

OA.No.170/00451/2018/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00451/2018

DATED THIS THE 03rd DAY OF SEPTEMBER, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V.SANKAR, MEMBER (A)

Sri.K.Sundar Raj, 54 years
 S/o Late Sri.Kannappan
 Occn: Electrician
 Sports Authority of India
 Netaji Subhash Southern Centre
 Mysuru Road, Jnanabharati Campus
 Bengaluru: 560 056.

With residential Address as
 No.11, Srikrishna Temple Road
 Doddabommasandra
 Vidyaranyapura Post
 Bengaluru: 560 097.
 Applicant

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(By Advocate Shri P.A.Kulkarni)

Vs.

1. Union of India
 to be represented by its Secretary
 Ministry of Youth Affairs and Sports
 Shastri Bhavan
 New Delhi-110 001.

2. Director(Personnel)
 Sports Authority of India(SAI)
 Jawaharlal Nehru Stadium Complex (East Gate)
 Lodhi Road
 New Delhi: 110 003.

3. The Regional Director
 Sports Authority of India
 Netaji Subhash Southern Centre
 Mysuru Road, Jnanabharati Campus
 Bengaluru: 560 056.
 Respondents

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(By Advocate Shri K.Gajendra Vasu for R1 and
 Shri M.Vasudeva Rao for R2&3)

O R D E R (ORAL)
(PER HON'BLE DR.K.B.SURESH, MEMBER (JUDL.))

Heard the matter. The applicant whose name is K.Sundar Raj had joined Army on 11.3.1987. Thereafter in 1989 he was sent along with Indian Peace Keeping Force to Srilanka where he claims that he suffered bullet injury in chest and arm during Army operation. He was admitted at Command Hospital at Bangalore and at that time he admits that he had deserted from duty and process was taken against him.

2. Now the applicant would submit that his elder brother K.Raja who had worked in the Army as a Naik and got out of it in the year 2001 along with his other brother K.Pushpa Raj who was a Sepoy in the Army from 15.04.1978 to 10.05.1982 when he was discharged on medical grounds advised him that there is a possibility of getting a job with the respondents as a Groundsman if he will impersonate him as K.Pushpa Raj.

3. It is an admitted case of the applicant also that he had in fact impersonated K.Pushpa Raj and had obtained job in the respondents' department. Thereafter his case seems to be that his elder brother K.Raja gave a complaint of his impersonation to the respondents and at that time it had come to the notice of the respondents his impersonation. Apparently the applicant would now plead that he was dismissed from Army service on the ground of desertion from the Army and in a process before the Armed Forces Tribunal he had challenged it successfully, his dismissal on 9.4.1994. However that matter is not germane to the present issue and therefore we need not consider it any more. If he was reinstated back into the Army or not is a matter for that department to take it and decide. We will not go into that

aspect.

4. Now the case put forth by the applicant is that there is a distinction now. The applicant had thereafter changed his name from K.Pushpa Raj to his original name of K.Sundar Raj and vide a Gazette notification it was affected in 1997. After that the applicant had got an opportunity for career progression and therefore he had underwent Limited Departmental Competitive Examination in the department and following this he was considered and appointed as Electrician but it is in the new name of K.Sundar Raj which is actually his original name. The case of the applicant now is that since he had assumed to his earlier persona, the earlier infraction which is alleged against him is no more relevant at all.

5. Shri Rao, on the other hand, relies on several Supreme Court judgments. But we found that they may not be relevant at all to this issue. **The issue is only that when a person applies for an appointment under governance system and selected on certain parameters offered by himself, he owes a responsibility to the concerned department as also his competitors in the field. If a person is selected on the basis of certain parameters espoused by him and found to be incorrect he thereby tarnishes the chances of being selected to the others. He by his impersonation imposed a heavy burden on the respondents.** At this point of time, the Annexure-A17 is brought to our notice. Apparently, the Armed Forces Tribunal held that because of injury suffered by the applicant, he may be eligible for real discharge benefits and need not be dismissed. That we will leave it to them. But the very fact that the applicant has impersonated his elder brother and using this parameter which has a juncture of only with the elder brother obtained an employment with the Government has defeated the competitive,

general public as well as the department. The fact that he has changed his name once again to K.Sunder Raj will not improve his case at all as the infraction in morality had already been committed and vitiated and created a cloud against him. **Therefore, there is no justifiable ground on which the charges can be challenged at any stage as especially the applicant had admitted that he is guilty of impersonation.** The respondents are eligible to go ahead and pass an appropriate order on the basis of that admission made in the Court. Whatever technical device he had adverted to at a later stage in 1997 of changing his name will not detract and retract from the infraction as originally committed as impersonation stands proved by his own admission in Court.

