

(2006) 12 DEL CK 0135

In the Delhi High Court

Case No : WP (C) No. 6592 of 2003

Ex (Recruit) Constable Nirbhai Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-12-2006

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5, 5(1)
Delhi Police (Appointment and Recruitment) Rules, 1980 — Rule 5
Penal Code, 1860 (IPC) — Section 306, 34

Citation : (2007) 94 DRJ 325

Hon'ble Judges : Vipin Sanghi, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : Keshav Kaushik and Darpan Wadhwa, amicus Curia, for the Appellant; V.K. Tandon, for the Respondent

Final Decision : Allowed

Judgement

Manmohan Sarin, J.—This petition raises an important question regarding enforcement of a clause in the application form providing for a deemed presumption of suppression and concealment, in case of non disclosure of an event occurring in future. As per the terms and conditions of the Application Form, if an event occurring in future relating to detention, arrest or conviction, is not disclosed, it shall be treated as concealment and suppression resulting in cancellation of the candidature followed by termination of employment.

2. The above issue has arisen in the following facts:

(i) In October, 1997 a special recruitment drive was carried out in Moga (Punjab) to recruit constables (temporary) in Delhi Police. Petitioner filled up the application form on 6.10.1997.

(ii) The application form contained warning to the effect that giving false information or suppressing correct information in the application form would be treated as making the applicant ineligible for the selection. Further, it provided

that if after submitting the form, the applicant is detained or deprived of any right or convicted by a court of law, then detailed information of the same must be furnished to the DCP 3rd Bn. DAP, immediately. Failure to do so would be deemed to be suppression of information.

(iii) In response to a query as to whether any criminal case was pending against the applicant, the petitioner responded "No". In the attestation form filled in around the same time, the reply to the query with respect to criminal proceedings was again "No". This is admittedly correct as there was no past criminal record of the petitioner, prior to filling up of the forms.

(iv) On 27.12.1997, FIR No. 100 was registered against the petitioner u/s 306/34 IPC. He was arrested and was subsequently released on Bail. Challan was sent to Court on 27.3.1998. Significantly, petitioner after his selection upon clearing the interview and medical tests, joined the Department on 27.3.1998 (A.N.) itself without disclosing his involvement in the criminal case. Petitioner had remained in custody for two months in the said criminal case which was for abetting suicide committed by his brother's wife, Karamjit Kaur. He claims to have been dragged into the case along with his brother, without any fault of his.

(v) Vide judgment dated 1.9.1998, the Additional Sessions Judge, Faridkot, acquitted the petitioner and his brother, as no evidence was found against them. The case that Karamjit Kaur, had taken poison as her husband and brother-in-law abused her and demanded dowry was not proved as the witnesses turned hostile.

(vi) On 28.9.1998, a show cause notice was issued to the petitioner by respondent No. 3 stating that an inquiry was got conducted which revealed that FIR No. 100 dated 27.12.1997 u/s 306/34 IPC was registered against him, but at the time of joining on 27.3.1998 or from 27.12.1997 till date, he did not disclose the facts of his involvement/arrest in the criminal case. It was stated that he adopted deceitful means in joining the Department, deliberately and knowingly. He was called upon to show cause as to why his services should not be terminated under Rule 5(i) of the CCS (Temporary Service) Rules, 1965 for concealment of the fact of his involvement in a criminal case.

(vii) Petitioner responded to the show cause notice on 20.10.1998 by stating that he was not aware of the provision which required the disclosure to be made. He further submitted that moreover, he has been acquitted in the criminal case vide judgment dated 1.9.1998.

(viii) After considering the reply to the show cause notice, the respondents terminated the petitioner's service vide order dated 12.1.1999, stating that the plea that he was unaware of the procedure is devoid of any weight and moreover ignorance of rules is no excuse. It was recorded that he intentionally concealed the fact and further that his plea of being acquitted is not tenable since the acquittal is due to the prosecution witnesses not supporting the case.

