
(2006) 07 DEL CK 0025
In the Delhi High Court
Case No : WP (C) No. 10612 of 2005

Balbinder Singh	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 05-07-2006

Acts Referred:

Central Industrial Security Force Rules, 2001 — Rule 25, 25(2), 26, 26(1), 26(2)

Citation : (2006) 07 DEL CK 0025

Hon'ble Judges : Reva Khetrapal, J;Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : R.D. Rahalia, for the Appellant; Prabahti Lal, for the Respondent

Final Decision : Dismissed

Judgement

Reva Khetrapal, J.—This writ petition is directed against the notice dated 28th May, 2005 issued by the respondent No. 4 in exercise of the power conferred upon him vide para 26 of the CISF Rules, 2001 and the CISF (Amendment) Rules, 2003, seeking to terminate the services of the petitioner by giving him one month's notice.

2. Background facts in a nutshell are as follows:

The petitioner applied for appointment to the post of Constable in the Central Industrial Security Force (for short the "CISF") and appeared for the recruitment test/interview held from 20.01.03 to 21.01.03. He was directed to report for basic training on 19th April, 2003 and was supplied with blank forms viz., (i) Attestation Form, (ii) Certificate of Character, and (iii) Character and antecedents certificates and other required forms vide letter of the Commandant of the concerned CISF Unit dated 03.4.03, with a direction to submit the same duly filled in, completed and certified by the competent authorities to the Commandant on 19.04.303 at the time of reporting. The Attestation Form as also the other Forms were duly filled in by the petitioner on 10.04.03 and deposited in the department accordingly. As against column No. 12(i) at page 5 of the

Attestation Form, the petitioner was required to furnish information as to whether any case was pending against him in any court of law and as to whether he had ever been arrested and/or prosecuted and/or kept under detention. The petitioner's reply to all the aforesaid queries was in the negative. The petitioner also submitted a character certificate from the SHO of the area as also from the Sub Divisional Magistrate of the area in which nothing adverse was mentioned against him. Accordingly, the petitioner was appointed in the CISF in the rank of Constable w.e.f 19th April, 2003 on a temporary basis and was placed on probation for a period of 2 years with a stipulation that in the event of his being found unsuitable for retention in the force at any time, his services would be terminated in accordance with the provisions of Rules 25 and 26 of the CISF Rules, 2001 as amended in the year 2003. From 21st April, 2003 to 1st March, 2004 the petitioner underwent basic training and after completion of the same reported to his unit - BCCL, Dhanbad.

3. In the meanwhile, however, the Attestation Form of the petitioner which had been duly filled in by him at the time of his recruitment and which had been sent by the respondent for verification to his home address at District Kangra (H.P.) was received back in original, duly verified, and with an endorsement and a report in the original attestation form that "One police case No. 64/2001 u/s 420/461/468/471 of IPC has been registered against Balbinder Singh s/o Sh. Bir Singh in the Nurpur Police Station which is subjudice in the court of law." After receiving the aforesaid report through the Dy.Commissioner, District Kangra, it was found by the respondents that the said information had not been mentioned in column No. 12 (i) at page No. 5 of the attestation form by the petitioner, and had been deliberately suppressed by the petitioner in order to gain the appointment.

4. On receipt of the aforesaid report regarding involvement of the petitioner in FIR No. 64/2001, the impugned notice dated 28.5.05 was issued by the Senior Commandant of the CISF Unit BCCL Dhanbad, giving one month's notice for terminating the services of the petitioner in exercise of the powers conferred upon him vide para 26(3) of the CISF Rules, 2001 and the CISF (Amendment) Rules, 2003 and it was mentioned in the said notice that after the expiry of one month's notice, the petitioner shall be deemed to be no more in the service of the CISF. The aforesaid notice was served upon the petitioner on 28.05.05 itself. After completion of one month's notice period on 26th June, 2005, the name of the petitioner was struck off from the strength of the CISF Unit, BCCL Dhanbad as well as the CISF. In the meanwhile, the probation period of two years of the petitioner was extended by a communication dated 01-06-2005 for a further period of six months from 18.4.2005 to 18.10.2005 on finding the services of the petitioner during his probation period as "Unsatisfactory in all respects."

