

**(2004) 03 KAR CK 0091**  
**In the Karnataka High Court**  
**Case No : Writ Appeal No. 4424 of 2000**

Union of India (UOI) and Others

APPELLANT

Vs

K. Murugesan

RESPONDENT

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**Date of Decision :** 25-03-2004

**Acts Referred:**

Army Act, 1950 — Section 20, 20 (3), 44  
Army Rules, 1954 — Rule 17  
Constitution of India, 1950 — Article 311

**Citation :** (2005) 104 FLR 169 : (2004) 6 KarLJ 120 : (2004) 3 KCCR 288 SN

**Hon'ble Judges :** Tirath S. Thakur, J;Huluvadi G. Ramesh, J

**Bench :** Division Bench

**Advocate :** A.S. Bopanna, for the Appellant; Vijayan Alakkat, for the Respondent

**Final Decision :** Allowed

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## Judgement

Tirth S. Thakur, J.—This writ appeal calls in question the correctness of an Order passed by a learned Single Judge of this Court whereby W.P. No. 6738 of 1993 filed by the respondent has been allowed and the Order of dismissal of the petitioner from service set aside reserving liberty to the respondent to conclude the proceedings afresh after considering explanations submitted by the petitioner.

2. The petitioner-respondent herein was enrolled in the Indian Army by the Branch Recruiting Officer at Madras in September 1988 and sent to No. 4, Training Battalion (MT), ASC Centre (South) in Bangalore for training. Despite three chances and extra coaching given to the respondent, he failed thrice in the Commandant's drill test. On the recommendations of the Commanding Officer of the Training Battalion, he was discharged from service under Rule 13(3) of the Army Rules on the ground that he was "unlikely to become an efficient soldier". He was however re-enrolled on 4-12-1989 through HQ Quota sponsored by Sri K. Neduncheliyan, his brother who was himself serving in the Army. In the Enrollment Form submitted by the respondent, he concealed the fact of having served the Army earlier and discharged from the same on the ground mentioned

above. The non-disclosure of this significant part of information required from the candidates led to the conduct of a Court of Enquiry in which the respondent was given an opportunity to explain the circumstances leading to his enrollment and the non-disclosure of the true facts regarding his earlier service in the Army and his eventual discharge from the same. The Court of Enquiry did not however find a case for trial of the respondent by a Court Martial and recommended that the respondent be given benefit of doubt and retained in service. This recommendation did not find favour with the Commandant, ASC Centre (South) at Bangalore. By his Order dated 7-8-1991, the Commandant held that the enrollment authorities concerned were ignorant about the previous service of the respondent in the Army and that the respondent had deliberately withheld important information which he was supposed to reveal in the application form. He also found that even the brother of the respondent had failed to disclose the information regarding the earlier service of the respondent and thereby committed a breach of Section 44 of the Army Act. He accordingly directed disciplinary action to be taken against the respondent and his brother.

3. Insofar as Sri K. Neduncheliyan, brother of the respondent was concerned, the disciplinary action appears to have resulted in a severe reprimand against him. As regards the respondent, he was served with a notice by which he was called upon to show cause why action should not be taken against him for his failure to disclose the previous service rendered in the Army. In the reply filed by the respondent to the said show-cause notice, the fact that the enrollment form had not disclosed his previous service in the Army was not disputed. An attempt was however made to show as though the Army authorities were aware of the respondent's previous service in the Army.

4. Upon consideration of the explanation offered by the respondent, the Commandant, ASC Centre (South), Bangalore, dismissed him from service in terms of Section 20(3) of the Army Act read with Rule 17 of the Army Rules. Aggrieved, the respondent filed W.P. No. 6738 of 1993 which was heard and allowed by a Single Judge of this Court by Order dated 6-6-2000 impugned in this appeal. The learned Single Judge was of the view that Rule 17 of the Rules envisaged the conduct of an enquiry against the Official concerned before he could be dismissed from service under the said rule or u/s 20 of the Army Act. No such enquiry having been conducted, the dismissal was held to be unjustified. The Court also held that since the dismissal order did not rely upon the Court of Enquiry proceedings, the said proceedings could not be called in aid to justify the same. The petition was on those findings allowed and the appellants directed to reinstate the respondent while reserving liberty to them to pass fresh orders in accordance with law.

5. Appearing for the appellant-Mr. Bopanna argued that learned Single Judge had fallen in error in holding that dismissal in terms of Section 20(3) of the Act read with Rule 17 of the Army Rules envisaged an enquiry before an order of dismissal could be made. It was contended that all that Rule 17 envisaged was an

opportunity to the Official concerned to state the reasons that he may have to urge against his dismissal or removal from service. Alternatively, he submitted that the facts leading to the dismissal of the respondent not being in dispute, there was no necessity of holding any enquiry into the same. The respondent had admittedly concealed information regarding his previous service in the Army or his discharge from the same in the enrollment form submitted by him. The non-disclosure of the said information which was significant for determining the eligibility of the respondent was therefore actionable and since the material facts in that connection were not in dispute, there was no need for holding an enquiry.

