

(2011) 07 DEL CK 0456

In the Delhi High Court

Case No : Writ Petition (C) No. 894 of 2011

Nirbhai Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-07-2011

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5(1)
Constitution of India, 1950 — Article 226, 227
Penal Code, 1860 (IPC) — Section 306, 34

Citation : (2011) 185 DLT 319 : (2012) 2 SLJ 88

Hon'ble Judges : Dipak Misra, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Krishna Mohan, for the Appellant; Sachin Datta, for R-1 and Sandeep Khatri, for R-2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, C.J.—By this writ petition preferred under Articles 226 and 227 of the Constitution of India, the Petitioner has prayed for issue of a writ of certiorari for quashing the order dated 22nd January, 2010 passed by the Central Administrative Tribunal, Principal Bench (for short "the tribunal") in OA No. 418/2008, wherein the tribunal has declined to interfere with the order dated 8th March, 2007 whereby the order of termination of the applicant's services initially passed by the competent authority on 12th January, 1999 under Sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965 (for short "the 1965 Rules") was confirmed after the matter was remanded by this Court.

2. The facts that have been exposited are that the Petitioner applied for the post of Constable (Executive) in Delhi Police for special recruitment in Moga (Punjab). He filled up an Application Form and thereafter the Attestation Form. He was medically examined and was selected for the post of Constable (Executive) in Delhi Police and joined the duties on 27th March, 1998. After the submission of the Application Form, a case was registered against his brother and himself

under Sections 306/34 of the Indian Penal Code (for short "IPC") at PS Mehna. The charge sheet was filed on 17th April, 1998. Eventually, the Petitioner was acquitted by judgment dated 1st September, 1998. However, he did not inform the Respondent-employer about his involvement in the criminal case. He remained in judicial custody for about two months in the aforesaid criminal case which was registered for abetting the suicide committed by his brother's wife, late Karamjeet Kaur. The department came to know about his involvement in the criminal case and the factum of detention only after the information given by Sri B.S. Ramoowalia, the ex Minister of Welfare. As the factual score would further depict, a show cause notice dated 28th September, 1998 was served on him to explain why his services should not be terminated under Rule 5(1) of the 1965 Rules for concealment of fact after joining the service by adopting deceitful means which was deliberate and intentional. The Petitioner replied to the show cause stating, inter alia, that he was not aware of the provision when the Application Form and Attestation Form were filled up; that there was nothing against him and he had been falsely implicated in the case; and that he was ultimately acquitted and, hence, there was no justification to proceed against him.

3. The Respondent-employer did not find the reply satisfactory and by order dated 12th January, 1999, his services stood terminated. Against the order of termination, he submitted a representation on numerous grounds which included the ground that removal from service without holding a regular departmental enquiry was vitiated, but the said representation did not render any success to the Petitioner.

4. Being grieved by the same, he preferred OA No. 1745/1999 which was dismissed by the tribunal by order dated 17th December, 2002. The said order was assailed before this Court in WP(C) No. 6592/2003 and this Court allowed the writ petition, set aside the order passed by the tribunal and remitted the matter to the Respondent authority to consider the defence of the Petitioner after granting him an opportunity of showing that he was not aware of the requirement of disclosing his involvement in a criminal case relating to future. This Court expressed the opinion that the willful suppression and concealment is required to be established otherwise without the aid of deeming provision. A direction was issued that the Petitioner would appear before the competent authority on 27th December, 2006.

5. After the remit, the Respondents re-examined the matter and passed the order on 8th March, 2007 confirming the order of termination. The Petitioner was afforded an opportunity of personal hearing on 24th January, 2007. The authorities concerned referred to the language employed in the Forms and expressed the view that it was obligatory on the part of the individual concerned to inform with regard to his involvement in a criminal case in future and the same was to be given to the Deputy Commissioner of Police, 3rd Battalion, Armed Police, Delhi - 110009, but the Petitioner, despite his involvement and

detention, chose not to inform the said authority. The tribunal scrutinized the order passed by the authority and came to hold that the same is in accord with the directions given by the High Court and the plea that the Petitioner was not aware of the same because of the time gap and, hence, the same should be treated as infirm or illegal and was unacceptable.

6. We have heard Mr. Krishna Mohan, learned Counsel for the Petitioner, Mr. Sachin Datta, learned Counsel for the Respondent No. 1 and Mr. Sandeep Khatri, learned Counsel for the Respondent Nos. 2 and 3. In pursuance of the order passed by this Court, the Respondents have produced the original file relating to the Petitioner.

