

**2024 LiveLaw (SC) 102**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

***BELA M. TRIVEDI; J., PANKAJ MITHAL; J.***

**CIVIL APPEAL NOS. 644-645 OF 2017; FEBRUARY 9, 2024**

**No.2809759H EX-RECRUIT BABANNA MACHCHED *versus* UNION OF INDIA AND ORS.**

**Armed Forces Tribunal Act, 2007; Section 31 - The recruitment was not confined to the priority / reserved class rather it was open for general category also in case vacancies remain available. The Recruitment application(s) clearly establishes that the appellants have applied as a general category candidate(s) against the surplus seats/vacancies remaining unfilled after considering the priority/reserved quota for relatives of servicemen/ex-servicemen, etc. In a situation, when they have not claimed any enrollment/recruitment on the basis of relationship with servicemen/ex-servicemen, there was no occasion for them to submit any relationship certificate. The discharge/dismissal of the appellants from service is vitiated on grounds that they have actually not produced any relationship certificate for selection/recruitment as they never applied in the reserved category. The discharge/dismissal order of the appellants is certainly invalid for want of non-consideration of the plea taken by the appellants. (Para 17, 24)**

**Armed Forces Tribunal Act, 2007; Section 31 - It was not the case of the respondents ever that the vacancies on which the appellants have been enrolled/recruited were only for the alleged reserved category and not for general category. Subsequent improvement in defence and supplementing reasoning of discharge/dismissal which is not contained in the order impugned is not permissible in law. (Para 23)**

WITH CIVIL APPEAL NOS. 652-653 OF 2017, CIVIL APPEAL NOS. 642-643 OF 2017 & CIVIL APPEAL NOS. 654-655 OF 2017

*For Appellant(s) Mr. Suhaskumar Kadam, Adv. For M/S. Black & White Solicitors, AOR*

*For Respondent(s) Mr. Mukesh Kumar Maroria, AOR Ms. Aishwarya Bhati, ASG Ms. Poornima Singh, Adv. Mr. Ashwin Joseph, Adv. Dr. N. Visakamurthy, AOR*

**J U D G M E N T**

**PANKAJ MITHAL, J.**

1. Learned counsel for the parties were heard.
2. Instructions were issued from time to time with regard to enrollment into Army under the Unit Headquarters Quota (UHQ). The instructions as revised upto the year 1978, provided that Regiments/Corps have sanction to enroll 15 per cent of the total yearly demand released by the Additional Directorate of Recruiting to Zonal Recruiting Offices. This percentage was increased to 25 during the year 1981-82 and in March, 1983 this quota was further increased to 50 per cent. Since the Regiments/Corps could not fill up such large number of vacancies, to facilitate the enrollment, priority was provided to certain categories of personnel which included sons and grandsons of servicemen and ex-servicemen; brothers and other near relatives of those killed in battle or died in service; wards who were fully dependent upon servicemen or exservicemen; sportsmen of merit, and those for whom there was a special recruitment, e.g., Ladakh Scouts, Cavalry, Gorkha, Para, President Body Guard Regiments etc. It was further provided that Unit Headquarters Quota Enrollment shall give priority to the above categories and in case vacancies for recruitment remain available with Regimental Centre, personnel from open category based on merit may be taken.

3. In the light of the above instructions for recruitment under the Unit Headquarters, a news item was published for the purposes of recruitment inviting applications under the Unit Headquarters Quota. It appears that a large number of candidates including the appellants applied. The appellants were selected and were enrolled in the Army by the Maratha Light Infantry Regimental Centre ('MLIRC'). After they had put in nearly three years of service, a show cause notice was issued to several of them alleging that they had obtained enrollment in the Army either on the basis of the fake sports person certificate or on the basis of false relationship certificate. On consideration of the reply of those persons, the services of about 52 of them were terminated. However, after some litigation, candidates belonging to the category of sportsmen of merit, were all reinstated. In regard to the fake relationship certificate, services of about 20 persons including the appellants were terminated out of which 4 persons are before this Court.

4. The case of all the four appellants is identical and is based upon similar facts and as such the appeals of all four of them were taken up together for consideration and are being disposed of by this common judgment.

5. In these appeals the challenge is to the common judgment and order of the Armed Forces Tribunal<sup>1</sup>, Kochi, dated 6.03.2014, whereby the Tribunal has refused to interfere with the discharge certificate, dismissing the appellants from service for adopting fraudulent means. Consequently, refusing the prayer of the appellants to reinstate them.

6. Notice in these appeals were issued only because the appellants before this Court wished to press that the appellants had never applied for enrollment in any reserved category. This was done on the statement of the counsel for the appellants which stands recorded in the order dated 08.03.2016.

7. In view of the above factual position, the only question for our consideration in these appeals is whether the appellants had applied and were selected as general category candidates or were placed in any of the reserved category.

