

(2012) 12 GUJ CK 0111

In the Gujarat High Court

Case No : Special Civil Application No. 13908 of 2005

Amanullah H. Mutwa

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 03-12-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227

Citation : (2012) 12 GUJ CK 0111

Hon'ble Judges : V.M. Sahai, J;S.G. Shah, J

Bench : Division Bench

Advocate : P.H. Pathak, for the Petitioner No. 1, for the Appellant; Shakeel A. Qureshi, Advocate for the Respondent Nos. 1 - 3, for the Respondent

Judgement

Honourable Mr. Justice S.G. Shah

1. The petitioner herein has challenged the judgment and order dated 23/7/2004 passed by the Central Administrative Tribunal, Ahmedabad [hereinafter referred to as "CAT"] in Original Application No. 218/2001, preferred by the petitioner; against the order and decision of the Disciplinary Authority and Appellate Authority of the respondents imposing the penalty of removal from service with immediate effect. The brief facts of the petitioner's case as well as litigation till date may be summarized as under.

1.1. It is the case of the petitioner that he was appointed as Extra Departmental Branch Post Master [hereinafter referred to as "EDBPM"] at village Gorevali in Kutch in the year 1979 and was performing his duties satisfactorily. That he was served with a memo of charges alleging that he had produced false certificate about his educational qualification and date of birth and thereby violated the provisions of the rules for appointment of EDBPM. That the petitioner has defended such charges mainly on the ground that he has not submitted any false certificate and demanded the copies of several documents from the Department. However, it is his case that ignoring his defence, the Disciplinary Authority has decided to impose punishment of removal from service by order dated 4/2/1999.

Aggrieved by such order, petitioner has preferred an appeal before the respondent no. 2 on, 27/3/1999 - 28/6/1999, but the same was also rejected by an order dated 29/11/1999, which was conveyed to the petitioner by letter dated 9/12/1999. The record shows that such orders were challenged before the CAT by preferring Original Application No. 218/2001 by the petitioner, which was also dismissed by the impugned judgment and order dated 23/7/2004.

2. The present petition is, therefore, preferred under Articles 14, 16, 226 and 227 of the Constitution of India in the month of March 2005, wherein rule was issued on 11/7/2005. Affidavit-in-reply is filed by the respondents in the month of August 2005.

3. By the present petition, the petitioner has prayed to issue an order or writ in the nature of mandamus and/or certiorari or other appropriate writ, order or direction for the declaration that the decision of the CAT in OA No. 218/2001 is illegal, unjust, arbitrary and non-application of mind and thereby the declaration that the decision of the respondents to issue charge-sheet to the petitioner and to impose penalty without production of documents submitted by the petitioner at the time of appointment in the year 1979 is also illegal and thereby to quash and set aside such orders and for specific directions to the respondents to reinstate the petitioner with all consequential benefits.

4. Heard learned advocate Mr. PH Pathak for the petitioner. It is submitted by him that at the relevant time, in the year 1979, since nobody was available for appointment as EDBPM in the village Gorevali, the petitioner was compelled to join the service as EDBPM and that he had served the Department faithfully and without any complaint or dispute till the year 1999 when he was removed from the services by orders which are under challenge. So far as legality of the decision of the respondents is concerned, it is submitted by Mr. Pathak that the initiation of the inquiry after 1989 itself is illegal and unjust, that when respondents have failed to provide requisite documents to the petitioner; which were specifically asked for by the petitioner; it cannot be considered by the Disciplinary Authority, Departmental Appellate Authority as well as CAT that the petitioner has produced false documents at the time of appointment and, therefore, order of removal is illegal and unjust.

4.1. It is further submitted that the Department has failed to prove the existence of false documents and submission of false document by the petitioner at the time of initial appointment and, therefore, the inquiry itself is illegal and on the same count, the decision of removal from service is illegal.

