
(2013) 09 DEL CK 0065

In the Delhi High Court

Case No : Writ Petition (C) 5609 of 2013 and CM 12425 of 2013

Kumar Gorav

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 06-09-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 34, 341, 506

Citation : (2013) 202 DLT 764

Hon'ble Judges : S. Ravindra Bhat, J;Najmi Waziri, J

Bench : Division Bench

Advocate : K.K. Sharma, Mr. Rajiv Bakshi and Mr. Bhanita Patowary, for the Appellant; Amrit Pal Singh, CGSC, Sh. Utsav Sidhu, Ms. Gurjinder Kaur, Advocates and Sh. Rakesh Kumar, Sr. Accountant for R-1, for the Respondent

Final Decision : Allowed

Judgement

Najmi Waziri, J.—Issue notice. Shri Amrit Pal Singh, CGSC accepts notice and states that the petition can be disposed-off finally. We have heard counsels for the parties.

2. The Writ Petition challenges the order of the Central Administrative Tribunal ("Tribunal") dated 23rd May, 2013 in O.A. No. 1852/2012 which upheld the termination of the petitioner from his employment as Multi-Tasking Staff ("MTS") with the respondent (employer). On 4th January 2012 the petitioner accepted the appointment letter of 13th December 2011 for the post of MTS for a probation period of two years from the date of his joining. He even attended a workshop in the second week of February organised by the respondent (employer) on "office procedure in computerised equipment". On 27th April, 2012, he suddenly received a notice stating that his services would stand terminated after expiry of one month from the date on which the notice was served on him. No reason or cause was assigned in the said notice of termination. His representation against it failed to elicit any response from the employer. Being aggrieved by the latter's silence and the inexplicable notice, the

petitioner challenged it before the Tribunal.

3. The petitioner's appointment was subject to his accepting the terms stipulated in the appointment letter, which recorded inter alia, that the appointment was on a temporary basis and it could be terminated - in accordance with the CCS (Temporary Service) Rules, 1965 without assigning any reasons therefor. Admittedly, the petitioner accepted this, as well as all the other terms in the appointment letter. Indeed, in compliance of one of the requirements of the appointment letter, the petitioner also furnished the duly filled out Attestation Form, (Annexure VI attached thereto). He then joined his employment. The dispute arose when, by letter dated 27th April, 2012 ("termination letter") the respondent gave notice of one month for terminating the services of the petitioner. Perplexed by this sudden development which carried no explanation or cause on the face of it the petitioner made a representation to his employer by letter dated 4th May, 2012 ("representation") seeking reconsideration of the decision to terminate his service. He reasoned that though no reason for the termination was given in the termination letter, he was given to understand that it was due to his likely furnishing wrong/false information in the Attestation Form; that the failure to give particulars of criminal proceedings pending against him was not intentional. He stated that his uncle had some dispute with his father regarding some ancestral property and the former-playing out his threat to the petitioner's father, had maliciously and vexatiously initiated criminal proceedings against the petitioner as well as his brother to spoil the latter's future prospects. He submitted that the Attestation Form was only in English- which he was not sufficiently proficient in- and had it filled out through another person, who in turn, being unaware of the petitioner's family dispute, had inadvertently failed to provide the particulars thereof in the Form. That no other criminal proceedings are pending against the petitioner. He submitted that that he had no intention to conceal/suppress any particulars and that he ought to not be handed down such a harsh punishment (i.e. of termination) for an inadvertent error. He expressed his willingness to face any action that may be taken against him in the event he was convicted in the criminal proceedings. Finally, he pleaded that a more liberal view may be adopted in the conspectus of the narrated facts and his compelling familiar circumstances.

4. In support of his submissions before the Tribunal, the petitioner relied on the judgments in General Officer Commanding Vs. CBI and Another, ; Government of NCT of Delhi and Anr. v. Amit Kumar, (order of this Court dated 12th July, 2010 in W. P. No. 8929 of 2009); Government of NCT of Delhi and Ors. v. Jitender Kumar (order of this Court dated 20th December, 2007 in W. P. No. 8385 of 2002); Commissioner of Police, (order of this Court dated 13th December, 2012 in W. P. No. 7748 of 2012); Ram Niwas v. Municipal Corporation of Delhi, (order of the tribunal in TA No. 955 of 2009, upheld by this court in its order dated 27th July, 2010 in W. P. No. 2417 of 2010); Govt of NCT of Delhi and Others Vs. Rajesh Kumar, ; Govt of NCT of Delhi and Another Vs. Robin Singh, . He also reiterated his contentions in the representation before the Tribunal.

