

(2009) 11 MP CK 0062
In the Madhya Pradesh High Court
Case No : W.A. No. 705 of 2007

Ashok Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-11-2009

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 11
Central Reserve Police Force Act, 1949 — Section 11(1)
Central Reserve Police Force Rules, 1955 — Rule 14(B)
Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 56, 94
Juvenile Justice Act, 1986 — Section 17, 18, 19, 2, 22
Penal Code, 1860 (IPC) — Section 294, 323, 325, 34, 452

Citation : (2010) 1 Crimes 596 : (2010) ILR (MP) 326 : (2010) 2 JLJ 231 :
(2010) 1 MPLJ 380

Hon'ble Judges : Abhay M. Naik, J;A.P. Shrivastava, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Abhay M. Naik, J.

This appeal has been preferred against the order dated 8.10.2007 passed by the learned Single Judge of this Court in W.P.S. No. 653/03.

Short facts relevant for the purpose of this appeal are that the Petitioner was bonafide resident of dacoity affected area of District Bhind with 5.3.1979 as his date of birth. A report was lodged with the police against various family members of the Petitioner including him in respect of an offence alleged to have been committed on 18.6.1994. Case No. 56/94 was registered u/s 452, 323 and 325/34 of IPC and a challan was filed before the court of regular magistrate (not Special Magistrate under the Juvenile Justice Act 1986). Petitioner was acquitted on 15.12.1999 as revealed in Annexure P/3. Prior to acquittal, Petitioner was appointed as Constable in Central Reserve Police force in the year 1999 itself. The Petitioner was required to furnish certain information for verification roll in

the format prescribed under Rule 14(B) of the Central Reserve Police Force Rules, 1955. Petitioner was merely a 10th standard passed boy from rural background. He put a mark of "x" before Hindi version of Column 12(a) and put "no" before English version, which is reproduced below:

Have you ever been arrested, prosecuted, kept under detention or bound down/ fined, convicted, by a court of law for any offence or debarred/disqualified by any Public Service Commission from appearing at its examination/selections, or debarred from taking any examination/rusticated by any University or any other education authority/Institution?

A memorandum dated 18th January 2002 was issued directing thereby an enquiry against the Petitioner for the charge of suppression. Statement of article of charge and imputation of article of charge are contained in Annexure P/4 as Annexures I and II, which are reproduced below:

ANNEXURE -I

STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST No. 991370942 CONSTABLE (GD) Ashok Sharma OF B/125 BATTALION. CRPF.

ARTICLE-I

That the said No. 991370942 Const (GD) Ashok Sharma of B/125 BN, CRPF committed an act of grave misconduct in his capacity as a member of the Force u/s 11(1) of CRPF Act, 1949 read with GOI decision No. 02 below Rule 11 of CCS (CCA) Rules, 1965 in that he managed to get himself enlisted in CRPF fraudulently by suppressing facts that a Criminal case was registered against individual but he suppressed this fact while filing his Character and Antecedents Verification Roll (CRPF Form-12)

ANNEXURE -II

IMPUTATION OF ARTICLE OF CHARGE FRAMED AGAINST No. 991370942 CONSTABLE (GD) Ashok Sharma OF B/125 BATTALION. CRPF.

ARTICLE-I

That the said No. 991370942 CT/GD Ashok Sharma of B/125 BN, CRPF committed an act of misconduct in his capacity as a member of the Force u/s 11(1) of CRPF Act, 1949 read with GOI decision No. 02 below Rule 11 of CCS (CCA) Rules, 1965 in that he managed to get himself enlisted in CRPF fraudulently by suppressing/concealing the facts that criminal case was registered against him the Court of First Class Magistrate, Bhind (M.P.) vide Criminal Case No. 446/97 u/s 56/94 of Code of Criminal Procedure 452, 323, 325/34 of IPC. The case was dropped by the First Class Magistrate, Bhind on 15.12.1999 as it was compounded by the both parties and giving benefit of doubt. His act of fraud came to notice when GC CRPF Shivpuri verified his character and Antecedents from his District Magistrate Bhind. In turn, District Magistrate, Bhind vide his letter No. 0/15/AC/V-117319913324 dated 19.9.00

has confirmed GC CRPF Shivpuri that he has suppressed/concealed the facts in Col No. 12 of Verification Roll. Thus, he committed an act of serious misconduct in misleading the Government by suppressing/concealing the facts at the time of his enlistment while fulfilling the Verification Roll (CRPF Form No. 25).

