

(1995) 11 MP CK 0054
In the Madhya Pradesh High Court
Case No : M.P. No. 3525 of 1988

Rajendra Kumar Pate

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-11-1995

Acts Referred:

Army Act, 1950 — Section 17
Army Rules, 1954 — Rule 13(3)

Citation : (1996) JLJ 199 : (1996) 1 MPJR 413 : (1996) 41 MPLJ 580 : (1996) MPLJ 580

Hon'ble Judges : S.K. Dubey, J

Bench : Single Bench

Advocate : M.L. Jaiswal, for the Appellant; Indira Nair, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Dubey, J.

By this petition under Article 226 of the Constitution of India, the petitioner has challenged the order of his discharge dated 23-8-1988 (Annexure 6) passed under Rule 13(3) of the Army Rules (for short "the Rules") framed u/s 191(2)(a) of the Army Act, 1950 (for short "the Act").

The facts giving rise to this petition are these. The petitioner was enrolled as Combatant recruit, after giving answers to the questions put by the Assistant Returning Officer, H. Q. Zonal Office, Sidhi in the prescribed form (Annexure R-1). The petitioner was temporarily selected and was sent for physical training at 3 EME First Battalion Centre, Bairagarh, Bhopal, for a period of six months. After completing physical training he was sent for Trade training of Vehicle Mechanic where he remained till 19-9-1987. On completion of the successful training, the petitioner was granted Certificate of Proficiency by the Commandant, Officer Commanding 2nd Training Battalion, 3 EME Centre, Bhopal (Annexure A) and then the petitioner was posted on 30-9-1987 as Vehicle Mechanic.

On receipt of the verification report from the Civil authorities, it came to the knowledge that the petitioner, on the specific question put to him, suppressed the true information and answered that he is not involved in any criminal case, while on verification it revealed that the petitioner was arrested and charge sheet was filed against the petitioner in the Court of Judicial Magistrate First Class, Rewa for the offences under Sections 147, 451, 294, 506 and 323 of the Indian Penal Code, registered at Crime No. 12/85 by Police-Station Gurh, district Rewa. Therefore, at the time of attestation as prescribed u/s 17 of the Act, the petitioner was not attested and reported as fit for duty and was discharged vide Annexure G, by the Commanding Officer in accordance with item (iv) of table annexed to Rule 13(3) of the Rules.

Shri M. L. Jaiswal, learned counsel for the petitioner submitted that as the offences charged against him were not of moral turpitude, therefore, he did not give the information of pendency of the criminal case. Not only this, on compromise, the petitioner was acquitted of the charge vide judgment dated 29-12-1987 (Annexure B). Hence, the petitioner could not have been discharged from his service. Moreover it was the duty of the Enrolling Officer or the respondent to have verified the correctness of the information furnished, but that was not done. On the other hand, the petitioner was allowed to continue to work till 23-8-1988 in spite of the fact that remarks relating to criminal prosecution were given by the Superintendent of Police, Rewa on 11-11-1986 in Annexure R-1 and the said Civil Officer sent a letter (Annexure R-2) dated 2-12-1986 to the District Magistrate, Rewa that the petitioner has suppressed the information relating to his antecedents hence he is not fit to be appointed in Government service. The order of discharge is penal in nature and is without affording an opportunity of hearing violative of the principles of natural justice, hence is liable to be quashed; reliance was placed on the decisions reported in *Chaukas Ram v. Sub-Area Commander, Allahabad* and *Anr.* (1991) Lab. I.C. 1056 (All.) and *T. V. Thampan v. Adjunct General Discipline and Vigilance Directorate Branch Army Head Quarters, New Delhi* (1994) Lab. I.C. 599 (Ker.)

Smt. Indira Nair, learned counsel for the respondents contended that the petitioner was arrested and challan was put up on 3-6-1985 in the Court of Judicial Magistrate First Class, Rewa against the petitioner prior to the furnishing of information in Annexure R-1. The petitioner was well aware of his involvement and arrest for the said offences, but deliberately suppressed the information relating to his antecedents and character. Because of his involvement in the criminal offences, the petitioner was not even liable to be enrolled as a combatant recruit. Hence the discharge was proper which does not call for interference. Learned counsel pressed into service the decisions reported in *District Collector and Chairman Vizianagaram (Social Welfare Residential School Society) Vizianagaram* and *Anr. v. M. Tripura Sunderi Devi* 1990 (4) LR 237 (SC) , *Central Provident Fund Commissioner and others Vs. Ashok Dubey and others*, and *Sanjay Kumar Bajpai v. Union of India* and *Ors.* 1994 Lab. I.C. NOC 154 (All.)

