
(2015) 12 AHC CK 0062
In the Allahabad High Court
Case No : Special Appeal No. 529 of 2010

Shailesh Bhushan Tripathi	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 03-12-2015

Acts Referred:

Arms Act, 1959 — Section 25
Central Reserve Police Force Act, 1949 — Section 11(1)
Penal Code, 1860 (IPC) — Section 120-B, 147, 148, 149, 302
Probation of Offenders Act, 1958 — Section 12

Citation : (2015) 12 AHC CK 0062

Hon'ble Judges : Rakesh Tiwari and Shashi Kant, JJ.

Bench : Division Bench

Advocate : K.K. Shukla and S.P. Pandey, for the Appellant; Rohit Pandey, for the Respondent

Judgement

Rakesh Tiwari, J.—Heard learned counsel for the parties and perused the record.

2. This Special Appeal challenges the validity and correctness of the impugned judgment and order dated 10.3.2010 passed by the learned Single Judge in Civil Misc. Writ Petition No. 37715 of 2005, Shailesh Bhushan Tripathi versus Union of India and others, whereby the aforesaid writ petition was dismissed.

3. The relevant findings recorded by the learned Single Judge in the impugned judgment reads thus:--

"Clause 12 of the verification form is relevant for our purposes and reads as follows:

"12. Have you ever been arrested, prosecuted, kept under detention or bound down/fined, convicted, by a court of law for any offence or debarred/disqualified by any Public Service Commission from appearing at its examination/selection, or debarred from taking any examination/rusticated by any University or any other education authority/Institution?"

Reference may also be had to Clauses 1 and 2 of the form, which read as follows:

"1. The furnishing of false information or suppressing of any factual information in the Verification Roll would be a disqualification and is likely to render candidate unfit for employment under the Government.

2. If detained, convicted, debarred etc., subsequent to the completion and submission of this form, the details should be communicated immediately to the Union Public Service Commission or the authority to whom the Verification Roll has been sent earlier, as the case may be, failing which it will be deemed to be suppression of factual information."

From a reading of the aforesaid clauses it is apparently clear that the candidate was required to disclose not only his arrest etc. but also the cases wherein he had been prosecuted, whatsoever the outcome of the prosecution had been.

Admittedly, the petitioner has been prosecuted in Criminal Case No. 90 of 1991 much prior to the filing of the form.

Even assuming that the petitioner had been served with a charge sheet in Case Crime No. 162 of 1998 only in the year 2002, in view of Clause 2 of the form he was immediately required to inform the authority concerned qua his prosecution, which he has admittedly failed to do so.

In view of the aforesaid fact admitted on record, the authorities are legally justified in canceling the appointment of the petitioner in terms of Clauses 1 and 2 of the form, referred to above. There is no illegality in the order impugned.

Writ petition lacks merit and is dismissed."

4. Brief facts giving rise to the instant appeal are that the appellant was appointed as Constable in Central Reserve Police Force (hereinafter referred to as "the CRPF") on 5.7.2000. While he was posted at 85 Bn. CRPF Nalkata, Tripura, was served with the charge sheet issued by respondent No. 3, Deputy Inspector General, CRPF, Allahabad on 26.7.2002 and was charged with the offence of misconduct for furnishing false statement in column Nos. 12(a) and 12(b) of the Verification Form by concealing the fact of pending of criminal cases i.e. Case Crime No. 90 of 1991 and Case Crime No. 162 of 1998. The appellant submitted his reply to the aforesaid chargesheet denying the allegations stating that in so far as Criminal Case No. 738 of 1994 (Case Crime No. 90 of 1991) under Sections 147 , 323 , 149 , 452 , 504 and 506 IPC was concerned, he had been acquitted vide judgment and order dated 25.11.1994 passed by the IVth Addl. Chief Judicial Magistrate, Sultanpur. As regards second case i.e. Criminal Case No. 1229 of 2010 (Case Crime No. 162 of 1998), State versus Awadh Bihari Tripathi and others, under Section 323 IPC, it was stated by the appellant that he had no information as he was neither arrested nor he was ever served with any summon issued by the competent Court prior to his appointment as such he had not furnished any false statement. The enquiry was conducted into the matter by the Enquiry Officer. On completion of the enquiry, the report was submitted by

the Enquiry Officer to the Disciplinary Authority, respondent No. 4, Commandant, Central Reserve Police Force, 85 Bn. Nalkata, Tripura on 10.3.2003 holding the appellant guilty of the charge. The Disciplinary Authority vide its order dated 26.3.2003 required to the delinquent employee to submit his reply, if any, to the enquiry report, within a period of 15 days which was submitted him reply on 29.3.2003. The Disciplinary Authority terminated the services of the appellant vide order dated 12.4.2003 on the basis of material on record finding the charges proved against the appellant.