6. The applicant had approached the Tribunal with unclean hands and great deficit in morality. The fact that the applicant had admitted it and infraction stands proved will not detract and retract from the action of the applicant. Even though under the constitutional process, any person has a right to approach the Court. The imposition he has made on the competitors which he had raised against him at that point of time will not be washed away. Therefore, there are twin elements of that issue. One is the diminishment he had caused to the department and second one the diminishment he had caused to others like him who has suffered prejudice due to his impersonation in the selection. Unless the Court of Law has rightfully adjudicated this and take sufficient note of this information, they fail fundamentally in their responsibility. Therefore, we hold that there is no merit in the cause alleged by the applicant and it is also vitiated by the clouds of diminishment brought in deliberately by the applicant on other competitors as well. But at this point of time we cannot order restitution for the very simple reason that we are not aware as to what happened in 6.11.1990 when the applicant was selected.

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There is no point in going 28 years back to find out who had lost out, because they cannot be adequately compensated. But then such immoral and unethical conducts must be reasonably tempered and acted upon to prove as a deterrent. The vexatiousness of applicant's contention is beyond belief. The OA is therefore dismissed with the cost of Rs.50,000/-.

7. At this point of time, Shri Kulkarni submits that the cost should be reduced. We disagree with it for the simple reason that the applicant had deliberately denied the sustenance and livelihood to a more competent person than him which cannot be restituted at that time or now . His own imposition necessarily visit the applicant with some consequences otherwise justice delivery system and constitutional governance fails. The cost of Rs.50,000/- is confirmed. If the cost is not paid to the 1st respondent by the applicant within one month, they are at liberty to approach the concerned Deputy Commissioner who will coercively elicit the amount, subsequent interest and costs as a crown debt and pay it over to the respondents as soon as possible.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

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Annexures referred to by the applicant in OA.No.170/00451/2018

- Annexure-A1: Charge memo dtd.10.4.2018
- Annexure-A2: Applicant's letter dtd.10.4.2018 to R-3
- Annexure-A3: R-3's letter dtd.17.4.2018 to applicant
- Annexure-A4: Complaint dtd.22.11.2017 made by applicant's brother K.Raja through his Advocate
- Annexure-A5: Applicant's reply to the Fact Finding Committee submitted on 23.2.2018
- Annexure-A6: Fact Finding Committee report
- Annexure-A7: Applicant's letter dtd.18.4.2018 to respondent No.3
- Annexure-A8: R-3's letter dtd.20.4.2018 to applicant
- Annexure-A9: Applicant's letter dtd.26.4.2018 to R-3
- Annexure-A10: Army authority communication dtd.12.1.18 to SAI, Bengaluru
- Annexure-A11: Army authority communication dtd.7.2.2018 to SAI, Bengaluru
- Annexure-A12: Letter td.25.7.1998
- Annexure-A13: Electrician wireman certificate dtd.17.2.1999
- Annexure-A14: Call letter to the applicant issued on 20.11.2001
- Annexure-A15: Office order No.372/2001 dtd.26.11.2001 appointing the applicant as Electrician
- Annexure-A16: Applicant's statement dtd.23.2.2018 before Fact Finding Committee
- Annexure-A17: Copy of the order dtd.21.9.2017 in OA.56/2017 passed by Army Forces Tribunal Regional Bench Kochi Circuit Bench at Bengaluru
- Annexure-A18: Copy of the representation dtd.17.10.2017 made by the applicant to the Army Authority
- Annexure-A19: Copy of the speaking order dtd.10.3.2018 passed by Corps of Military Police Records
- Annexure-A20: Copy of the ruling of the Apex Court reported in (2005) 6 SCC 636

Annexures with reply statement:

- Annexure-R1: Copies of letter dtd.07.02.2018 forwarding service details by Army Medical Corps Record Office, ID card-Ex-servicemen, Pensioner's ID card, Aadhaar Card of Late K.Pushparaj
- Annexure-R2: Copy of Gazette of India dtd.12.07.1997

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Annexure-R3: Copy of service particulars of K.Pushparaj

Annexure-R4: Copy of transfer certificate No.4123 of K.Pushparaj

Annexure-R5: Copy of Fact Finding Committee's report dtd.01.03.2018

Annexures with rejoinder:

-NIL-

Annexures with additional reply statement:

-NIL-

Annexures with additional rejoinder:

-NIL-