Services in the Army unlike regular and semi-Government services have its own unique features peculiarity and special requirement. It is not a service where all and sundry could hope to enter. The selection process is elaborate and only persons of grip, intelligence and integrity and who are also prepared to face exacting conditions in the defence of the land generally are fit for a career in the Army. A person of doubtful antecedent and character and who has a record of involvement in anti-social activities in the area has no place in the Army. It is for this reason that commission, appointment and enrolment is made with the strict compliance of the provisions contained in Chapter III of the Act of which Section 13 prescribes the procedure before the enrolling officer which lays down that upon the appearance before the prescribed enrolling officer of any person desirous of being enrolled, the enrolling officer shall read and explain to him, or cause to be read and explain to him in his presence the conditions of the service for which he is to be enrolled.; and shall put to him the question set forth in the prescribed form of enrolment, and shall after having cautioned him that if he makes a false answer to any such question he will be liable to punishment under the Act, record or caused to be recorded his answer to each such question. Section 14 speaks of mode of enrolment, after complying with the provisions of Section 13 of the Act. If after complying with the provisions of Section 13, the enrolling officer is satisfied that the person desirous of being enrolled fully understands the questions put., to him and consents to the conditions of service, and if such officer perceives no impediment, he shall sign and shall also cause such person to sign the enrolment paper and such person shall thereupon be deemed to be enrolled. Section 15 of the Act speaks of validity of enrolment. Section 16 enumerates the persons to be attested, namely, -

- (a) all persons enrolled as combatants,
- (b) all persons selected to hold a non-commissioned of acting non-commissioned rank; and
- (c) all other persons subject to this Act as may be prescribed by the Central Government.

Section 17 lays down mode of attestation, which reads thus -

"17. Mode of attestation. - (1) When a person who is to be attested is reported fit for duty, or has completed the prescribed period of probation, an oath or affirmation shall be administered to him in the prescribed form by his Commanding Officer in front of his corps or such portion thereof or such members of his department as may be present, or by any other prescribed person.

(2) The form of oath of affirmation prescribed under this section shall contain a promise that the person to be attested will bear true allegiance to the Constitution of India as by law established and that he will serve in the regular Army and go wherever he is ordered by land, sea or air, and that he will obey all commands of any officer set over him, even to the peril of his life.

(3) The fact of an enrolled person having taken the oath or affirmation directed by this section to be taken shall be entered on his enrolment paper and authenticated by the signature of the officer administering the oath or affirmation."

From a bare look of the aforesaid provisions, it is evident, that a person who is desirous of being enrolled after he is being questioned in the manner laid down u/s 13 of the Act, makes a false answer to any of such question, he is liable to be punished. On being enrolled the petitioner was sent for training who after completion of training was not attested as required by Section 17 of the Act. It is only after receipt of verification report of civil officer it came to the knowledge that the petitioner had suppressed the fact of his involvement in criminal case in answer to the question 15(J) of the form of verification roll. Though the fact was well within the knowledge that he was arrested and challan was filed against him in the Court of Judicial Magistrate First Class, Rewa for the offences under Sections 147, 294, 506 and 323 of the Indian Penal Code. Therefore, the petitioner was not attested and reported fit for duty for giving deliberately and intentionally false answer in reply to the question set forth in the enrolment form. It is not the case of the petitioner that he did not give false information. It is not a case of the petitioner being illiterate, the questions put to him were not explained and that he was not cautioned for making a false answer to any such question. On the other hand at the time when the questions were put to him, he was put specific question in clause 15 of the form which relates to the particulars of previous conviction, if any, sentence of fine etc., which reads thus -

"Is any case pending against you in any other Court of law at the time of filling up this verification roll?"

The answer to this question was "No". It is because of this false answer to the query, the petitioner was discharged under Rule 11, by the authority empowered to discharge under item (iv) of the table annexed to Rule 13 of the Rules.

In the above set of facts the principles of natural justice are also not attracted as it would not have served any purpose. It is not the case of the petitioner that he was not arrested and was not involved in any criminal case pending against him. It is also not the case that the petitioner did not give the answer or he is an illiterate, his signatures were obtained by the enrolling officer without explaining the questions. On the other hand, the petitioner got himself enrolled fraudulently by concealing the relevant information, for which he is to blame himself.

The decision of the Kerala High Court in the case of T. V. Thampan v. Adjunct General, Discipline and Vigilance Directorate Branch Army Head Quarters, New Delhi (supra) is of no help to the petitioner and is distinguishable on facts as in that case it was not suggested that the petitioner had a criminal background, nor the antecedents coming in the way of selection were explained by placing relevant aspects before the Court for non-apparent reason. The other Division Bench decision of Allahabad High Court in Chaukas Ram v. Sub-Area

Commander, Allahabad and another (supra) is also of no help to the petitioner as in that case the administrative action taken by compulsory discharge under Rule 13(3)(iii)(v) of the Rules at the fag end of service of the Army personnel for the allegation of gross misconduct without following the principles of natural justice.

In the result, the petition is devoid of substance and is accordingly dismissed with no order as to costs. Security amount, if any, be refunded to the petitioner.