5. Aggrieved by the impugned notice dated 28.5.2005, the petitioner filed the present writ petition along with an application requesting for grant of stay of the operation of the order dated 28.5.05. A Division Bench of this Court vide order

27-06-05 granted stay of the operation of the impugned order till the same was vacated or modified. Resultantly, the petitioner as on date is still in service and on the strength of the CISF Unit, BCCL Dhanbad.

6. The case of the petitioner as it emerges from the writ petition is that some of the villagers of the petitioner's village who had enmity with the father of the petitioner had hatched a conspiracy to frame the petitioner, since he (the petitioner) had got a government job, and his name was included in the criminal proceedings, but the same was after a gap of considerable time from the date of the filing up of the Attestation Form and other forms. It is further pleaded by the petitioner that on account of enmity of the village Pradhan with the family of the petitioner, the Pradhan had implicated the father of the petitioner, and later on when he came to know that the petitioner was selected in the CISF and was undergoing probation, he falsely implicated the petitioner with ulterior motive to get the petitioner terminated from service.

7. In the course of arguments learned Counsel for the respondents with a view to counter the case of the petitioner submitted that the CISF was a highly disciplined force and the petitioner had got himself recruited to the aforesaid force on the basis of false statements made by him in the Attestation Form at the time of recruitment. He has drawn our attention to the said Attestation Form, which on page No. 1 at the top carries the following warning:

WARNING

1. The furnishing of false information or suppression of any factual information in the Attestation Form would be a disqualification and is likely to render the candidate unfit for employment under the Government.

2. If detained, convicted, debarred etc. subsequent to the completion and submission of this Form the details should be communicated immediately to the authority to whom the Attestation Form has been sent earlier, failing which it will be deemed to be a suppression of factual information.

3. If the fact that false information has been furnished or that there has been suppression of any factual information in the Attestation form comes to notice at any time during the service of a person, his services would be liable to be terminated.

8. Our attention was also drawn by learned Counsel for the respondents to Sub rule (2) of Rule 25 and sub rule (3) of Rule 26 of the CISF Rules which read as follows:

25 (1) ...

(2) If during the period of probation the appointing authority is of the opinion that a member of the Force is not fit for permanent appointment, the appointing authority may discharge him from the Force after issue of notice of one month or after giving one month's pay in lieu of such notice, or revert him to the rank

from which he was promoted or repatriate to his parent department, as the case may be.

(3) On successful completion of probation...:

26 Termination.- (1) Where a notice is given by the Deputy Inspector General terminating the services of a probationer is terminated either on the expiry of the period of such notice or forthwith by payment of pay plus allowance or services are terminated by the appointing authority for his failure to pass the final examination of the initial training course, the Inspector General, if the said Deputy Inspector General or the appointing authority, as the case may be, subordinate to him, may on his own motion or otherwise, reopen the case and after making such enquiry he may (i) confirm the action taken by the Deputy Inspector General or the appointing authority, as the case may be; (ii) withdraw the notice; (iii) reinstate the probationer in service; or (iv) make such other order in the case as he may consider proper:

Provided that except in special circumstances, which should be recorded in writing, no case shall be reopened under this Sub-rule after the expiry of three months-

(a) from the date of notice, in a case where notice is given;

(b) from the date of termination of service in a case where no notice is given.

(2) Where a probationer is reinstated in service under above rule, the order of reinstatement shall specify (i) the amount of proportion of pay and allowances, if any, to be paid to the probationer for the period of his absence between the date of termination of his services and date of his reinstatement; and (ii) whether the said period shall be treated as a period spent on duty for any specified purpose or purposes.

(3) Where the Inspector General has terminated the service of a probationer, acting as appointing authority, all the powers prescribed in Sub-rules (1) and (2) above shall be exercised by the Director General and where the Director General has issued the order of termination by the Central Government.