(ix) Petitioner submitted his representation against the termination order on

9.4.1999 which was rejected on 30.6.1999. Petitioner contends that there is nothing on record to conclude that the non-disclosure of involvement in criminal case was deliberate or intentional. Petitioner filed OA No. 1745/1999 before the Central Administrative Tribunal, Principal Bench, New Delhi, seeking reinstatement with consequential benefits. The OA was allowed vide order dated 31.1.2001, as Tribunal was of the view that the Department has not established that the post of the petitioner was temporary and thereby attracted the CCS (Temporary Service) Rules. Respondents were directed to reinstate the petitioner. The said order was challenged by the Department in W.P. (C) No. 3573/2001 before this Court. Vide order dated 8.8.2001, the matter was remanded back to the Tribunal for re-hearing all contentions on merits in the amended OA to be filed by the Petitioner. This OA was dismissed vide order dated 17.12.2002, which is assailed in this writ petition.

3. Vide our order dated 13.9.2006, we recorded the common ground between the parties that the services were terminated on account of what had been treated by the respondent as concealment. Learned Counsel for the petitioner contended that this was an appointment against a permanent vacancy and Therefore Rule 5(1) could not have been invoked.

4. Considering the issues arising in the writ petition, we consider it expedient to appoint Mr. Darpan Wadhwa, Advocate as amicus Curiae to assist the Court.

5. We have heard the parties. The amicus Curiae Mr. Darpan Wadhwa has submitted written submissions and the research done by him on the question arising for consideration, which was taken on record. At the time of filling up of the form in October, 1997, there was neither any mis-statement nor any concealment as no criminal case was pending against the petitioner, i.e. no "Past Event" was concealed. However, after his selection petitioner was arrested in the case registered vide FIR dated 27.12.1997, referred to for facility of reference as "Future Event". Charges were framed in the criminal case on 17.4.1998. He was acquitted of these charges on 1.9.1998 by the Court of Sessions. These events were not disclosed by the petitioner to the respondent leading to a show cause notice being issued to the petitioner on 29.9.1998 i.e. after he was acquitted, by the respondents, alleging suppression of information of arrest in the criminal case.

6. Mr. Wadhwa submits that the petitioner's plea that he was unaware of the provision for disclosure, was simply rejected as being "devoid of any weight and an after thought". It was urged that the termination order does not consider or go into the issue whether the petitioner, in fact, intentionally or knowingly concealed the fact of his involvement in a criminal case subsequent to his filling up the forms. It is based on an assumption that not providing the information regarding the future event, per se amounted to suppression which, per se leads to termination of service.

7. Mr. Wadhwa placed reliance upon Kendriya Vidyalaya Sangathan and Others

Vs. Ram Ratan Yadav, where a criminal case was pending at the time of filling up the form and saying "no" in response to the question of involvement in a criminal case, in the form, was held to be plain suppression of material information and also a false statement. It was observed that:

it is difficult to accept his version that he could not correctly understand the contents of column 12 and 13. Even otherwise, if he could not correctly understand certain English words, in the ordinary course he could have certainly taken the help of somebody. In view of this it was held that having certified the information, the version of the employee could not be accepted.

It was urged that reference to Kendriya Vidyalaya's case is invited to note that the defense of the employee was duly considered but rejected as not being believable. In the present case, it is contended that the defense of the petitioner of not knowing the requirement of disclosure was not even considered.

8. Learned amicus Curiae referred to Commissioner of Police, Delhi and Another Vs. Dhaval Singh, , where a candidate had given incorrect information while filling up the form, however, subsequently, the candidate sent a letter stating that he had inadvertently not mentioned the pendency of a criminal case and the letter should be treated as giving the correct information. Despite this communication, his candidature was "automatically" canceled. The Supreme Court held that the subsequent letter should have been considered as it was relevant material and the cancellation was quashed on the basis of improper application of mind. It was held that it was "obligatory" to have considered the subsequent communication and apply its mind to the stand of the respondent that he had made an inadvertent mistake, before passing the order. It was urged that this case also makes clear the approach of the Supreme Court that a finding of intentional suppression is necessary and the presumption of intentional suppression cannot be applied in every case where incorrect information is filled up in a form. Besides, it was obligatory to consider the defense of the person and the authority should not proceed simply to cancel the candidature on the basis of incorrect disclosure.

