
(2003) 08 AHC CK 0020
In the Allahabad High Court
Case No : C.M.W.P. No. 31746 of 1997

Arvind Kumar Rai

APPELLANT

Vs

U.P. Public Service Commission and Another

RESPONDENT

Date of Decision : 08-08-2003

Acts Referred:

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

Citation : (2003) 6 AWC 4615

Hon'ble Judges : Umeshwar Pandey, J;A.K. Yog, J

Bench : Division Bench

Advocate : Ajay Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

Umeshwar Pandey, J.—The Petitioner, Arvind Kumar Rai, a candidate initially declared successful in the Combined State/Upper Subordinate Services (Main) Examination, 1991, has approached this Court under Article 226 of the Constitution of India with a prayer to quash the orders passed by Respondent No. 1, U.P. Public Service Commission (hereinafter referred to as the "Commission") dated 2.12.1996 (Annexure-5) and dated 10.6.1997 (Annexure-7) whereby his candidature to the aforesaid examination was cancelled and his representation for review of the said order was rejected.

2. In short, the facts are that the Petitioner, after having been finally, selected and declared successful as per the Press Release (Annexure-1) of the Commission to the aforesaid examination was waiting for his letter of appointment to be issued from the State Government on this basis of rank held by him in the merit. He was expecting his appointment on the post of District Commandant, Home Guard. His medical examination as per the rules was also conducted on 9.8.1994 and he was found medically fit for such appointment. He, however, did not receive appointment letter and, on inquiry, it was gathered that the juniors in the merit had received appointment letters. He, thereafter, made inquiries but did not receive any reply, either from the State Government or from

the Commission. Ultimately, in August, 1996 he received a show cause notice (Annexure-3) from the office of Commission stating that he deliberately concealed informations regarding his having been held guilty for the offence of murder, etc. during trial before the court of II Ird Additional Sessions Judge, Azamgarh. He knowingly did not fill up the Column 15 (Ka) of the application form for his candidature to the examination and also he did not fill up and give the aforesaid information as required in Column 11 (Ka) of the attestation form which he was required to fill before appearing in the interview of the combined examination. He was asked to explain the circumstances under which he concealed the information of his involvement in the murder case and of having been held guilty for the same by the trial court. Upon receiving the aforesaid notice, the Petitioner sent his reply (Annexure-4), but the Commission having not been satisfied with the explanation, cancelled his candidature for the aforesaid combined examination of the year 1991, vide impugned order dated 2.12.1996 (Annexure-5). Later on, when the Petitioner made a representation (Annexure-6) before the Commission, that too did not find favour with Respondent No. 1 and the same was rejected by the impugned order dated 10.6.1997 (Annexure-7) ; hence, this petition.

3. The Commission, Respondent No. 1 has filed counter-affidavit and disputed the bona fide of the Petitioner in the whole affair. It is stated in the counter-affidavit that the Petitioner not only concealed the information of his involvement in the murder case and his subsequent conviction on having been found guilty for those offences by the trial court but he also concealed his permanent residential address of village Haraiya, Police Station Jiyanpur, District Azamgarh by deliberately giving incorrect address of his permanent residence being EWS-32, Muirabad, A.D.A. colony, Allahabad in the application form. The facts of Petitioner's involvement in the criminal case and his subsequent conviction by the trial court had come to light only on a complaint received in the Government. It was further stated on behalf of the Commission that in the attestation form, which is filed by the candidate before his interview, a certificate was required to be given. The Petitioner signed the said certificate stating that the informations, which he has furnished in the attestation form, were wholly correct though he had left blank the relevant Column 11 (Ka) of the said form which required the Petitioner to give information, if he has been prosecuted, kept in detention, bound, fined or has been held guilty for some offence by the Court. By leaving the said column blank, the Petitioner had deliberately withheld the aforesaid information of his involvement in the criminal case and later on conviction recorded by the trial court.

4. On receiving the complaint of the aforesaid concealment, etc. about the Petitioner's involvement in the criminal case the same was sent by the Commission to the Government. The State Government thereafter sent back the complaint to the Commission (Respondent No. 1) to take decision in the matter for cancellation of candidature of the Petitioner. On scrutiny of the facts and circumstances and on obtaining explanation of the Petitioner, the Commission

was of the opinion that in view of the entire episode of concealment of important facts relating to Petitioner's involvement in the criminal case and his having been found guilty for the offences of murder etc. by the trial court, his candidature should be rejected and thereafter only the impugned order was passed and communicated to the Government and the Petitioner.

5. We have heard the learned Counsels Sri Arun Tandon for the Petitioner. Sri Pushpendra Singh for Respondent No. 1 and learned standing counsel for Respondent No. 2.