7. At the very outset, we must state that a contention was raised by the Petitioner before the tribunal that Rule 5(1) of the 1965 Rules was not applicable as he was a permanent employee but the tribunal declined to address the same as the said issue had been foreclosed by the order of this Court in WP(C) No. 6592/2003. On a perusal of the order passed in the earlier writ petition, we find that this Court had clearly held that the services of the Petitioner were temporary. Thus, the view expressed by the tribunal withstands scrutiny and, accordingly, we concur with the same.

8. The gravamen of the matter is whether the order passed by the competent authority which has been given the stamp of approval by the tribunal is justifiable on the facts and also meets the observations made and directions issued by this Court on earlier occasion. It is worth noting that this Court had posed a question whether there can be deemed presumption of suppression and concealment in the facts of the case and had opined thus:

11. ...There is also inherent distinction between the non-disclosure or concealment of a past event where the deeming provision could apply as the facts are within the knowledge of the person, and in respect of a future event, where the application of the deeming provision would entail attributing to the person concerned, his remembering the provision, which may or may not be true. As noted above, even in cases relating to the disclosure or non-disclosure of past event, the approach of the Supreme Court has been that the defence of the employee ought to be considered. The same would apply with greater force to a provision dealing with a future event. Therefore, in our view, simply by invoking the deeming provision especially in respect of a future event, the authority cannot terminate the employment without considering the employee's defence.

12. In view of the foregoing discussion, we are of the view that even if there is incorrect disclosure in the application/attestation forms as to a past event, it is obligatory to consider the defence of the employee before coming to the conclusion of suppression. This should apply with greater force for non-compliance with disclosure of Future Events. Secondly, the meaning given to the word "deemed" depends upon the context in which it is used. The ordinary

meaning includes "generally regarded" or "prima facie regarded" and does not in every case mean "treated as". Thirdly, the statutory principles of deemed legal fiction should not be engrafted in the context of contractual relationship.

Thereafter, the Division Bench proceeded to state as follows:

15. Having heard learned Counsel for the parties and noted the legal position in the paras above, we find that there is no analogous provision relating to disclosures, as in the application form, in the Central Civil Services (Temporary Services) Rules, 1965. We find that in this case, the question which arises for determination is whether it can be attributed to the Petitioner that he remembered the disclosure clause on the basis of the deemed presumption. It goes without saying that that the Petitioner could not have forgotten the period of his incarceration. The question is whether he remembered that the application form, that he had filled nearly a year back, contained a clause requiring him to make such a disclosure. Even if such a presumption was to be raised, it would be a rebuttable presumption where he has to be permitted to lead evidence in defence and the same being objectively considered rather than arriving at a finding of deemed suppression or fraudulent concealment.

16. In the instant case, there is no real consideration of the defence of the Petitioner that he was not aware of the instruction in the form which required him to inform the authorities as and when he was prosecuted or arrested in future, after having filled up the form. In our view, in a mass recruitment drive as this, it is quite plausible that a person filling up the form may not even retain a copy or remember the covenant contained therein so as to inform the authorities at a later date on the happening of the eventuality. The authorities in the instant case have acted on the presumption raised as per the clause without considering the defence of the Petitioner. It has not been shown that the Petitioner having the knowledge of the requirement to inform the authorities and its consequences, deliberately hid the factum of his subsequent arrest in order to secure the employment. The relevant portion of the order dated 12.1.1999 is reproduced for facility of reference:

It was obligatory on his (Petitioner's) part to inform this department soon after his arrest in the said case in conformity with the clause mentioned in the application form prescribed for recruitment in Delhi Police as well as in the attestation form which he filled during the course of his recruitment in Delhi Police. But he did not disclose the facts of his arrest in the said criminal case, which amounts to concealment of fact. His plea that he was unaware of the procedure is devoid of any weight being the plea to be an afterthought. Besides this, ignorance of rules is no excuse. He intentionally concealed the facts. His next plea that he has been acquitted in the said criminal case is also not tenable since his acquittal is not honourable due to non-supporting the case by main P Ws. Here it is also worth mentioning that this plea of the Rectt. Constable Nirbhai Singh, No. 2408/N does not require any consideration, as the issue is that he concealed the fact of his arrest in the said criminal case.

From the foregoing it would be seen that the Respondent authority, on the basis of the clause in the Application Form has rejected the plea of the Petitioner of not being aware of the same, as an afterthought and treated the same as deliberate and intentional concealment. The authority in holding "ignorance of rules is no excuse" has treated it as a deeming provision akin to raising a statutory presumption.

