

(2016) 03 P&H CK 0032
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 276 of 2016 (O&M)

Dinesh Kumar

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 10-03-2016

Acts Referred:

Constitution of India, 1950 — Article 14, 226
ITBP Service Rules, 1994 — Rule 22

Citation : (2016) 2 SCT 559

Hon'ble Judges : Mahesh Grover; Lisa Gill, JJ.

Bench : Division Bench

Final Decision : Disposed Off

Judgement

Mahesh Grover, J. - C.M. No. 572-LPA of 2016

Delay condoned. C.M. stands allowed.

C.M. No. 573-LPA of 2016

Allowed as prayed for.

LPA No. 276 of 2016

2. The appellant questions the judgment of learned single Judge dated 15.1.2016 upholding the order of termination on the ground that at the threshold of entering into service the appellant concealed the vital information required of him as per column No.12 (a) and (b) of the self-declaration form which reads as under :-

"Whether you were arrested or any case is pending against you or you were ever arrested or you have been released on bail or you have been fined by Court or charges have been proved or you have been barred to appear in the examination by the Public Service Commission or you have been disqualified by the University or Education Board."

The appellant was facing criminal trial in FIR No.105 dated 3.6.2012 under Sections 419, 420, 120-B IPC registered at Police Station Sector 3, Chandigarh.

3. It is a different matter, however, that he was acquitted subsequently on 23.9.2015. The appellant in the meantime gained entry into service on 14.8.2012 and faced termination on 17.2.2014 on the ground noted above.

4. He questioned his termination by filing CWP No.804 of 2016 which was dismissed with an observation that the respondents were well within their rights to terminate the services of the appellant on account of furnishing a false/incorrect information at the time of his appointment.

5. Learned counsel for the appellant contends that the case registered against him was false which was substantiated by his subsequent acquittal and therefore failure to furnish this information was inconsequential. Besides under Rule 22 of the ITBP Service Rules, 1994 there is a discretion in the Central Government either to terminate the service or grant lesser punishment to an incumbent who has furnished a false/incorrect information. He refers to the use of word "may" in the rule in support of his plea.

6. Rule 22 of the ITBP Service Rules, 1994 is extracted here below :-

"22. Termination of service on grounds of furnishing false/incorrect information at the time of appointment - The central Government, or as the case may be, the authority as specified in rule 17, may terminate the service of a person subject to the Act on grounds of furnishing false/incorrect information at the time of appointment of that person in the service. A show cause notice giving one month's time shall be issued to the individual before termination of his service."

The counsel for the appellant has also placed reliance on Ashok Kumar v. Union of India and others 2012(3) RSJ 125 and Commissioner of Police and others v. Sandeep Kumar, 2011(4) SCC 644.

After hearing the learned counsel for the appellant, we are of the opinion that no legal infirmity has been pointed out by him in the impugned judgment. Indeed the word "may" in the rule would vest a discretion in the authority but it has not been shown to have been exercised arbitrarily. The appellant does not dispute concealment and offers no justification except to say that he was falsely involved. Acquittal came subsequently. Even charge was framed on a date later than the date of disclosure.

7. We are also of the opinion that a person who seeks or aspires an entry into a uniformed service should be a man of impeccable character and integrity. Concealment of vital information of pendency of a criminal case would reflect on the fallible integrity of the individual exposing him to the charge of an officer unbecoming of a service to which he would not have been assigned but for concealment of information.

8. There is thus obviously a significant import attached to the self declaration

which cannot be reduced to insignificance. Indeed another view favourable to the appellant was a probable course open to the authorities which possibly it could have adopted if the appellant had some justification to offer. But if the competent authority has taken a view that concealment of information of a case which also impinges on the moral credibility of an officer (involved in an offence under Sections 419, 420, 120-B IPC) should be sufficient to warrant termination of his services particularly for lack of any serious explanation offered by the appellant, then no fault can be found with its decision. The appellant has been unable to show that the discretion vested in the authority has been exercised unwisely or arbitrarily.

9. The judgment of the Hon"ble Supreme Court in Commissioner of Police v. Sandeep Kumar (supra) would not be applicable as in that case that matter under Section 325 IPC had been compromised and the Hon"ble Supreme Court specifically noticed the youth of the writ petitioner amenable to indiscretions of age to condone an offence under Section 325 IPC. It thus does not lay down a principle of law in absolute terms to offer a binding character to the judgment.

10. We thus do not find any ground to interfere. Dismissed.