

(2017) 03 CAL CK 0123
In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction Appellate Side W.P. No. 21312 (W) of 2006

Rajesh Kumar Yadav

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 29-03-2017

Acts Referred:

Central Industrial Security Force Rules, 2001 — Rule 36
Constitution of India, 1950 — Article 226

Citation : (2017) 2 CLR 206 : (2017) LIC 1803

Hon'ble Judges : I.P. Mukerji, J.

Bench : Single Bench

Advocate : Mr. Santi Das, Mr. S. Dey, Advocates, for the Petitioner; Mr. Anup Mukhopadhyay, Advocate, for the Respondent

Final Decision : Allowed

Judgement

I.P. Mukerji, J.—The writ petitioner was in the Central Industrial Security Force Unit FBP at Farraka. He was appointed by a letter dated 23rd June, 2001.

On 21st April, 2005 he was issued a memorandum of charge under Rule 36 of the CISF Rules, 2001, by the appropriate authority. The charge against him was that he had suppressed in his declaration at the time of joining service that a criminal case under Section 427, 504 and 506 of the Indian Penal Code, registered in 1999 was pending against him at the time of his appointment.

2. The petitioner denied the charge and pleaded not guilty. Thereafter, the disciplinary authority decided to conduct a regular departmental enquiry. By its order dated 1st July, 2005 the disciplinary authority appointed an enquiry officer and a presentation officer. The enquiry officer held the charge to be proved. This was confirmed by the disciplinary authority on 29th October, 2005, by its final order as follows: "reduction of pay by four stages from Rs. 3350/- to Rs. 3050/- in the time scale of pay for a period of four years with effect from the date of issue of final order with further direction that he will not earn increments of pay

during the period of reduction and that on expiry of the period. The reduction will have the effect of postponing his future increments of pay."

3. Thereafter the Deputy Inspector General NEZ exercised his powers of suo motu review under Rule 54 (1) (b) of the CISF Rules, 2001 and issued a show cause notice dated 10th February, 2006 to the writ petitioner. In this show cause notice the writ petitioner was asked to explain within 15 days, why the punishment imposed on him should not be enhanced? By his order dated 7th April, 2006 the Deputy Inspector enhanced the punishment to "removal from service".

4. It is very important at this stage to know the nature of the criminal case that was pending against the petitioner. The records say that the case was under Section 427, 504 and 506 of the Indian Penal Code. Section 427 deals with mischief causing loss or damage of fifty rupees or upwards. Indulging in the Act of property destruction or undermining the value thereof is defined as mischief in Section 425 of the said Act. Section 504 relates to intentional insult with intent to provoke breach of peace. Section 506 deals with criminal intimidation. It appears from the decision of the reviewing authority that the alleged acts were done by the petitioner as a result of rivalry between fellow villagers. The Judicial Magistrate District Court, Balia dismissed the complaint against the writ petitioner resulting in his acquittal on 1st June, 2005.

5. At the time of entering service the writ petitioner was required to fill up a form. The form required information to be furnished as to inter alia whether there was any criminal case pending against him at that time. It goes without saying that the purpose of eliciting this information was to ascertain whether the person being taken in had a good moral character and no adverse background.

6. Let us see the law on the subject. In many employments, which includes the employment in question, a candidate or appointee is asked to fill up a form answering questions regarding pendency of criminal case, conviction etc. concerning him or her. The terms and conditions of appointment or the service rules warn that if there is any untruth in the information supplied, or suppression of facts in the information supplied, it would be considered as a major offence for which the punishment may extend to dismissal from service.

Earlier the Supreme Court had taken a very strict view of any mis-declaration made in the application form, particularly those with regard to pendency of criminal proceedings against the candidate. Even if the accused had been acquitted before taking up the employment, the court upheld his punishment in the departmental proceedings. The view was that the court was not concerned with the gravity of the offence or the ultimate fate of the case, like conviction or acquittal. Since, public employment entailed occupying a civil post, an aspirant for the post must have a good moral character or at least be free from moral turpitude. "Antecedents" of the candidates were considered very important for his appointment to a civil post. Therefore, if, in the service rules or in the terms

and conditions of employment, it was provided that false information or withholding it could be considered as a major offence, resulting in dismissal from service, the Supreme Court did not hesitate to uphold the punishment granted by the departmental disciplinary authority dismissing an employee on this ground. The employee was presumed to have practised fraud on the employer. [See *Delhi Administration through its Chief Secretary v. Sushil Kumar* reported in (1996) 11 SCC 605, *Commissioner of Police, Delhi v. Dhaval Singh* reported in (1999) 1 SCC 246, *The Regional Manager Bank of Baroda v. Presiding Officer, Central Government Industrial Tribunal* reported in (1999) 2 SCC 247, *Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav* reported in AIR (2003) SC 1709, *Secretary, Department of Home Secy., A.P. v. B. Chinnam Naidu* reported in (2005) 2 SCC 746, *R. Radhakrishnan v. Director General of Police* reported in (2008) 1 SCC 660, *Union of India v. Bipad Bhanjan Gayen* reported in (2008) 11 SCC 314, *State of West Bengal v. Sk. Nazrul Islam* reported in (2011) 10 SCC 184, *Devendra Kumar v. State of Uttaranchal and Others* reported in (2013) 9 SCC 363].

7. In the recent case of *Avtar Singh v. Union of India* ((2016) SCC On Line SC 726) the Supreme Court has however shown a bit of sympathy for the candidate or employee, in specific circumstances. It said that where the offence was committed when a person was very young and was trivial in nature some amount of latitude had to be given to the employee. This was as opposed to where an employee suppressed pendency of a criminal case on the accusation of his commission of a heinous crime and joined the organisation in a civil post. If the offence was minor in nature, the employer was given the power of ignoring the suppression. Following Lord Denning in *Morris v. Crown Officer* (1970) 2 QB 114, Mr. Justice Arun Mishra observed "in our opinion we should display the same wisdom as displayed by Lord Denning.....youth often commits indiscretions which are often condoned.....Suppression related to a case when Sandeep Kumar was about 20 years.....and at such age people often commit indiscretions.....the modern approach should be to reform a person instead of branding him a criminal all his life."

That is exactly the case here. Whatever the writ petitioner may have done was in his youth. He was not involved in any major criminal activity. It seems that he was involved in fights or affray with fellow villagers and while doing so did some minor damage to their property. He was acquitted. Now, he is leading a very sober life. There is no complaint against him.

8. In my opinion the order of the first authority reducing the pay of the petitioner by four stages was the correct punishment. I think the Deputy Inspector General NEZ unnecessarily went out of his way to pick up the file of the writ petitioner suo moto and to inflict the punishment of removal of service, without any justification. He did not exercise his discretion properly. In any event, punishment should be proportional to the fault of the delinquent. When what was omitted to be disclosed was a minor offence, of which the petitioner was

acquitted, the punishment of removal from service was disproportionate.

In those circumstances, the impugned order dated 7th April, 2006 is set aside. The petitioner is entitled to all consequential benefits including reinstatement of service, payment of back wages etc which will be provided to him by the respondent authorities within 8 (eight) weeks of communication of this order.

Certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.