



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

Civil Appeal Nos. 7125 - 7126 of 2019
(Arising out of Diary No. 28984 of 2016)

EX. SEPOY SURENDRA SINGH YADAV **Appellant(s)**
Versus

CHIEF RECORD OFFICER & ANR.
..... **Respondent (s)**

J U D G M E N T

L. NAGESWARA RAO, J.

Leave to Appeal is granted.

1. These Appeals arise from orders dated 05.01.2016, 21.03.2016 and 19.05.2016 passed by the Armed Forces Tribunal, Lucknow Bench, dismissing the Transfer Application filed by the Appellant.

2. The Appellant was enrolled in the Army on 26.04.1991. At the time of his appointment he produced his matriculation certificate issued by the Madhyamik Shiksha Mandal, Gwalior, Madhya Pradesh. On verification it was found that the certificate produced by him was not genuine. A charge-sheet was issued under Section 44 of the Army Act, 1950 (for short, '*the Act*') and a preliminary

inquiry was conducted against the Appellant. During the preliminary inquiry, the Appellant admitted that he did not have any proof to show that he had passed the matriculation examination in 1988.

3. The Appellant was tried by the Summary Court Martial and was found guilty under Section 44 of the Act. The Appellant was dismissed from service and sentenced to undergo rigorous imprisonment for three months in a civil jail.

4. Thereafter, the Reviewing Authority set aside the order of termination and the sentence imposed on the Appellant and recommended that the Appellant may be reinstated and the proceedings for discharge can be taken.

5. The Appellant was reinstated on 27.11.1992 and a show cause notice was issued to him on 27.05.1993 seeking an explanation as to why he should not be discharged from service. There was no response from the Appellant to the show cause notice. The Appellant was discharged from service on 10.07.1993. He filed a Writ Petition in the High Court challenging the order of discharge which was transferred to the Armed Forces Tribunal, Lucknow Bench. The Tribunal dismissed the

Transfer Application holding that no ground was made out by the Appellant for setting aside the order of discharge. Dissatisfied with the order of the Armed Forces Tribunal the Appellant has approached this Court.

6. The learned counsel for the Appellant submitted that the order of discharge in exercise of the power under Rule 13 (3) Table III (v) is without jurisdiction. He argued that the Appellant cannot be dismissed in exercise of power under Section 20 of the Act after he was exonerated in the Summary Court Martial. He further urged that the order of discharge is vitiated as it amounts to double jeopardy. He relied upon a judgment of this Court in ***Union of India and Anr. v. Pursushottam***¹.

7. Learned Senior Counsel appearing for the Union of India justified the order of discharge by submitting that exoneration in a Summary Court Martial is not a bar for initiation of proceedings for discharge. He also submitted that the subject matter of the charge-sheet which led to the Summary Court Martial is completely different from the allegations made against the Appellant for his discharge from service. He stated that the order of discharge,

¹ (2015) 3 SCC 779

essentially, was passed under item 3 Table III, annexed to Rule 13 of the Army Rules, 1954 which was well within the jurisdiction of the authority who has passed the order of discharge.

8. It is relevant to reproduce Section 44 of the Act which is as follows:

***“44. False answers on enrolment.** Any person having become subject to this Act who is discovered to have made at the time of enrolment a wilfully false answer to any question set forth in the prescribed form of enrolment which has been put to him by the enrolling officer before whom he appears for the purpose of being enrolled shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.”*

9. As stated above, the initiation of a Summary Court Martial was for an offence under Section 44 of the Army Act. He was finally exonerated by the reviewing authority but discharged from service in exercise of power conferred under Rule 13 of the Army Rules.

10. The first submission made by the learned counsel for the Appellant that no proceedings for discharge could have been initiated after he was exonerated in the Summary

Court Martial, cannot be accepted. In the judgment relied upon by the Appellant in ***Union of India and Anr. v. Pursushottam (supra)***, this Court held that there is no bar for departmental action after exoneration in the Summary Court Martial. In the said judgment reliance was placed on ***Union of India and Ors. v. Harjeet Singh Sandhu***² to conclude that if the decision of the Court Martial is not confirmed, disciplinary action for imposition of a penalty of a dismissal or for that matter discharge, may be resorted to. In Pursushottam's case (supra), the order of the Summary Court Martial against a Hawaldar in the Corps of Military Police was set aside in review under Section 162 of the Act. This Court was of the opinion that the order of the Reviewing Authority under Section 162 of the Act was vitiated. For the reasons mentioned in the said judgment this Court restored the order of the Summary Court Martial. On the facts of the said case, this Court held that the show cause notice that was issued to the Respondent therein ought to have been issued under Section 20 of the Act instead of Rule 13 (3) Table III (v) of the Army Rules.

² (2001) 5 SCC 593

11. As stated above, the show cause notice that was issued to the Appellant in this case was under Rule 13 (3) Table III (v). Rule 13 specifies the authorities who are empowered to authorize discharge in respect of persons enrolled under the Act who have been attested. The Officers competent to authorize discharge are mentioned. The grounds of discharge as contained in Rule 13 (3) are as follows:

“Grounds of discharge. III Persons enrolled under the Act who have been attested.

(i) On fulfilling the conditions of his enrolment or having rechecked the stage at which discharged may be enforced.

(ii) On completion of a period of army service only, there being non vacancy in the Reserve.

(iii) Having been Commanding Officer. Found medically unfit for further service.

(iv) At his own request before fulfilling the conditions of his enrolment.

(v) All other classes of discharge.”

12. The Appellant was charge-sheeted for producing a false certificate to show that he passed matriculation. The proceedings initiated for discharge is on the ground of lack of requisite educational qualification. The charges are not the same. The submission that is made by the Appellant

that he cannot be discharged but can only be dismissed or removed under Section 20 (3) cannot be accepted. Though, the Respondents committed an error in referring to Section 20 (3) of the Act, a close scrutiny of the material on record would indicate that this is a case of discharge. We find no error committed by the respondents in exercising power under Rule 13 to discharge the Appellant. As stated earlier, exoneration in a Summary Court Martial is not a bar for initiation of proceedings for discharge. The Appellant does not possess the requisite educational qualifications. He cannot be continued in service. Therefore, he has been rightly discharged from service.

13. For the aforementioned reasons, these Appeals are dismissed.

.....J.
[L. NAGESWARA RAO]

.....J.
[HEMANT GUPTA]

**New Delhi,
September 06, 2019.**