9. Further reliance is placed on Chief Engineer, M.S.E.B. and Another Vs. Suresh Raghunath Bhokare, where the court held that "fraud needed to be pleaded and proved" to urge that it is necessary to plead, prove and establish that there was deliberate suppression/concealment before an employee is terminated/dismissed. He submits that from the above judicial pronouncements, the inference that can be safely drawn is that it is necessary to plead, prove and establish that there was a deliberate suppression/concealment before an employee is terminated/dismissed on the said ground. The Supreme Court in each of the cases, has considered the defense of the employee.

10. The element of an intentional perversion of truth for the purpose of inducing another, in reliance upon it, to part with some valuable thing belonging to him or surrender a "legal right" is essential to constitute suppression and concealment

amounting to fraud. According to Halsbury's Law of England, a representation is deemed to have been false, and Therefore a misrepresentation, if it was at the material date, false in substance or in fact. In *Derry v. Peek* 1886-90 All ER 1 what constitutes fraud was described thus:

Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it is true or false.

Accordingly, the amices Curiae urged that the above requirements are not met in the petitioner's case.

11. We find merit in the submissions of the learned amices Curiae. We are of the view that while dealing with contractual relationship between a governmental authority and its employee engrafting the presumption of legal fiction as applicable in statutory law to the contractual relationship would not be prudent. There is also inherent distinction between the non-disclosure or concealment of a past event where the deeming provision could apply as the facts are within the knowledge of the person, and in respect of a future event, where the application of the deeming provision would entail attributing to the person concerned, his remembering the provision, which may or may not be true. As noted above, even in cases relating to the disclosure or non-disclosure of past event, the approach of the Supreme Court has been that the defense of the employee ought to be considered. The same would apply with greater force to a provision dealing with a future event. Therefore, in our view, simply by invoking the deeming provision especially in respect of a future event, the authority cannot terminate the employment without considering the employee's defense.

12. In view of the foregoing discussion, we are of the view that even if there is incorrect disclosure in the application/attestation forms as to a past event, it is obligatory to consider the defense of the employee before coming to the conclusion of suppression. This should apply with greater force for non-compliance with disclosure of Future Events. Secondly, the meaning given to the word "deemed" depends upon the context in which it is used. The ordinary meaning includes "generally regarded" or "prima facie regarded" and does not in every case mean "treated as". Thirdly, the statutory principles of deemed legal fiction should not be engrafted in the context of contractual relationship.

13. We may also note the submissions of Mr. Keshav Kaushik, counsel for the petitioner that the petitioner had been recruited against a permanent vacancy and, Therefore, his services cannot be terminated under the CCS (Temporary Service) Rules. The above plea is without merit as rightly pointed by Mr. Tandon , counsel for the respondent. The application form itself carries the notation

Application form for the post of Temporary Constable in Delhi Police.

Further, Rule 5(e)(i) of the Delhi Police (Appointment and Recruitment) Rules, 1980 provides as follows:

All direct appointments of employees shall be made initially on purely temporary basis. All employees appointed to the Delhi Police shall be on probation for a period of two years:

Provided that the competent authority may extend the period of probation but in no case shall the period of probation extend beyond three years in all.

This shows that the services of the petitioner were temporary.

14. Coming to the factual aspect, Mr. Tandon on behalf of the respondent submitted that the petitioner had been in custody for two months and it is certain that it was not such an event which could have slipped from his mind. Information regarding the involvement in the case should have been disclosed as soon as possible. He submits that it was only when the show cause notice was issued to the petitioner that realization dawned upon him regarding the disclosure. Mr. Tandon urged that in view of the warning in the application form which was binding on the petitioner, he was required to disclose his involvement and failure to do so, rightfully resulted in the presumption of suppression and concealment. Accordingly, his termination was valid.