5. The respondent defended its actions contending that the Attestation Form was in simple English and could be easily understood by the petitioner with his level of educational qualification but despite warnings printed on the form itself against suppressing of information and against furnishing false information, the petitioner wilfully furnished false information in response to the query at para 12 (i) (b) of the Attestation Form which asked: "Have you ever been prosecuted?" This falsehood was discovered upon receipt of police verification report. Consequently, the petitioner was terminated from service as per the CCS (Temporary Service) Rules, 1965. Furthermore, he being a temporary employee had no right to the post, nor any right to be furnished any reason for his termination from services especially in terms of the conditions stipulated in the appointment letter. The respondent relied upon the judgment in *S.C. Patariya v. State of U. P.*, (order of the Allahabad High Court dated 29th September, 2004 in W. P. No. 29899 of 1992) in support of its contentions.

6. The Tribunal was persuaded by the employers' arguments and the aforesaid impugned order, it dismissed the petitioner's case, holding that since the applicant was still facing trial in a matter, (an information he had not furnished in the requisite Attestation Form), he could not be reappointed unless he was acquitted in the said case. It observed:

...No doubt the facts of this case are almost similar to those in the case of *Commissioner of Police and Ors. v. Sandeep Kumar* (supra). In fact the dispute in which the applicant is involved is the one between his uncle and himself and his brother in respect of some family property. On the basis of his uncle's complaint against him and his brother, the police has registered FIR No. 64/2011 u/s. 341/323/506/34 IPC PS Kajwala and the consequential criminal case initiated against them is pending trial before the court. Offence u/s 341 IPC is "wrong restraining any person". Section 323 IPC deals with "voluntary causing hurt". Section 506 IPC deals with "criminal intimidation". Section 34 IP (sic: IPC) deals with "acts done by several persons in furtherance of common intention". None of them are serious offences which involves moral turpitude. They also do not fall within the category of rape, murder, dacoity etc. as observed in *Sandeep Kumar's* case (supra). But in this case the Applicant is still facing the trial. Unless, he is acquitted in the aforesaid case, he cannot be reappointed.

7. The Tribunal also held that the impugned notice of termination had worked itself out and the Application before it had become infructuous.

8. Before this court counsel for the petitioner has reiterated the same contentions as made before the Tribunal. In addition, he submitted that a criminal prosecution starts only after the appropriate court frames charges or issues notice, as the case may be, against an accused. He further submits that in the present case the chargesheet was filed on 21st July 2011, on which summons were issued on 7th April, 2012 as aforesaid petitioner had merely appeared before the court only on 24th May 2012 whereas the Attestation Form had already been filed about five months earlier on 27th December, 2011, much

prior to the unfolding of the aforesaid sequence of proceedings before the court. He submits that therefore, the petitioner could not possibly have been able to mention that he was prosecuted in paragraph 12 (i) (b) of the Attestation Form. He submitted that because of the incidents prior to the aforesaid appearance before court, the petitioner believed bona fide that the matter has been patched-up a little while after the incidence of disputes with his relatives. That the said proceedings are the outcome of family disputes that are invariably vexatious in nature and his prosecution is merely an attempt at harassment by his uncle. He submits that the form was only in English - a language he was not sufficiently proficient in and had therefore requested another person to fill up the form for him. He submits that it was out of sheer inability to understand or comprehend the full import of the question at paragraph 12 (i) (b) of the Attestation Form, that the answer thereto came to be given as "no"; that it was a case of mistaken impression and not wilful suppression of information

9. There can be no dispute to the proposition that the benefit of a mistaken impression ought to be given to a person in the position of the petitioner in contrast to one of deliberate and wilful misrepresentation. This court draws support for this from the judgment of the Supreme Court in *State of Haryana and Others Vs. Dinesh Kumar*, . A Division Bench of this Court had occasion to consider the justifiability of termination of services of an employee who had failed to answer an identical question in a similar Attestation Form in *Bheem Singh Meena Vs. Govt. of NCT of Delhi and Others*, . In view of the employee in that case having pleaded difficulty with the English language - the relevant form being made available only in English- the court, after looking at the varied scope and ambit of the term "prosecution", observed:

38. The above narration shows that the expression "prosecute" as used in the attestation form does not clarify as to whether mere registration of the FIR against a candidate would amount to prosecution or whether a charge-sheet has to be placed before a competent court which could be treated as a prosecution. It does not state as to whether the expression means having stood a trial or suffering a conviction. For a layman, especially someone who is not conversant with legal terms and not familiar with the finer nuances of the English language, the word "prosecuted" may be synonymous with imposition of punishment.

39. It has to be borne in mind that the expression "prosecuted" is being construed in the context of a candidate filling the attestation form. Such person even if is educated, is not a legally trained mind.

10. The Court went on to hold that susceptibility to confusion of the contextual meaning of the word "prosecuted" was plausible, in view of the constraints of proficiency in English expressed by the employee and his consequent inability to correctly understand the meaning and spirit of the word "prosecuted".

