

(2007) 12 DEL CK 0089

In the Delhi High Court

Case No : Writ Petition (C) 11366 of 2006 and CM 11377 of 2006

Ex. Sepoy Sultan Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-12-2007

Acts Referred:

Army Act, 1950 — Section 44

Army Rules, 1954 — Rule 33, 34

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 15(1)

Penal Code, 1860 (IPC) — Section 147, 148, 149, 222, 323

Citation : (2007) 12 DEL CK 0089

Hon'ble Judges : Vikramajit Sen, J;S.L. Bhayana, J

Bench : Division Bench

Advocate : P.D.P. Deo, for the Appellant; A. Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, J.—The facts in this Petition are that the Petitioner was enrolled in the Indian Army on 11.1.2002. He completed his Training on 22nd October 2002 and was posted at 5, Rajputana Rifles as a Recruit. In May 2005 he was served with a Chargesheet dated 21.5.2005 Along with a copy of the Summary of Evidence so that he would prepare his defense as envisaged in Army Rules 33 and 34 of the Army Rules, 1954. The Petitioner was further informed that he would be tried by a Summary Court Martial (SCM) on 25.5.2005. The Petitioner was dismissed by the SCM and his subsequent Appeal was also unsuccessful. The Charge against the Petitioner reads as follows:

Army Act

Section 44

MAKING AT THE TIME OF ENROLMENT A WILLFULLY FALSE ANSWER TO A QUESTION SET FORTH IN THE PRESCRIBED FORM OF ENROLMENT WHICH WAS PUT TO HIM BY THE ENROLLING OFFICER BEFORE WHOM HE APEARED FOR

THE PURPOSE OF BEING ENROLLED

In that he, at BRO Jhunjhunu on 04 Oct 2001, when appeared before Colonel U Sachdev, an enrolling officer, for the purpose of being enrolled for service in the "RAJPUTANA RIFLES REGIMENT" to a question put to him, "Have you ever been imprisoned by the Civil Power or are you under trial for an offence or has any complaint or report been made against you to the magistrate or Police for any offence" If so give details"" answered "No" well knowing it be false since a case was pending against him at Police Station Sri Madhopur bearing No. 222/97 under IPC Section 147, 148, 149, 323, 325, 447 and 326 respectively.

2. Learned Counsel for the Petitioner states that when the Petitioner was fifteen years of age he was mentioned in an FIR and had to face prosecution.

3. The District Magistrate, Sikar, vide his letter dated 25.11.2002, informed the Respondents that a case for offences under IPC Nos. 147, 148, 149, 323, 325, 447, 326, 222/97 against the Petitioner was pending in the Civil Court since 30.6.1998. The important fact is that at the time when the Attestation Form was filled-up the Petitioner was over eighteen years of age, and most importantly, the criminal proceedings were still pending. It is, Therefore, irrelevant that the Petitioner was allegedly fifteen years of age when the prosecution commenced. Knowingly, the Petitioner has incorrectly responded to the queries in the Attestation Form.

4. The prosecution ended with an Order dated 24.1.2005 which reads as follows:

Accused minor Sultan with guardian present. The Gist of charge under IPC 147, 148, 149, 447, 323, 325, 326 was verbally told to the accused minor Sultan and he confirmed the accusation for which he filed an application. After confirmation of the accusation, prosecution was closed. Argument heard. Application was considered. After proving the charge under IPC 147, 148, 149, 447, 323, 325, 326 against accused minor Sultan he was sent with guardian for counseling and under Juvenile Act 2000 Act 15(1)(d) he was handed over to his guardian after warning. His guardian was fined Rs. 5000/- u/s 15(1)(d) of Juveniles Act. The presence and arrest warrant of minor Sultan were cancelled. It is directed that there will be no adverse effect of the offence on Government service of the minor.

As per order the guardian of minor Sultan deposited Rs. 5000/- and it is seen to that to that effect receipt No. 43049/32 has been given. There is no action left in this case and the case is confined to the record.

Vice President Minor Justice Board Jaipur

5. In *Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav*, in the Attestation Form the employee had stated that he had not been prosecuted or convicted by any Court of any offence and that no case was pending against him in any Court at the time of the filling of the Attestation Form. Since these were found to be incorrect, he was dismissed from service and this action was upheld by the Supreme Court.

6. A similar view was taken by the Supreme Court in Ram Saran Vs. I.G. of Police, CRPF and Others, where the petitioner concealed his correct birth date and it was held that-

This is a case which does not deserve any leniency otherwise it would be giving premium to a person who admittedly committed forgery. In the instruction (GO No. 29 of 1993), it has been provided that whenever it is found that a government servant who was not qualified or eligible in terms of the recruitment rules, etc. for initial recruitment in service or had furnished false information or produced a false certificate in order to secure appointment should not be retained in service.

7. An almost identical question had arisen before a Division Bench of this Court in Yogesh Kumar Singh v. Union of India WP(C) No. 11460/2004, decided on 19th October, 2006. Our learned brothers had dismissed the Petition in view of the settled law. We are in respectful agreement with that Judgment. Where a Verification Roll has been wrongly filled up, despite the caution contained at its very threshold, it would be inappropriate for the Writ Court to exercise its extra-ordinary jurisdiction.

8. It is altogether another matter that had the Petitioner honestly and candidly mentioned the prosecution it may not have been held against him as he was a juvenile at the relevant time. In fact, the Order dated 24.1.2005 itself mentions that there will be no adverse effect of the offence on the government service of the accused. We must, however, draw the distinction that the Petitioner's service had been terminated not because of his involvement in a criminal prosecution but because of his incorrect answers to the questions contained in the Attestation Form.

9. Writ Petition is without merit and is dismissed.