5. As against that, learned advocate Mr. SA Qureshi for the respondents has submitted that the Department has started an exercise to make the departmental information in order and to regularize the EDBPM in the year 1988 and hence the information was called for from all the EDBPMs. In continuation of such process, it has been noticed by the Department that the petitioner has disclosed false information and, therefore, if he has submitted some documents

at the relevant time, the same are required to be scrutinized and, therefore, the Department has initiated an inquiry from the school authorities, whereby it has been noticed that so far as the present petitioner is concerned, the information disclosed by him at the time of his initial appointment in the year 1979 with reference to his date of birth and educational qualification are not correct in as much as the real date of birth of the petitioner as per the record of the school is 12/3/1950. The date of birth disclosed to the Department by the petitioner is 2/8/1953. Similarly though as per school record, the petitioner had not studied beyond 4th standard, the information disclosed to the Department by him at the time of appointment is such that he has studied upto 7th standard. Therefore, it is submitted that since such information is vital information for appointment of EDBPM and since such information is false, considering it as a violation of service rules, departmental inquiry was initiated, proper opportunity was given to the petitioner to explain and to prove the fact, but since the petitioner has failed to prove his innocence and since the petitioner infringed the provisions of rule 17 of the EDA [Conduct and Service] Rules, 1964, it was decided by the Competent Authorities to remove him from the service, which order was confirmed throughout the proceedings and hence prayed to dismiss the petition.

6. Before we discuss the rival contentions of both the sides and scrutinize the pleadings and evidence on record, it transpires that though the affidavit-in-reply is filed on record in the year 2005, annexed with almost all relevant documents, petitioner, who is challenging his termination order, has not bothered to negativate any such document or any other information in the form of pleadings and documents on record, which otherwise bears his own signature and information pertaining to his services with the respondents. Therefore, so far as such pleadings and documentary evidence are concerned, there is no other option but to consider the same, which is otherwise permitted in law by taking adverse inference in absence of any other evidence on record. Such observation is required for the simple reason that though on one hand the petitioner himself has stated in his petition that he was appointed as EDBPM as per rules, he also pleaded that nobody was available for appointment to handle the post office in the year 1979 and, therefore, he was appointed as such and such story was also admitted by the respondents in their reply. Therefore, in absence of any contrary evidence on record, there is no reason to disbelieve the documentary evidence, which is on record right from departmental inquiry and on record of this petition since 2005 and which are never denied by the petitioner except in oral argument at the time of final hearing.

7. On merits, if we scrutinize the facts and evidence on record, it transpires that though the petitioner was in service since the year 1979 as EDBPM, the Department has in the year 1988 called for basic information of all EDBPMs by their letter No. PF/BPM/88 dated. 14/4/1988 [Annexure-B to affidavit-in-reply]. In response to such inquiry, the petitioner has filled up and submitted a form on 20/1/1989 with his signature disclosing details as asked for by the Department, wherein he has disclosed his date of birth as 2/8/1953 and educational

qualification as standard 7 pass. An attempt was made by Mr. Pathak to state that such information was not disclosed by the petitioner. However, it cannot be accepted for the simple reason that in the said form at page 75, the person has to disclose the name of the languages which he can read, write or speak and against such column no. 5, languages, namely Gujarati, Hindi, Urdu and Sindhi are disclosed as known by the petitioner, as the languages which the petitioner can read, write and speak. Thus, it cannot be said that all such detailed information was not disclosed by the petitioner in response to the inquiry made by the Department. It has come on record that since the Department has found that some information may not be correct, they have initiated an inquiry and deputed one Mr. JM Antani, M.O. No. 1 of East Division of the respondents to verify the contents of the details submitted by the EDBPMs and said Mr. Antani has submitted his inspection report on 19/8/1993 after visiting the school of Gorevali, that as per xerox copy of leaving certificate submitted by the petitioner, the date of birth shown was 2/8/1953; whereas as per school record, it is 12/5/1950 and that in such school leaving certificate, though it is stated that the petitioner has studied upto standard 4, in the xerox certificate submitted by the petitioner, it is stated that the petitioner has studied upto standard 7. Even as per school record, it is clear that the petitioner has studied only upto standard 4. Relying on such discrepancy and statement of the petitioner himself recorded on 16/10/1993; which is produced at Annexure-C with affidavit-in-reply; before Sub Divisional Inspector, Bhuj East, wherein the petitioner has categorically stated that "my school leaving certificate which is produced in your office in which my educational qualification shown as standard 7 and the date of birth shown as 02/08/1953, actually I had passed standard 4 and my correct date of birth is 12/05/1950. The above mentioned certificate was wrongly issued by the school. So, I am once again stating that I am only standard 4 pass and my date of birth is 12/05/1950 and as supporting evidence, I am giving duplicate copy of my school leaving certificate." Such statement was recorded by the Sub Divisional Inspector in presence of witness, namely Isha M Mutva and signed by both, the petitioner and the witness; therefore, submission made by Mr. Pathak that such statement was taken with pressure or coercion cannot be accepted, more particularly in absence of any such pleadings on oath on record for last more than seven years, on behalf of the petitioner.

