
(2001) 05 J&K CK 0013
In the Jammu And Kashmir High Court
Case No : S.W.P. No. 1525 of 1996

Bashir Ahmed Hakak

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 31-05-2001

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 15(2)

Citation : (2002) 4 SCT 600

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : N.A. Choudhary, M.S. Malik, Advocates appearing for the Parties

Judgement

T.S. Doabia, J.—An order of compulsory retirement passed on 23.10.1996 is being assailed by the petitioner in the present litigation. The

operation of this order was stayed by this Court on 6.12.1996.

2. Petitioner submits that in response to advertisement notice issued by the Union Public Service Commission (hereinafter referred to as the

Commission), the petitioner submitted an application seeking employment with the Govt. of India. He was seeking selection to gradeIII Central

Information Service. Petitioner was selected. A letter of appointment was issued in his favour. This letter is dated 13.8.1982. Petitioner submits

that the notification in this regard is Annexure P2. On 13.7.1989 a chargesheet was served on the petitioner. The charge against him was that the

petitioner when he applied for the post suppressed the fact that he was in the employment of the High Court of Jammu and Kashmir and that

disciplinary cases were pending against him. It was submitted that nongiving of this information exhibited lack of integrity. The Article of Charges

has been placed on the record as Annexure P3. For facility of reference this is being reproduced below :

Article

That the said Shri Bashir Ahmed Hakak while applying for appointment to Grade III of the Central Information Service, Ministry of Information

and Broadcasting on 14.3.1981, suppressed the fact of his employment with the High Court of Jammu and Kashmir and the pendency of a

disciplinary case against him there as he did not mention about this in the relevant columns of either the Application Form or the Attestation Form.

By this above acts, Shri Hakak exhibited lack of integrity in violation of clause 3 of the Attestation Form (reproduced below) submitted by him :

` 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.

3. Petitioner denied the charge. He submitted a detailed reply. This is Annexure P4. This led to the appointment of an Inquiry Officer. After the

inquiry was over, the order dated 23.10.1996 came to be passed. Further facts which were relevant for the issuance of the chargesheet and the

material which was taken note of be also noticed at this stage. After the article of charges were served on the petitioner and after he had denied the

allegations, the respondent authorities decided to conduct a formally enquiry. Dy. Director of Field Publicity was appointed as Inquiry Officer.

Inquiry Officer was later on changed and ultimately it was Shri N. Balasubramaniam who figures as respondent No. 4 came to hold the inquiry.

Petitioner had taken the following four pleas. These are noticed in the order dated 23.10.1996. These are reproduced below :

(a) That no cognizance has been given to his representation dated 1.1.1990 addressed to the Joint Secretary to Government of India, Ministry of

Information and Broadcasting, New Delhi sent vide his office letter No. R/ Admn/5/29/895000 dated 1.1.1990;

(b) that no copy of the Vigilance Inquiry proceedings has been made available to him which formulates the basis of the inquiry against him.

(c) that no cognizance has been given to the Indian Limitation Act, 1925 which bars the jurisdiction to investigate the case at this state after an

elapse of more than 10 years of his service; and

(d) that the inquiry report is silent about tarnishing his service career for a prolonged period of more than a decade.

4. Petitioner also made a request for supplying him certain documents. The material which had come on the record was taken note of. The Inquiry

Report was against the petitioner. This was considered by the Disciplinary Authority. A finding was recorded that the petitioner procured

appointment on the basis of fraudulent information; as this amounted to cheating and as the act of fraud stood unfolded the appointing authority

taking into consideration the totality of the circumstances instead of removing or dismissing from service imposed the penalty of compulsory

retirement. He was to be paid full pension and retirement gratuity.