6. It has been contended on behalf of the Petitioner that he had been declared successful after written Examination and interview etc. for the aforesaid Combined State Services Examination of 1991 ; he was also found medically fit at the medical examination and was just by inadvertence that the Petitioner while filling his form of the said examination, left Column 15 (Ka) blank which required the candidate to give information of his involvement in a criminal case or his trial or conviction before a criminal court. The learned Counsel for the Petitioner has further contended that in the same manner because of inadvertence only the attestation form which the Petitioner had filled before his interview, Column 11 (Ka) was left blank. He gave full justification of leaving the said column blank in his explanation submitted to the Commission while replying to the show cause notice. The learned Counsel for the Petitioner has further tried to stress that the Petitioner, when came to know of the mistake of leaving the columns blank, he volunteered entire information of his involvement in the criminal case and subsequent court verdict holding him guilty in the said case, to the Commission vide his letter dated 21st July, 1994. It is urged that these events show and reflect bona fides of the Petitioner.

7. In support of the aforesaid, the learned Counsel for the Petitioner has placed reliance upon the case of Commissioner of Police, Delhi and Anr. v. Dhaval Singh AIR 1999 SC 2326. With the aid of the aforesaid case law, it is further submitted that since the Petitioner has been finally acquitted in the criminal case by the appellate court by its judgment dated 3.2.2003, the matter does not remain any more serious as to justify the passing of impugned orders of the Commission whereby Petitioner's candidature to the aforesaid examination of the Combined State Services was cancelled.

8. In order to ascertain as to what is what in the whole episode of the concealment of facts about involvement of the Petitioner in criminal case and his subsequent declaration as proved guilty in the murder trial, we preferred to summon the original record of the case of the Petitioner available with the Commission which is produced by the learned Counsel for the Respondent No. 1. We have perused the whole record and found that Column No. 15 (Ka) of the application form which was initially filled by the Petitioner himself, has been left blank. This column requires a candidate to give information about his ever having been punished in any criminal case by a Court. Likewise Column 11 (Ka) of the attestation form, which is filled by the candidate on 2.1.1994 (before his

interview which took place on 3.1.1994) also requires him to give information if he was ever arrested, prosecuted, kept in detention, bound, fined or found guilty by a Court or not. This column does not find any reference given by the Petitioner and has been left blank. Likewise in this attestation form itself, the Petitioner was required to give a certificate if there was any circumstance, which could render him unsuitable for any post/service in the Government.

9. For convenience relevant extracts of Application Form and Attestation Forms are reproduced:

other language

10. From the facts narrated above, it is also clear that the criminal case against the Petitioner had been initiated, rightly or wrongly, on the basis of First Information Report (15.6.1986) of murder case lodged against him. He was facing trial of the said murder case in Sessions Trial No. 286 of 1986 before the II Ird Additional Sessions Judge, Azamgarh. This trial concluded and final judgment of conviction against the Petitioner was rendered on 15.2.1990. It is, therefore, more than obvious on the record that the Petitioner was involved in the said criminal case since 1986. This being a murder case, it goes without saying that the Petitioner must have also been detained before his enlargement on bail in the case and also on his having been found guilty by the trial court at the time of delivery of judgment. The Petitioner could have got his bail order from the appellate court only after some time when his appeal would have been entertained in this Court. Obviously, during the intervening period, he must have been under detention. These are such facts, which were to be necessarily given by the Petitioner when he filled up his form for the aforesaid Combined State Services Examination (Civil), 1991. Explanation offered by the Petitioner and claim of his bona fide (in not mentioning these facts of his involvement and detention etc. in the criminal matter in his application form to the aforesaid Combined State Services Examination and his attestation form filled before the interview of such examination), to our mind, are not at all acceptable.

11. Learned Counsel for the Petitioner has given lot of emphasis while pleading the Petitioner's claim of bona fide in the matter, upon his voluntary information given to Respondent No. 1 detailing all these facts vide his letter-dated 21.7.1994.

12. We have gone through the original letter of the Petitioner, which forms part of the Commission's record placed before us by the learned Counsel for Respondent No. 1. It is an one-page letter disclosing the facts about his false involvement in the murder case in which he was held guilty by the trial court vide judgment dated 15.2.1990. The Petitioner could venture giving this information to the Commission only when he had obtained an order of this Court dated 19.7.1994 whereby the operation of the judgment of conviction, recorded against him, had been stayed in Criminal Appeal No. 341 of 1990. Though the appeal was preferred way back in the year 1990, the stay of the operation of the order

of conviction rendered by the trial court, was obtained only on 19.7.1994 and that too in view of this pending consideration of selection made by the Commission, as is evident from the reading of the said Order of this Court. This itself reflects adversely to the claim of bona fide of the Petitioner. The order of the Court was obtained by moving an application to that effect when the Petitioner had been declared successful at the Combined State Civil Services Examination through a published notification in the news paper dated 14.2.1994. It is quite obvious that the Petitioner had become conscious after he found himself successful in the aforesaid examination, that his criminal back-ground which had existed till then would come to light and put him in adverse situation, more specially in view of the fact that he had concealed by omitting relevant facts well within his knowledge which he was required to mention in the aforesaid relevant columns of the examination form and also the attestation form. This act of the Petitioner, viz., not giving information of his involvement in the criminal matter, instead of proving his bona fide, goes to project his ulterior motive and crafty approach to the whole matter. While going through the attestation form filled by the Petitioner, we have noticed that the certificate which he gave in that form is to the effect that he was not aware of any fact or circumstance, which could adversely affect his suitability for the appointment to a post/service in the Government. This certificate given by the Petitioner in fact renders him wholly unsuitable for appointment to any post in the Government, much less a gazetted post in question. The Petitioner was in full know of his involvement in a murder case in which he had been found guilty after conclusion of trial before the Additional Sessions Judge, Azamgarh. By that time, the order dated 19.7.1994 of this Court staying the operation of the judgment of conviction had not been obtained by him in his Criminal Appeal No. 341 of 1990.

