

(2003) 06 MP CK 0005
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1464 of 2002

Dinesh Chandra Tiwari

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-06-2003

Acts Referred:

Army Rules, 1954 — Rule 13
Criminal Procedure Code, 1973 (CrPC) — Section 320(2)
Penal Code, 1860 (IPC) — Section 141, 294, 323, 34

Citation : (2003) 4 MPLJ 296

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Advocate : T.S. Ruprah, for the Appellant; Indira Nair with Smt. K. Menon, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Khare, J.

This is a writ petition under Articles 226 and 227 of the Constitution of India for quashing the "discharge order" dated 8-12-2001 and for issuing a direction to the respondents to reinstate the petitioner in army service.

It is not in dispute that the petitioner was selected as "recruit" in RVC Core and he was directed to join basic military training. He reported for training on 1-1-2001. On that date he was required to fill in a form described as "Verification roll for combatant recruits" (Annexure-R-2). In this form against column No. 15 the petitioner gave the answer "No" to the questions (a) Have you ever been arrested? (b) Have you ever been prosecuted and (j) If any case is pending against you in any Court of Law, at the time of filling up this verification roll. There is a "warning" at the foot of column 15 in the words : "The furnishing of false information of any factual information in the Verification Roll would be a disqualification and is likely to render the candidate unfit for employment under the Government." This form has been signed by the petitioner and the Enrolling

Officer. This form was sent for verification to the District Magistrate, Satna who by his letter dated 31-10-2001 (Annexure-R-1) informed the respondent No. 3 that there is Crime No. 19/2000 registered against the petitioner under sections 141, 294, 323, 506(B) read with section 34 Indian Penal Code, he was arrested on 16-4-2000 and the charge-sheet was filed against him in the Court and this case was pending on the date of submission of form Annexure-R-2 by the petitioner. On the basis of this letter the services of the petitioner were terminated on 8-12-2001 as per Annexure-R-2 and R-3. In the discharge order dated 8-12-2001 (Annexure-R-3) it has been recorded; "Unlikely to become an efficient soldier under Item IV of the table annexed to Rule 13, Army Rules, 1954." The criminal case ended in acquittal of the petitioner as per order dated 11-2-2002 (Annexure-P-4) as the offences were compounded on the application of the complainant and the accused u/s 320(2) of the Code of Criminal Procedure, 1973.

The petitioner's case is that the incident giving rise to the criminal case had taken place when he was a student and it was because of the enmity with certain persons that he was involved in this case. According to him he was falsely implicated and the case was compromised at the instance of the complainant. It is stated that no show cause notice was given to the petitioner before issuing the discharge order and it is against the principles of natural justice. In the rejoinder it is said that the case was of petty nature and it did not involve any moral turpitude and the petitioner had no intention to furnish any false information. It is also stated that the form Annexure-R-2 was filled in by some staff member and it was simply signed by the petitioner and he could not understand the requirements of Column No. 15 as the Form was in English and he did not know this language.

The respondents' case is that the petitioner suppressed the material fact that criminal case was pending against him on the date he submitted the verification form. It is stated that a person who at the initial stage itself suppressed vital - information from the department and filled up wrong information cannot be believed as that shows the character of the individual. It is submitted that such a person does not deserve to be a member of disciplined force like that of Indian army. The subsequent acquittal is said to be of no relevance as the termination is not for the said offences but for suppressing the material facts. The honesty and integrity of the petitioner has been found to be doubtful and he has been found unfit for retention in army service. It is also pleaded that all the questions mentioned in the form were put to the petitioner in the language he understood and the information supplied by him was filled in by the enrolling officer. It is again reiterated that the petitioner's services have been terminated because he had wilfully and deliberately concealed the truth and made the false statement.

The learned counsel for both the sides have been heard. In the verification form the petitioner has definitely suppressed the material facts of his arrest and the pendency of the criminal case against him on the date he submitted this form

under his signature. The contents of the column No. 15 must have been explained to him and the warning must have been read over to him. The verification form is required to be filled in u/s 13 of the Army Act which provides; "Upon the appearance before the prescribed enrolling officer of any person desirous of being enrolled, the enrolling officer shall read and explain to him, or cause to be read and explained to him in his presence, the conditions of the service for which he is to be enrolled, and shall put to him the questions set forth in the prescribed form of enrolment, and shall after having cautioned him that if he makes a false answer to any such question he will be liable to punishment under this Act, record or cause to be recorded his answer to each such question. It has been held by the Supreme Court in Sanjay Kumar Bajpai vs. Union of India, 1997(1) SLR (SC) 803 while dealing with an identical case that having appended his signatures at the end of the form it is not open to the appellant to disown the same. The filling of enrolment form was an official act required to be performed u/s 13 of the Army Act and a presumption about regularity of such official act can be drawn. There is no reason to assume that the enrolment form was not filled in the manner as required.

In the present case the petitioner did not plead in the original petition that the contents of Question No. 15 and the warning appended thereto were not explained to him. It is in the rejoinder that this plea has been set up. The official acts are presumed to have been done rightly and regularly as per illustration (e) to section 114 of the Evidence Act. The form contains a number of questions and all these were filled in on the basis of the information given by the petitioner and, therefore, the information relating to question No. 15 also must have been supplied by the petitioner. He did not disclose that the criminal case was pending against him and made a false statement that no case was pending against him at that time. In the case of Sanjay Kumar Bajpai (supra) the Supreme Court has held that the discharge from service on the ground of false statement in the enrolment form is not open to interference by the Court. In that case also there was ultimately acquittal in the criminal case under sections 147, 452, 324 and 323 Indian Penal Code but that fact was held to be not of much significance as the termination was based on the suppression of material fact and making of a false statement.

There is a recent decision of the Supreme Court in Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav, in which it has been held that 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. It has been further observed that 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 fact that the case was subsequently withdrawn and that the offences were not of very serious nature or did not involve moral turpitude were held to be not of much significance. The decision of the Division Bench of this Court in this case was reversed. That judgment is reported as Ramratan Yadav Vs. Kendriya Vidyalaya Sangathan and Others, . Dealing with the earlier decision in Regional Manager, Bank of Baroda Vs. The Presiding Officer, Central Govt. Industrial Tribunal and Another, it has been observed by the Supreme Court that in that case it was made clear that the order in that case was rendered on the peculiar facts and circumstances of the case and "will not be treated as a precedent in future" and therefore the High Court could not treat that case as a precedent.

In light of the statement of law in the two decisions of the Supreme Court referred above the impugned order in the present case cannot be quashed. As already stated the petitioner suppressed the material facts of his arrest and the pendency of criminal case against him in spite of the warning that furnishing of false information would be a disqualification and was likely to render the candidate unfit for employment and, therefore, the termination order is beyond the scope of judicial review. There was no need of any show cause notice to the petitioner on the facts and circumstances of this case.

The learned counsel for the petitioner has relied upon the single Bench decision of this Court in Jai Singh Vs. Director General, Headquarters Central Reserve Police Force and Others, which in turn is based on the judgment of the Division Bench of this Court and the decision of the Supreme Court in the case of Bank of Baroda referred above. The view taken in Jai Singh's case cannot prevail in view of the two decisions of the Supreme Court in Sanjay Kumar Bajpai and Ramratan Yadav referred above.

The petition is dismissed.