5. Aggrieved by the order dated 12.4.2003, the appellant preferred an appeal before respondent No. 3, the Deputy Inspector General, Central Reserve Police Force, Allahabad, which was dismissed vide order dated 19.4.2004. Thereafter, he preferred revision against the order dated 19.4.2004 before respondent No. 2, the Inspector General, Central Reserve Police Force, Lucknow, which too was rejected vide order dated 23.2.2005. The appellant preferred then Writ Petition No. 37715 of 2005, Shailesh Bhushan Tripathi versus Union of India and others, before the High Court which was dismissed as stated above. Hence, the instant special appeal.

6. The impugned judgment and order of the learned Single Judge is assailed on the ground that once a criminal case has ended in acquittal, then it would be deemed that there was no criminal case against the accused-appellant in the eye of law. Under the aforesaid impression the appellant had furnished information in the verification form. Admittedly, at the time of filling up verification form, no criminal case was pending against him, hence taking such a harsh decision dismissing the appellant from service was unjustified; that in so far as much emphasis drawn by the learned Single Judge in respect of clause 1 and 2 of the verification form is concerned, it is submitted by the learned counsel for the appellant that it is mere instruction and they are not statutes and the service of the appellant is governed by the statutory rules wherein there is no such provision in the form of removal of an employee from service on such ground.

7. It is submitted that even if clause 1 of the verification form is relied upon, then also there is no mandatory provision to terminate an employee from service in future. The verification form simply provided that furnishing false information or suppression of fact in verification roll renders a candidate unfit for employment under the government. A plain reading of the aforesaid clause appears to be an enabling provision and upon proof of suppression of some material informations and not any factual impression may require dismissal of an employee from service. The authorities concerned are therefore, under obligation to apply their mind and to assess the misconduct of the employee concerned proportionate to his guilt. In the present case, in the absence of any such provision, clause 12 of the verification form necessarily gives information even in the matter of acquittal in criminal case hence, any hyper technical view taken by the departmental authorities was wrongly upheld by the learned Single Judge.

8. It is also submitted that in so far as second criminal case i.e. Case Crime No.

162 of 1998 is concerned, it was a non-cognizable report about which the appellant had no information. He was neither detained nor convicted in this case and was not even debarred. Even if the chargesheet was served upon him in the year 2002, it was not mandatory upon the appellant to inform the authorities concerned in the facts and circumstances of the case. It is stated that while dismissing the writ petition, learned Single Judge wrongly held the appellant guilty of suppression of material fact saying that he has violated the condition mentioned in clause 2 of the verification form.

9. The counsel for the appellant then submitted that it is well settled law that punishment should be proportionate to the gravity of the alleged misconduct but in the present case, punishment awarded to him is not only disproportionate to the alleged misconduct but also it is too harsh.

10. In support of his submissions, learned counsel for the appellant has relied upon the following case laws.

1. Writ Petition (Civil) No. 3306 of 2012, Commissioner of Police and another versus Vijay Kumar Malik;

2. Civil Appeal No. (s) 1430 of 2007, Commissioner of Police and others versus Sandeep Kumar;

3. Special Appeal No. 2046 of 2011, Santosh Kumar versus State of U.P. and others;

4. Ramesh Prasad Patel Vs. Union of India (UOI), ; and

5. Criminal Appeal No. 17 of 2015, Awadh Bihari Tripathi and others versus State of U.P. through District Magistrate, Sultanpur.

11. Per contra, learned Standing counsel appearing for the respondents submits that Para 1-12(d) of the Recruitment Manual of the Central Reserve Police Force provides that if a person is adversely reported upon in the verification roll by the local authorities, his services shall be terminated under rule 16 of the CRPF Rules, 1955 read with rule 5 of the CCS (Temporary Service) Rules. It is argued by the learned Standing counsel that in the present case, the appellant was adversely reported in the verification roll by the District Magistrate, Sultanpur vide his letter dated 17.7.2001 that he was involved in criminal case No. 162 of 1998 under Section 323 IPC, which was pending against him in the lower Court at Sultanpur and prior to this another criminal case No. 90 of 1991, under Sections 147 , 327 , 452 , 504 and 506 IPC was registered against him in which he was acquitted by the lower Court vide judgment and order dated 25.11.1994 on the basis of compromise between the parties. Thereupon, a departmental enquiry was initiated against the appellant and he was charged for not disclosing the correct facts in his verification roll, which is violative of Section 11(1) of the Central Reserve Police Force Rules, 1949; that on the basis of enquiry report as well as other evidence on record, he was not found fit to continue in the force and consequently he was removed from service vide order dated 12.4.2003.

