Act. B C

6. Learned counsel for the appellant submitted that the Tribunal ought to have taken note of the opinion of DJAC, as per which no sufficient evidence was available against the appellant. It was further submitted that once the Commanding Officer had come to the conclusion that no charge or trial is made out against the appellant, it was not open to the respondents to terminate the services of the appellant by invoking the administrative power under Section 20 of the Army Act read with Rule 17 of the Army Rules. D E

7. On the contrary, the learned counsel for the respondents has maintained that no case is made out for interfering with the reasoned order passed by the Armed Forces Tribunal. The General Officer Commanding, 26 Infantry Division was well within its powers under Section 20(3) read with Rule 17 of the Army Rules to terminate the services of the appellant. F

8. We have carefully considered the rival submissions and perused the impugned judgment and the materials available on record.

9. As per Section 20(3) of the Army Act, 1950, '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'. Rule 17 of the Army Rules, 1954 requires the dismissal/removal order to be a reasoned one. In the present case, the General Officer Commanding 26 (GOC), Infantry Division initiated administrative action against the H

A . appellant on the ground of being allegedly involved in fraudulent recruitment during the month of August, 2006, while he was posted at Jammu. Show cause notice was duly issued to the appellant and he was afforded an opportunity of filing reply to the show cause notice as well as an additional reply. The provisions of the Army Act and Rules thereof, as well as the mandate of natural justice was duly complied with in the case of the appellant. Henceforth, the GOC exercised his right under Section 20(3) of the Act coupled with Rule 17 of the Rules, and dismissed the appellant from services w.e.f. 10.07.2011. After having rightly appraised the evidence on record and the law dealing with the subject, the Armed Forces Tribunal dismissed the application filed by the appellant, thereby affirming his dismissal from service. We do not find any perversity in the findings of the Tribunal. However, with regard to infliction of punishment of dismissal from service, we are of the view that the Tribunal could have kept in view the long service of the appellant.

D 10. As a matter of record, the appellant was enrolled in the Indian Army on 26.04.1994 and till his termination on 10.07.2011, he is said to have discharged his services diligently for more than seventeen years. During the period of his service, he had no adverse remarks in his service record except the present one. In our view, when the dismissal order was passed in case of the appellant, the GOC could have taken into account the unblemished service record of the appellant and his long service. If an order of discharge would have been inflicted against the appellant, he still would have been restricted from continuing in service and at the same time, the appellant, who had served diligently for more than 17 years, would have been granted with the benefits accrued on his service rendered so far.

F 11. No doubt, the dismissal order passed against the appellant was within the powers of the concerned authorities. However, as far as the dismissal from service is concerned, it is an extreme punishment imposed against the appellant. The appellant has to thrive in civil life by doing an appropriate job suitable to his qualification. In the facts and circumstances of the present case, we are inclined to modify the punishment of dismissal from service into discharge from service. The modification of the sentence of dismissal from service into that of discharge will not change the position of the appellant, so as to claim any re-instatement into service. Even if he was discharged from service, in lieu of dismissal from service, the appellant cannot seek for any employment or re-employment into

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the Army Therefore, there would not be any grievance for the respondents in the event of punishment of dismissal being modified into that of discharge. At the same time, interest of justice would be served as the appellant would get the benefits like gratuity and other attendant benefits for the service rendered by him and the appellant would also get an opportunity to lead honourable life in the society:

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12. The impugned order passed by the Armed Forces Tribunal in O.A. 96/2011 dated 06.05.2016 is modified to the extent that the order of dismissal of the appellant from service is converted to that of discharge from service. The appeal is thus partly allowed and the respondents are directed to release benefits available to the appellant for the service rendered by him in the Army. No order as to costs.

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Kalpana K. Tripathy

Appeal partly allowed.