Petitioner in his reply submitted that he was not able to understand the language and gravity of Column 12 of verification roll. It was clearly mentioned in the reply that the Petitioner was aged 15 years only at the time of alleged criminal incidence. Moreover, the Petitioner having already been acquitted can not be said to have committed any substantial suppression or concealment. An enquiry was conducted by Assistant Commandant. He vide his report dated 22nd March 2002 (Annexure P/5) opined that the Petitioner was merely 15 years old at the time of the alleged criminal incidence and the contents of the Verification Roll might not have been properly understood by him. He being merely a 10th class passed person from rural background and further on account of already having been acquitted, deserves sympathetic treatment. Disciplinary authority on receipt of enquiry report found the charge proved and dismissed the Petitioner from service vide order dated 5th May 2003 (Annexure P/2). Appeal preferred against it having been rejected vide order dated 13th Sept. 2003 (Annexure P/1), Writ Petition under Article 226/227 of the Constitution of India was submitted for quashment of Annexures P/1 and P/2 and for further directions for reinstatement of the Petitioner with consequential benefits including back wages.

Petition was opposed by the Respondents on the ground that the Petitioner had suppressed the factum of his prosecution. He was found guilty of the charge in the enquiry duly conducted under the rules. Thus, the prayer for dismissal of Writ Petition was made.

Learned Single Judge placing reliance on the decision of the Supreme Court of India in the case of Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav, , dismissed the Writ Petition. Being aggrieved, present Writ Appeal is preferred, wherein extensive submissions have been made by the learned Counsel for the parties.

From the aforesaid, it is quite clear that the Petitioner/Appellant was charged with an offence u/s 452, 323, 325/34 of IPC with certain other persons. It is equally established that he was prosecuted, whose non-disclosure in routine course could have been treated as suppression or concealment attracting disciplinary proceeding for misconduct. However, an important factor of this case is that the date of birth of the Petitioner is 5.3.1979, as revealed in the record of Union of India Itself (i.e. employer) and the Petitioner/Appellant was aged less than 16 years at the time of occurrence of the alleged criminal incidence. Appellant according to the record of the Union of India itself, was a juvenile and he could not have been prosecuted except by a Juvenile court. Thus, prosecution of the Petitioner by court of regular magistrate was without jurisdiction. Impact of Juvenile Justice Act, 1986 was not taken into consideration by the disciplinary authority while imposing punishment of dismissal. Since this point was not raised

before the learned Single Judge, it could not come up for consideration. In order to impart justice, we invited both the counsel to address on the effect of the provisions of The Juvenile Justice Act 1986 (for brevity "Act of 1986") and The Juvenile Justice (Care and Protection of Children) Act, 2000 (for brevity "Act of 2000").

Learned Assistant Solicitor General of India for Respondents vehemently opposed on the ground that the plea that the Petitioner was juvenile and could not have been prosecuted by a regular magistrate is not taken at all neither in the writ petition nor in the writ appeal. Therefore, such a new plea can not be permitted to be raised for the first time in the writ appeal. Reliance has been placed on Sayed Muhammed Mashur Kunhi Koya Thangal Vs. Badagara Jumayath Palli Dharas Committee and Others, , Assistant Commercial Taxes Officer Vs. Bajaj Electricals Ltd., , G. Jayashree and Others Vs. Bhagwandas S. Patel and Others, , Bangalore Metropolitan Transport Corpn. Vs. Padma and Others, .

