

(1997) 02 SC CK 0179
In the Supreme Court Of India
Case No : Appeal Civil 7627 of 1994

Sanjay Kumar Bajpai

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-02-1997

Acts Referred:

Army Act, 1950 — Section 13

Penal Code, 1860 (IPC) — Section 147, 323, 324, 452

Citation : (1997) 3 JT 83 : (1997) 2 SCALE 196 : (1997) 10 SCC 312 : (1997) SCC(L&S) 1752 : (1997) 1 UJ 510 : (1997) 2 UPLBEC 1022

Hon'ble Judges : S. C. Agrawal, J;K. S. Paripoornan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal is directed against the judgment of the Allahabad High Court (Lucknow Bench) dated September 13, 1993 whereby Writ Petition No. 10117 of 1989 filed by the appellant has been dismissed. In the said Writ Petition the appellant had assailed the validity of the order dated September 12, 1989 discharging him from service as M.E.R. (Technical)/Nursing Assistant in the Army Medical Corps.

2. The appellant appeared in M.E.R. (Technical) Examination conducted by Headquarters Recruiting Zone, Lucknow on January 24, 1988. On the basis of the result of the said examination he was selected for recruitment as M.E.R. (Tech)/Nursing Assistant in the Army Medical College. He was enrolled as M.E.R. (Technical)/Nursing Assistant on February 29, 1988. At the time of enrolment a form is required to be filled on the basis of the answers to questions put to the person seeking enrolment. For the purpose of enrolment the enrolment form as prescribed by the relevant rules was filled. It is not disputed that at the time of his enrolment the appellant was being prosecuted before the Special Judicial Magistrate (Pollution Control), U.P., Lucknow for offences Under Sections 147, 452, 324 and 323 I.P.C. The case of the respondents is that at the time of

enrolment the appellant was asked the following question:

Q. No. (8) : Have you ever been imprisoned by the civil power or are you under trial for any offence or has any complaint or report been made against you to the Magistrate or Police for any offence? If so, give details.

3. In the enrolment form it is recorded that the said question was answered by the appellant by the word "No". The enrolment form of the appellant was sent for verification to the District Magistrate, Lucknow. After verification the District Magistrate, Lucknow, by his letter dated December 21, 1988, informed the A.M.C. center and School about the pendency of the criminal case against the appellant. On receipt of the said communication from the District Magistrate, Lucknow, a show-cause notice dated May 20, 1989 was issued to the appellant whereby he was informed that it had come to the notice that the appellant was involved in a civil case and he had deliberately given false answers to the questions put to him by the enrolling officer regarding involvement in any civil case at the time of enrolment. The appellant was required to show cause why he should not be discharged from service on account of the same. The appellant in his communication dated May 23, 1989 admitted about the pendency of the criminal case against him but asserted that he had been falsely implicated in the same. After considering the said communication of the appellant the impugned order dated September 12, 1989 was passed whereby he was discharged from service under Army Rule 13(3)(IV) as his service was no longer required. It appears that the order dated September 12, 1989 refers to Clause (IV) of the table appended below Rule 13 of the Army Rules which contains three clauses. Clause (IV) of the said table enables discharge of a person enrolled under the Act but not attested who is considered as unlikely to become an efficient soldier and whose services are no longer required.

4. The case of the appellant is that the enrolment form was not filled on the basis of the answers given by him to questions put to him at the time of enrolment and that the signatures of the appellant were obtained on the blank enrolment form and the same was filled later and, therefore, the appellant cannot be held responsible for any statement contained in the said enrolment form and the action that has been taken against him on the basis of the statement contained in the enrolment form cannot be held to be valid. It has also been asserted by the appellant that the show cause notice dated May 20, 1989 was never served on him and only an oral query was made by the Commanding Officer and that in response to the said query he had sent the communication dated May 23, 1989 giving his explanation about the criminal case that was pending against him. The submission of the appellant is that he never made a false statement that no case was pending against him at the time of enrolment.

5. Shri P.P. Malhotra, the learned senior Counsel appearing for the respondents, has placed before us the original enrolment form regarding the enrolment of the appellant on February 29, 1988. The said enrolment form is required to be filled u/s 13 of the Army Act which lays down:

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 explained 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 this Act, record or cause to be recorded his answer to each such question.

