

EX SIG. MAN KANHAIYA KUMAR

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v.

UNION OF INDIA & ORS.

(Civil Appeal No(S). 1804 OF 2018)

JANUARY 09, 2018

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[A. K. SIKRI AND ASHOK BHUSHAN, JJ.]

Army Act, 1950 – ss.20(3), 122(4) – Dismissal from service – Propriety of – Appellant, enrolled in Army as Sepoy/Washerman, dismissed from service for obtaining enrolment on the basis of fake relationship certificate – Representation made by appellant, rejected by respondents – Original Application (OA) challenging the said order filed by appellant before Armed Forces Tribunal (AFT) – AFT upheld the dismissal of appellant from service – Plea of appellant that there should have been an inquiry into the matter as per the provisions of 1950 Act – Held: Not tenable – Appellant himself admitted in reply to the show cause notice that his father was not an ex-service man and the Relationship Certificate produced by him was fake – Power of dismissal or removal u/s.20(3) can be exercised if the delinquent has been informed of the particulars of the cause of action and allowed reasonable time to state in writing any reasons he may have to urge against his dismissal/removal from service – In the present case, such an opportunity was given to appellant – Appellant got enrolment by playing a fraud – Fraud vitiates the entire action – A person having done wrong cannot take advantage of his own wrong – Authorities were well within their right to exercise power u/s.20(3) – Armed Forces – Army Rules, 1954 – r.17 – Service Law – Fraud – Maxims – “Nullus Commodum Capere Potest De Injuria Sua Propria”.

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Fraud – Employment obtained by playing fraud – Consequences – Discussed.

Dismissing the appeal, the Court

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HELD: 1.1 A conjoint reading of Section 20 of the Army Act,1950 along with Rule 17 of the Army Rules,1954 shows that power of dismissal or removal under Section 20(3) can be exercised if the delinquent has been informed of the particulars of the cause of action and allowed reasonable time to state in

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(2004) 6 SCC 325	referred to	Para 11	A
[2006] 1 SCR 1102	relied on	Para 12	
[2015] 8 SCR 745	relied on	Para 13	
[1996] 3 SCR 785	relied on	Para 15	

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1804 of 2018. **B**

From the Judgment and Order dated 28.02.2017 by the Armed Forces Tribunal, Principal Bench, New Delhi in O.A. No. 1608 of 2016.

Manjunath Meled, Anuj Saini, Govind, Anil Kumar, Advs. for the Appellant. **C**

The Judgment of the Court was delivered by

A. K. SIKRI, J. 1. The appellant has filed this appeal, along with application for grant of leave to appeal, against the order dated 28.02.2017 passed by the Armed Forces Tribunal, Principal Bench at New Delhi(for short, the ‘AFT’), whereby it has dismissed the original application filed by the appellant. Leave to file the present appeal has also been rejected by the AFT by a separate order. **D**

2. Leave to appeal is granted.

3. The facts giving rise to this appeal are that the appellant was enrolled in the Army as Sepoy/Washerman on 19.01.2009. After about 6 years of service a show cause notice was issued on 08.10.2014 alleging offence of fraudulent enrolment i.e. enrolment in the Army based on a fake relationship certificate. On 13.03.2015, the respondent authorities dismissed the appellant from service under Section 20(3) of the Army Act. The appellant submitted representation before the respondent which was not considered in time due to which he filed O.A. No. 773/2015 before the AFT and the same was disposed of with a direction to decide the representation of the appellant. On 09.08.2016 the respondents rejected the representation of the appellant. The appellant preferred the Original Application under Section 14 of the Armed Forces Tribunal Act, 2007 challenging the order dated 09.08.2016. **E**
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4. It may be noted that without admitting the formal original application, the AFT had directed the respondent to produce the relevant documents. In compliance with the said direction, the Relationship Certificate dated 09.08.2004 was produced vide reply dated 05.11.2014 **H**

A submitted by the appellant to the show cause notice issued by the establishment. In the reply so submitted the appellant had specifically admitted the fact that his father was not an Ex-serviceman and, in fact, he had produced and relied on a fake Relationship Certificate. The records pertaining to Army No. 14224588 made available by the respondents clearly showed that number is in respect of Onkar Mal Gujar.

