

(2009) 02 DEL CK 0007

In the Delhi High Court

Case No : Writ Petition (C) No. 10041 of 2005

Birendra Mahto

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-02-2009

Acts Referred:

Citation : (2009) 02 DEL CK 0007

Hon'ble Judges : S.L. Bhayana, J;B.N. Chaturvedi, J

Bench : Division Bench

Advocate : Aditya Singh, for the Appellant; Darpan Wadhwa, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Chaturvedi, J.—Based on a written examination and interview, to fill up the posts in constabulary of CISF (respondent No. 2) the petitioner was, on his selection, offered an appointment as a constable vide letter dated 14.1.2002. Pursuant to such offer of appointment, the petitioner reported at Training Centre, CISF, Arrakkonam, Tamil Nadu on 21st of April, 2002 and was, thus, appointed as a temporary constable in CISF with effect from 21st of April, 2002(FN). The aforesaid letter dated 14.1.2002 offering appointment to the petitioner, was accompanied by an Attestation Form to be filled up by him and submitted to the respondent No. 2 at Tamil Nadu at the time of his joining. Column 12(b) of the Attestation Form required an information to the following effect: "Have you ever been prosecuted?" To this, the information, as furnished by the petitioner, was "No".

2. Vide letter dated 12.6.2002, the petitioner was placed on probation for a period of two years on being appointed as a temporary constable, subject to the condition that in the event of his being found unsuitable for retention in the service at any time either during the period of his initial training or the period of probation, his services were liable to be terminated.

3. In November, 2003, the petitioner was served with a memo requiring him to

submit his explanation for suppressing the information against column 12 of the Attestation Form that he had been named as an accused in case FIR No. 68/93 dated 3.8.1993, PS Daudpur, Distt. Chhapra, Bihar under Sections 447, 341, 323, 324, 337/34 IPC and prosecuted in that case. The petitioner submitted his explanation dated 19.11.2003, in which, he though did not dispute his name figuring as an accused in the FIR and his subsequent prosecution, he added that it was a false case reported by his real uncles on account of disputes between his father and uncles in respect of partition of ancestral properties and that the case was later compromised between his parents and uncles. It was further submitted that since the matter had been compromised, he was, at the time of filling up column 12 of the Attestation Form, under the impression that no offence had been committed by him and that there could be no question of any punishment for the same. Acknowledging the lapse on his part in furnishing correct information, the petitioner pleaded that it had happened due to ignorance and that he deserved to be dealt with leniently on humanitarian consideration.

4. It appears that the aforesaid explanation from the petitioner was not found satisfactory and consequently, vide letter dated 12.1.2004, his services were terminated with immediate effect paying one month's salary in lieu of the notice period as he was not found fit for further retention in service.

5. On behalf of respondents, defending the impugned action terminating the services of the petitioner, it is pleaded that in view of intentional and deliberate suppression of correct information against column 12 of the Attestation Form, the petitioner was, after being afforded an opportunity of explaining his position, found not fit for permanent appointment and his services were, therefore, terminated in exercise of powers conferred on the appointing authority under Rule 25(2) of the CISF Rules, 2001.

6. We have heard the learned Counsel representing respective parties and also perused the relevant parts of the record.

7. The background facts leading to issue of memo dated 5.11.2003 requiring the petitioner to explain his position in regard to suppression of information on his part in relation to his being prosecuted in connection with a case FIR No. 68/93 dated 3.8.1993, PS Daudpur, Distt. Chhapra, Bihar under Sections ,447 341, 323, 324, 337/34 IPC in column 12 of the Attestation Form by answering the same in negative, are undisputed.

8. Learned Counsel for the petitioner assailed the impugned action terminating the services of the petitioner on the sole ground that the Commandant/CISF Unit, ONGC, Ahmedabad while passing the impugned order terminating the services of the petitioner with immediate effect vide letter dated 12.1.2004 acted without application of his mind by omitting to accord due consideration to the explanation dated 19.11.2003 submitted by the petitioner pursuant to memo dated 5/19.11.2003 rendering the same vitiated and legally unsustainable. A decision of the Supreme Court in Commissioner of Police, Delhi and Another Vs.

Dhaval Singh, , was relied upon by the learned Counsel for the petitioner to lend strength to his aforesaid argument. Dhaval Singh's (supra) was a case where the respondent, a candidate for appointment as constable, put a cross mark in the column of Attestation Form against which he was required to give information about pendency of criminal case, if any, against him. He had, however, before order cancelling his candidature was passed on 20th of November, 1995 on the ground of suppression of correct information, on his own informed the authority concerned about the pendency of the criminal case against him as also his subsequent acquittal therein. Without adverting to information so furnished by the respondent, the authority concerned proceeded to cancel the appointment of the respondent which was eventually challenged by the respondent before the Central Administrative Tribunal. The Central Administrative Tribunal allowed the respondent's application and set aside the orders of cancellation of candidature and rejection of his representation, and directed the appellant to offer appointment to the respondent within three months from the date of receipt of the copy of the order. The order of the Central Administrative Tribunal was challenged in SLP before the Supreme Court. The Supreme Court, noticing that the information regarding pendency of criminal case voluntarily furnished by the petitioner was, before passing of the impugned order, left out of consideration and also that such communication from the respondent had never been disposed of, held that there was lack of proper application of mind and that there was, in the circumstances, no error committed by the Central Administrative Tribunal in setting aside the orders cancelling respondent's candidature and rejecting his representation.