9. After hearing counsel for the parties and upon scanning the records, we find that the petitioner in Column 12 of the Attestation Form, filled in by him on 10th April 2003, clearly stated that he was never arrested/prosecuted or kept under detention nor any case was pending against him in any court of law. He did so under his signatures. He also furnished along with his Attestation Form, certificates that no proceedings were pending against him from the SHO Police Station Nurpur, District Kangra and from the SDM of the area. However, when the aforesaid Attestation Form was forwarded for verification by the DIG concerned to the Deputy Commissioner, District Kangra (H.P.) at the home address of the petitioner, it was reported by the Dy. Commissioner, Kangra that the petitioner was involved in a criminal case instituted u/s 420/461/468/471 of IPC vide FIR No. 64/2001. Thus, it stands established from the records that the petitioner had

entered the service by furnishing false information, which was false to his knowledge, and obtained appointment to the post by playing a fraud. This, despite the fact that the petitioner had been specifically cautioned in writing in the Attestation Form itself, which carried a warning in clear terms and in bold letters at the top of the said form as to the consequences of furnishing false information and suppression of any factual information in the Attestation Form. The petitioner who was morally and legally bound not to furnish any false declaration and also not to suppress any factual information, did so at the peril of termination of his services as set out in Warning No. 3 and the likelihood of his being rendered unfit for employment under the Government as stipulated in Warning No. 1.

10. The contention of the petitioner that his name is not mentioned in the First Information Report (and the same is registered against his father alone) is also devoid of merit. The said First Information Report is on the record and it reveals that the father of the petitioner had fraudulently mutated certain government land in the name of his "sons", which expression undeniably includes the petitioner. His further contention that he had been subsequently implicated is also of no avail to the petitioner, inasmuch as a perusal of Warning No. 2 makes it evident that if the detention, conviction etc. is subsequent to the completion and submission of the form, the details are still required to be communicated immediately to the authority to whom the Attestation Form is sent earlier, failing which it would be deemed to be a suppression of factual information.

11. It also deserves to be mentioned at this juncture that no reply was filed by the petitioner to the impugned notice dated 28.5.2005 to refute the allegations made therein regarding the suppression of material information in the Attestation Form filled up by the petitioner. The petitioner also did not care to file any representation before the respondents. Instead, the petitioner filed the present writ petition, seeking stay of the impugned notice by raising grievance that his services had been illegally terminated by the respondents.

12. There are decisions galore both of the Supreme Court and of this High Court that where the services of a person are terminated as a consequence of suppression of material facts/furnishing of false information, such a person is not entitled to invoke the jurisdiction of a court of law for the purpose of grant of relief to him. The common thread which runs through these decisions is that a person who seeks equity from the court must come to the court with clean hands, and he who comes to court with unclean hands or herds tainted with fraud would not be entitled to receive equity with the same hands.

13. In *R. Vishwanatha Pillai Vs. State of Kerala and Others*, a three Judges' Bench of the Apex Court observed as follows:

...A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favor. A person who seeks equity must act in a

fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false (caste) certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practicing fraud.

14. In a recent decision rendered by it in *Ram Saran Vs. I.G. of Police, CRPF and Others*, , which was a case where the services of the appellant were terminated after 27 years as it was revealed that he had furnished a false birth certificate, the Supreme Court observed that whenever it is found that a government servant, who was not qualified or eligible in terms of the recruitment rules, etc. has furnished false information or produced a false certificate in order to serve appointment, he should not be retained in service. These were cases which did not deserve leniency otherwise it would be giving premium to a person who practices fraud. Reiterating the observations made by it in its earlier decision in *R. Vishwanatha Pillai's case (supra)*, the Supreme Court observed that though Pillai's case related to a false caste certificate, the logic indicated therein clearly applied to the case before it.

