
(2007) 02 DEL CK 0114

In the Delhi High Court

Case No : Writ Petition (C) No. 7223 of 2004

Rajesh Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-02-2007

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14
Penal Code, 1860 (IPC) — Section 323, 34, 341

Citation : (2007) 140 DLT 667

Hon'ble Judges : Mukul Mudgal, J; Aruna Suresh, J

Bench : Division Bench

Advocate : A.K. Trivedi, for the Appellant; Suresh Kait, for the Respondent

Final Decision : Allowed

Judgement

Aruna Suresh, J.—Rule DB. With the consent of the learned Counsel for the parties, the matter is taken up for final hearing.

2. The petitioner has assailed the order dated 17.11.2003 of the Central Administrative Tribunal (hereinafter referred to as the CAT) in O.A.

No.663/2003 whereby the OA of the petitioner was dismissed.

3. Petitioner was appointed as Civilian Vehicle Mechanic (MV) in 505 Army Base Workshop on 21.2.2000 after qualifying selection. He was

involved in a case FIR No.348/1998 registered u/s 341/323/34 IPC, PS Najafgarh, Delhi. At the time of filing of the Attestation Form for

character and police verification, petitioner suppressed the fact of pending criminal case against him despite knowledge of the same. On verification

the respondents were informed by the Dy. Commissioner of Police, Special Branch, Delhi that the petitioner was involved in case FIR No.348

dated 8.7.1998 u/s 323/341/34 IPC, PS Najafgarh, Delhi pending adjudication.

This resulted into issuance of show cause notice to the petitioner.

After he replied to the same, he was charge-sheeted for departmental enquiry under Rule 14 of CCS (CCA) Rules, 1965 for concealing material

information regarding involvement in criminal case at the time of recruitment. After completion of enquiry, the petitioner submitted a detailed

representation to the Enquiry Officer taking a plea that he, on account of improper knowledge of English language, was not able to understand the

correct import of Column No.13 of the Attestation Form. The said representation was rejected. Appeal and revision against the said order was

also dismissed and petitioner was imposed with major penalty of removal from service. This resulted into filing of the OA by the petitioner, which

was dismissed on 17.11.2003. The said order of the CAT has been assailed before us.

4. The short question involved in the present writ is: Whether the penalty of removal from service is justified and proportionate to the offence of

suppression of the fact of pendency of criminal proceedings against the petitioner which culminated into acquittal on compromise on 20.2.2003?

5. Learned Counsel for the petitioner has argued that the petitioner was falsely implicated in the criminal case and he was immediately released on

bail. At the time of appointment the petitioner filled in the Attestation Form but in column No.13(b) he ticked mark as 'No' to the question 'Have

you ever been prosecuted?"; after confirming from his relative and friend who had the knowledge of English and the petitioner was told the

meaning of 'prosecuted' as 'conviction' or 'detention in police custody or judicial custody'. It was under this bonafide belief that the petitioner

wrote 'No' in front of column No.13(b) with no malafide intention to hide his involvement in criminal case. It was further submitted that though the

petitioner is matriculate but is not well versed with English language and the Attestation Form was filled in on the basis of Hindi version given by his

friend. It has also been argued by learned Counsel for the petitioner that petitioner has been acquitted from the said criminal case by the

Metropolitan Magistrate vide order dated 20.2.2003 on parties having entered into a compromise. After his acquittal respondent should have

reinstated the petitioner in service as no stigma was cast upon him of the criminal proceedings pending against him at the time of his appointment as

Civilian Vehicle Mechanic (MV), with a lesser punishment as punishment of removal from service is very harsh and disproportionate to the alleged misconduct.

6. All these arguments have been controverted by learned Counsel for the respondent. It is submitted that not only the petitioner had concealed the material information of his involvement in criminal case in the Attestation Form, but he also suppressed information in his Declaration where he had verified the contents of Attestation Form and had signed in English. Therefore, he cannot take excuse of having poor knowledge of English language to get out of this deliberate suppression of material information and misconduct. Therefore, according to him the petitioner was rightly imposed with the penalty of removal from service, which is not to be treated as disqualification for future employment under the Government.

7. To appreciate the submissions of both the parties it is necessary and appropriate to notice the terms of Ministry of Home Affairs (DOP&T) OM

No.18011/9(5)/78 Estt. dated 2.7.1982 regarding verification of character and antecedents of candidates selected for appointment to civil posts

under the Government of India - Review of the procedure and revision of Instructions, which reads as under:

3.1 Criteria

(C) Normally a person convicted of an offence involving moral turpitude should be regarded as ineligible for Government Service.

Provided in cases where the appointing authority, feels that there are redeeming feature of reasons to believe that such a person has cured himself

of the weakness, specific approval of Government may be obtained for his employment.

Clause 4.1 of the said OM reads as follows:

4.1 Detailed verification consists of getting an attestation form filled by the candidate and getting the enquiries verified by the district authorities.

The Attestation Form opens with the following lines:

1. The furnishing the false information or suppression of any factual information on the attestation form would be a disqualification and likely to

render the candidate unfit for employment under the Govt. Rules.

2. If detained, convicted, debarred etc., subsequent to the completion and submission of this form, the details should be communicated

immediately to the authorities to whom the attestation form has been sent earlier as the case may be a suppression of factual information.

3. If the fact that false information has been furnished to that there has been suppression of any factual information in the attestation forms comes to

notice at any time during the service of a person his service would be liable to be terminated.