We are not impressed with this contention. It is true that while drafting and preparing the writ petition as well as Writ Appeal no such ground has been taken in specific. However, it can not be ignored that according to the record of Union of India itself as revealed in Annexure R/1, the date of birth of the Petitioner/Appellant is 5.3.1979. According to the record of enquiry, the alleged criminal incidence occurred on 18.5.1994. Thus, the Petitioner at the relevant time was unquestionably a juvenile. No factual dispute is involved in entertaining the said plea. On the contrary, the provisions of the Act of 1986 and the Act of 2000 are to be necessarily taken into consideration while imparting justice in the case of a juvenile against victimization in contravention of the provisions of the said Acts. Section 2(h) of the Act of 1986 defines a "juvenile" as a boy, who has not attained the age of 16 years, or a girl, who has not attained the age of 18 years. Section 23 of the Act of 1986 lays down that notwithstanding anything to the contrary contained in Code of Criminal Procedure 1973, no proceeding shall be instituted and no order shall be passed against a juvenile under Chapter VIII of the said Code. Section 25 further lays down that notwithstanding contained in any other law, a juvenile who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attaching to the conviction of offence under such a law. Petitioner was obviously a juvenile as per the aforesaid definition on the date of alleged criminal occurrence i.e. 18.6.1994 and his prosecution by court of regular magistrate even with other accused was without jurisdiction in view of Section 24, which prohibits joint trial of a juvenile with a person who is not a juvenile. Although the Juvenile Justice Act, 1986 is further repealed by the Act of 2000, Sections 23, 24 and 25 of the earlier Act are virtually retained in spirit in the form of Sections 17, 18, and 19. Object of both the aforesaid acts can not be ignored by not taking into consideration a new plea, which has no involvement of new facts. In our considered opinion, the various citations submitted by the learned Assistant Solicitor General of India do not come in our way to impart justice in the light of the provisions, which are meant for protecting the rights of juveniles.

We may successfully refer here the decision of the Apex Court in the case of Chief Commissioner, Delhi and Others Vs. Federation of Indian Chambers of Commerce and Industry, New Delhi and Others, , wherein while allowing a new plea, it was observed:

This point will not require any additional material for its decision. The question is only of drawing a correct inference about the point in issue from the material already on record.

Learned Single Judge has placed reliance on the decision of the Hon''ble Supreme Court of India in the case of Kendriya Vidyalaya Sangathan (supra), wherein a criminal case was pending against the employee, who has against Column No. 12(i) 13 of the attestation form mentioned "no" despite the fact that criminal case was pending against him in the court of law. He was holder of B.A., B. Ed. and M. Ed. Degrees. Therefore, it was not accepted that he could not correctly understand the contents of Column 12 and 13. It has been further observed by the Hon''ble Supreme Court in para 12:

The object of requiring information in columns 12 and 13 of the attestation form and certification thereafter by the candidate was to ascertain and verify the character and antecedents to judge his suitability to continue in service. A candidate having suppressed material information and/or giving false information cannot claim right to continue in service. The employer having regard to the nature of the employment and all other aspects had the discretion to terminate his services, which is made expressly clear in para 9 of the offer of appointment. The purpose of seeking information as per columns 12 and 13 was not to find out either the nature or gravity of the offence or the result of a criminal case ultimately. The information in the said columns was sought with a view to judge the character and antecedents of the Respondent to continue in service or not.

In the case of R. Radhakrishnan v. Director General of Police and Ors. (2008) 1 SCC 660, the employee had suppressed disclosure about pendency of criminal case against him u/s 294(b) of IPC. It was held that in the event such disclosure had been made, the authority could have verified the character of the employee as also his suitability for appointment.

In a decision of this Court in the case of Narayan Singh Yadav v. State of Government of M.P. ILR (2008) M.P. 2783, an employee holding the post of teacher was found involved in seven criminal cases, which were suppressed in the verification roll. Therefore, the suppression was held fatal.

In the case in hand, the Enquiry Officer has concluded that the Petitioner being a 10th class passed person from rural background might not have understood the contents of relevant column of verification roll. His this conclusion has not been reversed by the Disciplinary Authority.

Division Bench of this Court headed by the then Hon''ble Mr. Chief Justice A.K. Patnaik (presently Judge of Hon. Supreme Court of India) in the case of Union of

India (UOI) and Others Vs. Hariom, has observed:

The Respondent who was an illiterate scheduled caste person obviously is not expected to know as to which circumstance might impair fitness under Government. It is for the authorities proposing to appoint a candidate as Safai Karmachari to indicate clearly in the different questions in the verification roll the circumstances which might impair fitness for employment under Government by putting a question in that regard in the verification roll.

