

(2006) 01 DEL CK 0054
In the Delhi High Court
Case No : WP (C) 4147 of 1993

Brijesh Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-01-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 147, 148, 307, 308, 402

Citation : (2006) 01 DEL CK 0054

Hon'ble Judges : Mukul Mudgal, J;H.R. Malhotra, J

Bench : Division Bench

Advocate : A.K. Singh, for the Appellant; Gaurav Duggal and Priya, for the Respondent

Final Decision : Dismissed

Judgement

H.R. Malhotra, J.—The petitioner was selected as a Constable in the Boarder Security Force in March, 1987. His enrollment form was sent to the police for verification of his character and antecedents . The Senior Superintendent of Police Agra sent the said enrollment form to the SHO Jaipur District Agra for inquiry. During the inquiry it was found that the petitioner was involved in a criminal case being Criminal Case No. 93/1985 under Sections 147,148,307,308 and 402 I.P.C. and this case was registered against him way back on 12th November, 1985 and charge sheet had also been filed in the court of Sessions and the trial was in progress. This report was forwarded to the Commandant BSF Udampur .

2. Since the petitioner had concealed this material fact he was discharged from service on 15th January, 1988 because of concealment of this material fact in the attestation form which contained various columns about the pendency of criminal cases, prosecution, and conviction etc. The petitioner while filling up those columns stated "No" against all these columns indicating that no prosecution against him was pending whereas in actuality he was prosecuted for commission

of the aforesaid offences and the trial of the case was in progress in the court of sessions at that time.

3. This fact has not been denied by the petitioner but it is pleaded by him that principles of natural justices were violated by the respondents by not affording an opportunity to the petitioner of being heard . What else is pleaded by him is that the case resulted in acquittal finally and, Therefore, for that reason he was entitled to reinstatement for which he made representation to the respondent which was turned down. The petitioner has further stated that he was not discharged from the service on the ground of concealment of material fact but he was discharged from the service on the ground that he was not likely to be an efficient soldier and Therefore according to the petitioner an enquiry should have been held before discharging the petitioner.

4. We have gone through the pleadings i.e. the petition, counter and the rejoinder. This is a case where the petitioner managed to get the employment in the para military force which is one of the elite forces as Jawans of BSF are primarily responsible for guarding our borders and many times face to face with the enemies and Therefore such security personnels are expected to maintain the high standard of discipline and character. The petitioner in our view had withheld the material fact deliberately knowing fully well that if he had disclosed this fact in the attestation form he may not have been eligible to the employment as he was facing a criminal trial in a serious case where Provisions of Section 307 were invoked against him. The petitioner has raised a grievance that the respondent while removing him from service violated the principles of natural justice by not affording an opportunity to the petitioner of being heard. The petitioner was in fact afforded an opportunity of being heard in this Court and asked to address us on this issue. However he was unable to point out any error in the impugned order. He has also been unable to satisfy this Court the reason for concealment of criminal proceedings pending against him, at the time of his application for enrollment. With holding of material information from the authorities speaks for itself about the character , discipline and personality of the petitioner. The Nation cannot take the risk of including such like persons the members of the armed forces or para military forces. These Jawans have to play an important role while guarding the International Borders. Concealment of this material fact speaks about the mind setup of the petitioner and, Therefore, in these circumstances the conclusion that he was not likely to be efficient soldier cannot be faulted.

5. The petitioner further challenges the impugned order of discharge on the ground that since he had been acquitted in the case subsequently and, Therefore, he should be reinstated in the force. We are not in agreement with such proposition. We may add that subsequent acquittal cannot of any help to the petitioner. The petitioner's conduct was not found worthy of service in the BSF on ground of concealment of pending criminal proceedings and not on ground of having been convicted of a criminal proceeding. It is not a fit case

where this Court should interfere with the order of discharge by way of invoking the Provision of Article 226 of the Constitution of India as the act of the respondent of cessation of petitioner's employment on ground of his likelihood of not being efficient soldier was justified.

6. There is thus no merit in this petition, the same is dismissed as such. No order as to costs.