12. He also submits that column Nos. 1 and 2 of the verification roll provide that furnishing of false information or suppression of any factual or material information would disqualify and render the candidate unfit for service. Relying upon column No. 3 of the form it submitted that any false information or suppression of any factual information in the verification roll filled by a candidate if comes to the notice of the authorities at any time, his services would be liable to be terminated. The appellant had known these provisions before entering into the service and his filling up of column Nos. 12A and 12B as "No", deliberate, hence he is not entitled to continue in service. The appellant has therefore, committed a serious offence resulting into his removal from the services and he is not entitled for any relief and appeal deserves to be dismissed with costs.

13. In support of aforesaid submissions, learned Standing counsel has relied upon the case of *Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav*, in which it has been held that:

"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 to judge his suitability to continue 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 discretion to terminate his services, which is made expressly clear in para 9 of the offer of appointment. The purpose of seeking information as per columns 12 and 13 was not to find out either the nature or gravity of the offence or the result of a criminal case ultimately. The information in the said columns was sought with a view to judge the character and antecedents of the respondent to continue in service or not."

14. Before dealing with the case of the learned counsel for the parties it would be appropriate to discuss the case laws cited by the learned counsel for the appellant.

15. In the case of *Commissioner of Police and another versus Vijay Kumar Malik*, respondent Vijay Kumar Malik had applied for the post of Sub-Inspector (Executive) Male in the Delhi Police. However, his candidature in respect of the said post was cancelled on the ground that he was involved in a criminal case pertaining to FIR No. 277 dated 20.8.2005 under Sections 302 , 148 , 149 , 120-B IPC and Section 25 of the Arms Act, 1959 registered at police station City Sonapat, Haryana. He had disclosed his involvement in the said case in both the application form as also in the attestation form. Respondent filed a petition before the Tribunal, which was allowed. Aggrieved, the Commissioner of Police, Delhi approached the Apex Court by filing a writ petition. While dismissing the writ petition filed by the Commissioner of Police, the Apex Court has held that as the said Vijay Kumar Malik has been acquitted by the Juvenile Justice Board, hence the candidature of the respondent could not have been cancelled in law.

16. In the case of *Commissioner of Police versus Sandeep Kumar*, respondent

Sandeep Kumar applied for the post of Head Constable but did not mention in his application form that he was involved in a criminal case being FIR 362 under Section 325 /34 IPC, which was compromised on 18.1.1998 and the respondent and his family members were acquitted from the charges levelled against them. His candidature for the post of temporary Head Constable was cancelled on the ground of concealment of fact of involvement in the criminal case under Sections 325 /34 IPC and had made a wrong statement in his application form. He preferred a petition before the Central Administrative Tribunal, which was dismissed on 13.2.2004. Against that order the respondent filed a writ petition before the Delhi High Court, which was allowed. The Commissioner of Police, Delhi went up in appeal before the Apex Court. While dismissing the appeal, the Apex Court held that-

"In our opinion, we should display the same wisdom as displayed by Lord Denning. As already observed above, youth often commit indiscretions, which are often condoned. It is true that in the application form the respondent did not mention that he was involved in a criminal case under Section 325 /34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified.

At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter.

For the reasons above given, this Appeal has no force and it is dismissed. No costs."

17. In Santosh Kumar (supra) the appellant was recruited as Civil Police Constable in the year 2005 in District Azamgarh as per Rules. That after recruitment/selection, he was required to submit an affidavit in respect of his qualification and other details. Thereafter the candidature of the appellant was cancelled on the ground that in his affidavit, he has not mentioned his involvement in a criminal case. Aggrieved, he preferred writ petition, which was dismissed. Then he preferred special appeal. While allowing the special appeal, the Court has held thus:--

"After hearing counsel for the parties, we are of the considered view that the criminal case No. 31A of 2000 under sections 147 , 323 , 504 , 506 , 354 IPC has been registered on 29.02.2000 and the chargesheet has been submitted on 04.04.2000 and the said case has been decided by the Chief Judicial Magistrate, Gorakhpur vide judgement dated 17.10.2003 resulting into the acquittal of the appellant. No appeal has been preferred by the State against the order of acquittal of appellant. Therefore, it can not be said that the appellant has concealed any information or his character and antecedents were not such that he could not be given appointment in a disciplinary force. It is also mentioned that the offence in which the appellant was involved was of the nature of minor offence.

