

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13392 of 2019

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Md. Istaque Ahmad S/o Md. Habib Resident of Village-Dedhua, P.O.-Sukki,
PIN-843114, P.S.-Patepur, District-Vaishali, Presently posted on the Rank-
Subedar No. TJ-6351L, A Coy, Ex-151 Inf Bn (TA) JAT, Att-301 Army Avn
Sqn (Spl Ops), PIN-925301, C/o 56 APO

... .. Petitioner

Versus

1. The Union of India through the Principal Secretary, Ministry of Defence,
Government of India, New Delhi
2. The Additional Director General of Territorial Army Ministry of Defence,
Government of India, Army, L-Block, Charch Road, New Delhi
3. The General Office Commanding Bihar and Jharkhand Sub-area, Danapur,
Patna
4. The Commandant Group Commander of Territorial Army, Lacknow (U.P.)
5. The Commanding Officer 151, INF-BN (TA) JAT, Chakkar Maidan,
Muzaffarpur, Pin-842001, Bihar

... .. Respondents

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Appearance :

For the Petitioner : Mr. Satya Prakash Sinha
For the Respondent/s : Mrs. Nivedita Nirvikar, C.G.C.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

11 30-07-2021 The petitioner has sought for following reliefs in the

present writ application : -

“i) To quash the order dated
17.06.2019, Disembodiment Certificate,
passed by the Coy Cdr, ‘A’ Coy, 151 INF BN
(TA) Jat, whereby and whereunder the
petitioner has been disembodied from Rule-
33 with effect from 17.06.2019 (FN) from
service of the Rank of Subedar, No. TJ-
6351L without any warning, enquiry, charge,
show cause and departmental proceeding and
without turn over procedure in the middle of



the month against T.A. Rule-33 in retaliation of his voice raised against corruption. (Anx.-7)

ii) To direction to the respondents authority to made high level enquiry against the corruption in the recruitment/appointment of the Sepoy on the basis of forge residential and character certificate raised by the petitioner for taking action against them for the security of the Unit.

iii) The petitioner further pray for his reinstatement on the same post with all consequential benefits.”

2. It has stated in paragraph 4 of the writ application he was appointed/enrolled on 31.08.1995 on the post of Sepoy, Unit-114 INF BN TA JAT at Fatehgarh, District-Farukhabad (U.P.) and was subsequently promoted to the rank of Subedar. It is his case that as he had submitted a petition on 22.02.2019 before the Commanding Officer 151, INF-BN (TA) JAT, Muzaffarpur (respondent No.5) giving list of 13 persons, who had been recruited/appointed as Sepoy on the basis of forged residential and character certificate. He is said to have raised issues of corruption and illegality in the process of recruitment. The writ petition contains various allegations in relation to such irregularities. It is thereafter stated in the writ application that



the petitioner was asked to deposit his identity card dated 16.06.2017 and accordingly he has been disembodied with effect from 17.06.2019 (from service of Subedar TJ-6351L without any warning, enquiry, charge, show cause, departmental proceeding and without turn over system in the middle of the month against 'T.A. Rule-33' in retaliation to his voice raised against corruption.

3. It is peculiar to note that the writ application does not disclose at all about the nature of petitioner's initial engagement i.e. whether he was subject to provisions of the Army Act, 1950 or the Territorial Army Act. As a matter of fact, the Court found it completely difficult to decipher on the basis of pleadings in the writ application as to the nature of relief, which petitioner is seeking.

4. In the counter affidavit filed on behalf of the Union of India, it has been stated that the petitioner had a total of 22 years 31 days of embodied service out of 25 years of his service in Territorial Army. During this period, he was punished twice, awarded seven days of rigorous imprisonment on 03.05.2020 for misbehaving with the superior officers and was awarded three days pay fine for being absent without leave on 23.03.2008. It has been stated that there have been consistent breach of



discipline by the petitioner for which he had been given warnings on 17.05.2017, 20.07.2017, 19.02.2019 and 27.03.2019. It has further been stated that the petitioner had been showing continuous aberrations, indiscipline and had been given counselling letters and punishments by different officers at various stages of his career. In relation to the petitioner's allegation against illegal employment of 13 Sepoys made in the year 2018, it has been stated that similar complaint was received in October, 2018 and after detailed verification of his documents, reply to the complaint petition was forwarded to all concerned. The complaint made by the petitioner related to the period 2007-10 for which board of officers was confined and the records were duly investigated. The JAT was also approached to investigate and the documents were found to be correct. It has been alleged in the counter affidavit that the petitioner raised the issue at a belated stage after 8-10 years, which is indicative of his malafide intention as he was in the battalion throughout this intervening period. The allegations made in the writ application have been specifically denied in the counter affidavit.

