
(2005) 08 GAU CK 0013
In the Gauhati High Court
Case No : WP (C) No. 442 of 2002

Sanjoy Das

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 10-08-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 311(2)
Penal Code, 1860 (IPC) — Section 147, 148, 307, 353, 427
Tripura State Rifles (Recruitment) Rules, 1984 — Rule 14, 14(3), 15

Citation : (2006) 1 GLR 556 : (2005) 4 GLT 629

Hon'ble Judges : T. Vaiphei, J

Bench : Single Bench

Advocate : A.K. Bhowmik, S.R. Dey and A. Deb, for the Appellant; U.B. Saha and D.C. Nath, for the Respondent

Final Decision : Dismissed

Judgement

T. Vaiphei, J.—The legality of the Order No. 053/TSR-6/Disch/Estt./03/00853-63 dated 12.02.2003 terminating/discharging the petitioner from service on the ground of adverse report against him is called into question in this writ petition.

2. The factual matrix leading to the filing of this writ petition may be briefly stated at the very outset. The petitioner belongs to a Schedule Caste community. He was appointed to the post of Rifleman in 6 Bn. Tripura State Rifles on temporary basis on 25.4.2001 and joined the post on 21.5.2001. The appointment order stipulated that this final appointment and continuation in service would be subject to medical fitness, educational qualification certificate and C & A (character and antecedent) report verification without any adverse (report ?) and further that he was obliged to fill up attention form. In the course of verification of the character and antecedents of the petitioner, it was found that the petitioner was involved in a criminal case, i.e., Kamalpur P.S. Case No. 64/99 u/s 147/148/353/307/427 IPC, for which charge sheet was submitted against him in a court of law. As against item Nos. 13(a), (b) and (c) of the

attestation form, he mentioned "No" though he was arrested, prosecuted and detained in connection with the aforesaid case prior to his appointment. The attestation form was signed by him on 16.5.2001. Thereafter, the matter was sent to the Superintendent of Police, Dhalai for necessary verification. The S.R, Dhalai after making the verification, reported by his letter dated 17.11.2002 that the petitioner was involved in the said criminal case and was charge sheeted. Apparently acting on this report that the respondent No. 3 issued the impugned order of discharge, which is now under challenge in this writ petition.

3. Mr. A.K. Bhowmik, the learned senior counsel for the petitioner, contends that Rule 14(3) of the Tripura State Rifles (Recruitment) Rules, 1984 (TSR Rules" for short) enables the appointing authority to terminate the service of a member of the Rifles in case of adverse report of his character and antecedents but such powers must be exercised after following the principles of natural justice. What he submits is that when the termination of a temporary employee like the petitioner is stigmatic, even if the rules do not incorporate principles of natural justice, the same must necessarily be read into such provision. So read, an opportunity of hearing should have been given to the petitioner, and having failed to do so in the instant case, the impugned order is not sustainable in law. He further submits that the arrest of the petitioner and his being charge sheeted in the case have lost their relevance after his acquittal from the case by this Court vide the judgment dated 15.9.2003 in CrI. A. No. 76 of 2002. He further submits that the discharge of the petitioner from service without waiting for final disposal of the criminal case is arbitrary. Finally, it is urged by the learned senior counsel that the impugned order is violative of Article 311(2) and Article 14 of the Constitution and is accordingly liable to be quashed and reinstated to his post with full monetary and service benefits.

4. Mr. U.B. Saha, the learned senior Government Advocate, appearing for the respondents, submits that the impugned order was issued on the basis of the adverse report made by the S.P., Dhalai, who checked and thoroughly verified the attestation form duly filled up and signed by the petitioner as per the information collected on his character and antecedents. He further points out that the adverse report against the petitioner was made on discovering the suppression of materials relating to his arrest and subsequent filing of the charge sheet against him. According to the learned Counsel, Rule 14(3) of the TSR Rules empowers the respondents to terminate the petitioner from service, if he is adversely reported, by giving him one month's notice or one month's salary in lieu thereof and the petitioner was accordingly discharged from service under this provision, which is perfectly in order and is not liable to be interfered with. In support of his contentions, he relies on Secy. Deptt. of Home Secy. A.P. and Others Vs. B. Chinnam Naidu, and Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav,

5. Before proceeding further, it will be appropriate to refer to the relevant portion of the terms of offer of appointment (Annexure-1) and the attestation form filled

up by the petitioner (Annexure-R/2), which read : -

Offer of appointment: - (para-2)

2. Your final appointment and continuation of service will be made subject to medical fitness, educational qualification certificates and C & A verification without any adverse (sic).

Attestation form : -

1. The furnishing of false information or suppression of any factual information in the Attestation Form would be a disqualification and likely to render the candidate unfit for employment under the Government.

2. ***** Omitted as irrelevant * *

3. If the fact that false information has been furnished or that there has been suppression of any factual information in the attestation form comes to notice at any time during the service of a person his service would be liable to be terminated.

The relevant information required are at Item No. 13(a), which are :

(i) Have, you ever been arrested ?

(ii) Have you ever been prosecuted ?

(iii) Have you ever been kept under detention ?