In none of the cases cited by the Respondents, the provisions of the Act of 1986 or of Act of 2000 did come up for consideration. We may successfully refer to the decision of the High Court of Rajasthan in the case of Munshi Khan Vs. State of Rajasthan, to conclude that the plea of benefit of the provisions of Act of 86 and Act of 2000 may be raised at any stage, even at the stage of appeal.

Division Bench of Delhi High Court in the case of Ex. Gnr. Ajit Singh v. Union of India 2004 (17) AIC 637 has held that the provisions of Act of 2000 are equally applicable to a juvenile in the army. Thus, there is no reason for not invoking the provisions in the case of employees of CRPF.

Hon"ble Supreme Court in the case of Raj Singh v. State of Haryana, (2000) 6 SCC 759 , has observed as under:

It is on record that the Appellant's date of birth is 9-12-1974 as per the certificate issued by the Board of School Education, Haryana. This certificate stands reaffirmed by another certificate produced today before the Court verifying the said fact. In the circumstances, there cannot be any serious dispute about the date of birth of the Appellant i.e. 9-12-1974. If that is so, the trial should have been held only as provided u/s 22 of the Act so a different procedure followed leading to conviction of the Appellant is vitiated.

In the case of Pratap Singh Vs. State of Jharkhand and Another, , Five Judges Bench of the Supreme Court has finally held that the reckoning date for the determination of age of juvenile is the date of the commission of the offence and not the date when he is produced before the competent authority or court.

It is observed:

The whole object of the 1986 Act and the 2000 Act is to provide for the care, protection, treatment, development and rehabilitation of juveniles. The Acts being benevolent legislations, an interpretation must be given which would advance the cause of the legislation i.e. to give benefit to the juveniles.

It is further observed:

The definition of delinquent juvenile in the 1986 Act is referable to an offence said to have been committed by him. It is the date of offence that he was in conflict with law. When a juvenile is produced before the competent authority and/or court he has not committed an offence on that date, but he was brought before the authority for the alleged offence which he has been found to have

committed.

Further it is observed:

The purpose of the juvenile justice legislation is to provide succour to the children who were being incarcerated along with adults and were subjected to various abuses. It is not only a beneficent legislation, but also a remedial one.

It is suppression in the Verification Roll of substantial material, which if taken into consideration, may dislodge an employee from seeking appointment. It is true that the act of the Appellant in the present case may be technically termed as suppression, but the same in our opinion is not substantial because at the time of filling up the Verification Roll, there was no pending criminal case against the Appellant. Appellant was acquitted by the regular magistrate on 15.12.1999, whereas Verification Roll was attested later on. Secondly, rather more importantly, the Appellant was juvenile on the date of occurrence of the alleged criminal incidence according to the record of the Respondents themselves and he could not have been prosecuted by a regular magistrate by virtue of Section 23 of Act of 1986. His prosecution by a regular magistrate was nullity and may be treated as non est for the purpose of Verification Roll.

Viewed from the angle of the aforesaid settled position of law, we will now take up the case in hand. As per Annexures I and II reproduced in para 2, it is clear that the charge levelled against the Appellant was that he managed to get himself enlisted in CRPF fraudulently by suppressing facts that a Criminal case was registered against him. In the imputation of article of charge (Annexure II) it is mentioned that the Petitioner managed to get himself enlisted in CRPF fraudulently by suppressing/concealing the facts that criminal case was registered against him in the Court of First Class Magistrate, Bhind (M.P.) vide Criminal Case No. 446/97 u/s 56/94 of Code of Criminal Procedure 452, 323, 325/34 of IPC. Thus the Petitioner was not charged with allegation about suppression of factum of arrest. He was merely charged with an allegation of suppression of his prosecution in Criminal Case No. 446/97 by the court of First Class Magistrate Bhind. This being so, the question of arrest of the Petitioner or the factum of its suppression is not liable to be considered for the purpose of this Writ Appeal. It is only the factum of suppression of registration of Criminal Case No. 446/97 against the Petitioner and his prosecution by the court of First Class Magistrate Bhind, which are to be considered in the light of the provisions of Act of 1986 and Act of 2000.

