

(2004) 03 AHC CK 0135
In the Allahabad High Court
Case No : Special Appeal No. 578 of 2003

Krishna Chandra Chaurasiya

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-03-2004

Acts Referred:

Border Security Force Act, 1968 — Section 23, 48

Citation : (2004) 2 AWC 1409 : (2004) 2 UPLBEC 1784

Hon'ble Judges : Umeshwar Pandey, J;A.K. Yog, J

Bench : Division Bench

Advocate : Arvind Srivastava, for the Appellant; B.N. Singh, S.S.C. and Ashok Singh, for the Respondent

Final Decision : Dismissed

Judgement

Umeshwar Pandey, J.—This intra-Court Appeal arises out of the judgment and order dated 7th July, 2003 rendered by learned single Judge.

2. The brief facts are that the appellant-petitioner Krishna Chandra Chaurasiya applied for recruitment on the post of Constable in Border Security Force and he filled up the prescribed form. While filling up the form on 6.3.2002, he had to give certain informations to the queries as detailed in Part A. In the answer to query at Sl. No. 12, he was to give the detailed particulars if he was arrested, prosecuted, convicted, imprisoned, bound over, interned, extended or otherwise dealt with under any law in force in India or outside". In reply to this query, the simple answer given by the petitioner was "No". After the form was filled up, the petitioner was called for physical test and interview in which he was finally selected for being included in the select list of candidates. Subsequent thereto, a character verification of the petitioner was got conducted through the District Magistrate who submitted the same to respondent No. 3, A.D.I.G./ Commandant S.T.C./Border Security Force, North Bengal, Salugara, District Jalpaigudi stating that on inquiry, the petitioner was found implicated in a Case Crime No. 209/1996 under Sections 147, 323, 325 and 504, I.P.C. and also under the

provisions of Section 3(1)(x) of the S.C./S.T. (Prevention of Atrocities) Act (in short S.C./S.T. Act). The petitioner contends vide paras 7 to 11 of his pleadings in the petition that he was falsely implicated in the aforesaid case by one Shiv Kumar Dhobi. He had absolutely no knowledge of the alleged incident and was only 15 years of age at that point of time. In fact, petitioner's mother on that date was beaten by the complainant Shiv Kumar Dhobi and she received serious injuries. His brother was also beaten and an F.I.R. was lodged on 2.6.1996. In order to counter it the aforesaid, Shiv Kumar Dhobi lodged the cross F.I.R. On account of his association with the police the said Shiv Kumar Dhobi got the charge sheet submitted against the petitioner and his family members. The petitioner was never in picture nor did he know anything about the alleged F.I.R. or consequent charge-sheet pending trial in the concerned Court when he filled up his form and gave declaration for the purpose of recruitment/enrolment to the aforesaid post of Constable in the Border Security Force. The criminal proceedings of which cognizance has been taken for removing the petitioner from the service by the respondent, relates to a very petty matter and no serious view of the same should be taken as to occasion an order of his dismissal from the service. The petitioner further contended that he was wholly ignorant about the entire matter of the pendency of the criminal case against him and his declaration in the prescribed form of enrolment should not be taken as seriously as to charge and punish him with dismissal from service as Constable.

3. The petition was contested and counter-affidavit has been filed by the respondents. It is stated that the appointment of the petitioner on the post of Constable in Border Security Force was subject to the verification of his character of antecedent roll and when on verification it was found that on the basis of F.I.R. lodged in the year 1996, a criminal trial was pending against him In a competent court, the department took up the matter and when it was noticed that the petitioner had given false answer to the question No. 12 of his enrolment form, it amounted to an offence u/s 23 of the B.S.F. Act, 1968. Accordingly, a trial was ordered in which after due notice, the proceedings were completed and punishment of dismissal from service was awarded. Vide para 13 of the counter-affidavit, the respondent pleaded that on the top of the enrolment form there was a warning in the following words :

"Your are warned that if after enrolment, it is found that you have given a willfully false answer to any of the first 12 of following questions you will be liable to be punished as provided in the Border Security Force Act, 1968."

Since at the trial the petitioner was found to be guilty u/s 23 of the B.S.F. Act, 1968 for giving willful false answer to the question No. 12 contained in Part A of the enrolment form, he has been awarded the punishment and his antecedent roll was also not found up to the standard on account of his involvement in a criminal case since 1996.

4. The petitioner in reply to the counter-affidavit filed his rejoinder-affidavit and has simply reiterated his case disclosed in the petition.

5. We have heard Sri Arvind Srivastava appearing for the appellant and Sri Ashok Singh appearing on behalf of the contesting respondents at length and have considered the entire material available on record. We also summoned the original records of Special Trial Nos. 80 and 81 of 1998 which are pending before the Court of Special Judge (S.C./S.T. Act), Gorakhpur and have perused it.