6. On behalf of the respondent, it was on the other hand argued that the order of discharge of the respondent under Rule 13 of the Army Rules was itself unjustified. It was submitted that the discharge order had been passed even before the result of the drill had been published. It was further contended that the Court of Enquiry having recommended retention of the respondent in service, the Commandant was not justified in directing disciplinary proceedings against him. Such proceedings in any case ignored the fact that the enrollment of the respondent for the second time was permitted by the Army authorities even when they were fully aware of the respondent's discharge from service earlier. There was therefore no suppression of information by the respondent to call for any action against him. It was also argued that the respondent had not himself filled up the form and that the contents thereof were never read out to him nor were his answers to the questions printed on the form verified from him by anyone.

7. We have given our anxious consideration to the submissions made at the Bar. We have also perused the relevant record.

8. The fact that the respondent had been enrolled and sent for training at the ASC Centre (South), Bangalore in September 1988 is not in dispute. The record also bears the order of the Centre Commandant discharging the respondent from service in terms of Army Rule 13(3) of item (iv) on the ground that he was "unlikely to become an efficient soldier". This Order was made on the recommendations of the Commanding Officer of the Training Battalion (MT) which may be extracted for ready reference:

"The indl. was enrolled by BRO, Madras on 02 September, 1988. He reported to No. 3 Trg Bn (MT) of this Centre on 03 September, 1988 for basic trg. He was further sent to No. 4 Trg. Bn. (MT) on 01 October, 1988. He has failed thrice in Comdt's Drill Test. As on date he has spent 33 weeks in this Centre in contravention to HQ Trg Wing letter No. CHQ/1181/Reke/TW/ST12, dated 30 November, 1988. This indl. has got no aptitude and inclination to continue in service despite of all efforts on the part of the Bn. He is also not likely to make a good soldier in the Army. In view of the above, his discharge from service on the grounds "Unlikely to become an efficient soldier" under the provisions of Army Rule 13(3) item (iv) is recommended".

(emphasis supplied)

9. The correctness of the discharge of the respondent on the grounds mentioned above was not assailed by him, with the result the same has attained finality. In 1989, the respondent admittedly applied for fresh enrollment against the HQ Quota. The enrollment form specifically required the applicant to state whether he had ever served in the Indian Armed Forces, the Reserve, the Territorial Army, the forces of any State, the Nepalese Army, the British Gorkha Brigade or in any Police Force or in any civil capacity under Central Government and if so to indicate the particulars of the said service and the cause of his discharge. In reply to the said question contained in the enrollment form, the respondent's answer was that he had not served in any such Force. The information regarding his discharge from service was thus actively concealed. This suppression was a clear case of misrepresentation with a view to getting an undeserved entry into the service for the second time. The argument that the respondent had not filled up the form or that he did not know about the questions and the answer provided to the same must also fail for two reasons. Firstly, because the respondent is admittedly educated upto 10th Standard. He was therefore capable of reading for himself the questions and giving answers to the same. In the second place, the Deputy Commandant, ASG Centre (South), Bangalore who was also the Enrolling Officer has affixed a certificate below the enrollment form submitted by the respondent to the following effect:

"Certificate of Enrolling Officer.--The conditions of service for which he is now enrolled were read and explained to the above person by me (or in my presence). After having cautioned him that if he made a false answer to any of the above questions No. 1 to 21, he would be liable to be punished as provided in the Army Act. I put all the above questions to him and his answer to each question has been duly entered as replied to. I am satisfied that he fully understands all the questions put to him and consents to the conditions of service".

10. In the absence of any evidence to show that the above certificate is false, there is a presumption that the certificate has been properly affixed and that all the questions referred to therein have been put to the applicant and his answer to the same duly entered as given by the respondent. It follows that the factual basis on which the discharge order was made was undisputed, thereby obviating the necessity of any further enquiry into the same.

11. That brings us to the question whether an Enquiry was at all envisaged by the provisions of Rule 17 of the Army Rules. Rule 17 reads as under:

"Rule 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 particulars of the

cause of action against him and allowed reasonable time to start 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".

11-A. A plain reading of the above would show that the same does not envisage the 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. The argument that Rule 17 envisaged the conduct of an enquiry before an order of dismissal could be passed must therefore be rejected. The provision satisfies bare minimal requirements of natural justice before an order of dismissal is passed against the Officials concerned. The decisions of the Supreme Court in *Lekh Raj Khurana v. Union of India* and *Union of India and Anr. v. K.S. Subramanian*, have authoritatively held that in the absence of protection conferred under Article 311 of the Constitution, the principles of natural justice cannot be invoked to widen the scope of enquiry or the opportunity available to an affected person over and above that prescribed by the relevant rules. To the same effect is the decision of High Court of Andhra Pradesh in *V.Y. Thomas v. Commandant, A.D.C. Centre, Secunderabad and Anr.* It follows that an order of dismissal passed u/s 20 of the Army Act read with Rule 17 of the Rules framed thereunder may be validly passed upon satisfying the requirements of a notice to the person affected and informing him about the cause of action on the basis whereof the proposed order of dismissal is sought to be made and after allowing him time to state in writing reasons that he may have to urge against his dismissal or removal from service. That requirement having been satisfied in the instant case, there was no illegality in the order to justify interference with the order of dismissal impugned in the writ petition. In as much as the learned Single Judge read into Rule 17, the requirement of an enquiry, he in our opinion, committed an error that needs to be corrected in appeal.

12. We accordingly allow this appeal set aside the order passed by the learned Single Judge and dismiss the writ petition filed by the respondents but in the circumstances without any orders as to costs.