Therefore, having regard to the fact that at the time of lodging of the F.I.R., the

appellant being 15 years of age was a minor, no knowledge could be imputed to him, therefore, following the ratio of the Hon"ble Apex Court in Ram Kumar Vs. State of U.P. and others case (supra) and order dated 18.01.2012 passed by this Court in Special Appeal No. 1515 of 2007 (Sanjesh Yadav Vs. State of U.P. and others), we allow this Appeal and quash the order of the Single Judge dated 19.11.2007 with the direction that the appellant will be taken back in service within a period of two months from today but he will not be entitled to any back wages for the period he has remained out of service. There shall be no order as to costs.

The respondents are directed to take follow-up action within a period of two months from the date of receipt of a certified copy of this order."

18. In Ramesh Prasad Patel (supra) the appellant was enrolled in the Army as a recruit on 30th August, 1986 and stood discharged with effect from 31.7.1989 on the ground that he had given a false declaration at the time of his enrollment to the effect that no criminal case was pending against him, which was found to be false on verification. In fact, he had been tried in a criminal case, which has subsequently, been decided vide judgment and order dated 12.7.1995 wherein he stood convicted for the offence punishable under Section 379 IPC, however, he has been given the benefit of the provisions of Probation of Offenders Act, 1985. It has further been observed that the conviction would not adversely affect his civil rights in view of the provisions of Section 12 of the Act, 1958. He challenged the said order of discharge dated 31.3.1989 by filing a writ petition which was dismissed vide judgment and order dated 13.2.2004. Aggrieved, the appellant preferred Special Appeal before the High Court, which was dismissed holding that-

"Thus, in view of the above, the law in this regard can be summarized that the benefit of the Act 1958 takes away the benefit of sentence and not of conviction and the submissions made on behalf of the appellant that the appellant has been granted the benefit of the Act 1958 cannot be sustained, being preposterous. More so, the Court dealing with the criminal case has no competence to make any observation which may have bearing on civil rights of the parties, particularly in service matters."

19. It is noteworthy that the judgment rendered in the case of Kendriya Vidyalaya Sangathan & others (supra) relied upon by the learned Standing counsel is an earlier view and subsequently the Apex Court has taken otherwise regular stand as is evident from the various case laws relied upon by the learned counsel for the appellant.

20. It appears that in Criminal Appeal No. 17 of 2015, Awadh Bihari Tripathi and others versus State of U.P. through District Magistrate, Sultanpur, appellant Shailesh Bhushan Tripathi was acquitted of the offence punishable under Section 323 IPC vide judgment and order dated 26.9.2015 passed by the Sessions Judge, Sultanpur. The criminal appeal was preferred against the judgment and

order dated 19.1.2015 in Criminal Case No. 1229 of 2010 (Case Crime No. 162 of 1998), State versus Awadh Bihari Tripathi and others, passed by the then Addl. Chief Judicial Magistrate, Court No. 19, Sultanpur, whereby each of the appellants were directed to be released under Section 323 IPC giving benefit of the provisions of Section 12 of the Probation of Offenders Act, 1985 on probation for a period of six months.

21. After hearing counsel for the parties and on perusal of the record it appears that the appellant has been acquitted in both the criminal cases i.e. Case Crime No. 90 of 1991, under Sections 147 , 327 , 452 , 504 and 506 IPC and Case Crime No. 162 of 1998, under Section 323 IPC. Therefore, it can not be said that the appellant has concealed any material information or his character and antecedents were not such that he could not be given appointment in a disciplinary force. It may also be mentioned that the offence in which the appellant was said to be involved was of the nature of minor offence.

22. Having regard to all the facts and for the reasons that at the time of lodging of the F.I.R., the appellant was a minor, no knowledge could be imputed to him about the consequences of his childish acts, hence following the ratio laid down by the Apex Court in the cases of Commissioner of Police Versus Sandeep Kumar (supra) and Ram Kumar Vs. State of U.P. and others, (Civil Appeal No. 7016 of 2011) arising out of Special Leave Petition (C) No. 12091 of 2010 and the judgment of Delhi High Court in Commissioner of Police and another versus Vijay Kumar Malik as well as the judgment and order dated 19.1.2012, in Special Appeal No. 2046 of 2011, Santosh Kumar versus State of U.P. and others, we allow this Appeal and quash the order of the learned Single Judge dated 10.3.2010 with the direction that the appellant will be taken back in service within a period of two months from today but he will not be entitled to back wages for the period he has remained out of service. There shall be no order as to costs.

23. The respondents are directed to take follow-up action within a period of two months from the date of receipt of a certified copy of this order.