(iv) Is any case pending against you in any court of law at the time of filling this Attestation Form ?

6. It will also be necessary and useful to refer to rule 14 of TSR Rules :

14. Verification. - (1) As soon as a person is enrolled as a member of the Rifles his character, antecedents, connections and age shall be got verified by the Commandant from the concerned District Superintendent or Commissioner of Police.

(2) The verification roll, after it is returned by the authority to whom it was forwarded by necessary action, shall be attached to the Service Book of the concerned members of the Rifles.

(3) If a person is adversely reported as a result of above verification, his service shall be terminated by giving him one month's notice or one month's salary in lieu thereof under Rule 15 of these rules.

(4) ***** omitted as irrelevant

A cursory look at the attestation form filled in by the petitioner reveals that as against Item No. 13(a)(i), (ii), (iii) and (ix) concerning the information on arrest,

prosecution, detention and pendency of any case against him, he empathically mentioned "No" despite the facts to the contrary. He further certified in the attestation form that the said information was correct and complete to the best of his knowledge and belief. As noticed earlier, it is not in dispute that the petitioner was arrested and challaned in connection with a criminal case. Yet, he categorically denied those facts in the attestation form.

7. A case of somewhat similar nature came up for consideration before the Apex Court in *Kendriya Vidyalaya Sangathan* (supra), the case cited by the learned senior Government Advocate, on the following facts and circumstances. The petitioner was selected for the post of Physical Education Teacher in Kendriya Vidyalaya. As per Clause 4 of the offer of appointment, the petitioner was on probation for a period of two years and that his services were liable to be terminated by one month's notice. Para 8 of the memorandum containing the offer of appointment required him to fill in an attestation form. Para 9 of the same memorandum provided :

Suppression of any information will be considered a major offence for which the punishment may extend to dismissal from service.

The attestation form duly filled by the petitioner indicated that he had taken degree from St. Aloysius College, Jabbalpur and B.Ed, and M.Ed, degree from R. Durgavati Vishwavidalya, Jabbalpur. Column 13 and 14 as filled up read, thus :

12. Have you ever been prosecuted/kept under detention or bound down/ fined, convicted by a court of law of any offence ? - "No".

13. Is any case pending against you in any court of law at the time of filling up this attestation form ? - "No".

The respondent also certified the information given in the said attestation form as under :

I certify that the foregoing information is correct and complete to the best of my knowledge and belief. I am not aware of any circumstances which might impair my fitness for employment under Government.

8. However, on the basis of report received from Inspector General of Police that a criminal case was pending against the petitioner on the date of filling the attestation form, a memorandum was issued to him terminating his service on the ground of suppression of material information required under columns 12 and 13 of the attestation form and violation of para 9 of the memorandum. The petitioner challenged the order of termination before the Central Administrative Tribunal on the ground that he had education in Hindi and he was not well conversant with English words. As such, he failed to understand the meaning of the words "prosecution" or "conviction". Under a misconceived notion, he did not take note of column 12 in the attestation form. He also submitted that whatever was done by him, was in order to get employment because at the relevant time, he was undergoing great difficulty. It was his case that the incident occurred at

the place where a number of persons were raising their grievances against the State authorities relating to non-grant of earthquake relief ; he was not at all part of that mob ; while he was passing, a few demonstrators who were his friends pulled him into the mob, he, all of a sudden, later learnt that a criminal case had been registered against him. CAT dismissed his petition. The petitioner thereupon filed a writ petition before the High Court. The High Court allowed the writ petition. Thereafter, an appeal was filed before the Apex Court. Allowing the appeal, the Apex Court observes :

The object of requiring information in columns 12 and 13 of the attestation form and certification thereafter by the candidate was to ascertain and verify the character and antecedents of the respondent as on the date of filing and attestation of the form to judge his suitability to continue in service. 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. A candidate having suppressed material information and/or giving false information cannot claim right to continue in service. The employer having regard to the nature of the employment and all other aspects had the discretion to terminate his services which is made expressly clear in Para 9 of the offer of appointment.

9. On the subsequent withdrawal of the criminal case against the petitioner, the Apex Court further held that the High Court went wrong in saying that the criminal case had been subsequently withdrawn and that the offences charged against the petitioner were also not of serious nature. According to the Apex Court, the respondent therein was to serve as a Physical Education Teacher in Kendriya Vidyalaya in which the character, conduct and antecedents of a teacher will have some impact on the minds of the students of impressionable age. The Court also observed that the petitioner accepted the offer of appointment subject to the terms and conditions mentioned therein with his eyes wide open and that Para 9 of the memorandum in clear terms kept the petitioner informed that the suppression of material facts or any false information may lead to dismissal from service. In the attestation form, continued the Apex Court, the petitioner certified that the information given by him was correct and complete to the best of his knowledge and belief ; if he could not understand the contents of columns 12 and 13, he could not have certified so. The Apex Court concluded that having certified that the information given by him was correct and complete, his version could not have been accepted.