13. It is not at all expected of a candidate applying for a gazetted post in the Government to misrepresent or conceal an important fact, which was otherwise expected to be prejudicial against a candidate and was required to be disclosed in the application form and/or attestation form. Giving false certificate by such a candidate while appearing in the interview to be held for such examination, actually cannot be justified by any set of facts or circumstances and also cannot be interpreted showing it to be leaning to the bona fides of the candidate. This type of conduct of a candidate at such juncture not only renders him wholly unsuitable for selection and recommendation for the appointment to the gazetted post, but it may also render him liable to graver consequences.

14. The learned Counsel for the Petitioner has also given much stress upon the fact that the appellate court has ultimately declared the Petitioner innocent and has finally rendered the judgment of acquittal in the Criminal Appeal No. 341 of 1990. Since the Petitioner has been found innocent, the whole criminal charges stood washed out and on that basis the Petitioner's career should not be left to ruin. He has tried to emphasise that in the identical facts situation, the Apex Court had propounded theory of leniency in the case of Commissioner of Police, Delhi (supra) and the benefit of the same should be extended to the Petitioner

also.

15. We have very carefully gone through the judgment of the Apex Court in the aforesaid case of Commissioner of Police, Delhi (supra). The learned Counsel for the Petitioner relies on following paragraphs 5 and 6:

5. That there was an omission on the part of the Respondent to give information against the relevant column in the Application Form about the pendency of the criminal case is not in dispute. The Respondent, however, voluntarily conveyed it, on 15.11.1995, to the Appellant that he had inadvertently failed to mention in the appropriate column regarding the pendency of the criminal case against him and that his letter may be treated as "information". Despite receipt of this communication, the candidature of the Respondent was cancelled. A perusal of the order of the Deputy Commissioner of Police cancelling the candidature on 20.11.1995 shows that the information conveyed by the Respondent on 15.11.1995 was not taken note of. It was obligatory on the part of the Appellant to have considered that application and apply its mind to the stand of the Respondent that he had made an inadvertent mistake before passing the order. That, however, was not done. It is not as if information was given by the Respondent regarding the inadvertent mistake committed by him after he had been acquitted by the trial court it was much before that. It is also obvious that the information was conveyed voluntarily. In vain, have we searched through the order of the Deputy Commissioner of Police and the other record for any observation relating to the information conveyed by the Respondent on 15.11.1995 and whether that application could not be treated as curing the defect which had occurred in the form. We are not told as to how that communication was disposed of either. Did the competent authority ever have a look at it, before passing the order of cancellation of candidature? The cancellation of the candidature under the circumstances was without any proper application of mind and without taking into consideration all relevant material. The Tribunal, therefore, rightly set it aside. We uphold the order of the Tribunal, though for slightly different reasons, as mentioned above.

6. Learned Counsel for the Appellants has drawn our attention to a judgment rendered by a Bench of this Court on 4.10.1996 in C.A. No. 13231 of 1996. On the first blush, that judgment seems to support the case of the Appellants but there is a material difference between the two cases. Whereas in the instant case, the Respondents had conveyed to the Appellant that an inadvertent mistake had been committed in not giving the information against the relevant column in the Form much before the cancellation of his candidature. In Sushil Kumar's case, no such correction was made at any stage by the Respondent. That judgment is, therefore, clearly distinguishable on facts.

16. From the perusal of fact of the case before the Apex Court, it is evident that the Petitioner had applied for the post of constable in a special recruitment and while filling his form, he had left to mention his involvement in a criminal case of rioting and marpeet of which the trial was going on. Later on after he got

selected, he intimated the aforesaid facts of his involvement in the criminal case.

17. Here, the case at hand before us, the fact situation is quite different. It is not only that the Petitioner had left to mention the pendency of criminal case against him, but had deliberately concealed the fact that in the said criminal case he had already been convicted by the Court of Sessions Judge and in that connection, he was also under detention in the lock-up/jail for some time. In addition to this deliberate concealment of fact, he while going to appear for the interview held for such merit examination, he gave a deliberate false certificate in the attestation form. This certificate submitted by him to the Commission was wholly misleading for which the Petitioner cannot have any excuses. So are not the facts of the case of Commissioner of Police, Delhi (supra). The Petitioner thus, cannot seek any help from the aforesaid case law, which is clearly distinguishable on facts from this case.

18. As a matter of fact, we are convinced that the Petitioner has absolutely no bona fide in the present matter which could entitle him to obtain a discretionary relief under Article 226 of the Constitution of India, against the impugned orders whereby his candidature to the Combined State Services Examination (Civil) of the year 1991, had been cancelled.

19. The petition is devoid of merits and is hereby dismissed.

20. No order as to costs.