8. It seems that relying upon such inquiry and statement, charge-sheet was issued on 18/9/1995 for taking action against the petitioner under Rule 8 of EDA [Conduct and Service] Rules, 1964 and statement of amputation of misconduct was enclosed with such charge, stating that the petitioner has furnished false information in connection with his date of birth and educational qualification and, therefore, it is believed that he has prepared and submitted false school leaving certificate and tried to secure appointment on the post of EDBPM irregularly though he was not eligible and, therefore, he has failed to maintain absolute integrity and devotion to duty and thereby violated the provisions of Rule 17 of EDA [Conduct and Service] Rules, 1964.

9. The contention of the petitioner that the departmental inquiry and punishment is illegal because he was not supplied with the relevant documents is also negated since the Department has vide their letter No. B3/Disc./Gorewali/95 dated 30/10/1995 forwarded copies of 10 documents to the petitioner by Regd. Post A.D., and acknowledgment of such Regd. Post is also produced on record at Annexure-A and A-1 respectively. So far as non-supply of some of the documents is concerned, the letter dated 13/12/1988 at Annexure-B1 confirms that some of the documents like joining charge report and order as well as appointment order were not available on record and, therefore, the same were not provided to the petitioner. The fact remains that because of non-availability of particular record and information, the Department has initiated an inquiry and called upon all such information not only from the present petitioner, but all the EDBPMs and in response to such inquiry, when the petitioner has submitted a duly filled in form on 20/1/1989 and thereafter, when the Department has found that the information submitted by the petitioner is not correct and when the petitioner himself has admitted such facts in his statement dated 16/10/1993, now the petitioner cannot blame the Department by stating that the Department has not provided him requisite information and he was not at fault in disclosing such improper information and thereby the petitioner cannot claim reliefs as prayed for throughout the proceedings.

10. The fact remains that the information which is found to be improper, namely date of birth and educational qualification, is very well within the personal knowledge of the petitioner himself since it is his own date of birth and it is his own educational qualification and, therefore, there is no reason for the Department to disclose something different than the information which is submitted by the petitioner to the Department. Therefore, the statement dated 16/10/1993 of the petitioner before the Sub Divisional Inspector, Bhuj East that actually he has passed standard 4 and his correct date of birth is 12/5/1950 is to be believed without any hesitation and once there is admission by the petitioner himself about the correctness of the documents already produced by him, now he cannot claim benefit of his own wrong.

11. The petitioner has relied upon the following decisions :

[i] State of Andhra Pradesh Vs. N. Radhakishan, ,

[ii] K.B. Trivedi Vs. State of Gujarat ,

[iii] Bhartiya Seva Samaj Trust Tr. Pres. and Another Vs. Yogeshbhai Ambalal Patel and Another, .

12. So far as the decision in the case of K.B. Trivedi's case [supra] is concerned, it is solely based and relied upon the decision rendered in the case of N. Radhakishan [supra] and, therefore, they can be dealt with together. Before discussing said judgments, it would be at advantage to refer to the latest judgment of the Hon''ble Supreme Court of India rendered in the case of The Secretary, Min. of Defence and Others Vs. Prabhash Chandra Mirdha, . In such

latest judgment, the Hon"ble Supreme Court has considered several decisions relating to disciplinary proceedings and crux of several judgments including judgment of N. Radhakishan [supra] is narrated in para. 9 as under :

9. Law does not permit quashing of chargesheet in a routine manner. In case the delinquent employee has any grievance in respect of the chargesheet he must raise the issue by filing a representation and wait for the decision of the disciplinary authority thereon. In case the chargesheet is challenged before a court/tribunal on the ground of delay in initiation of disciplinary proceedings or delay in concluding the proceedings, the court/tribunal may quash the chargesheet after considering the gravity of the charge and all relevant factors involved in the case weighing all the facts both for and against the delinquent employee and must reach the conclusion which is just and proper in the circumstance.