8. Briefly stated, after the appellants were enrolled/recruited in the Army, they were served with identical show cause notices contending that they have been enrolled in the Army by producing false relationship certificates and the documents produced by them on verification have been found to be fake/forged. Thus, calling upon them as to why they should not be dismissed from service. In response to the show cause notice, all the appellants submitted their response on identical lines that they were recruited in the Army after they have passed all exams and standards; they were not recruited on the basis of the claim that they were relatives of any serving or ex-servicemen personnel rather they had applied under the general category and as such there was no occasion for them to have produced any relationship certificate. In other words, they clearly denied having produced any certificate of relationship for the purposes of recruitment and as such contended that they cannot be charged of producing fake certificates.

9. The Maratha Light Infantry Regimental Centre by similar orders dismissed all the appellants from service with effect from 9.05.2013. The discharge certificate issued to each of the appellant in unequivocal terms stated that they are being dismissed from service for the reason that they got themselves enrolled by adopting fraudulent means, referring to the fake relationship certificates as mentioned in the show cause notices.

10. In other words, the appellants were dismissed/discharged from service on the ground that at the time of their enrollment in the Army through Maratha Light Infantry

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<sup>1</sup> Hereinafter referred to as 'the Tribunal'

Regimental Centre under the Unit Headquarters Quota in December, 2009 they had produced false relationship certificates which upon verification were found to be manipulated and false.

**11.** The departmental appeal(s) against the aforesaid discharge/dismissal also failed whereupon the appellants preferred Original Applications before the Armed Forces Tribunal. The Original Applications were dismissed by the Tribunal and so were the review petitions.

**12.** The appellants have thus preferred these appeals under Section 31 of the Armed Forces Tribunal Act, 2007 before this Court inter alia contending that the appellants were recruited under the general category and not on priority basis as relatives of any servicemen or ex-servicemen; and they have not produced any relationship certificate and, therefore, they cannot be charged for obtaining enrollment/recruitment on the basis of fake relationship certificates. The authorities as well as the Tribunal have not considered the above explanation of the appellants and only on the basis that the certificates alleged to have been produced by the appellants on verification have been found to be fake/forged, without recording any finding that the appellants had in effect produced any such certificate, upheld the order of discharge/dismissal.

**13.** The defence of the respondents is that the enrollment/recruitment under the Army Headquarters Quota is only for the relatives of the servicemen/ exservicemen and that there is no general category in which the appellants could have been recruited. It is also contended that the appellants are taking the above grounds of enrollment/recruitment under general category and of non-production of relationship certificate as an afterthought as on identical plea the sports persons were directed to be reinstated.

**14.** After hearing Shri Vinay Navare, learned senior counsel, appearing as a lead lawyer for the appellants and Ms. Aishwarya Bhati, learned Additional Solicitor General, appearing for the respondents, in the facts and circumstances of the case, as narrated above, the following points arise for our consideration:

- (i) Whether the appellants were enrolled/recruited by giving benefit of relationship with the servicemen/exservicemen;
- (ii) Whether the appellants have produced any relationship certificate(s);
- (iii) Whether their discharge/dismissal from service is bad in law for non-consideration of their explanation.

**15.** The respondents have relied upon a newspaper clipping which was neither part of the record before the Tribunal or of these appeals but was passed over to this Court for the purposes of its perusal. The newspaper clipping dated 27.9.2009 as appearing in Deccan Herald as shown to this Court during the course of hearing is not part of the record. The respondents made no efforts to bring it on record at any stage, not even before this Court except for placing it across the Bar for our perusal. In such a scenario, it is not at all appropriate for this Court to consider and rely upon it. Nonetheless, a plain reading of it would reveal that it is not an advertisement inviting applications for enrollment/recruitment under the Unit Headquarters Quota. It is simply a news item published in the newspaper informing that such an exercise for enrollment/recruitment under the Unit Headquarters Quota is going to take place without specifically stating that general category candidates who do not have any relationship with servicemen/exservicemen are prohibited or barred from applying. On the contrary, the guidelines/instructions for recruitments under the

enrollment/recruitment in Paragraph 7 clearly mentions about open category recruitment. It reads thus:

“7. Open Category: In case of Additional vacancies for recruitment available with Regimental Centre open category of personnel based on merit may be taken provided they meet the \_\_\_\_\_.”

**16.** A simple reading of the above Paragraph 7 clearly belies the stand taken by the defence that the above enrollment/recruitment was only meant for the relatives of the servicemen/ex-servicemen and was not open for the general category.

**17.** The appellants have brought on record zerox copies of their applications submitted for the purposes of enrollment/recruitment. In Part-II of the application(s) under the heading ‘Documentation’ they have not claimed status of a relative of servicemen/ex-servicemen, NCC, Sports persons rather they have clearly stated to be of general category. The application(s) nowhere mentions that they have produced any relationship certificate(s). The application(s) thus clearly establishes that the appellants appear to have applied as a general category candidate(s) against the surplus seats/vacancies remaining unfilled after considering the priority/reserved quota for relatives of servicemen/ex-servicemen, etc. In such a situation, when they have not claimed any enrollment/recruitment on the basis of relationship with servicemen/ex-servicemen, obviously there was no occasion for them to submit any relationship certificate.