Apex court in the case of Secy. Deptt. of Home Secy. A.P. and Others Vs. B. Chinnam Naidu, has reiterated that the object of requiring information in various columns like column 12 of the attestation form and declaration thereafter by the candidate is to ascertain and verify the character and antecedents to judge his suitability to enter into or continue in service.

In the present case, the Appellant with 5.3.1979 as his date of birth according to the record of the Respondents themselves was a juvenile on the date of

occurrence of the alleged criminal incidence on 18.6.1994. Criminal case No. 446/97 was registered against him in the court of First Class Magistrate Bhind u/s 56/94 of Code of Criminal Procedure, Sections 452, 323, 325/34 of IPC. He was acquitted by the said magistrate on 15th December 1999 as revealed in Annexure P/3. Court of Judicial Magistrate First Class Bhind was not a special court having powers under the Act of 1986. Prosecution and trial of the Appellant by the court of JMFC Bhind were vitiated being nullity for want of jurisdiction. Therefore, the prosecution of the Appellant was not valid in the eye of law and ought to have been treated as non est for the purpose of verification roll. The Appellant even if had been convicted by the JMFC Bhind, the conviction could not have been given effect to on account of the Appellant being juvenile at the time of occurrence of the alleged criminal incidence. Section 25 of the Act of 1986 clearly lays down that a juvenile who has committed an offence and has been dealt with under the provisions of the said Act, shall not suffer disqualification, if any, attaching to a conviction of an offence under such law. Thus, even if the disclosure of prosecution had been made, the Appellant would not have earned any disqualification on account of such jurisdictionless prosecution. According to the Apex Court, disclosure in verification roll is in order to provide information to the employer to judge the suitability. Particulars about prosecution of the Appellant by the Court of JMFC would not have provided any material to the Respondents to deny the appointment because the prosecution itself was nullity on account of the Appellant being juvenile on the date of occurrence of the alleged criminal incidence. This aspect was not considered at all by the Respondents while passing the impugned order contained in the Annexures P/1 and P/2. The same could not be pointed to the learned Single Judge who passed the impugned order of dismissal of the writ petition. Status of prosecution of the Appellant by the court of JMFC Bhind was not considered at all, which was without jurisdiction and stood vitiated by virtue of the provisions of Act 1986 and Act of 2000. This being so, the Appellant can not be said to have suppressed any substantial information, which on being considered would have debarred the Appellant from service because of juvenile status of the Appellant at the time occurrence of the alleged criminal incidence.

Thus, in view of the aforesaid facts and discussion, we hold that the Petitioner/Appellant did not make suppression of any substantial fact to get himself enlisted in CRPF. In the charge levelled against him, it is alleged that the Petitioner/Appellant managed to get himself enlisted in CRPF fraudulently by suppressing/concealing the fact that Criminal Case No. 446/97 was registered against him by the court of First Class Magistrate Bhind. Omission to mention fact is not always an out come of fraud. There is no specific finding of Disciplinary Authority that any kind of fraud was committed by the Petitioner in the alleged suppression or concealment. Moreover, the factum of prosecution of the Petitioner in Criminal Case No. 446/97 could not have been taken into consideration by the Respondents in denying the appointment/selection in the service of CRPF on account of juvenile status of the Petitioner at the time of occurrence of the

alleged criminal incidence. This being so, the impugned orders contained in Annexures P/1 and P/2 are not sustainable in law.

Consequently, the appeal deserves to be and is hereby allowed. Impugned order of the learned Single Judge as well as Annexures P/1 and P/2 are hereby set aside. Respondents are directed to reinstate the Petitioner/Appellant on the post of Constable by issuing necessary appointment letter subject to his fitness.

As regards back wages, it can not be gainsaid that the Petitioner/Appellant did not provide the information about his prosecution by the court of JMFC Bhind. Though, he is found entitled to the benefit of Act of 1986 and Act of 2000, it can not be ignored that the information about his prosecution was not disclosed. In this view of the matter, the Petitioner/Appellant is not held entitled to the back wages. He would be entitled to salary from the date of his rejoining on work.

No order as to costs.