Therefore, the contention of the petitioner cannot sustain that merely because there is delay in issuing charge-sheet, departmental inquiry cannot be continued. However, if we scrutinize both cited decisions, the fact becomes clear that in said cited cases, the delay was attributed to some improper or irregular activities by the delinquents during their regular duty as such. Whereas in the present case, practically there is no delay in as much as when the Department has started to make their record in order and called for certain information from the delinquent and when such information was found improper, it was confirmed to the Department only after 1993 that the petitioner has submitted false documents and, therefore, charge-sheet issued in the year 1995 could not be said to be delayed, as observed in the cited cases. Moreover, the latest judgment of the Hon"ble Supreme Court has specifically clarified that law does not permit quashing of the charge-sheet in a routine manner. It has been clarified by the Hon"ble Supreme Court that for quashing the charge-sheet, only delay is not to be taken into consideration, but gravity of charge and all relevant factors involved in the case weighing all facts both, for and against the delinquent - employee, shall be taken into consideration. Therefore, cited cases are not helpful to the petitioner to get the reliefs, as claimed.

13. So far as judgment rendered in the case of Yogesh Ambalal Patel's case [supra] is concerned, learned advocate Mr. Pathak has referred Head Note B and argued that the Department cannot take benefit of their own wrong when they have appointed any person relying upon the information submitted to them, practically goes against the petitioner himself in as much as the fact before us are such that if we believe the story as it is, then in fact the Department has relied upon the improper information submitted by the petitioner that his date of birth is 2/8/1953 and that he has passed 7th standard, while appointing him on the post of EDBPM; whereas on scrutiny, it has been found that his date of birth is 12/5/1950 and he has not cleared standard 7th, but he has studied only upto standard 4. Therefore, practically, this citation also goes against the petitioner himself that one cannot take benefit of his own wrong. Moreover, the petitioner

has never alleged and thereby never proved that there is any malice or discrimination or victimization of the petitioner, which were the grounds for which Hon"ble Supreme Court has decided accordingly in such cited judgments and, therefore, such judgments are not helpful to the petitioner in any manner.

14. The judgment of Hon"ble Supreme Court rendered in the case of Daya Shankar Yadav Vs. Union of India (UOI) and Others, confirms that when somebody has clearly suppressed the material fact and thereby made a false statement, even assuming that there was ambiguity in the record, but when such information was required to be furnished by the declarant, it is to be believed that the declarant has knowingly made a false statement and, therefore, order of termination of service of the employee delinquent was confirmed, by the Hon"ble Supreme Court. Though factual details may be different in such reported case and in the present case, the sum and substance of the cited cases is clear that if somebody had knowingly made a false statement about his own details, then his termination under the relevant rules cannot be quashed.

15. It is rightly observed by the CAT that this is not the case of improper appointment, which has been terminated, but it is a case of departmental action having been initiated for furnishing false information and producing false documents.

16. Even otherwise the CAT has considered all the relevant aspects and all relevant documents available on record in proper manner and we do not find any irregularity or illegality in the judgment and order of the CAT, which is impugned herein for quashing the termination of the petitioner which had taken place in the year 1999. Thereby there is no reason for this Court to interfere with the findings, which are against the petitioner throughout the proceedings, in the proceedings under Article 226 or 227 of the Constitution of India since there is no irregularity or illegality and the impugned order is just and proper. Nothing further was submitted by the petitioner.

17. In view of the above facts and circumstances of the case and discussion, there is no merits in the arguments and petition by the petitioner to quash his order of termination and impugned order of CAT, which results into nothing but dismissal of this petition. In the result, the petition is dismissed. Rule is discharged. However considering the status of the litigant, there is no order as to costs.