15. To the same effect is the judgment of the Supreme Court in the case of *Sanjay Kumar Bajpai Vs. Union of India (UOI) and Others*, In the said case the appellant was discharged from services as MER (Technical)/Nursing Assistant in the Army Medical Corp on the ground that he had furnished wrong information about the pendency of a criminal case against him at the time of his enrolment. Rejecting the contention of the appellant that his signatures had been obtained on a blank enrolment form which was filled up later on and, Therefore, he could not be made responsible for the incorrect statement made in the enrolment form, the Supreme Court held that since the appellant did not disclose at the time of his enrolment that a criminal case was pending against him and made a false statement that no case was pending against him at that time, he was guilty of furnishing wrong information in the form required to be filled up for verification and the termination of the appellant's services on the ground that he had furnished wrong information at the time of recruitment was not required to be interfered with.

16. In *Shamim Akhtar Khan v. Union of India and Ors.* W.P(C) 6920/2002 which is on identical facts, a Division Bench of this Court of which one of us (M.K. Sharma, J.) was a member held as follows:

It is, Therefore, established from the aforesaid factual matrix that the petitioner not only suppressed material and factual information in the attestation form but he also furnished false information. No information was given by the petitioner regarding the institution and pendency of the aforesaid criminal case against him in which even a charge sheet is filed against him or of his arrest. The aforesaid information that a criminal case is instituted and pending against him was required to be disclosed by the petitioner at the time of his enrolment and at the

time of filling up of the aforesaid attestation form. The petitioner deliberately gave wrong information to the respondents as against the queries made under Clause 12 of the attestation form and also suppressed material facts. The fact of pendency of criminal case against the petitioner came to light and to the knowledge of the respondents only on receipt of the report from the District Magistrate and the police authorities. The petitioner was also given an opportunity to explain his position by issuing a show cause notice. Even at that stage the petitioner did not clearly state regarding the pendency of the said case against him and feigned ignorance about the said case. Therefore, we are of the considered opinion that the action taken by the respondents in discharging the petitioner from service is legal and justified.

We find no reason to interfere with the order of discharge passed by the respondents. The writ petition has no merit and is accordingly dismissed.

17. Apart from the above settled position in law, there is yet another aspect of the matter which was succinctly highlighted in Ram Saran's case (supra) as follows:

8. The courts should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation commonly known as Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision. (See V. Ramana Vs. A.P.S.R.T.C. and Others,

18. It may also be mentioned that the petitioner was on probation when it came to light that he had obtained appointment in the CISF by suppression of the material information that a criminal case was pending against him. The letter of offer of appointment to the petitioner dated 3.4.03 which is available on the records reveals that he had been provisionally selected for the post of Constable on temporary basis and had been put on probation for a period of 2 years, subject to the provisions of the CISF Act and Rules. He was directed to report for his basic training along with all the documents specified in the offer of appointment including the Attestation Form. The said Attestation Form apart from carrying the "Warning" at the top, referred to hereinbefore, carried a "Note" at the bottom of column 12 and also a certificate to be signed by the petitioner which read as follows:

Note:

(i) Please also see the "warning" at the top of the Attestation Form.

(ii) Specific answers to each of the questions should be given by striking out, "Yes" or "No" as the case may be.

_____X_____X_____ I certify that the foregoing information is correct and complete to the best of my knowledge and belief. I am not aware of any circumstances which might impair my fitness for employment under the Government.

19. Thus, apart from the bold warning at the top of the Attestation Form, the attention of the petitioner was specifically invited to the said warning by the "Note" at the bottom reproduced hereinabove. Not only this, at the bottom of the Attestation Form, the petitioner certified that the information given by him was correct and complete to the best of his knowledge and belief and that he was not aware of any circumstances which might impair his fitness for employment under the government. The said certificate was duly signed by him. He has not disputed his said signatures nor it has been denied by him that a criminal case is pending against him on counts of cheating and forgery, that too relating to government land at his native place. Accordingly, it stands established on the record that the petitioner failed to disclose material information to the Appointing Authority and as a matter of fact deliberately furnished false information to gain appointment. The respondents cannot Therefore be faulted for terminating his services on the aforesaid ground.

20. Keeping in view all the aforesaid facts and circumstances, the present case Therefore in our considered opinion is not a fit case for interfering with the notice of termination of the petitioner's probation which has been impugned.

21. The writ petition is accordingly dismissed as being without merit. The stay order granted in favor of the petitioner on 27th June 2005 also stands vacated.