8. This Attestation Form was duly filled in by the petitioner in his own hand and in English language. As per the information contained in column

No.10, he has given his educational qualification as metric from Govt. School, Goyla Khurd, Delhi-43. Column No.13, so far as it is relevant for

the present case, has been filled as follows:

13 (a) Have you ever been arrested : No.

(b) Have you ever been prosecuted : No

(c) Have you ever been kept under

termination : No.

(d) Have you ever been bound down : No

(e) Have you ever been fined by a

court of law : No

(f) Have you ever been convicted by a

Court of law for any offence : No

(g) x x x

(h) x x x

(i) x x x

(j) x x x

(k) x x x

Note : Please also see the WARNING at the top of this attestation form.

9. After filling in the form, petitioner also certified that information given by him is correct and complete. His certificate is reproduced as below:

I certify that foregoing information is correct and completed to the best of my knowledge and belief. I am not aware of any circumstances which

empire fitness for employment under Govt.

Date: 1.3.2000 Sd/-

Place : Delhi (Rajesh Kumar)

10. It is not disputed that petitioner was facing trial for an offence which involved moral turpitude. It is also not disputed that criminal case

registered u/s 341/323/34 IPC was pending on the date when the petitioner filled the Attestation Form. Therefore, the information given by the

petitioner against column No.13 as `No" is purely suppression of material information and is also a false statement. Admittedly, petitioner has done

matriculation from Delhi. It is believable that his medium of instruction was Hindi through out, but it is not acceptable that he had never studied

English in the School. He has filled his Attestation Form in English in his own hand, though he has claimed that his knowledge in English is weak.

This plea of the petitioner cannot be accepted. If the petitioner could understand the remaining columns of the Attestation Form, it is not tenable

that he could not correctly understand the contents of column No.13. Petitioner has tried to wriggle out of this concealment of information or

misconduct by alleging that he had sought guidance from his friend who has informed him that `prosecution" means `conviction". This plea is belied

from the Attestation Form itself. Column No.13 of the Attestation Form has several sub-columns. As per column 13(f) a specific information is

sought, if he was ever convicted by any Court of Law for any offence. Whereas against column 13(b) petitioner was required to disclose if he was

ever prosecuted and as per column 13(a) he was required to inform if he was ever arrested. Therefore, even the friend who guided him could not

have told him that `prosecuted" means `convicted". It is possible that petitioner who was arrested and released immediately, might not have been

sent to judicial custody, the fact remains that he was arrested and was facing trial in a criminal case u/s 341/323/34 IPC, at the time when he was

selected and joined the service. He was not honourably acquitted of the offence charged with. The matter was compromised much after his

termination on 20.2.2003. This being the actual position the Tribunal was right in rejecting the contention of the petitioner that there was no

misconduct on his part and there was no malafide on his part to conceal the information as sought in column 13 of the Attestation Form.

11. It is pertinent to mention her that learned Counsel for the petitioner relied upon Ramratan Yadav v. Kendriya Vidyalaya Sangathan and Ors.

(2001) 4 SLR 69 of the High Court of Madhya Pradesh, which was over ruled by Supreme Court in appeal reported as Kendriya Vidyalaya

Sangathan and Others Vs. Ram Ratan Yadav, . In the said case there was suppression of material information regarding involvement in a criminal

case by Ramratan Yadav in the Attestation Form and he had taken the plea that his knowledge in English was poor though he was B.A., B.Ed.

and M.Ed. qualified and had not understood the contents of relevant columns of the Attestation Form, it was held:

The requirement of filling column Nos.12 & 13 of the attestation form was for the purpose of verification of character and antecedents of the

respondent as on the date of filling and attestation of the form. Suppression of material information and making a false statement has a clear bearing

on the character and antecedents of the respondent in relation to his continuance in service.

It was further observed:

The purpose of seeking information as per Columns 12 and 13 was not to find out either the nature or gravity of the offence or the result of a

criminal case ultimately. The information in the said columns was sought with a view to judge the character and antecedents of the respondent to

continue in service or not.

12. Learned Counsel for the petitioner has further relied upon Regional Manager, Bank of Baroda Vs. The Presiding Officer, Central Govt.

Industrial Tribunal and Another, . In the said case it was specifically stated by the Apex Court that the said order was rendered on the peculiar

facts and circumstances of that case and would not be treated as a precedent in future. Therefore, the said judgment cannot be treated as a

precedent to the facts and circumstances of this case.

13. Similarly Krishan Kumar v. Union of India and Ors. (1992) 20 ATC 783 decided by Central Administrative Tribunal, New Delhi, is of no help

to the petitioner as the case against Krishan Kumar stood settled by compromise of the parties on 5.12.1983, whereas Krishan Kumar joined

duties on 12.1.1984. Under these circumstances his termination on the ground of false information in the attestation form for verification of

character and antecedents was set aside. In the present case the criminal case was pending trial against the petitioner when he joined the service

and filled in the Attestation Form. The said case was finally decided in the year 2003, after his termination from service. Similarly, the other cases

referred to by the petitioner in the writ petition have all been decided on their own facts and circumstances and are of no help to the petitioner.

14. What is relevant for us is not the seriousness of the offence which has a bearing on the propensity to crime, but with regard to credibility of the individual and his character and antecedents in this regard. When a candidate despite clear warning in the beginning of Attestation Form does not disclose the fact of his involvement in a particular case and has no reasonable Explanation for the omission, then the department is justified in taking action and removing him from service after holding an enquiry.

15. Therefore, we find no reason to interfere with the order of CAT dated 17.11.2003 as it suffers with no error or infirmity and it calls for no interference.

The writ petition is accordingly dismissed.