
(2009) 05 PAT CK 0012
In the Patna High Court
Case No : CWJC No. 5283 of 1996

Mukesh Kumar Thakur

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 13-05-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 307, 323, 324, 34

Citation : (2009) 3 PLJR 730

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Advocate : G.P. Singh and Manish Kumar, for the Appellant; Sandeep Kumar, for the Respondent

Judgement

Sheema Ali Khan, J.—The petitioner had initially prayed that the order of discharge dated 14.8.1990 passed by the Commanding Officer, Bihar Regimental Centre, Danapur be quashed. By supplementary counter affidavit filed by respondents, the appellate order passed by Chief of Army Staff has been brought on record vide Annexure-R/8. There is some confusion about the date and therefore, I am not mentioning the date. The petitioner has challenged the order rejecting the appeal on grounds stated hereinafter. The facts of the case are that the petitioner had applied for the post of a Sepoy in March, 1989. After passing various tests including physical and written test, he was appointed in the Bihar Regiment on 31.3.1989 and allotted Sepoy No. 4270304 in Grade "D" i.e., infantry. At the time of recruitment it is essential that the recruits should fill up form disclosing certain information regarding themselves. Accordingly, the petitioner was to fill up a the form which is Annexure-R/1 to this writ application. Column No. 8 states as follows:--

"Have you ever been imprisoned by the Civil power or are you under trial for any offence or has any complaint or report been made against you to the Magistrate or Police for any offence? If so, give details. The answer given by the petitioner "No"."

2. The petitioner was thereafter enrolled and was working as a Sepoy. After enrollment the procedure adopted is to verify the character of the recruited person. Accordingly, information was sought from the Superintendent of Police, Samastipur who reported that the petitioner was an accused in a case under Sections 323, 109 and 307 of the Indian Penal Code.

3. The petitioner was issued a show cause on 1st of July, 1990 asking him to answer as to why he had suppressed the fact that he was accused in a case under the Indian Penal Code. The petitioner filed his show cause stating therein that the enrollment form was filled in by the Officer and that it was not in the writing of the petitioner, although the petitioner had signed on the form. The petitioner had explained the circumstances under which he was made accused in a case under Sections 323/307/109. It is submitted before the Commanding Officer that due to fact that one Jagdish Narayan Sinha, Block President of the Congress Party was on inimical terms with the family of the petitioner, his name was dragged in the case. The petitioner also stated that he was not accused in a case u/s 307 of the Indian Penal Code rather he has been made an accused in a case under Sections 323, 324/34 and 109 of the Indian Penal Code and the Superintendent of Police has wrongly reported that the petitioner is accused in a case u/s 307 of the Indian Penal Code. The show cause filed by the petitioner was not accepted and he was discharged on 14.8.1990.

4. The petitioner being aggrieved by the order of discharge filed an appeal before the Chief Army Staff on 6.7.90. After the appeal was filed, a letter was sent by the Chief Army Staff (Annexure-5) making enquiry with respect to the stage of the case, also asking the Superintendent of Police, Samastipur to send information regarding final verdict reached by the court regarding the criminal case. The said letter mentions that para 25(a) of the Army Headquarter letter No. A/04153/tg 5(OR) (d) dated 13th February, 78 envisages that the decision has to be taken with respect to an adverse criminal record of a recruit by the Commandant with respect to his discharge from his service. The appeal remained pending since 1990 and ultimately, the petitioner filed C.W.J.C. No. 1389 of 1992 which was disposed of on 11.1.1996 with an observation to the respondents to dispose of the appeal within three months from the date of production of a copy of this order. The order of appeal was not supplied to the petitioner and has only come on record by way of supplementary affidavit filed on 20.4.2009.

5. The order passed in the appeal by the Lieutenant General at para 10 of the second supplementary affidavit filed in Court which merely states as follows:--

"10. In view of the above, it is recommended that the appeal dated 6 July, 91 (Ends. 3-C) preferred by No. 4270304X Ex Rect Mukesh Kumar, Thakur to the COAS, for cancellation of his discharge order and subsequent reinstatement in service be rejected as it lacks substance."

6. The matter was placed before the (officiating) Chief Officer/Chief of Army of Staff, which was also rejected on 10.4.96.

7. Learned counsel for the petitioner assails the order on two grounds. It is firstly submitted that the order rejecting the appeal of the petitioner is non-speaking order and does not give any reasons for rejecting the appeal. The second submission is that the order passed by the Lieutenant General does not take into consideration the rules laid down by the Army regarding the said subject matter.

8. This Court finds no problem in holding that the order is non-speaking order and therefore is liable to be set aside. Learned counsel however wants this Court to go step further and pass reasoned order with respect to the law and lay down principles that ought to be followed by the Commandant in Chief/Lieutenant General while considering matters relating to discharge of recruits on the ground of suppression of facts, at the stage when they are required to disclose information about themselves and the consequences of such suppression.

9. I think there is no need for the Court to lay down any principles whatsoever regarding this aspect of the matter. The principles on which such action are to be considered is laid down in verification of character and antecedent of records of Army/Navy Policy Letter No. 59 of 78 which contained in Annexure- R/4. Clause 25A of the letter envisages as follows:--

"The Centre Commandants should use their discretion in deciding whether the offence is of so serious a nature, or the punishment varied of so long seldom be advisable to retain a man who had recently been in jail or who had at any time been in jail for more than six months. Where in doubt the Commandant may refer such cases to "Commands for a decision."

10. The letter has given the authority to the commandant to use his discretion in deciding whether the offence is of such a serious nature or the punishment awarded or to be awarded is such, and is so long that it would be advisable not to retain a person in service. The letter also envisages that if a person remains in custody for the said offence for more than six months the Commandant may discharge him from service. It has been submitted that these principles have been given a go-bye by the Lieutenant General or the Officer below him who had prepared the report for consideration of the Lieutenant General. It is also submitted that the petitioner has been acquitted of the charges as far back as in 1991 and as such the concerned authorities ought to have taken into consideration that the petitioner has been acquitted of the charges against him. It is submitted that it is precisely for this reason that letter A/111/121 was issued on 20th May, 1996 referring to Office Memo dated 9th February, 1990 (Superintendent of Police) seeking information regarding the status of the criminal case pending against the petitioner. These aspects have not at all been considered by the Lieutenant General or the (officiating) Chief of Army Staff, This Court, therefore, quashes the orders passed on 10.4.1996 by the Officiating Chief of Army Staff and directs that they may reconsider the appeal within a period of four months on receipt of copy of the order in accordance with their own circulars which ought to be binding on them. The respondents may take into account that the facts were suppressed as by the petitioner at the initial stage

while passing the final order.

11. The petitioner may file a copy of this order alongwith fresh statement of facts within a period of one month on receipt of a copy of this order. This writ application is disposed of with the aforesaid observation.