
(2013) 07 P&H CK 0208
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 10144 of 2013

Parvesh Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 04-07-2013

Acts Referred:

Citation : (2013) 172 PLR 16 : (2013) 4 SCT 653

Hon'ble Judges : S.S. Saron, J; Inderjit Singh, J

Bench : Division Bench

Advocate : Jasmer Singh, for the Appellant;

Final Decision : Dismissed

Judgement

S.S. Saron, J.—The petitioner seeks quashing of the order dated 6.8.2012 (Annexure P6) passed by the Armed Forces Tribunal, Regional Bench Chandigarh, Chandimandir whereby the petition of the petitioner seeking quashing of the letter dated 31.7.2004 (Annexure P5) with respect to his discharge from service has been dismissed. The petitioner was enrolled in the 22nd Battalion of the Sikh Regiment as an Infantry Soldier of the Indian Army on 2.10.2001. According to him, he belongs to the "Kumhar Sikh" community. On the basis of a certificate issued by the Sub-Divisional Officer in this regard, which was submitted by the petitioner to the army authorities, he was recruited to the Sikh Regiment. Thereafter, the army authorities sought a report from the Sub-Divisional Officer who had issued the certificate as regards its authenticity. The Sub-Divisional Officer (Civil), Safidon, District Jind (Haryana) vide letter dated 23.8.2000 submitted that the certificate was issued to the petitioner for the Backward Classes (Kumhar), however, the caste certificate incorporating "Kumhar Sikh" was not issued. The word "Sikh" might have been added by the individual himself. Therefore, it was observed by the army authorities that the petitioner had got himself enrolled in the Sikh Regiment by tampering with his caste certificate. Action was initiated against him and he was discharged from the Army under Rule 13(3) Item (iii) (v) of the Army Rules 1954. The petitioner filed

a statutory complaint against his discharge and in terms of the impugned letter dated 31.7.2004 (Annexure P5) issued by the Sikh Regiment Abhilesh Karyalaya Records, the Sikh Regiment, Ramgarh Cantt., Jharkhand he was informed that he had got himself fraudulently enrolled and the action to discharge him from service in terms of Army Head Quarters letter No. A/110064/Rtg. (OR) (a) dated 29.1.1990 and, Section 44 of the Army Act, 1950 was in order.

2. The petitioner filed a writ petition in this Court challenging his discharge from service. On the Constitution of the Armed Forces Tribunal ("Tribunal" - for short), the petition was transferred to the said Tribunal. The learned Tribunal inter alia observed that in the caste certificate that was issued by the Sub-Divisional Officer, the caste of the petitioner was written as "Kumhar" but the petitioner by tampering with the certificate added the word "Sikh" after the word "Kumhar" and projected himself as "Kumhar" Sikh". The said fact stood established by the letter of the Sub Divisional Officer attached with the written statement filed on behalf of the respondents. The petitioner did not challenge the aforesaid letter of the Sub Divisional Officer by filing any replication, rejoinder or any document in rebuttal showing the letter to be ingenuine. It was, however, contended on behalf of the petitioner that he had been discharged without show cause notice. The learned Tribunal observed that there was no necessity to issue a show cause notice as the Sub Divisional Officer had himself verified in response to the letter from the Army that the original certificate issued by him had been manipulated with and the word "Sikh" had been added at the end by the petitioner himself after the certificate was issued. It was observed that issuing of show cause notice is not mandatory.

3. Learned counsel for the petitioner has contended that there has been a violation of the principles of natural justice and fair play. It is submitted that the denial of the principles of natural justice is unlawful and are arbitrary curtailment and deprivation of the basic rights of the petitioner and denial of an opportunity to a fair and independent inquiry.

4. We have given our thoughtful consideration to the matter. As already noticed, it is the admitted position on record that the certificate regarding the caste of the petitioner which he submitted for being enrolled in the Sikh Regiment of the Indian Army had been tampered with. The certificate submitted by the petitioner with respect to his caste was verified by the Sub-Divisional Officer (Civil), Safidon, District Jind, Haryana and he stated that the certificate was correct to the extent that the caste of the petitioner was "Kumhar". However, the word "Sikh" had been added by the petitioner himself so as to make the certificate as if the petitioner belongs to the "Kumhar Sikh" community. On the strength of the said certificate, he was recruited in the Sikh Regiment of the Army. This position was not controverted by the petitioner by filing a replication, rejoinder or any document to the written statement of the respondents before the Tribunal. The Tribunal observed that the petitioner had not filed any replication, rejoinder or any document to show that the letter was not genuine. On the said premise, the

petitioner was discharged from the Army. Therefore, the present is a case of admitted and undisputed facts.