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C 5. Taking into consideration the aforesaid admitted facts, the AFT held that since the appellant got enrolment in the Army by making use of a fake Relationship Certificate, his dismissal from service on the ground of fraudulent enrolment was perfectly justified and no fault could be found with the order of dismissal passed by the establishment.

D 6. The only ground raised by the learned counsel for the appellant before us is that there could not have been an order of dismissal under Section 20(3) of the Army Act, 1950 and this general power could not have been exercised when there is a specific provision to deal with such cases laid down in Section 122(4) of the Army Act, 1950. He submitted that as per law laid down by this Court in catena of judgments, the general provision cannot be invoked when there is a specific provision to deal with such situation.

E 7. In order to appreciate the aforesaid contentions we reproduce Section 20 as well as Section 122 of the Army Act, 1950.

“20. Dismissal, removal or reduction by the Chief of the Army Staff and by other officers.—

F (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 non-commissioned officer.

G (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.

H (4) Any such officer as is mentioned in sub-section (3) may reduce to a lower grade or rank or the ranks, any warrant officer or any non-commissioned officer under his command.

(5) A warrant officer reduced to the ranks under this section shall not, however, be required to serve in the ranks as a sepoy. A

(6) The commanding officer of an acting non-commissioned officer may order him to revert to his permanent grade as a non-commissioned officer, or if he has no permanent grade above the ranks, to the ranks. B

(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.”

“122. Period of limitation for trial.—

(1) Except as provided by sub-section C

(2) no trial by court-martial of any person subject to this Act for any offence shall be commenced after the expiration of a period of three years 1[and such period shall commence,—

(a) on the date of the offence; or D

(b) where the commission of the offence was not known to the person aggrieved by the offence or to the authority competent to initiate action, the first day on which such offence comes to the knowledge of such person or authority, whichever is earlier; or E

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the authority competent to initiate action, whichever is earlier.] (2) The provisions of sub-section (1) shall not apply to a trial for an offence of desertion or fraudulent enrolment or for any of the offences mentioned in section 37. F

(3) In the computation of the period of time mentioned in sub-section (1), any time spent by such person as a prisoner of war, or in enemy territory, or in evading arrest after the commission of the offence, shall be excluded. G

(4) No trial for an offence of desertion other than desertion on active service or of fraudulent enrolment shall be commenced if the person in question, not being an officer, has subsequently to H

A the commission of the offence, served continuously in an exemplary manner for not less than three years with any portion of the regular Army.”

8. It will also be apt to take note of Rule 17 of the Army Rules, 1954 which reads as under:

B “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 sub-section (1) or sub-section (3) of section 20; unless he has been informed of the
C 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:

D 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.”
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9. A conjoint reading of Section 20 of the Army Act, 1950 along with Rule 17 of the Army Rules, 1954 shows that power of dismissal or removal under Section 20(3) can be exercised if the delinquent has been informed of the particulars of the cause of action and allowed reasonable
F time to state in writing any reasons he may have to urge against his dismissal or removal from service. In the present case, such an opportunity was given to the appellant. Gravamen of the charge is that he had got the enrolment on the basis of a fake Relationship Certificate. It is pertinent that in reply he admitted the fact that the Relationship Certificate produced by him was fake. Thus, the procedure contained in
G Rule 17 of the Army Rules, 1954 was substantially followed.

10. It is also an admitted position that but for the said fake Relationship Certificate, the appellant could not have got enrolment in the Army. Thus, he got enrolment by playing a fraud. The fraud vitiates the entire action and in such a case the enrolment obtained by the
H appellant, which was fraudulent.

