

(2007) 01 DEL CK 0089

In the Delhi High Court

Case No : Writ Petition (C) No. 3715 of 2004

Recruit Pritam Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-01-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 149, 302, 304
Pension Regulations for Army, 1961 — Regulation 132

Citation : (2007) 01 DEL CK 0089

Hon'ble Judges : Swatanter Kumar, J;G.S. Sistani, J

Bench : Division Bench

Advocate : K. Ramesh, for the Appellant; Ashwini Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—The petitioner was enrolled as a Member of the Indian Army and was posted to Rifle Centre, Delhi Cantt on

17.6.1985. The petitioner had always performed his duties to the satisfaction of all concerned. On 8.2.1986 he proceeded on causal leave from

Raj Rifles Centre to his home town. On 19.3.1986, the petitioner was arrested by the Civil Police, Rohtak on the charge of murder in his village,

while he was on casual leave. The Commandant handed over the petitioner to the police authorities and the petitioner was discharged from the

military service on 22.10.1986. The Court of Sessions vide its judgment dated 12.8.1987 held the petitioner guilty of an offence u/s 304 read with

149 of the Indian Penal Code (for short "IPC") and awarded him a sentence of 7 years Rigorous Imprisonment. Against the judgment of the

learned Trial Court, the petitioner had preferred an appeal in the High Court which was also dismissed by the High Court on 24.10.1997 but the

brother of the petitioner Sepoy Satbir Singh was acquitted by the High Court. The Ministry of defense based on this factum, released all the

benefits due to Satbir Singh till date of his superannuation and even the subsequent pensionary benefits. The petitioner not having got the said

benefits and being aggrieved from the judgment of the High Court, preferred a SLP before the Supreme Court. The appeal preferred by the

petitioner was allowed by the Supreme Court and conviction and sentence of the petitioner was set aside vide judgment dated 12.2.2004. A legal

notice dated 20.2.2004 was served upon the respondents claiming arrears of pay and all other benefits. The said notice is annexed by the

petitioner as Annexure "D" to the writ petition. This notice was not even replied to by the respondents resulting in filing of the present writ petition.

2. In view of the above facts, the petitioner in the present writ petition filed under Article 226 of the Constitution of India claims arrears of pay and

allowances with effect from the date when he was arrested 19.3.1986 till the date of his superannuation i.e. 30.6.2002 and the pensionary benefits

thereafter in view of the fact that he had been acquitted by the Supreme Court.

3. In the counter affidavit filed by the respondents, it is stated that the petitioner was enrolled in the Indian Army on 17.6.1985. It is stated that at

the time of enrollment the petitioner did not disclose to the Enrolling Officer that he was sentenced to undergo imprisonment for life u/s 302 of the

IPC before his enrolment. It is only when the form was sent for verification to the District Civil Authorities at Rohtak that an adverse report was

received from the Superintendent of Police, Rohtak vide letter No. 24, dated 10.1.1986 and letter of the District Magistrate bearing No.

1774/RKE dated. 16.1.1986. Copy of the police verification report has been placed on record as Annexure R2. The petitioner had been

sentenced to undergo imprisonment vide judgment dated 22.4.1983 and even an arrest warrant was issued against the petitioner on 5.3.1986

which was received by the Army Authorities on 17.3.1986. Based on the said warrant, the petitioner was handed over to the police for the

ongoing criminal cases and to suffer the imprisonment awarded to him. It is further submitted that the petitioner was paid his accrued monetary

benefits on account of final settlement amounting to Rs. 761/- and nothing is due and payable to the petitioner as he was discharged from the Army

as a Recruit. He is not entitled to any pensionary benefits as he had rendered only 9 months and 3 days service as a Recruit whereas the pensionable service was 15 years in terms of the Regulations 132 of the Pension Regulations for the Army, 1961. It is further stated that the petitioner was dismissed from the Army in view of the adverse police verification and not as a result of conviction and/or acquittal of the petitioner for charge framed u/s 302 of the IPC. Along with their reply the respondents have also placed on record, photocopies of the original form filled in by the petitioner in which a wrong declaration has been made in para 8, which reads as under:

8. 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.

NO

4. It can hardly be disputed that the petitioner had answered the question incorrectly when the correct facts were within his knowledge. Such incorrect information invited the consequences against the petitioner as afore-noticed. At this stage, we may refer to a judgment of a Division Bench of this Court in the case of Yogesh Kumar Singh v. Union of India and Ors. W.P. (C) No. 11460/2004 decided on 19.10.2006, where the Court while dealing with a case of a somewhat similar circumstance relating to a person who had made similar incorrect statement in his form at the time of his entry into Central Reserve Police Force, held as under:

The exercise of power by the respondent is not punitive but has been exercised on the basis of application form submitted by the petitioner containing an incorrect and false information. We have already noticed that in reply to column 12A, the petitioner had made an averment and answered the question, which to his knowledge was incorrect or false. This he did despite the warning contained in the opening Clause (1) of the Form. The petitioner had submitted to the respondents as well as placed the judgment dated 3.7.2003 on record wherein he was acquitted. There is no dispute to the fact that he had filled in the form for employment on 10th April, 2003 when the case was at advance stage. Probably even arguments in the case had been concluded by that time. The petitioner had also attained the age of maturity.

