

(2018) 10 DEL CK 0336

In the Delhi High Court

Case No : Civil Writ Petition No.11198 OF 2018 & C.M. No. No.43471 OF 2018

Gulab Singh

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 16-10-2018

Acts Referred:

Indian Penal Code, 1860 — Section 323, 363, 504, 506
Central Industrial Security Force Act, 1968 — Section 9

Citation : (2018) 10 DEL CK 0336

Hon'ble Judges : Hima Kohli, J;Rekha Palli, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The petitioner is aggrieved by an order dated 10.05.2018, passed by the respondent No.4/CISF denying his claim for grant of back wages for the period between 11.11.2016 to 20.12.2018, on the ground that he was out of service in this duration as a consequence of his own omission.

2. The brief facts of the case are that pursuant to an advertisement issued by the respondent inviting applications for appointment to the post of

ASI(Executive), the petitioner while working on the post of Constable in the CISF in the year 2014, had applied for the said post and had joined

service w.e.f. 22.09.2014. Upon being selected for the said post, the petitioner was required to fill up an Attestation Form wherein he was required to

give the details of any criminal case and/or record of conviction relating to him etc. The petitioner filled up the said form without disclosing the fact

that FIR No.305/2007 had been registered against him and his family members at Police Station Khatauli, Distt.Muzaffarnagar (UP) under Sections

363/504/506/323 IPC. In response to a specific question as to whether any

criminal proceedings were pending against him, the petitioner had categorically stated "No".

3. After the petitioner had been selected for the said post and was undergoing training while on probation, he received a letter dated 30.06.2015, from the respondent stating inter alia that they had learnt that a Case No.305/2007 was registered against him at Police Station Khatauli, Distt.

Muzaffarnagar (UP). He was therefore directed to furnish certain information relating to the said case. In response to the said letter, the petitioner

furnished all the requisite information. On completion of the petitioner's period of probation of two years on 21.09.2016, vide letter dated

14.10.2016, the respondents extended the same for six months. Soon thereafter, the respondents issued an order on 11.11.2016, terminating the

services of the petitioner by paying him salary in lieu of the notice period.

4. Aggrieved by the said termination order, the petitioner filed a statutory appeal before the respondent No.2 under Section 9 of the CISF Act on

03.02.2017. In the said representation, for the first time the petitioner stated that his brother, Pushpender Singh had fallen in love with one Reena, and

both had left their native place without informing the family members. Against the wishes of her family members, Reena and Pushpendra had

solemnized their marriage on 14.05.2007. When Reena was not found at her home, her family members filed a complaint with the police, based on

which complaint, an FIR was registered in which the petitioner and his family members were named. Subsequently, the dispute between the

family members of the petitioner and of Ms.Reena got amicably resolved and resultantly, the Investigating Officer submitted a closure report which

was accepted by the concerned court on 24.11.2015.

5. After considering the aforesaid facts, the Appellate Authority i.e. Inspector General/APS, CISF dismissed the petitioner's appeal and passed a

detailed order on 12.04.2017, holding inter alia that the petitioner had joined the service by suppressing material facts about his background, which was

unacceptable in government service and that he had read and signed the Attestation Form and Questionnaire Form in which it was clearly stated that

in case the information submitted by him was found to be false or incorrect, his candidature would be liable to be cancelled, apart from being subjected

to departmental or legal proceedings. With these observations, the petitioner's

appeal was rejected.

6. Aggrieved by the aforesaid order, the petitioner filed a writ petition in the High Court, registered as W.P.(C) 7942/2017 on which notice was issued

on 08.09.2017 and an interim order was passed on the same date stating inter alia that in the mean time, the respondents will be at liberty to examine

the judgment of the Larger Bench of the Supreme Court, in the case of Avtar Singh vs. UOI & Ors., reported as (2016) 8 SCC 471 and the pendency

of the writ petition would not bar the respondents from passing appropriate orders. In compliance of the aforesaid orders, vide letter dated 15.11.2017,

the CISF, New Delhi, requested the Inspector General/ TS, CISF Hyderabad (AP) to re-examine the instant case by constituting a Special Screening

Committee and forward its recommendations to the CISF HQrs for necessary action.

7. Consequently, the Special Screening Committee, as constituted by the competent authority assembled at the CISF (TS) HQrs on 04.12.2017 and re-

examined the petitioner's case. The report of the Screening Committee was forwarded to the Directorate General CISF, based on which the

petitioner was reinstated in service vide order dated 12.02.2018 and directed to report for duty at CISF ASG RGIA, Hyderabad within ten days from

the receipt of the order. The said order clearly specified that the intervening period i.e. from the date of SOS from the force to the date of reporting

back to duty, would be regularized separately as per the Rules. In view of the decision taken by the respondents/CISF on 12.02.2018, the captioned

writ petition was disposed of vide order dated 13.02.2018, while granting liberty to the petitioner to approach the respondents for consequential relief, if

he so desired.