11. It has been so held by this Court time and again. In *Union of India & Ors. v. M. Bhaskaran*¹, this Court gave a firm and stern message that if any employment is obtained by committing fraud, the same cannot be countenanced by a court of law as the employment secured by fraud renders it voidable at the option of employer. This position was reiterated in *Vice-Chairman, Kendriya Vidyalaya Sangathan & Anr. v. Girdharilal Yadav*².

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12. Likewise, in *Ram Saran v. IG of Police, CRPF & Ors.*³, where the appellant was working on the post of Police Constable and his services were terminated 27 years after joining the service, on grounds of using Fake Birth Certificate, such a termination was held to be valid in law. Discussion that followed, in the process, is as under:

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“6. In response, learned counsel for the respondents submitted that in a disciplined force there was no scope for taking lenient view for a person who obtained employment on the basis of forged document. It was pointed out that on the basis of binding instructions contained in the Government of India, Department of Personnel and Training, OM No. 11012/7/91 Estt. (A) dated 19-5-1993 (GO No. 29 of 1993) dismissal from service was the only punishment imposable. In fact, the DIG, CRPF had referred to the said instructions while differing from the punishment proposed. Rule 24 of the CCS (Pension) Rules reads as follows:

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“24. Forfeiture of service on dismissal or removal.—Dismissal or removal of a government servant from a service or post entails, forfeiture of his past service.”

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8. 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 Corpn.* [(1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] commonly known as *Wednesbury case* [(1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] the court would not go into the correctness of the choice made by the administrator open to him

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¹ 1995 Supp. (4) SCC 100

² (2004) 6 SCC 325

³ (2006) 2 SCC 541

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- A 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 v. A.P. SRTC* [(2005) 7 SCC 338 : 2006 SCC (L&S) 69] .)
- B 9. In *R. Vishwanatha Pillai v. State of Kerala* [(2004) 2 SCC 105 : 2004 SCC (L&S) 350] it was observed as follows: (SCC pp. 116-17, para 19)
- C “19. It was then contended by Shri Ranjit Kumar, learned Senior Counsel for the appellant that since the appellant has rendered about 27 years of service, the order of dismissal be substituted by an order of compulsory retirement or removal from service to protect the pensionary benefits of the appellant. We do not find any substance in this submission as well. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. The appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eye of the law. The right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on a false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for a Scheduled Caste, thus depriving a genuine Scheduled
- D Caste candidate of appointment to that post, does not deserve any sympathy or indulgence of this Court. 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. A person
- E who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual
- F acquired a status by practising fraud.”
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13. In Rajeshwar Baburao Bone v. State of Maharashtra & Anr.⁴, appointment was obtained by the appellant using fake caste certificate. Termination on that ground held to be valid. Para 12 reads as under:

“12. In the facts and circumstances of this case, we are of the opinion that the impugned order [Rajeshwar Baburao Bone v. State of Maharashtra, WP No. 5160 of 2012, order dated 17-12-2013 (Bom)] passed by the High Court needs no interference and this appeal deserves to be dismissed. However, we hold that because of inordinate delay in considering the certificate of the appellant, the benefit of the certificate already availed by the appellant shall not be disturbed making it clear that the appellant shall not be entitled to take any further benefit of reservation in future including the benefit of continuing in service.”

14. In the aforesaid scenario, the argument of the appellant that there should have been an inquiry into the matter as per the provisions of the Army Act, 1950 is totally untenable. Even otherwise, when the appellant himself has admitted that Relationship Certificate produced by him is fake, the procedure as laid down in Section 20 of the Army Act, 1950 would be an empty formality.

15. In Union of India & Ors. v. Major General Madan Lal Yadav (Retd.)⁵, this Court opined that a person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent court and, in the process, the Court invoked the Latin dictum “Nullus Commodum Capere Potest De Injuria Sua Propria”.

16. We are, therefore, of the opinion that the authorities were well within their right who exercised their power under Section 20(3) of the Army Act, 1950.

17. The appeal is dismissed accordingly.

Divya Pandey

Appeal dismissed.

⁴ (2015) 14 SCC 497

⁵ (1996) 4 SCC 127