**18.** In response to the show cause notice which stated that the appellants have obtained enrollment/recruitment on false relationship certificates which on verification have been confirmed to be fake, the appellants have denied producing any such certificates as they never applied under any priority category as a relative of servicemen/ex-servicemen but in the general category. The discharge certificate simply states that the appellants are dismissed from service under the orders of Commandant for the reason of obtaining enrollment/recruitment by fraudulent means referring to submission of fake relationship certificates. The order of the Commandant states that at the time of enrollment/recruitment in December, 2009 under the Unit Headquarters Quota at the Maratha Light Infantry Regimental Centre, the relationship certificates of the appellants upon verification from records have been found to be manipulated and false. Therefore, the appellants had obtained enrollment/recruitment by fraudulent means and their services are liable to be terminated. Accordingly, the appellants were dismissed.

**19.** In the above discharge certificate or the order of the Commandant, there is no whisper that any inquiry was conducted to ascertain or find out as to whether the appellants had actually produced relationship certificates for the purposes of enrollment/recruitment in the Army. No finding has been recorded by the respondents that the appellants had as of fact, produced such certificates or that their explanation claiming that no such certificates were furnished by them is completely false. In effect, the authorities have not dealt with the above explanations/claims of the appellants.

**20.** A reading of the order of the Tribunal also shows that the above aspect or the contention of the appellants was not dealt with by the Tribunal. The Tribunal in a casual and routine manner affirmed the discharge/dismissal order simply holding that the relationship certificates produced by the appellants have been found to be fake even upon verification. The Tribunal also seems to have lost sight of the crucial point of the appellants that they have applied under the general category and not as relatives of servicemen/ex-servicemen. They have not produced the alleged certificate(s) which could be held to be fake. Accordingly, the core issue arising in the matter was missed not only by the authorities concerned but by the Tribunal as well. Thus, the order(s) of discharge/dismissal

of the appellants and that of Tribunal stand vitiated for nonconsideration of the material aspect.

21. In **S.N. Mukherjee vs. Union of India**<sup>2</sup>, it has been categorically laid down by this Court that an order passed without consideration of the material evidence or the plea would be violative of Principles of Natural Justice and would stand vitiated for non-consideration of the relevant material, plea or the evidence.

22. At the same time in **Mohinder Singh Gill vs. Chief Election Commissioner, New Delhi**<sup>3</sup>, it has been provided that the validity of the order impugned has to be tested on the basis of the reasoning contained therein and that the authorities are not supposed to supplement the same by means of extraneous material or affidavit before the courts.

23. In the case at hand, it was not the case of the respondents ever that the vacancies on which the appellants have been enrolled/recruited were only supposed to be filled up by the relatives of the servicemen/ex-servicemen and not by a general category person or that the posts advertised were only for the alleged reserved category. They never even took any defence based upon the newspaper clipping as referred to earlier. This is a subsequent improvement in their defence which as discussed earlier do not stand established. It is nothing but supplementing the reasoning of discharge/dismissal which is not contained in the order impugned. It is thus not permissible in law in view of Mohinder Singh Gill (supra).

24. In the end, we sum up our conclusions as under: -

(i) The recruitment under the Headquarter Quota was not confined to the priority/reserved class rather it was open for general category also to a limited extent;

(ii) There is no material on record to establish that the appellants had produced any relationship certificate to obtain enrollment; and

(iii) The discharge/dismissal of the appellants from service is vitiated for non-consideration of their specific case that they have actually not produced any relationship certificate for selection/recruitment as they never applied in the reserved category.

25. The decision in **Ex Sig. Man Kanhaiya Kumar vs. Union of India and Ors.**<sup>4</sup> as cited from the side of the respondents has no application in the present case inasmuch as in the said case the fraudulent enrollment in the Army was admitted to the appellants to be on the basis of fake relationship certificate. There is no dispute to the ratio laid down in the above case that the authorities had the power of punishment/dismissal/removal of the candidate in the event the enrollment/recruitment had been obtained by fraudulent means or on the basis of fake relationship certificate.

26. Similarly, the case of **S. Muthu Kumaran vs. Union of India and Ors.**<sup>5</sup> is of no help to the respondents as the dismissal therein under the Army Act was on the ground of fraudulent recruitment which was found to be proved and no perversity was found in the order of the Tribunal affirming the dismissal order which was modified/substituted to that of discharge.

27. In view of what have been said above and the legal position, as referred, the discharge/dismissal order of the appellants is certainly invalid for want of non-

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<sup>2</sup> (1990) 4 SCC 594

<sup>3</sup> (1978) 1 SCC 405

<sup>4</sup> (2018) 14 SCC 279

<sup>5</sup> (2017) 4 SCC 609

consideration of the plea taken by the appellants. Accordingly, we have no option but to set aside the impugned orders of discharge/dismissal dated 9.5.2013 and the judgment(s) and order(s) dated 06.03.2014 and 18.11.2015 passed by the Armed Forces Tribunal. The appellants shall be reinstated with all consequential benefits.

**28.** The appeals are allowed as aforesaid with no order as to costs.

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