10. The question whether there is a false declaration or suppression of material information when the petitioner did not indicate his arrest or of the pendency of any case against him, even though the only requirement to indicate is whether he is convicted by a court of law or detained under any Central/State Preventive detention, again came up for consideration before the Apex Court in B. Chinnam Naidu (supra). While affirming the decision in Kendriya Vidyalaya Sangathan (supra) that when a candidate suppresses material information and/or gives false

information, he cannot claim any right of appointment or continuance in service, the Apex Court distinguished the case on facts and held that the respondent could not be said to have made false declaration or have suppressed material information. The Apex Court observes :

***** A bare perusal of column of the attestation form shows that the candidate is required to indicate as to whether he has ever been convicted by a court of law or detained under any State/Central preventive detention laws for any offences whether such conviction is sustained or set aside by the appellate court, if appealed against. The candidate is not required to indicate as to whether he has been arrested in any case or as to whether any case was pending. The requirement in the present case is "conviction" and not "prosecution". Therefore, by answering that the respondent had not been convicted or detained under preventive detention laws, it cannot be said that he had suppressed any material fact or had furnished any false information or suppressed any information in the attestation form to incur disqualification. The State Government and the Tribunal appeared to have proceeded on the basis that the respondent ought to have indicated the fact of arrest or pendency of the case, though column 12 of the attestation form did not require such being furnished. In view of the specific language so far as column 12 is concerned the respondent cannot be found guilty of any suppression *****

11. Reading the two judgments in juxtaposition, it becomes crystal clear that where there are requirements in a attestation form to indicate the arrest or pendency of a criminal case against an employee, such information become material information and failure to disclose such information will amount to suppression of material facts or furnishing of false information as held in Kendriya Vidyalaya Sangathan (supra). If any doubt persists on this aspect, such doubt has been completely removed by B. Chinnam Naidu case (supra). In the case at hand, the petitioner has in no uncertain term answered in the negative item 13(a), (b), (c) and (ix) in respect of his earlier arrest, prosecution, detention and the pendency of a criminal case against him. Never has there been any two cases so identical on facts. The petitioner in the instant case is demonstrably guilty of giving false declaration and/or of suppressing material information. It is next contended by Mr. A.K. Bhowmik, the learned senior counsel for the petitioner, that once the petitioner has been honourably acquitted by this Court, the question of unfitness to hold the post by him has lost much of its relevance. This issue has also been clarified by the Apex Court in B. Chinnam Naidu case (supra) when it held that the question whether he was a desirable person to be appointed in Government service was not the subject-matter of adjudication and the Tribunal was not justified in recording any finding in that regard and what whether a person is fit to be appointed or not is a matter within the special domain of the Government. For denying somebody appointment after he is selected, though he has no right to be appointed has to be governed by some statutory provisions. Rule 14(3) of the TSR Rules empowers the competent authority to terminate a person who is adversely reported on verification by

giving him one month's notice or one month's salary in lieu thereof under Rule 15. By invoking the said provisions, the services of the petitioner came to be terminated, which cannot be held as ultra vires or illegal.

12. Confronted with this situation, Mr. A.K. Bhowmik, the learned senior counsel for the petitioner makes a last ditch effort to distinguish between the facts of the instant case and the decision in Kendriya Vidhalaya Sangathan case (supra) by asserting that (i) the petitioner in the instant case was discharged from services, due to adverse report against him and not due to suppression of material information as in the case of Kendriya Vidhalaya Sangathan (supra) and (ii) judgments of Courts are not to be construed as statutes. He vehemently contends that the petitioner was never discharged from services due to suppression of material information as evident from the impugned order and that his discharge from services on the ground of adverse report is stigmatic and, therefore, must be preceded by a regular enquiry and in the absence thereof, he has been denied of reasonable opportunity of hearing guaranteed under Article 311(2) of the Constitution. To my mind, this submission is misconceived and sounds like legalistic hair splitting. In the first place, it must be noted that the adverse report referred to in the impugned order was the result of the verification report made by the Superintendent of Police, Dhalai District, who detected that the petitioner was already arrested, prosecuted, kept under detention and was involved in a pending criminal case at the time of his filling in the attestation form, contrary to the information furnished by him.

13. The correspondences between the respondents already noticed earlier prior to the issue of the impugned order clearly establish beyond doubt that the discharge of the petitioner from services was due to adverse report occasioned by suppression of material information or false information made by the petitioner in the attestation form, even though the impugned order did not say so in many words. That being the position, it can be safely held that the discharge of the petitioner from service was done in accordance with the conditions of his appointment. Now, when such discharge is made by way of enforcement of conditions of his appointment letter, the question of holding regular enquiry contemplated by Article 311(2) of the Constitution cannot arise. It is true that the judgment in Kendriya Vidhalaya Sangathan case (supra) should not be construed as statutes but then in the instant case, no such exercise is involved. What is being done herein is simply applying the law laid down therein to the factual scenario of this case. Under the circumstances, the reliance placed by the learned senior counsel upon Ashwani Kumar Singh Vs. U.P. Public Service Commission and Others, , The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another, , Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, and Nar Singh Pal Vs. Union of India and Others, are entirely misplaced.

14. For the reasons stated in the foregoing, I do not find any infirmity in the impugned order. Resultantly, this writ petition has no merit and is hereby

dismissed with no order as to cost.