6. The enrolment form of the appellant contains question No. 8 referred to above and the answer "No" against it. At the end there is the following declaration bearing the signatures of the appellant:

I Sanjay Kumar Bajpai do solemnly declare that the above answers made by me to the above questions are true and that I am willing to fulfil the engagements made.

7. Having regard to the aforesaid provision contained in Section 13 of the Army Act and the answers that have been recorded in the enrolment form as well as the declaration at the end of the form under signatures of the appellant that the answers made by him to the questions are true, we are unable to uphold the contention of the appellant that the answers recorded against the questions in the enrolment form were not based on the answers given by him at the time when the said form was filled and that his signatures were obtained on a blank form which was filled by the authorities without the appellant being required to give answers to the questions. Having appended his signatures at the end of the form it is not open to the appellant to disown the same. The filling of enrolment form was an official act required to be performed u/s 13 of the Army Act and a presumption about regularity of such official act can be drawn. There is no reason to assume that the enrolment form was not filled in the manner as required. We must, therefore, proceed on the basis that the answers that are recorded against the questions contained in the said enrolment form are based on the statement made by the appellant at the time of enrolment. Since as per the enrolment form question No. 8 was answered in the negative, it must be held that at the time of enrolment the appellant did not disclose that the criminal case was pending against him and made a false statement that no case was pending against him at the time.

8. Shri Vikas Singh, the learned Counsel for the appellant, has laid emphasis on the averments contained in para 8 of the counter affidavit of Major Kishan Lai filed on behalf of the respondents in the High Court as well as in para F(i) of the counter affidavit of Captain Krishna Chander filed in this Court wherein it is stated that the appellant was asked by the enrolling officer the following question "is any case pending against you in any court of law" at the time of filing of enrolment form and that reply was "No." The submission is that the question as set out in the aforesaid counter affidavits is different from the question No. 8 as contained in the enrolment form produced in this Court. It is no doubt true that in the aforesaid paragraphs of the counter affidavits filed on behalf of the

respondents in the High Court and in this Court the question that was put to the appellant at the time of enrolment is not in the same terms as question No. 8 of the enrolment form. But we do not find any major difference in the question as mentioned in the said paragraphs of the counter affidavits and question No. 8 in the enrolment form. The substance of the both is the same, namely, whether any case was pending against him in court. All that can be said is that the deponents of the counter affidavits filed in the High Court and in this Court did not bestow due care and attention while preparing the counter affidavits. It was expected that while making the affidavit the deponents should have carefully examined the record of the case including the enrolment form and, if they had done so, this discrepancy would not have occurred. The additional affidavit of the Lt. Col. A.K. Mitra correctly mentions the question as contained in the enrolment form. The said error in the counter affidavits filed earlier cannot, therefore, be made a ground for holding that the impugned order of discharge of the appellant is vitiated.

9. It was next submitted by Shri Vikas Singh that the show cause notice dated May 20, 1989 was never served on the appellant and action has been taken against him without affording a reasonable opportunity to him. In this regard the learned Counsel has urged that no document has been produced to show that the said notice was received by the appellant. This fact has been disputed by the respondents and it has been submitted that the communication dated May 23, 1989 was sent by the appellant in reply to the said notice. The case of the respondents is that the record relating to the service of the show cause notice is no longer available as it has been weeded out. We do not find any ground to doubt the correctness of the statement made on behalf of the respondents that the notice dated May 20, 1989 was served on the appellant. Moreover, the question whether the notice dated May 20, 1989 was received by the appellant or not is not of much consequence because the appellant submitted his explanation regarding the pendency of the case against him in his reply dated May 23, 1989 and the said explanation was considered by the authorities before passing the order of discharge dated September 12, 1989.

10. Shri Vikas Singh has invited our attention to the statement made in the counter affidavit filed by the respondents in this Court wherein it is stated that the appellant had been convicted in the criminal case. It is submitted that the said statement is a false statement because the appellant has actually been acquitted and the said false statement has been deliberately made to prejudice the case of the appellant. We do not find any met(sic) in this contention.

11. No ground is thus made out for interfering with the impugned judgment of the High Court. The appeal, therefore, fails and it is accordingly dismissed. No order as to costs.