9. The case on hand is clearly distinguishable on facts. Unlike in Dhaval Singh's case(supra), no voluntary information regarding his prosecution in the criminal case registered against him was ever furnished by the petitioner at any point of time subsequent to filling up and submission of his Attestation Form before the same was gathered on verification of his antecedents through the District Magistrate, District Chhapra, Bihar. The explanation offered by the petitioner to the effect that the FIR naming him as one of the accused was got falsely registered by his uncles and that the matter was eventually compromised during its pendency before the concerned Court or his acquittal in the case could not obliterate the effect arising out of furnishing of incorrect information required in column 12 of the Attestation Form, especially where para 1 at the very beginning of the Attestation Form appended a note of caution, "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." The information required to be furnished simply pertained to prosecution, if any, in a criminal case and it had nothing to do with the falsity or otherwise as also eventual acquittal in the case.

10. Learned Counsel for the respondents, referring to a decision of the Supreme Court in Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav, , involving more or less similar facts as in the present case, contended that the

suppression of material information as sought against column No. 12 of the Attestation Form and making a false statement has a clear bearing on the character and antecedents of the petitioner in relation to his continuance in service.

11. In Ram Ratan Yadav(supra), the respondent, selected for the post of Physical Education Teacher in Kendriya Vidyalaya, was offered an appointment. Para 8 of the letter of appointment required him to fill in an Attestation Form which contained columns 12 and 13 to the following effect:

12. Have you ever been prosecuted/kept under detention or bound down/fined, convicted by a court of law of any offence?

13. Is any case pending against you in any court of law at the time of filling up this Attestation Form?

Answer to both these questions furnished by the respondent was in negative. Like para 1 of the Attestation Form in the instant case, para 9 of the Attestation Form, though worded somewhat differently, in the aforesaid case provided:

Suppression of any information will be considered a major offence for which the punishment may extend to dismissal from the service.

Contrary to the information furnished by the respondent in columns 12/13 of the Attestation Form, a report received from police revealed that a criminal case registered under Sections 323, 341, 294, 506B read with Section 34 IPC was pending against the respondent on the date of his filling the Attestation Form. Finding that the respondent had suppressed the material information in regard to his prosecution and pendency of a criminal case at the relevant time, his services were terminated which he challenged before the CAT. The application filed by him challenging the order of termination of his service was, however, dismissed by the Tribunal. On a petition challenging the Tribunal's order dismissing his application, the High Court set aside the order of the Tribunal. Kendriya Vidyalaya Sangathan, aggrieved by the order of the High Court, went in appeal before the Supreme Court, which was, eventually, allowed by reversing the order of the High Court and restoring the Tribunal's order. The following observations of the Supreme Court in deciding the appeal may appear useful to extract:

11. It is not in dispute that a criminal case registered under Sections 323, 341, 294, 506B read with Section 34 IPC was pending on the date when the respondent filled the Attestation Form. Hence, the information given by the respondent as against columns 12 and 13 as "No" is plainly suppression of material information and it is also a false statement...

...The requirement of filling columns 12 and 13 of the Attestation Form was for the purpose of verification of character and antecedents of the respondent as on the date of filling and attestation of the form. Suppression of material information and making a false statement has a clear bearing on the character and antecedents of the respondent in relation to his continuance in service.

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....

12. The above extracted observations by the Supreme Court in Ram Ratan Yadav (supra) appear to apply equally in the context of present case as well and there is no scope to take a different view in the matter. In his reply to show-cause notice, the petitioner did not dispute that the information furnished by him in column 12 of the Attestation Form was incorrect inasmuch as he was found to have been prosecuted in a criminal case and was facing trial therein at the relevant time when he filled up the Attestation Form. Expressing regret for the lapse and seeking to justify suppression of material information of his being prosecuted in the criminal case by pleading that the petitioner was labouring under the misimpression that no offence had actually been committed by him, in view of compounding of the offences, could not have accounted for dilution of seriousness of the lapse to the extent of offsetting the consequential effect in the nature of the impugned order. The reply to show-cause notice submitted by the petitioner was very much before the competent authority when the impugned order came to be passed and thus it appears unacceptable that the same was not accorded due consideration. Moreover, the nature of reasoning advanced by the petitioner to justify the aforesaid lapse on his part, would even otherwise appear to supply no explanation to help obviate the impugned penal consequence that ensued.

13. Noticing that the impugned order terminating the services of the petitioner suffers from no vice warranting an interference therewith, the petition fails and the same is accordingly dismissed with no orders as to costs.