11. In *State of Haryana v. Dinesh Kumar* (supra) the Supreme Court had occasion to examine the actual meaning of the term "arrest" and to hold that

even Courts have had difficulty in interpreting what the true import of the term "arrest", was, therefore a layperson filling out an Attestation Form can hardly be found fault with for misunderstanding the same.

12. The court notices that reply was sought to a succession of 11 similar questions in clause 12 (i) (a) to (k) of the Attestation Form such as: whether the candidate had ever: been arrested; prosecuted; kept under detention; been bound down; fined by a court of law; convicted by a court of law for any offence, etcetera. The petitioner's response to the said queries was in the negative on his understanding of the expression "prosecuted" and successively thereafter in the negative for the other queries on the facts as they were.

13. This court is conscious of the principles laid down in the Sandeep Kumar case, Commissioner of Police v. Mehar Singh, (Civil Appeal No. 4842 of 2013), Devendra Kumar v. State of Uttaranchal and Ors., (order dated 29th July, 2013 in Civil Appeal No. 1155 of 2006) by the Supreme Court. However, the recruitment in those cases was for police and paramilitary forces. Insistence upon strict application of the material disclosure standard was approved in those cases because the courts were sensitive to the needs of disciplined and organized forces. The facts are different in the present case inasmuch as the petitioner has applied for a civil post, i.e., to the Multitasking Staff of the Department of Posts. He did not intend to withhold material information because of his difficulty in understanding the import of the query relating to criminal prosecution. In any case, according to him, the notice for criminal prosecution was received almost five months after the Attestation Form had been filled out - a fact not disputed by the employer, and that the information submitted by him was a fair, bona fide and genuine response to the query sought. Accordingly, this court is of the view that the petitioner's case stands on a different footing than the Sandeep Kumar case and other similar cases. It would therefore be unfair for insistence on his acquittal in the trial before he could be reappointed. In any case, the notice of termination did not disclose any reason for the action and it was never the case of the respondent/employer that till the trial continues or till the acquittal of the petitioner/employee, he could not be kept in service or be reappointed. The representation of the petitioner is said to have been rejected by the employer's letter dated 23rd/24th May, 2013 i.e. the same date on which the impugned judgment was pronounced by the Tribunal. Evidently the said rejection letter did not form a part of the proceedings before the Tribunal and hence any reliance thereon by the latter would be misplaced.

14. More particularly, in the Sandeep Kumar case, the Supreme Court also observed:

We respectfully agree with the Delhi High Court that the cancellation of his candidature was illegal, but we wish to give our own opinion in the matter.

When the incident happened, the Respondent must have been about 20 years of age. At that age, young people often commit indiscretion, and such indiscretion

can often be condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people.

Hence, our approach should be to condone minor indiscretion rather than to brand them as criminals for the rest of their lives.

15. The judgment of the Tribunal delivered on 3rd December, 2012 in O. A. No. 1796 of 2012 in Nitin Kumar Dabas v. Union of India and Anr. in which the employer was the same as in the present case that is - Department of Posts is interesting. In identical circumstances the applicant Nitin Kumar Dabas was selected for Multitasking Staff in February 2011. He was appointed under the CCS (TS) Rules, 1965 but in response to the query at para 12 (i) of the Attestation Form had concealed the factum of his being an accused in two criminal cases. His services were terminated by a notice of identical date as in the present writ petition, i.e. 27.04.2012. He too had contended lack of adequate proficiency in English leading to the inaccurate information being furnished in response to Para 12(i) of the Attestation Form. He had contended that he had been falsely implicated in the cases which had been subsequently compounded interestingly the Tribunal when relying upon the ratio in Pawan Kumar Vs. State of Haryana and another, held as under:

12. In the above facts and circumstances of the case though there was concealment of the fact of his involvement in the aforesaid two criminal cases in the attestation form, yet it alone does not constitute the reason for his termination from service. We, therefore, allow this OA and quash and set aside the impugned notice dated 27.04.2012. Resultantly, the applicant shall be reinstated in service immediately but in any case within a period of four weeks from the date of receipt of a copy of this order. Of course, the applicant shall be careful in future career so that he shall not give any other opportunity to the respondents to accuse him of any of (sic) such concealment or untrustworthy action....

16. This court is of the opinion that the Tribunal ought to have passed the subsequent order (impugned in the present writ petition) likewise, especially in view of the non-identical facts and circumstances of both the cases and-all-the-more-so because the same Judicial Member was a member of the Bench which rendered judgments in both the OAs, i.e. of Nitin Kumar Dabas and the present petitioner Kumar Gorav. This Court finds no reason to differ from the views of the above reasoning, given the facts of the present case. Accordingly, the impugned judgment and order of the Tribunal is hereby set aside. The petitioner is directed to be taken back in the same position that he was before his termination from the post of Multi Tasking Staff, within four weeks from today. The petition is allowed in the above terms. No costs.