After so holding, this Court referred to the order passed by the tribunal which has concurred with the view expressed by the competent authority and, thereafter, this Court proceeded to direct as follows:

We accordingly set aside the order of the Tribunal dated 17.12.2002 as also order dated 12.1.1999 of the Respondent authority and remand the case to Respondent authority to consider the defence of the Petitioner after granting him an opportunity of showing that he was not aware of the requirement of disclosing his involvement in a criminal case in future. The willful suppression and concealment is required to be established otherwise, without the aid of the deeming provision. The Petitioner would appear before the concerned Respondent authority on 27.12.2006. the Respondent authority would decide the remanded matter within three months.

9. After the said order was passed, as has been indicated earlier, a show cause notice was issued and the explanation of the Petitioner was taken into consideration. After issuing notice to show cause and considering the explanation, the competent authority passed the following order:

A Show Cause Notice for terminating his services from the force was issued to Rectt. Constable Nirbhai Singh, No. 2408/N vide this office endst. No. 12255/SIP-N dated 29.9.98, under Sub-rule (1) of Rule 5 of CCS (Temporary Services) Rules - 1965 on the allegation that he concealed the facts of his involvement in case FIR No. 100 dated 27.12.97 u/s 306/34 - IPC PS Mehna (Punjab) after submitting the application form for the recruitment as Constable in Delhi Police. As per warning mentioned at Sl. No. 4 of the application form as well as in the attestation form at St. No. 2, it has clearly been mentioned that in case after submitting these forms a candidate is involved and arrested in any criminal case, he will furnish its information immediately to DCP/II or IV Bn., DAF, failing which it would be considered as concealment of facts. Enquiry has been got conducted by DCP/II Bn. DAF and it has been found that a case FIR No. 100 dated 27.12.97 u/s 306/34 IPC PS Mehna was registered against him. He was arrested and was on Court bail. The case was challenged to Court on 27.3.98 and 17.4.98. However, he succeeded in joining the department on 27.3.98 (F.N.). He did not disclose the facts of his involvement/arrest in this criminal case even after joining the department which was obligatory on his part. He has thus adopted deceitful means in joining the department deliberately and knowingly.

The Show Cause Notice for termination was served upon him on 6.10.98 and he has submitted his reply in response to S.C.N. to this office on 20.10.98. He has

taken plea that he was not aware of the provision on the subject. He has also submitted that he has been acquitted from the offences by the Court of Sh. K.C. Suri Addl. Sessions Judge, Faridkot vide judgment dated 1.9.98.

I have gone through the reply submitted by Rectt. Constable Nirbai Singh No. 2408/N on the pros and cons of the case as well as available record. He was involved and arrested in case FIR No. 100 dated 27.12.97 u/s 306/34-IPC PS Mehna (Punjab) after submitting the application form for recruitment as Constable in Delhi Police. It was obligatory on his part to inform this department soon after his arrest in the said case in conformity with the clause mentioned in the application form prescribed for recruitment in Delhi Police, as well as in the attestation form, which he filled during the course of his recruitment in Delhi Police. But he did not disclose the facts of his arrest in the said criminal case which amounts to concealment of facts. His plea that he was unaware of the procedure is devoid of any weight being the plea to be an after thought. Besides this, ignorance of rules is no excuse. He intentionally concealed the facts. His next plea that he has been acquitted in the said criminal case is also not tenable, since his acquittal is not honourable due to non-supporting the case by main P Ws. Here it is also worth mentioning that this plea of the Rectt. Constable Nirbhai Singh, No. 2408/N does not require any consideration, as the issue is that he concealed the fact of his arrest in the said criminal case.

10. After so stating, the competent authority further noted that after being in custody for a period of a month and a half, the Petitioner had joined the department and that is sufficient enough to establish that there was willful suppression and concealment on the part of the Petitioner. The authority also took note of the fact that during the personal hearing, the Petitioner did not disclose any new fact but only stated that he was from a down-trodden family and did not have the knowledge of rules and had not done anything intentionally and willfully. The same has not been given credence by the authority concerned. The tribunal, while dealing with the facet whether the order has been passed keeping in view the observations and the guidelines of the High Court, has opined that the Respondents have re-examined the matter on the anvil of the rule; that the order is a speaking and reasoned one stating the grounds based on which the conclusions have been rested; that the Respondents had done their best to inform the individual concerned regarding the requirements inasmuch as the Forms clearly spelt out the "Chetavani" (warning) that it was obligatory on the part of the individual concerned to inform his/her involvement in a criminal case in future; that there was no reliance on the deeming provision; that the condition as to information of criminal case is prominently displayed in the language which could be understood by the candidate and the Petitioner having passed matriculation in second division with Hindi as a subject was very much aware of it; that the time gap between the selection and the detention was very short since the Petitioner had applied for the post in October, 1997 and the case was registered against him in December, 1997; that he was detained in custody for about two months before he joined his duties in March, 1998; that the