5. Petitioner submits that the inquiry was not initiated by the appointing authority. It is submitted that the appointing authority of the petitioner was

Joint Secretary, Information and Broadcasting and not Joint Secretary, Vigilance. That even if some lapses were committed by the petitioner

before joining the service, then he could not be punished after 14 years of his having rendered blemishfree the service. It is further submitted that if

major penalty was to be given, then the appointing authority should have indicated that the conduct is such which has direct relation and nexus with

the post which the delinquent officer is holding at the time being and that the misconduct should be such which leaves no option but to impose the

major penalty. Further, it is submitted that the punishment could been awarded for good and sufficient reasons. It is submitted that the condition

precedent for initiating disciplinary action is that there are good and sufficient reasons for doing so. This it is sought to be urged that merely not

mentioning that the petitioner was in the service of the J&K High Court and that some proceedings were pending on account of the fact that he

was on unauthorised absence would not lead to the consequence of a major penalty being imposed. Lastly, it is submitted that the punishment

which has been imposed is not commensurate with the lapse attributed to him.

Thus what is sought to be urged is that the misconduct which has been attributed to the petitioner did not warrant holding of an inquiry with a view

to impose major penalty and therefore, the major penalty could not be imposed.

6. Petitioner has also placed on record the certain documents indicating that

ultimately the High Court did not punish him. His resignation was accepted and the period of absence from 20.3.1981 to 10.8.1982 AN is treated as leave of whatever kind was due to him. The order issued by the High Court dated 20.10.1982 is reproduced below :

High Court of Jammu and Kashmir at Jammu.

Order No. 639

Dated 30.10.1982

Resignation of Sh. Bashir Ahmed Hakak, Clerk Tehsil Court, Handwara, is accepted w.e.f. 10.8.1982 A.N. and enquiry against him is dropped.

The period of absence from 20.3.1981 to 10.6.1982 A.N. is treated as leave of whatever kind be due to him.

By order.

Sd/

(S. Mohinder Singh)

Secretary Hon'ble

Chief Justice.

7. It is submitted that this order was passed on 30.10.1982 i.e. after his appointment was notified in the Gazette on 3.9.1982. The stand taken by the respondents be now noticed.

8. It is submitted that this Court should not examine the question as to whether the punishment which has been awarded is commensurate with the

lapse and again this court should not act as an appellate authority in the matter of examining the findings recorded by the Inquiring Authority. It is

also stated that the petition is not maintainable as the petitioner has not availed of the statutory remedy available to him. These are said to be

contained in Rules 27, 29, 29A of the Civil Services (Classification, Control and Appeal) Rules.

9. From the perusal of the facts indicated above, it becomes apparent that what has been found against the petitioner is that he was guilty of

suppressing certain facts. Petitioner did not disclose the fact that he was in the employment of High Court of J&K and that a disciplinary case was

pending against him. So far as the pendency of the disciplinary proceedings are

concerned nothing has been established and at least it is not apparent from the report submitted by the Inquiry Officer that some disciplinary proceedings were pending. The ultimate conclusions which stand arrived at by the inquiring authority are as under :

And whereas the undersigned being the Disciplinary Authority in this case, after carefully considering the findings of the Inquiring Authority, the representation of Shri B.A. Hakak, all facts and circumstances of the case alongwith all the related records/documents has found that the very

basis of Shri Hakak's employment with D.E.P. was procured on the basis of fraudulent information as it had been proved during the enquiry.

Since, Shri Hakak had employed cheating to procure the job, the right for punishment would be, upon discovery of such fraud, to remove or

dismiss him from the service. However, taking a compassionate view, especially since there would be dependents who would be deriving support

from him, the undersigned has decide to impose a penalty of Compassionate Retirement upon Shri B.A. Hakak, Field Publicity Officer,

Directorate of Field Publicity, Jammu with immediate effect and to pay him full compensation pension and retirement gratuity as admissible to him

on the date of his compulsory retirement.

To repeat, the charge against the petitioner is

- (i) that he was in the employment of J&K High Court;
- (ii) that some disciplinary proceedings were pending against him;
- (iii) that these facts were suppressed by the petitioner.