6. The photo copy of the Border Security Force recruiting roll and enrolment form which the petitioner filled up for the post of Constable in Border Security Force on 6.3.2002, has been annexed as C.A.-1 with the counter-affidavit. He has replied to the questionnaire in Part A of the enrolment form consisting of as many as 17 questions. It is not disputed that for giving false information in reply to the question No. 12 of the aforesaid questionnaire, the proceedings u/s 23 of the Border Security Force Act had commenced. He was charged of making willful false statement to the aforesaid question and it was ultimately proved against the petitioner and the punishment in question was awarded by the authorities. Now it is not desirable for us to go into the niceties of the facts, which led to the authorities to find the petitioner guilty of giving false information while filling up the form for recruitment, but the learned counsel for the appellant-petitioner has tried to emphasise that the negative answer to question No. 12 aforesaid was not deliberate or a willful concealment of fact. Vide para 14 of the petition, the petitioner had no knowledge of the pendency of any criminal case against him at the time of filling the enrolment form.

7. On perusal of the order sheet of the record of criminal case (Special Trial No. 81/1998), it is evident that the petitioner-Krishna Chandra Chaurasiya made his appearance before the criminal court on 21.1.1999 and has put his signature on the margin of the order sheet. He was also present on the date (26.7.2000) of framing of charges against him by the trial court. He had put his signature on the margin of the order sheet on that date as well as on the paper sheet containing the charges. In such circumstances, it is well nigh impossible to accept his contention that he did not have knowledge about the pendency of the criminal case before a competent court of law at the time when he filled up the form for enrolment and recruitment for the post of Constable in Border Security Force on 6.3.2002. The enrolment form contained a warning at the very outset cautioning the candidate while filling up the said form that if a candidate gives false answer to any of the first 12 questions detailed in Part A, he would be liable to be punished, as provided in Border Security Force Act, 1968.

8. Section 23 of the Border Security Force Act, 1968 provides as below :

"Any person having become subject to this Act who is discovered to have made at the time of enrolment a willfully false answer to any question set forth in the prescribed form of enrolment which has been put to him by the enrolling officer before whom he appears for the purpose of being enrolled, shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned."

9. The actual words of the warning have already been quoted above. Therefore, if in pursuance of giving willfully false answer to question No. 12 of the questionnaire (Part A), the authorities have charged the petitioner and punished him u/s 23 read with Section 48(c) of the B.S.F. Act, 1968, there is absolutely no occasion for us to interfere against the impugned judgment of the learned single Judge.

10. The learned single Judge while relying upon the case of Delhi Administration through its Delhi Administration through its Chief Secretary and Others Vs. Sushil Kumar, appears to have rightly found the non-desirability of petitioner's retention in the service. In the aforesaid case of Delhi Administration (supra), the petitioner-Sushil Kumar had applied for the post of Constable in Delhi Police and had succeeded in all the tests including written, interview and physical. He was selected but on verification of his character and antecedent by the local police he was found not desirable for the appointment. Thus, only the Apex Court has pinpointedly emphasised the relevance of the character and conduct of a candidate for his appointment in a Government service. The antecedents of a candidate if found to be unsuitable by the presence of a criminal proceedings against him in a Court of law coupled with deliberate concealment of such fact on his part, he has to suffer the consequences.

11. Thus, in the present case at hand if the petitioner had made concealment of fact inspite of warning contained in the enrolment form, he had to be subjected to face the charges u/s 23 of the B.S.F. Act, 1968 and the maximum punishment, which is provided in the aforesaid provision, is that of imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned. Section 48(c) of the Act provides the punishment of dismissal from service in respect of offences committed by person subject to this Act and convicted by the Security Force Courts. If such dismissal order from service has been passed by the Security Force Courts, the same does not require to be interfered with by making a judicial review under Article 226 of the Constitution of India.

12. We are also thus, of the view that the learned single Judge was wholly justified in not exercising his extraordinary jurisdiction of judicial review under Article 226 of the Constitution of India. This view finds support from the judgment dated 4.10.2002 of the Division Bench of this Court rendered in Special Appeal No. 1075 of 2002, Nagendra Kumar v. Union of India and Ors. This order of Division Bench has confirmed the judgment dated 12.8.2002 of the learned single Judge rendered in Civil Misc. Writ Petition No. 24341 of 2001, Nagendra Kumar v. Union of India and Ors. In that petition also, the petitioner Nagendra Kumar, who was recruited as a Constable in C.R.P.F., was found to have given false declaration while applying as a candidate for the said appointment. The cases of Qamrul Hoda v. Chief Security Commissioner, N.E. Railway, Gorakhpur 1997 AWC 197 : 1997 (2) UPLBEC 1201 : Regional Manager, Bank of Baroda v. Presiding Officer. Regional Manager, Bank of Baroda Vs. The Presiding Officer,

Central Govt. Industrial Tribunal and Another, and Awadhesh Kumar Sharma Vs. Union of India and others, have been distinguished on facts of the case of Nagendra Kumar (supra), and that of Delhi Administration (supra) which definitely go at par with the facts of the present case where also the petitioner gave a false declaration while applying for his recruitment as a Constable in Border Security Force.

13. In the circumstances and the fact narrated above, we are not inclined to interfere with the judgment and order passed by the learned single Judge, challenged in this intra court appeal. As a result, the Special Appeal fails and is hereby dismissed with no order as to costs.