8. After the petitioner had rejoined service, a show-cause notice dated 13.04.2018 was issued by the respondents wherein it was proposed to

regularize the intervening period from the date of the termination of the services of the petitioner, to the day just before he was taken on the strength

of the Force i.e. 11.11.2016 to 20.02.2018, on the basis of "no work no pay".

The petitioner replied to the aforesaid notice to show-cause vide letter dated 04.05.2018, stating inter alia that he had suffered on account of his illegal

and arbitrary termination of service and not having been found guilty of any

offence, moral turpitude or dereliction of his duties, he was entitled to all the benefits towards the intervening period and that he must be treated as having remain in service continuously.

9. After considering the petitioner's explanation, the respondents passed the impugned order dated 10.05.2018, wherein it was observed as

follows:

â??.....It is found that the fact the fact remains on record was that the petitioner did not furnish the details of police case registered against him at the

time of recruitment in CISF, in the Attestation Form on 20.09.2014. The said police case was closed by the competent court only on 24.11.2015 as

admitted by the petitioner after his appointment in CISF 22.09.2014 as ASI/Exe. As such, his services have been terminated vide order dated 8441

dated 11.11.2016 under the provisions of Sub-Rule (4) of Rule 26 of the CISF Rules 2001.

5.....As already explained in the proceedings paras, it was the negligence of the petitioner wherein he did not furnish the factual information in

Attestation Form at the time of his appointment in CISF on 20.09.2014. As such, his services have been terminated vide order dated 11.11.2016.

However, in compliance to Hon'ble High Court of Delhi interim directions dated 08.09.2017, petitioner's case has been re-examined by a

Special Screening Committee duly constituted by the competent authority. This Special Screening Committee after re-examining the entire matter,

recommended the petitioner's case as suitable for appointment in CISF. Thereafter, the petitioner has been reinstated in service w.e.f.21.02.2018

(FN). Therefore, the petitioner was out of service from 11.11.2016 to 20.02.2018 due to his own negligence in not furnishing the factual information in

the Attestation Form at the time of his appointment in CISF on 20.09.2014.â??

10. Aggrieved by the aforesaid decision, the petitioner has filed the present petition.

11. Mr.Javed Ahmed, learned counsel for the petitioner states that the respondent has erred in denying the benefits of back wages to the petitioner for

the period in question on an erroneous assumption that there was some omission and/or misrepresentation on his part; that the respondent failed to

consider the petitioner's case in the light of the guidelines laid down by the Supreme Court in the Case of Avtar Singh (supra) and only when the

High Court had directed them to reconsider his case, was the Special Screening Committee constituted which had recommended his case as suitable

for appointment; that once the petitioner was found suitable for appointment, he should have been granted all the consequential benefits including the relief of back wages.

12. We have heard the learned counsel for the petitioner and have perused the records including the facts as narrated in the impugned order dated

10.05.2018. It emerges from the record that at the time of filling of the Attestation Form and the Questionnaire Form the petitioner has not denied the

fact that he had failed to furnish the requisite information with regard to the lodging of the FIR and the criminal case arising therefrom. The only

explanation offered by the petitioner for not doing so is that the police case had been closed by the competent authority. But fact remains that the said

case was admittedly pending on the date when the petitioner had filled up the Attestation Form and Questionnaire Form. The Attestation Form was

filled up by the petitioner on 20.09.2014, whereas the Court case was closed after over one year thereafter, on 24.11.2015. In fact, the petitioner had

already been appointed as an Inspector (Executive) in the CISF on 22.09.2014, on which date, a criminal case was undisputedly pending against him.

13. In view of the aforesaid facts and circumstances, the petitioner cannot lay the entire blame at the door of the respondents by claiming that grave

injustice has been meted out to him. There is no doubt that the judgment in the case of Avtar Singh (supra) has laid down the guidelines required to be

followed by an employer while considering cases of recruitment wherein a criminal case is pending or a filed against an employee/probationer, but at

the same time, that does not absolve the employee from an obligation to furnish the correct information to the employer at the time of seeking

employment. In the instant case, the petitioner had apparently defaulted, having failed to reveal the relevant information with regard to the lodging of

the FIR against him and his family members at the relevant point of time, despite being specifically asked to do so. Merely because the respondent

having failed to follow the guidelines of Avtar Singh (supra), was directed by the Court vide order dated 08.09.2017, to examine the petitioner's

case and pass appropriate orders in the light of the said decision, would not automatically mean that the petitioner would be entitled to claim

consequential benefits by way of back wages for the period between 11.11.2016 to 20.02.2018, when he had admittedly not discharged any duty.

Moreover, except for back wages under the impugned order, the respondents have granted the petitioner all the consequential benefits for the said period.

14. Given the aforesaid facts and circumstances, we do not find any infirmity in the impugned order dated 10.05.2018, that would warrant interference in judicial review. Accordingly, the present petition is dismissed in limine, along with the pending application.