
(2008) 01 DEL CK 0219

In the Delhi High Court

Case No : Writ Petition (C) No. 12587 of 2006

Praveen Tomar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-01-2008

Acts Referred:

Army Act, 1950 — Section 44
Army Rules, 1954 — Rule 116(4), 116(6)
Penal Code, 1860 (IPC) — Section 302

Citation : (2009) 3 SLJ 438

Hon'ble Judges : J.M. Malik, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Alok Kishor, for the Appellant; Barkha Babbar and Liny K. Nambiar, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—The petitioner herein applied for a post in the Army. After due selection he was enrolled in Rajputana Rifles Centre, Delhi Cantt. on 20th December, 2003. After completion of one year Infantry Army training he was posted as Sepoy to 4 Rajputana Rifles and he reported for duty on 29th December, 2004. When he had spent about 1 year 10 months in the service, he was served with charge-sheet dated 12th August, 2005. As per the said charge-sheet, following charge was made against him:

Army Act making at the time of enrolment u/s 44 wilfully false answer to a question set forth in the prescribed form of enrolment which was put to him by the Enrolling Officer before whom he appeared for the purpose of being enrolled.

In that he,

at RAJ REF Regimental Centre, Delhi Cantt. on 22 December, 2003, when appeared before Commandant, an Enrolling Officer, for the purpose of being enrolled for service in the "RAJPUTANA RIFLES REGIMENT" to the question put to

him, "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,-answered "No" well knowing it to be false since a case was pending against him at Police Station Baraut bearing No. CC No. 28/2000 under IPC Section 302.

2. Thus the charge against the petitioner was that though he was facing trial u/s 302 of the IPC at the time when he made application for appointment/enrolment for service in Rajputana Rifles Regiment, he did not disclose this fact in the application furnished by him inasmuch as against specific column eliciting this application he had given the answer in the negative. Therefore, according to the respondents it was a false information since case u/s 302, IPC was pending against him at that time.

3. A summary of evidence was conducted on 26th August, 2005. On that date petitioner also made the statement. In this statement he did not dispute that the case u/s 302, IPC was pending trial against him at the time he made application for appointment and further that he had not disclosed the same in the application. However, his explanation was that the incident of murder in which he was implicated happened at the time when petitioner was a student and only 15 years of age and a false case had been foisted upon him. He further stated that he was acquitted by the Court in the said case. He also mentioned that he had revealed this fact to the Coy. Cdr. Capt. Vijay when he was still undergoing training and had already completed training for about 5 months. He was given leave of 28 days and Capt. Vijay told him to produce the copy of the Court order in case the petitioner is acquitted. Thereafter he had produced the copy of the order, after his acquittal. Thus his explanation was that he had informed the authorities who were aware of the pending proceedings and, therefore, no action should be taken against him.

4. The summary Court martial was convened thereafter. As per the proceedings of the said summary Court martial the petitioner pleaded guilty of the charge levelled against him as a result thereof the respondents inflicted the penalty of dismissal vide orders dated 17th October, 2005. Petitioner submitted petition against the said order which was also rejected vide orders dated 15th May, 2006. Challenging these orders present petition is filed.

5. It is the submission of the learned Counsel for the petitioner that the petitioner did not understand the charge and the Commanding Officer arbitrarily and on his own recorded plea of guilty contrary to petitioner's statement. Thus, he violated the Army Rules 116(4) and 116(6) which are to the following effect:

(4) If from the statement of the accused, or from the summary of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty", the Court shall alter the record and enter a plea of "Not guilty", and proceed with the trial accordingly.

(6) When the accused states anything in mitigation of punishment which in the

opinion of the Court requires to be proved, and would, if proved, affect the amount of punishment, the Court may permit the accused to call witnesses to prove the same.

6. It is further argued that at the time of summary Court Martial the Commandant did not call any witness to prove the charge against the petitioner nor did he allow to test the veracity of the petitioner's statement made at the time of recording of summary of evidence.

7. We have considered the aforesaid submission of the learned Counsel for the petitioner but did not find any merit therein. As per the petitioner's own version the petitioner was facing trial in a murder case at the time when he made application for enrollment in service. Charge had been framed and the case was pending against him at the time of making that application. He has also admitted even in this writ petition that in spite of this in the application he did not furnish this information. The copy of the application for enrollment which the petitioner submitted has been placed on record. In Column 8 thereof following information is sought:

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.

Against this column answer given by the petitioner is "No".

8. This is clearly a false information provided by him in the said application, the charge levelled against him was giving false information in the said application. Therefore, it is not disputed even now that the petitioner had provided incorrect information. Therefore, we are not inclined to agree with the argument of the learned Counsel for the petitioner, though the Commanding Officer arbitrarily recorded plea of guilty contrary to petitioner's statement. No doubt the petitioner had submitted in his statement that he was falsely implicated in the said case and was also acquitted by the Court. Question is not as to whether he was falsely implicated in a case or he was ultimately acquitted in the case. The nature of charge is to be understood which was providing false information at the time of making application and suppressing the pendency of the aforesaid case in which he was initially imprisoned also.

9. The effect of giving such false information has been considered by Apex Court in number of cases. A Division Bench of this Court, of which one of us was a Member (A.K. Sikri, J.) had occasion to take note of law on the subject in detail in a recent judgment in the case Govt. of NCT of Delhi and Others Vs. Jitender Kumar, decided on 20th December, 2007. The position in law is summarised in para 11 thereof which reads as under:

11. We may remark here that where the case is pending at the time of filling up of the form, position would be different and in case a candidate conceals such an information or provides wrong information, the candidature or even the

appointment can be cancelled (see Sanjay Kumar Bajpai v. Union of India 1997 II AD SC 704). Similarly, where the prosecution, though resulted in acquittal, was for an offence which otherwise involves moral turpitude, it may be necessary to mention particulars of such a case as that may be a relevant consideration to adjudge the conduct or character of a candidate to be appointed to a service even when such a prosecution resulted in acquittal, inasmuch as, it would provide information about the antecedents of the candidate (see Delhi Administration through Its Chief Secretary and Ors. v. Sushil Kumar JT 1996(1) SC 34). However, where the offence with which the candidate was charged was petty offence not involving moral turpitude and it has resulted in acquittal as well and going by the petty nature of the offence if such a factor is not material enough to deny appointment to a candidate, non-disclosure thereof shall not be a ground to terminate his services.

10. Once we take the aforesaid legal position into consideration, the irresistible conclusion would be that petitioner was under obligation to give the information regarding pendency of the aforesaid case by giving answer in negative in respect of information sought in Column 8. It is clear that petitioner gave false answer and concealed the aforesaid information. The charge was u/s 302, IPC which is a serious offence. Even if the petitioner was acquitted of this charge ultimately that would not be a relevant consideration.

11. We are, therefore, of the opinion that the impugned punishment against the petitioner is in accordance with law. Thus finding no merit in this petition, we dismiss the same. No costs.