5. The Supreme Court in *S.L. Kapoor Vs. Jagmohan and Others*, considered the case where the Lt. Governor of Union Territory of Delhi in exercise of powers conferred by Section 12 of the Punjab Municipal Act 1911 appointed nine non-official members and four ex-officio members to the New Delhi Municipal Committee to hold office for a period of one year with effect from 4.10.1979. Before the expiry of the term, the Lt. Governor on 27.2.1980 superseded the New Delhi Municipal Committee with immediate effect and appointed one Sh. P.N. Behl as the person who may exercise and perform all powers and duties of the New Delhi Municipal Committee until the said Committee was reconstituted. The preamble to the order of supersession recited that the Committee was incompetent to perform and had made persistent default in the performance of the duties imposed on it under the law and had further abused its powers, resulting in wastage of Municipal funds. Four instances or grounds were mentioned for the removal of the members of the New Delhi Municipal Committee. Two of the nonofficial members of the superseded New Delhi Municipal Committee, Sh. S.L. Kapoor and another, filed a writ petition in the Delhi High Court to quash the order of supersession. A Full bench of five Judges of the Hon'ble Delhi High Court dismissed the petition. The principal submission on behalf of the petitioner was that the order of supersession was passed in complete violation of the principles of natural justice and in total disregard of fair play. It was pointed out that no notice to show cause against supersession was ever issued to the Committee, there was not the slightest hint until the order was made that there was any proposal to supersede the Committee and the Committee never had any opportunity either before or after the order of supersession was passed to offer their explanation against the allegations made in the order of supersession. The Full Bench upheld the claim of the petitioners that it was necessary to hear the Committee before an order was passed, but held that the Committee was made aware of the allegations and had been given opportunity to state its case or version in the case of at least three out of the four grounds and therefore, there was no failure to observe the principles of natural justice. Even otherwise, the High Court expressed the view that undisputed facts were there and they spoke for themselves and no purpose would have been served by giving formal notice to the Committee of the allegations and the proposal to take action to supersede the Committee since the result would have been the same. In the view of the High Court, there was no prejudice to the Committee by the failure to observe natural justice.

6. The Supreme Court after considering the matter held that New Delhi, Municipal Committee was never put on notice of any action proposed to be taken u/s 238 of the Punjab Municipal Act and no opportunity was given to the Municipal Committee to explain any fact or circumstance on the basis of which that action was proposed. It was held that the person proceeded against must know that he is being required to meet the allegations which might lead to a

certain action being taken against him. If that is made known the requirements are met. The findings of the High Court that the Committee had an opportunity to meet the allegations contained in the order of supersession were disagreed with. However, linked with the said question, the question that was considered was whether the failure to observe natural justice does at all matter if the observance of natural justice would have made no difference to the admitted or indisputable facts speaking for themselves. It was held that where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it approves the non-observance of natural justice but because Courts do not issue futile writs. Therefore, it may be noticed in respect of admitted and undisputed facts, the principles of natural justice can in appropriate cases be waived though it not the rule.

7. In *State Bank of Patiala and others Vs. S.K. Sharma*, , the respondent was working as a Branch Manager in State Bank of Patiala and was subjected to a departmental enquiry. In the enquiry that was conducted, the copies of statements of two witnesses were not furnished to him although he was permitted to peruse them and take notes therefrom for more than three days prior to their examination as witnesses. Out of the two witnesses, one was examined. The respondent did not object during the enquiry that he was not furnished copies of the statements which disabled him from effective cross-examining the witnesses or to defend himself. It was observed that no prejudice had resulted to the respondent on account of not furnishing him the copies of the statements of witnesses and in the circumstances, there had been a substantial compliance with the Regulations that were applicable. It was held that the several procedural provisions governing disciplinary enquiries are nothing but an elaboration of the principles of natural justice and their several facets. It is a case of codification of the several facets of the rule of *audi alteram partem* or the rule against bias. The sub-clause that had been infringed it was observed incorporated the principles of natural justice and was designed to provide an adequate opportunity to the delinquent officer to cross-examine the witnesses effectively and thereby defend himself properly. It was a procedural provision. Merely because the word "shall" was used in the said provision, it could not be held to be mandatory. Moreover, even a mandatory requirement can be waived by the person concerned if such mandatory provision is conceived is interest and not in public interest. From the conduct, the delinquent officer it was held must be deemed to have waived it. This is an aspect which is to be borne in mind while examining a complaint of non-observance of procedural rules governing such enquiries.

