
(2011) 08 GAU CK 0053
In the Gauhati High Court

Sanjay Kumar Narsinbhai Parmer, Constable No.991140035,
Moran Sector, CISF Unit Oil Duliajan

APPELLANT

Vs

Union of India, Ministry of Home, New Delhi.

RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:

Citation : (2011) 08 GAU CK 0053

Hon'ble Judges : B.K.Sharma, J

Bench : Single Bench

Advocate : For the Petitioners : Mr. P.K. Deka, Adv., For the Respondents : Mr. D.K. Dey, CGC., Advocates appearing for Parties

Judgement

1. Heard Mr. P.K. Deka, learned counsel for the petitioner as well as Mr. D.K. Dey, learned CGC.

2. The petitioner, who had joined the services of the Central Industrial Security Force (CISF) in the year 1999, is aggrieved by the Anenxure9 order dated 3.9.2004, passed by the senior Commandant, CISF Unit, OIL, Duliajan, by which his services as Constable under CISF was terminated by way of removal from service. Such a course of action was adopted pursuant to a departmental proceeding initiated against him on the following charge :

?ARTICLE OF CHARGE1

That the said No. 991140035 Const. Parmar Sanjay Kumar presently posted at Moran Sector, CISF Unit, OIL, Duliajan has exhibited grave misconduct in that he furnished false information by concealing factual position on 09.09.2000 in column No. (a), (b), (c) & (i) of Column 12 of Attestation form after his appointment in CISF as a Constable wef. 01.08.1999.

The above act on the part of No. 991140035 Const. Parmar Sanjay Kumar tantamount to grave misconduct and unbecoming of a member of the Force. Hence the charge.?

3. As regards the aforesaid allegation, the Deputy Commandant, Duliajan CISF Unit was informed by the Additional District Magistrate, Mehsana, vide his letter dated 7.12.2000 that the two criminal cases relating to the petitioner were dropped on compromise and thus the petitioner was innocent.

4. By Annexure3 letter dated 25.4.2003, the petitioner was directed to submit explanation as to why disciplinary action should not be taken against him for not mentioning about the pendency of the aforesaid two criminal cases against him when he had filled up the attestation form on 9.9.2000. In response to the said allegation, the petitioner submitted his explanation but the CISF authority being not satisfied with the same, issued the memorandum of charge sheet dated 11.2.2004 leveling the above quoted charge. In due course, proceeding was initiated and eventually the Enquiry Officer submitted his report vide Annexure8 dated 14.7.2004, holding the petitioner guilty of the charge. Thereafter, the aforesaid impugned final order dated 3.9.2004 removing the petitioner from service was passed.

5. Being aggrieved, the petitioner preferred an appeal and the appellate authority by his order dated 27.11.2004 having dismissed the appeal, the petitioner preferred a revision petition which was also dismissed by Annexure11 order dated 5.5.2005. Thereafter, he approached the Gujarat High Court by filing a writ petition, which was dismissed on withdrawal because of lack of jurisdiction. The order was passed on 2.7.2007. Thereafter, the petitioner filed the instant writ petition.

6. The whole controversy is in respect of the attestation form which the petitioner had filled in on 9.9.2000, a copy of which has been annexed as AnnexureB to the counter affidavit. In the said attestation form under Column 12, inter alia, certain queries were made. The relevant queries along with the reply furnished by the petitioner are quoted below :

- a) Have you ever been arrested ? No.
- b) Have you ever been prosecuted ? No.
- c) Have you ever been under detention ? No.
- i) Is any case pending against you in any court of Law at the time of filing up this attestation form ? No.

7. There is some controversy regarding the arrest of the petitioner in connection with the aforementioned two criminal cases. While Mr. Deka, learned counsel for the petitioner referring to the AnnexureC document annexed to the counter affidavit, submits that it was the father of the petitioner who had been arrested, Mr. Dey, learned CGC referring to the AnnexureD to the same affidavit, submits that the petitioner was also arrested.

8. As regard the other queries, Mr. Deka, learned counsel for the petitioner fairly submits that the only mistake the petitioner had committed was in not

mentioning about the criminal prosecution that was drawn up at the relevant point of time. However, he submits that as regard the most relevant query i.e. have you ever been convicted by Court of law for any offence, the petitioner had rightly given the answer as "No".

9. The respondents in their counter affidavit have referred to the purported compromise in respect of the criminal proceedings on 18.3.2003, although the fact of the matter is that the compromise was arrived at on 18.3.2000. However, the respondents in their counter affidavit have justified their action stating that irrespective of whether the compromise was entered on 18.3.2003 or 18.3.2000, the petitioner had made false statement while filling up the attestation form.

10. Mr. Deka, learned counsel for the petitioner submits that since the criminal proceeding against the petitioner came to an end with his honourable acquittal, there was nothing wrong in making the aforesaid declaration in the attestation form. On the other hand, Mr. Dey, learned CGC submits that the petitioner being a member of the disciplined force ought to have disclosed his involvement in the aforementioned criminal proceeding although he was acquitted from the said proceeding.

11. I have given my anxious consideration to the submissions made by the learned counsel for the parties and gone through the entire materials on record. The charge against the petitioner has been noted above. As recorded above, there is some dispute as to whether the petitioner was arrested in connection with the criminal case or not. One of the documents annexed to the counter affidavit, speaks of arrest of the father of the petitioner while AnnexureD speaks of arrest of both the accused persons i.e. the petitioner and his father. However, the petitioner in his attestation form replied in the negative. Same is the case in respect of the queries as to whether he had ever been prosecuted or kept under detention. However, the most vital clause i.e. whether any case was pending against him, the petitioner rightly answered in the negative as no criminal case was pending at the date of filling up the attestation form on 9.9.2000. Similarly, he rightly indicated "No" in response to the query whether he was convicted in any criminal offence.

12. The question that falls for consideration is as to whether because of such minor mistake committed by the petitioner when he was young and energetic should attract extreme penalty of removal from service. The Apex Court in the case of Commissioner of Police and others Vs. Sandeep Kumar reported in (2011) 4 SCC 644 has held that in such matter, approach should be to condone such indiscretions made by young people rather than brand them as criminal for the rest of their life. The fact of the matter is that although a criminal proceeding was launched against the petitioner but eventually he was honourably acquitted from the said proceeding. The particular entries made by the petitioner will have to be considered in the touch stone of the said fact. The petitioner at the very threshold of his service career might have committed a minor mistake in not mentioning about his involvement in a criminal case, from which he was

eventually acquitted but that by itself in my considered view cannot attract the extreme penalty of removal from service.

13. For all the aforesaid reasons, I am inclined to accept the writ petition by setting aside and quashing the impugned orders dated 3.9.2004, 27.11.2004 and 5.5.2005. Consequently, the petitioner shall be reinstated in service maintaining the continuity in service. However, it is made clear that the petitioner will not be entitled to any back wages. The respondents shall now pass appropriate orders towards reinstatement of the petitioner in service as expeditiously as possible but at any rate not later than 15.9.2011.

14. The writ petition is allowed. There shall be no order as to costs.