Learned Counsel for the respondent had relied upon the judgments of the Supreme Court in the cases of Kendriya Vidyalaya Sangathan and

Others Vs. Ram Ratan Yadav, and Ram Saran Vs. I.G. of Police, CRPF and Others, to contend that once an applicant or a candidate makes an

incorrect or false entry in his form, it will be a conduct, which can hardly be condoned and termination from service would be justified. Even such

punishment cannot be said to be disproportionate to such offence as otherwise it would mean to give premium on falsehood.

In view of settled position of law as well as the facts and circumstances of the case, which clearly indicate an intentional mis-statement on the part

of the petitioner in the form, there is hardly any scope for this Court to take a view different than the one taken by the respondents, particularly

while holding that action is arbitrary or without jurisdiction.

For the reasons aforesaid, this writ petition is dismissed, while leaving the parties to bear their own costs.

5. Reference can also be made to a judgment of this Court in the case of Arunesh Chand Mankotia v. Union of India W.P. (C) No. 19120/2004

decided on 19.10.2006 where the Court held as under:

7. Coming to the contents and requirements of Form IAFF (P)-14, it may be clarified that at the very opening page of the Form, warnings have

been given to the persons applying for selection to the SSC which reads as under:

The furnishing of false information or suppression of any factual information in the Attestation form would be a disqualification and is likely to

render the candidate unfit for employment under the Government.

8. Clause 12(1)(i) asked the candidate the following question:

Whether discharged/expelled/withdrawn from any training institute under the Government or Otherwise?

9. The above question has to be answered as per the instructions contained in the same clause which reads as under:

If the answer to any of the above mentioned questions is "Yes" given full particulars of the

case/arrest/detention/fine/conviction/sentence/punishment etc. and/or the nature of the case pending in the Court/University/Educational Authority

etc. at the time of filling up of this form.

10. The petitioner tick marked "No" in answer to question No. 12(1)(i) which obviously meant that he has not been discharged from any training institute under the Government or otherwise. The contention of the petitioner that the above clause does not impose any obligation upon the petitioner to make a declaration with regard to his previous discharge from the training is without any merit. The Clause 12(1)(i) has been worded very liberally so as to include any withdrawal from any institute of the Government and has been further amplified by the use of the expression "otherwise". The purpose of this clause is obviously to know without exception whether an applicant has been discharged, expelled or withdrawn from any training institute. There was hardly any occasion for the petitioner not to answer this question correctly and give complete particulars of his previous withdrawal from the training course. In the subsequent withdrawal, the only ground given by the respondents is non-disclosure and furnishing of false information under Clause 12(1)(i). The order passed by the respondents, thus, is in accordance with instructions, rules and there has been no violation of principles of natural justice. The order has been approved by the competent authority and suffered from no patent, legal or other infirmity.

11. For the reasons afore-stated, we find no merit in this writ petition. The same is dismissed, while leaving the parties to bear their own costs.

6. In view of the above law enunciated by the Court we revert back to the facts of the present case. The petitioner chose to make an incorrect statement of fact in his Form at the time of his entry. But for the verification report submitted by the competent authority on the form of the petitioner in the year 1985, the incorrect statement could never be traced. The report of the Officer which was made on the verification form reads as under:

REMARKS BY THE CIVIL OFFICER

The Civil Officer will complete the portion given below and will also enter any additional facts about the recruit that may be available.

Railway Station and distance from home

Kalanaur 15 km

Whether or not the recruit has a criminal record? If so, in what respect?

Yes

Has the recruit ever been imprisoned? If so, for how long and did his offence involve moral turpitude?

Umra Kaid ki saza on 22.4.83 u/s 302 IPC.

Whether or not the recruit has been engaged in or associated with others engaged in subversive/criminal activities or has otherwise come to

adverse notice? If so, state in what particular aspect?

Yes

Remarks of the Verifying Officer will be endorsed in the form itself and not in separate sheets.

Whether the Recruit in your considered opinion, fit NO

for services in the Army/Navy

Note:- The Verifying authority should allot appropriate requisite classification to the document where they feel it necessary to do so. The document

will then be treated as such.

Signature ...

(Verifying Officer)

Designation SHO

P.S. Kalanour

25.10.85

Date ...

7. Thus a fact which was within the personal knowledge of the petitioner could not have been brought to the notice of the authorities, but for the

above verification report by the concerned authorities. It was contended on behalf of the petitioner that if he had mentioned the factum of his

previous conviction, he would not have been taken into the Force and particularly, in face of the fact that the petitioner has been subsequently

acquitted, it has caused no prejudice to anyone. This argument cannot be accepted, primarily for the reason that the petitioner cannot be permitted

to take advantage of his own falsehood and furthermore the proper course of action for the petitioner would have been to disclose the correct facts

and subsequently inform the authorities concerned of his acquittal by the court of competent jurisdiction. There is no dispute to the fact that the

petitioner was convicted and sentenced for an offence u/s 302 IPC vide judgment dated 19.4.1983 and 22.4.1983 while he had filled up the form

in the year 1985. There can be no justification by the petitioner for making incorrect declaration in the Form.

8. For these reasons, we are unable to find any error of law or fact in the impugned order. No arbitrariness can be attributed to the respondents.

Consequently, the writ petition is dismissed while leaving the parties to bear their own costs.