Petitioner was the beneficiary of such concealment and the motive is tell tale; that the plea that the Petitioner was not aware of the requirement to inform the authorities about his detention in future and could not remember the same was not acceptable; that apart from making a bald statement, nothing had been provided by the Petitioner to support his contention; that the very first page of the "Application Form" and the "Attestation Form" eminently displayed the warning to the effect that if after submitting the Application Form the applicant is detained or prosecuted by any Court, the details must be furnished to the 3rd Battalion, Armed Police, Delhi immediately and failure to do so would be deemed to be suppression of information; and that it is not the case of the Petitioner that he had not understood the warning.

11. Criticising the order of the tribunal, it is contended by Mr. Krishan Mohan, learned Counsel for the Petitioner, that neither the competent authority nor the tribunal had understood the purport of the observations and directions of this Court and had again passed an order on the touchstone of deemed suppression. It is urged by him that the detention which pertains to a future event has its own signification and, therefore, the nature of proof has to be different and that is what was exactly meant by the Division Bench when the earlier orders passed by the tribunal and the competent authority were quashed and the matter was remanded to consider afresh without the aid of deeming provision. It is further canvassed by him that it was obligatory on the part of the authorities to get it established that there had been willful suppression and concealment and the same having not been done, the order is vulnerable.

12. Mr. Sachin Datta, learned Counsel for the Respondent No. 1 and Mr. Sandeep Khatri, learned Counsel for the Respondent Nos. 2 and 3, per contra, contended that what had been held by this Court is that the defence of the Petitioner is to be considered and, accordingly, a show cause notice was issued to him, but in his explanation, he could only state that he came from a down-trodden family and deserved to be reinstated. The learned Counsel for the Respondents would further submit that considering the factual matrix, the nature of the Forms and the surrounding circumstances and in the absence of a proper defence, the order passed by the competent authority which has been concurred with by the tribunal cannot be found fault with.

13. At this juncture, we think it appropriate to refer to the order of selection which, inter alia, stated thus:

Their appointment is on the basis of their self declaration. If the facts given by them are found incorrect in any material, their services will be terminated and they will be debarred from Government services in future, besides legal action.

14. After the training was over, the order of recruitment was issued on 15th July, 1998. The Petitioner had filled up the Application Form on 6.10.1997. In the said Form, at the top, it has been mentioned "Chetavani" (Warning). Clauses 3, 4 and 5 which are in Hindi, on being translated, would read as follows:

3. Furnishing of any false information in this form or concealment of any correct information will be considered as an ineligibility, which can render the applicant ineligible for the job.

4. After filling and submitting this form if you, were ever confined, or were held guilty by any Court of law, or were deprived of anything, etc., then the information thereof regarding the aforesaid should be given in detail immediately to DCP, 3rd Battalion, Delhi Armed Police, Delhi - 9. Failure to do so will be considered to be concealment of correct information.

5. If at any point of time during the period of continuation of service, it is found that you have furnished any false information or have concealed truth, you will be terminated from the service.

15. On 10th October, 1997, the Petitioner filled up the Attestation Form. The English rendition of Clause 2 of the said Form which is in Hindi, reads as follows:

2. After filling and submitting this form if you, were ever confined, or were held guilty by any Court of law, or were deprived of anything, etc., then the information thereof regarding the aforesaid should be given in detail immediately to DCP, 3rd Battalion, Delhi Armed Police, Delhi - 9. Failure to do so will be considered to be concealment of correct information.