10. The Inquiring Authority has recorded a finding that the petitioner was in service of the High Court. There is no finding recorded that any

disciplinary proceedings were initiated and the petitioner was made aware about the pendency of these proceedings. Exhibits P8 and P11, referred

to by the Inquiry Officer only indicate that the petitioner was on unauthorised leave. The question as to whether a regular disciplinary proceedings

were initiated against the petitioner is not borne out. Therefore, to say that some disciplinary proceedings were pending against the petitioner was

not established before the Inquiring Authority. The further fact which has been found is that the petitioner did not obtain formal permission from his

previous employer. Such was not the charge and, therefore, the question of

recording a finding and holding him guilty visavis this matter would not be apt. What was alleged against the petitioner has been brought out. About the charge regarding the petitioner having not obtained formal permission from the J&K High Court was not there and, therefore, the question of recording a finding on this could not arise. This is one aspect of the matter.

11. When order passed by the disciplinary authority is taken to of it becomes apparent that it is not apparent as to what prevailed with the said authority in passing the ultimate order. The observations made by the appointing authority in this regard are at pages 48 and 49. The same are reproduced above at pages 6 and 7 of this judgment. Perusal of the said paragraph would indicate that the appointing authority has taken note of the agreement arrived at by the disciplinary officer with the Inquiry Officer. What was represented by the petitioner and how this was not justified is again not apparent. In these circumstances, it cannot be said that the appointing authority has taken into consideration all the facts and circumstances and then arrived at a conclusion. I am accordingly of the view

(i) that the article of charge did not contain a charge that the petitioner applied for the post with the Govt. of India, without obtaining permission from the previous employer;

(ii) there is nothing on the record to indicate that any disciplinary proceedings were pending and these are conveyed to the petitioner.

(iii) the column regarding his previous engagement was left blank. That can be said to be only thing which stands established.

(iv) Therefore, when the relevant and irrelevant materials are taken into consideration then what would be the ultimate effect is a matter on which this Court cannot express any opinion.

12. It would be apt for the appointing authority to reconsider the whole issue. As a matter of fact the stand taken by the respondents is that a right

of appeal, revision or review is available in terms of Rule 27, 29, 29A of the Civil Services (Classification, Control and Appeal) Rules. Therefore,

the operative part of the order reproduced above which does not contain the basis of reasoning is held to be bad. Respondents are directed to

consider the whole issue. In doing so they would also consider the question as to whether the punishment which is being awarded is commensurate

with the lapse. It is not the case of the respondents that the petitioner had been remiss in the performance of the duties. As a matter of fact the

appointing authority while passing the order has taken note of the fact that there is nothing else against the petitioner. In this regard what was said

by the Supreme Court of India in the case of State of Gujarat v. Hon'ble High Court of Gujarat, 1998(7) SCC 392, can well be taken as a guide.

What was said in paragraph 29 of the judgment is quoted again :

To Mother Teresa, "the prisoner is Jesus to me". The world renowned philanthropist as he was, would have been very much inspired by the

scriptural words pronounced by Lord Jesus as quoted in the Gospel according to Matthew (Chapter verse 36):

Then the king will say to those on his right hand "come ye, who are blessed by my Father in Heaven, for, I was in prison and you came to see me.

To those on the left the king said 'Go away from me you caused ones,' for I was... in prison and you did not visit me.

13. The grant transformation recorded in the epics regarding Hunter Valmiki who turned out to be a poet of eternal recognition, is referred to in

para 30 of the judgment. It was observed :

If the powers which brought about that transformation had remained inactive, the world would have been poorer without the great epic

'Ramayana'. History is replete with instances of bad persons transforming into men of great usefulness to humanity.

In this regard it would again be apt to refer to the decision reported as Mohd. Giasuddin v. State of A.P., 1977(3) SCC 287, which decision was

noticed in the case of State of Gujarat (supra). In the above case it was observed as under :

.....The aphorism that 'if every saint has a past every sinner has a future' is a tested philosophy concerning human life.

14. In view of the above, the matter is left open to the discretion of the appointing authority. The fact that the operation of the order impugned has

remained stayed for almost 41/2 years is a matter which cannot be ignored. The respondents would accordingly reconsider the issue in the light of

the observations made above. The ultimate decision is to be taken by them. They are left free to do so. The services of the petitioner would not be

brought to an end. If any adverse order is to be passed, that would not be

effective for four weeks with a view to enable the petitioner to seek remedies of appeal or revision.

15. Disposed of accordingly.