8. In *Aligarh Muslim University and Others Vs. Mansoor Ali Khan*, the respondent was working as a Laboratory Assistant and he applied for two years extraordinary leave for joining a Al-Fatah University, Tripoli, Libya. The Vice Chancellor sanctioned leave for two years. Before expiry of the period, the respondent applied for extension of leave by three years. The University granted him

extension of leave for one year only and a date was fixed by which the respondent was required to resume his duties; besides, it was provided that no further extension in the period of leave would be possible. The respondent without waiting for the receipt of the order entered into a fresh contract in Libya, which was to be for a minimum period of two years. He then wrote a letter to the University seeking extension of leave by one more year and stated that he would definitely join duty on its expiry. The University sent a telegram informing him that his request for further extension had been refused and he should resume his duties by the fixed date failing which he would be deemed to have vacated the post and ceased to be in the University service. On the expiry of the date, a cable was sent extending the joining time and date on which the respondent was required to join. Thereafter, still another telegram was issued. The respondent failed to join his duty and the University deemed that he had vacated the office. The respondent filed a writ petition seeking quashing of the two telegrams and the order by which he was deemed to have vacated his post. His writ petition before the High Court was dismissed by the Single Bench holding that he had not expressed any intention to join till his assignment in Libya was over. Besides, without waiting for extension he entered into a fresh contract in Libya. He also did not avail the joining time as also the extended period. Therefore, his conduct did not justify any relief. In appeal, a Division Bench allowed the appeal and the Vice Chancellor of the University was decided to consider the matter afresh in view of the Service Rules applicable. The Hon''ble Supreme Court observed that admittedly no notice under the relevant Rules had been given and therefore, there was violation of principles of natural justice. Reliance was placed on an earlier judgment i M.C. Mehta Vs. Union of India (UOI) and Others, wherein it was held that there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution, for example, where no prejudice is caused to the person concerned, interference in under Article 226 was not necessary. It was held that the case of the respondent fell within the exceptions stated in S.L. Kapoor v. Jagmohan (supra) namely that on admitted or indisputable facts, only one view was possible and that even no prejudice would be said to have been caused to him though notice had not been issued. It was held that the University had not acted unreasonably in informing him advance - while granting one year extension, in addition to the absence of the two years - that no further extension will be given. On the said facts it was held that absence of a notice to show cause did not make any difference for the employee who had already been told that if his further overstay was for continuing in the job in Libya it was borne to be refused.

9. In Union of India (UOI) and Others Vs. Bishamber Das Dogra, the respondent was a Security Guard in CISF and had remained absent from duty without justification or leave for more than five times in less than six years of his service. He was inflicted with punishment of removal from service. It was held that the order was required to be examined on the touchstone of doctrine of prejudice. The delinquent employee has to establish real prejudice caused by non furnishing

of enquiry report. It was held that the principles of natural justice cannot be put into a straitjacket formula and its observance would depend upon the fact situation of each case. Therefore, the application of the principles of natural justice has to be understood with reference to the relevant facts and circumstances of a particular case.

10. In the present case, as already notice, the admitted and undisputed facts are that the petitioner furnished a certificate of his caste which was tampered with inasmuch as he added the word "Sikh" after the word "Kumhar" to represent himself to be a member of "Kumhar Sikh" community. On the said fake certificate, he was enrolled in the Sikh Regiment of the Indian Army. The certificate having been held to be fraudulent which was not disputed by the petitioner before the Tribunal by way of replication, rejoinder or any document to the letter of the Sub Divisional Officer (Civil) Safidon, District Jind (Haryana) submitted by the respondents with their written statement, it can safely be inferred that he had no dispute of his filing a false certificate. On the touchstone of the doctrine of prejudice, it can be said that no prejudice whatsoever has been caused to the petitioner and even if an opportunity of hearing was given, the end result would be the same that he had furnished a false certificate. Besides, the certificate being held to be fraudulent, the order of his discharge from the Army cannot be faulted. In the District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi, , the respondent therein was unqualified for the post and her selection was made by mistake. At the time of joining of duties, the respondent was found to be not having the requisite qualifications and was not permitted to join. It was held by the Supreme Court that an appointment made in disregard of the qualifications mentioned in the advertisement it was a matter not only between the appointing authority and the appointee but all those who had similar or better qualifications and had not applied as they did not possess the qualifications mentioned in the advertisement. Appointing persons with inferior qualifications is a fraud on public and no Court should be party to the same.

11. In the circumstances, the discharge of the petitioner from the Army on the basis of his furnishing a false certificate and the said discharge having been upheld by the Tribunal would not warrant any interference by this Court in exercise of its supervisory writ jurisdiction. For the foregoing reasons, there is no merit in the writ petition and the same is accordingly dismissed.