
(2005) 07 AHC CK 0155
In the Allahabad High Court
Case No : C.M.W.P. No. 22500 of 2004

Lakhan Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-07-2005

Acts Referred:

Army Rules, 1954 — Rule 13(3)

Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (2005) 3 ESC 2085

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Gaya Prasad Pal, for the Appellant; N.C. Tripathi, Addl. S.C., for the Respondent

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—Heard Sri Gaya Prasad Pal, learned Counsel for the petitioner and Sri N.C. Tripathi, Additional Standing Counsel.

2. The petitioner was recruited in Indian Army by BRO Agra and was sent to training in Goa. He had filled up application verification role in December, 1994. By this writ petition, he has prayed for a direction to quash the discharge order dated 6.1.1997 passed by Commanding Officer, HQ 2 STC, 5 TTR Panji, Goa.

3. In the counter-affidavit, it is stated that the petitioner filled up application in December 1994 and thereafter he was implicated in a criminal case. He joined duties on 28.4.1995. In para 9 of the counter-affidavit it is stated that he had completed only partial training. In May 1996 during police verification it was found that a criminal case was pending against him and consequently the petitioner was discharged under Army Rule 13 (3) Item (iv) being "unlikely to become an efficient soldier". Paragraphs 4 and 9 of the counter-affidavit are quoted as under :

"4. That paragraph 3 of the writ petition is not accepted hence denied. It is

submitted that discharge order dated 6.1.1997 refers to IAFY-1964 (Certificate of discharge) signed by CO 5 TTR, wherein the reasons of dismissal being unlikely to become an efficient soldier" is mentioned since the recruit was implicated in a criminal case, as per police verification. Verification of character which is mandatory for retention in service. The recruit was dismissed from service on the direction of HQ ATNKK & G Area, by the Commandant under Army Rule 13(3) Item (iv), being unlikely to become an efficient soldier". Since implicated in a criminal case.

It is further submitted that petitioner had enrolled himself by giving false declaration that he was not implicated in criminal case constitute a culpable offence under the Army Act. Admittedly, petitioner filled up application form for the post of Constable in Indian Army in December, 1994 and thereafter he was implicated in criminal case on 17.3.1995 (paragraph 9 of the writ petition). It is relevant to point out here that as per paragraph 12 of the writ petition petitioner joined duty on 28.4.1995 meaning thereby he deliberately joined duty after his implication in criminal case whereas it was his duty to inform the authorities about his implication in criminal case whether it was true or false. Action to of the petitioner proves that he deceived the Army Authorities by not giving information about the above criminal case and he concealed above important information from 17.3.1995 to fill the date of receipt of police verification report in the concerned unit.

Due to involvement of petitioner in criminal case his conduct and character has become clouded which is an important aspect to remain in Government service. Verification of the character and antecedent is one of the most important criteria to test whether the selected candidate is suitable to a post under the State. If any employee discharged or acquitted of the criminal offences, the same has nothing to do with the question. What is relevant is the conduct and character of the candidate to be appointed to a service and not the actual result thereof.

It is noteworthy that no correspondence on the individual being acquitted or intention of individual to rejoin was received by this unit. It is pointed out that the acquitted purportedly occurred on 3.9.2003 which further substantiates that he was involved in the criminal case and the police correctly reported an adverse verification accordingly.

9. That paragraphs 14 and 15 of the writ petition as they stand are denied. It is submitted that only partial training was completed in May, 1996. Further training specific to the trade/cat that he was allotted during the basic military training was still pending to be carried out, when the dismissal from service occurred. As such it is clear that his training was not over in May, 1996. The petitioner has completed first phase of training and had apparently managed to delay the verification, so as to complete the balance of training."

4. The aforesaid admitted facts go show that the petitioner was involved in a criminal case when he was recruited in Indian Army. The alleged incident on

which the criminal case reported took place on 17.3.1995 before he was sent for training. He was not directed to fill up any fresh form for verification and there was no requirement in the Rules or Regulation for having made a fresh declaration at the time of joining the training. The petitioner was bailed out and was not required to explain his conduct during the period after his recruitment and before he joined for training. It was also admitted that the petitioner has not given any show cause notice nor called upon to explain the circumstances in which he was implicated in a criminal case. The petitioner has been acquitted in Sessions Trial No. 26/1997, by judgment dated 3.9.2003 delivered by Additional District and Sessions Judge, Fast Track Court No. 3, Firozabad. The Sessions Court found that there were allegations of beating the injured complainants and a case crime No. 122-A of 1995 was registered on 17.3.1995 u/s 147, 148, 307, 323, 149, IPC. The witnesses namely PW 1 Sukhvir Singh, PW 2 Man Vendra Pal Singh, PW 3 Omveer Singh and PW 4 Mokesh Babu stated on oath that they are not in a position to identify the assailant on account of the fact that a large number of persons in the mob. The doctor, however, verified the injury report. The trial Court found that there was no evidence implicated petitioner and other accused in the crime and acquitted all the accused.

5. After the petitioner acquitted, he made a representation to Chief of Army Staff with a request to allow him to join.

6. I find that the petitioner had not given any false statement in the verification role. He was selected for training and was sent for training and has completed partial training. In case the respondents found after police verification that petitioner is implicated in a crime, the respondents were required to atleast inform the petitioner of allegations against him and seek his explanation. The respondents grossly violated principles of natural justice. The stand taken by the respondents that the petitioner was required to inform the authorities about his implication in a criminal case is not supported by any statutory rule or regulations. The petitioner had not made any false declaration. He was not required to make any other disclosures.

7. Now, since the petitioner has been acquitted, it is established that there was no evidence against him to proceed with the trial which is not because of benefit of doubt but lack of evidence on the basis of which he was acquitted.

8. Further I find that satisfaction that the petitioner was not likely to make efficient soldier was arrived at without looking into the facts and seeking explanation from the petitioner. It is a cardinal principle of law that no one may be punished without giving him opportunity of defence. The petitioner may have explained and satisfied the Army authorities that he has been falsely implicated, which was subsequently established in a criminal trial.

9. The writ petition consequently allowed. The discharge order dated 6.1.1997 passed by respondent No. 3 is set aside. The respondents are directed to reinstate the petitioner in service and to send him for completing the training.

The petitioner shall also be entitled to cost of the writ petition.