15. Having heard learned Counsel for the parties and noted the legal position in the paras above, we find that there is no analogous provision relating to disclosures, as in the application form, in the Central Civil Services (Temporary Services) Rules, 1965. We find that in this case, the question which arises for determination is whether it can be attributed to the petitioner that he remembered the disclosure clause on the basis of the deemed presumption. It goes without saying that the petitioner could not have forgotten the period of his incarceration. The question is whether he remembered that the application form, that he had filled nearly a year back, contained a clause requiring him to make such a disclosure. Even if such a presumption was to be raised, it would be a rebuttable presumption where he has to be permitted to lead evidence in defense and the same being objectively considered rather than arriving at a finding of deemed suppression or fraudulent concealment.

16. In the instant case, there is no real consideration of the defense of the petitioner that he was not aware of the instruction in the form which required him to inform the authorities as and when he was prosecuted or arrested in future, after having filled up the form. In our view, in a mass recruitment drive as this, it is quite plausible that a person filling up the form may not even retain a copy or remember the covenant contained therein so as to inform the authorities at a later date on the happening of the eventuality. The authorities in the instant case have acted on the presumption raised as per the clause without considering the defense of the petitioner. It has not been shown that the petitioner having the knowledge of the requirement to inform the authorities and of its consequences, deliberately hid the factum of his subsequent arrest in order to secure the employment. The relevant portion of the order dated 12.1.1999 is reproduced for facility of reference:

It was obligatory on his (petitioner's) part to inform this department soon after his arrest in the said case in conformity with the clause mentioned in the application form prescribed for recruitment in Delhi Police as well as in the attestation form, which he filled during the course of his recruitment in Delhi Police. But he did not disclose the facts of his arrest in the said criminal case, which amounts to concealment of fact. His plea that he was unaware of the procedure is devoid of any weight being the plea to be an after thought . Besides this, ignorance of rules is no excuse. He intentionally concealed the facts. His next plea that he has been acquitted in the said criminal case is also not tenable since his acquittal is not honourable due to non-supporting the case by main PWs. Here it is also worth mentioning that this plea of the Rectt. Constable Nirbhai Singh, No. 2408/N does not require any consideration, as the issue is that he concealed the fact of his arrest in the said criminal case.

From the foregoing it would be seen that the respondent authority, on the basis of the clause in the Application Form has rejected the plea of the petitioner of not being aware of the same, as an after thought and treated the same as deliberate and intentional concealment. The authority in holding "ignorance of rules is no excuse" has treated it as a deeming provision akin to raising a statutory presumption.

17. The Tribunal proceeded on similar lines when it, inter alia, holds in the impugned order:

This clearly shows that it had been conveyed and it was to the knowledge of the applicant that even after submission of the form, if he had been arrested and prosecuted, then this fact should be communicated immediately. Otherwise, it shall be deemed that there is suppression of actual information. It is on the strength of this fact that the necessary action on that count had been contemplated and later on culminated into the final order terminating the services of the applicant.

Non-communication of the information of arrest was treated as suppression of actual information. The Tribunal proceeded on the basis that the provision having been conveyed was to the petitioner's knowledge and gave effect to the deeming provision.

18. We are conscious of the chequered history of the case and that it is the second round of litigation. We are, however, of the view that the authorities have misdirected themselves in adopting the approach of non-consideration of the defense and of raising a deemed presumption akin to a statutory one in holding that there was concealment of the factum of arrest.

19. We accordingly set aside the order of the Tribunal dated 17.12.2002 as also order dated 12.1.1999 of the respondent authority and remand the case to respondent authority to consider the defense of the petitioner after granting him an opportunity of showing that he was not aware of the requirement of disclosing his involvement in a criminal case in future. The willful suppression and

concealment is required to be established otherwise, without the aid of the deeming provision. The petitioner would appear before the concerned respondent authority on 27.12.2006. The respondent authority would decide the remanded matter within three months.

We wish to record our appreciation for the valuable assistance rendered by the amices Curiae Mr. Darpan Wadhwa.

The petition stands allowed in the above terms.