16. If the Application Form and the Attestation Form are read conjointly, it is difficult to accept that there was no suppression of material facts by the Petitioner. This Court had remanded the matter on the foundation that there cannot be a deemed presumption of suppression. On a close scrutiny of the order passed by the competent authority, we are of the considered opinion that the said authority has not presumed suppression but has analysed the facts and arrived at the conclusion that there has been suppression of material facts. The stand of the Petitioner was only to the effect that he belonged to lower strata of the society but the said plea of stratum would not obliterate the act done. The Petitioner had remained in custody for almost two months. There was not a big gap between the date of release and the date of appointment. It cannot be conceived that the Petitioner, who was entering into the police force, could not remember the warning in the Application Form or the stipulation in the Attestation Form. It was too obvious to be ignored. In this context, we may refer with profit to the definition of the word "suppression" from the Law Lexicon of P. Ramanatha Aiyar which reads thus:

Where there is an obligation to speak a failure to speak will constitute "suppression of a fact" but where there is no obligation to speak silence cannot be termed "suppression".

17. In Black's Law Dictionary, "suppressio veri" has been defined thus:

Suppression or concealment of the truth. It is a rule of equity, as well as of law, that a suppression very is equivalent to a suggestion falsi; and where either the suppression of the truth or the suggestion of what is false can be proved, in a

fact material to the contract, the party injured may have relief against the contract.

18. In this regard, we may fruitfully refer to the decision in *Daya Shankar Yadav v. Union of India and Ors.* JT 2010 (13) SC 791 wherein a two-Judge Bench of the Apex Court referred to the pronouncements in *Union of India (UOI) and Others Vs. Bipad Bhanjan Gayen*, *State of Haryana and Others Vs. Dinesh Kumar*, *R. Radhakrishnan Vs. The Director General of Police and Others*, *Secy. Deptt. of Home Secy. A.P. and Others Vs. B. Chinnam Naidu*, and *Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav*, and came to hold as follows:

13.1. If the object of the query is to ascertain the antecedents and character of the candidate to consider his fitness and suitability for employment, and if the consequence of a wrong answer can be rejection of his application for appointment, or termination from service if already appointed, the least that is expected of the employer is to ensure that the query was clear, specific and unambiguous. Obviously, the employer cannot dismiss/discharge/terminate an employee, for misunderstanding a vague and complex question, and giving a wrong answer.

14. We do hope that the CRPF and other uniformed services will use clear and simple questions and avoid any variations between the English and Hindi versions. They may also take note of the fact that the ambiguity and vague questions will lead to hardship and mistakes and make the questions simple, clear and straightforward. Be that as it may.

15. But in this case, the Appellant is not entitled to any benefit of doubt on the question whether he knew the meaning and purport of questions 12(a) and (b). Even assuming that there was ambiguity in the English version of the questions, a reading of the Hindi version of the questions shows a clear indication of the information that was required to be furnished by the declarant. The Appellant read the questions in Hindi and answered them in Hindi. We extract below an English translation of query 12(a) in Hindi to show that there was no ambiguity in regard to the question:

English Translation of the question in Hindi

Have you ever been arrested for any offence or have been prosecuted or have been taken in custody or have been released on bail or have been fined/convicted by court of law or have been debarred/disqualified by any Public Service Commission from appearing at its examination/ selection or debarred from taking any examination/restricted by any university or any other educational authority/institution?

(emphasis supplied)

15.1. The fact that a criminal case was registered against the Appellant is not disputed. The fact that no criminal case was pending against him, when he gave the verification declaration in the year 2004, or the fact that he was not

convicted or fined or bound down in any case, loses relevance, when he clearly suppressed the material fact that he was prosecuted and thereby made a false statement. Though the English version of the questions could have used a little more clarity, we cannot agree with the contention that he was misled into answering the question wrongly, as the Hindi version of the questions which were answered by the Appellant did not suffer from any vagueness or ambiguity.

16. We are satisfied that the Appellant had knowingly made a false statement that he was not prosecuted in any criminal case. Therefore, the employer (CRPF) was justified in dispensing with his services for not being truthful in giving material information regarding his antecedents which were relevant for employment in a uniformed service, and that itself justified his discharge from service. Consequently, we dismiss this appeal as having no merit.

(Emphasis added)

19. In the case at hand, it is absolutely clear that the query in the Forms, both application and attestation, was neither vague nor complex. It was as clear as noon day and as simple as transparency in the hardest truth, allowing no room for doubt or confusion. Regard being had to the order of remit, the defence (whatever it is worth) of the Petitioner and the reasons ascribed by the competent authority which have been concurred with by the tribunal, the irresistible conclusion is that the Petitioner had suppressed the material facts and the same stands established beyond any reproach.

20. In view of the aforesaid analysis, we do not find any illegality or infirmity in the order passed by the tribunal and, consequently, the writ petition, being without any substance, is dismissed without any order as to costs.