
(2002) 10 AHC CK 0145
In the Allahabad High Court
Case No : Special Appeal No. 121 of 2002

Rajesh Yadav

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-10-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 504

Citation : (2003) 1 AWC 294 : (2003) 1 UPLBEC 349 : (2003) 1 UPLBEC 348

Hon'ble Judges : S.K. Sen, C.J.; Ashok Bhushan, J

Bench : Division Bench

Advocate : S.K. Shukla and Neeraj Kumar Mishra, for the Appellant; Ashok Singh and B.N. Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.K. Sen, C.J. and Ashok Bhushan, J.—Heard Shri S. K. Shukla, counsel for the appellant and Shri Ashok Singh learned counsel appearing for the respondents.

2. This special appeal is directed against the judgment and order dated 3.9.2002 passed by the learned single Judge in Writ Petition No. 36280 of 2002 whereby the learned single Judge has dismissed the writ petition. The writ petition was filed by the appellant challenging the order of Summary Court Martial and the order dated 13.7.1998 passed by Chief of Army Staff. The petitioner was found guilty of making a wilfully false answer to questions set forth in the prescribed form and at the time of enrolment.

3. A Criminal Case No. 79 of 1993 was registered against the appellant which was committed to Session on 18.4.1994. Learned single Judge dismissed the writ petition upholding the order of Summary Court Martial. The counsel for the appellant contended that since he was acquitted in the criminal case vide judgment dated 29.7.2002, it be treated that he was never involved in any crime. The counsel for the appellant has placed reliance on Apex Court judgment in Commissioner of Police, Delhi v. Dhaval Singh 2000 (1) SCSLJ 280.

4. We have heard the counsel for the parties and perused the record. The facts brought on the record clearly shows that appellant suppressed the material fact that he was involved in a criminal case at the time of his enrolment in the army.

5. The appellant was dismissed from service after being tried by Summary Court Martial on 3.9.1997 in which he was found guilty of charges. At the time of enrolment, when he was asked the question as to whether any complaint or report has been made against him of the Magistrate or Police in any offence, he gave reply in no. After verification from Police Authority, district Azamgarh, it was found that a case under Sections 147, 148, 149, 307, 504 and 506, I.P.C. was pending against the appellant. We are of the view that learned single Judge has correctly appreciated the questions raised in the writ petition. The learned single Judge while dismissing the writ petition has rightly placed reliance on the Apex Court judgment in Delhi Administration v. Suresh Kumar and Ors. 1997 SCC 492. The aforesaid Apex Court judgment is fully applicable in the facts of the present case. As laid down by the Apex Court that what would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. The relevant consideration is antecedents of the candidate. From the material brought on the record, it is clear that at the time when the appellant was enrolled in Army, i.e., on 21.8.1995, the criminal case was already committed to Session against the appellant and acquittal has taken place on 29.7.2002. There was no error in the decision of the Summary Court Martial dismissing the appellant from service.

6. The judgment of the Apex Court on which reliance has been placed by counsel for appellant is clearly distinguishable. In the aforesaid case before the Apex Court, the petitioner of that case before he being appointed brought into the notice of the authorities that due to inadvertence, he could not mention about certain facts.

7. In the case before Apex Court, the candidate brought into notice of the authorities before his appointment, the Court took the view that non-disclosure thereby inadvertence and the conduct of the candidate was found to be bona fide. The facts of the present are otherwise, appellant never disclosed the facts of his involvement in criminal case rather he concealed the relevant fact that the criminal case against him has been committed to the session and is pending on the date of his enrolment. Thus, the decision relied by counsel for appellant does not assist in any manner.

8. In view of the aforesaid discussion, we do not find any error in the judgment of the learned single Judge, the special appeal has no merit and is accordingly dismissed.