5. The petitioner has filed his reply to the counter affidavit denying the assertion that he was issued warning. He has again raised the issue of fake enrollment of the personnel,



which, according to him, could be made at any stage.

6. Before analyzing the pleadings on record, most of which are difficult to be deciphered by this Court in the absence of clarity as regards the petitioner's initial appointment and the service rendered by him in a dispensation governed by the provisions of the Territorial Army Act, 1948, it would be apt to notice distinguishing features of the Army Act and Territorial Army Act, as succinctly delineated by the Supreme Court in case of ***Santosh Devi vs. Union of India and Others*** in its decision rendered on 06.05.2016 in Civil Appeal No.4853 of 2016. Paragraphs 8, 9 and 10 of which read as under : -

“8. The distinctive features of Territorial Army and regular army are significant in the present case. As per Army Order 77/1984, the Territorial Army is a part of the regular Indian Army. The role of Territorial Army is to relieve the regular army from static duties, assist civil administration in dealing with natural calamities and maintenance of essential services in situations where life of the communities is affected or the security of the country is threatened, and to provide units for the regular army as and when required. As explicit in the Statement of objects and reasons of the Territorial Army Act, 1948, the role of the Territorial Army is:-



(a) to provide a second line to and a source of reinforcement for the regular army;

(b) to assist in internal defence duties in a national emergency;

(c) to be responsible for anti aircraft and coastal defence; and

(d) to give the youth of India an opportunity of training themselves to defend their country.

9. Section 4 of the Act provides that the personnel of the Territorial Army comprise of two classes—(a) officers and (b) enrolled persons. As per Section 6, any person who is a citizen of India may offer himself for enrolment and may if he satisfies the prescribed conditions, be enrolled for such period and subject to such conditions as may be prescribed. According to Section 6A, every person employed under the government in a public utility service who is between the age group of 20-40 years, subject to other provisions and rules, is liable, when so required, to perform service under the territorial army. Section 7 provides for liability for military service.

Section 7A casts a duty on every employer by whom a person who is required to perform military service under Section 7 was employed, to re-instate him in his employment on termination of military service in an occupation and under conditions not less



favourable than those which would have been applicable to him at his employment. As per Section 9, every officer while rendering service as such officer and every enrolled person when called out, or embodied, or attached to the regular army shall, subject to suitable adaptation, be subject to the provisions of the Army Act and the Rules or Regulations made thereunder. In terms of Section 14(2)(b) of Territorial Army Act, Central Government is empowered to make rules prescribing the manner in which, the period for which, and the conditions subject to which any person may be enrolled under the Act or may be required to perform compulsory service in the Territorial Army.

10. The terms and conditions of service of personnel belonging to the regular Indian Army and the personnel belonging to Territorial Army are governed by two different Acts. The former is governed by Army Act 1950 while the latter is governed by the Territorial Army Act 1948. It is implicit in Section 9 of the Territorial Army Act that when the person enrolled in the Territorial Army is not called out during that period of disembodied state, he is not subjected to the provisions of the Army Act. It is thus clear from the statutory scheme that a fine distinction is made between regular army personnel and personnel enrolled in territorial



army. Further distinction has to be made between the Territorial Army personnel who are embodied and those who are in disembodied state. It is only when the Territorial Army personnel get embodied, which means that when they are called out or attached to any portion of the regular army for active duty, that the provisions of Army Act 1950 are applied to the Territorial Army personnel. When the Territorial Army personnel are in a disembodied state i.e., when they are not called out or attached to any portion of the regular army for active duty, then the Territorial Army Act 1948 governs the service conditions and this is the statutory scheme.

(Emphasis supplied)

7. Evidently, disembodiment of the petitioner has the consequence that he has been relieved from active duty under regular Army. Consequently, the Territorial Army Act, under which the petitioner appears to have been appointed shall govern his service conditions. He, in the Court's opinion, cannot have any grievance against disembodiment as he does not have any statutory right to be embodied i.e. to be called to render service under regular Army.

8. In my opinion, no case for interference is made out. This application is accordingly dismissed.



9. The petitioner shall, however, be at liberty to approach the competent authority in accordance with law if he is not allowed to work under the establishment for which he was initially appointed under the Territorial Army.

(Chakradhari Sharan Singh, J)

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