

(2001) 03 DEL CK 0093
In the Delhi High Court
Case No : C.W.P. No. 5970 of 1999

Shri Parimal Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-03-2001

Acts Referred:

Citation : (2001) 4 AD 679 : (2001) 91 FLR 317

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Mr. S.S. Ray, for the Appellant; Mr. Sanjiv Sachdeva and Ms. Priya Mehra, for the Respondent

Judgement

Vikramajit Sen, J.—The Petitioner was recruited into the C.R.P.F. on 24.4.1991. After over seven years of service he has been dismissed in terms of the impugned order dated 8.12.1997 of the Commandant 81 BN CRPF. The salient part of this Order reads as follows:

"I have carefully gone through the proceedings of departmental enquiry, reply of the delinquent in response to enquiry officer"s report and agree with the findings of enquiry officer that No.913128305 Ct Parimal Singh submitted fake education certificate in order to get himself recruited in CRPF. It is clearly evident from defense document No.1 that said delinquent No. 913128305 Ct Parimal Singh not only tried to submit fake education certificate but his date of birth is also falsified to gain service benefits. The delinquent has tried to cheat the department by furnishing false facts. I could have taken a lenient view but the intentions of the delinquent are purposeful and hence with all due reasonable thinking, I, under the powers vested in Rule 27(a) of CRPF Rules, 1955, hereby impose the penalty of "DISMISSAL FROM SERVICE" of 913128305 Ct. Parimal Singh of F/81 Bn. CRPF with effect from the afternoon of 8/12/1997. Accordingly, he is hereby struck off the strength of this unit with effect from the same date i.e. 8/12/97 (BN)."

(underlining added)

2. An Appeal under Rule 28 of the CRPF Rules, 1995 (hereinafter referred to as "the Rules") was filed on 29.12.1997 which was rejected on 29.5.1998. A Revision Application under Rule 29 of the Rules was filed by the Petitioner on 14.7.1998 which was rejected on 15.12.1998. Thereafter the Petitioner sent a Memorandum to the Director General, CRPF on 18.1.1999 which also did not find favor in terms of Order dated 25.6.1999.

3. As will be evident from the extracted portion of the impugned dismissal Order dated 8.12.1997 the Petitioner had submitted a fake educational certificate with the intention of falsifying his date of birth. This has not been contradicted. The contention of learned counsel for the Petitioner before me was that the Petitioner was led to believe that his case would be considered sympathetically, and that he, Therefore, unequivocally pleaded his guilt to the charge of filing a false educational certificate. It was also reiterated that the Petitioner had drawn the attention of the Respondents to Rule 11(h) of the Rules which permitted a relaxation in the upper age limit in the case of candidates belonging to the special categories of persons in accordance with Orders issued from time to time by the Central Government. The contention was that the Petitioner belonged to the OBC category. Being unaware of the scope for relaxation in the upper age limit he had filed the fake educational certificate so as to depict himself to be younger than his actual age, but otherwise he had duly cleared the Higher Secondary Examination. Learned counsel for the Petitioner, however, submitted that the true and correct educational certificate had been filed before the Respondents. Along with correct educational certificate the Petitioner had also placed the Certificate of "Other Backward Category" issued by the Tehsildar, Murena. It was contented that in view of Respondents holding out that the Petitioner's case would be considered sympathetically, the awarding of the punishment of dismissal was not only contrary to impression given to the Petitioner but also far too excessive.

4. Notice was issued by A.K. Sikri, J. restricted to the question of whether the punishment awarded u/s 11 of the CRPF Act, 1949 (hereinafter referred to as "the Act") was appropriate, and infact a major penalty. It would also be necessary to examine whether the discretion available to the Punishing Authority had not been exercised in accordance with law. Section 11(1) of the Act reads as follows:

"11. Minor punishment. --(1) The Commandant or any other authority or officers may be prescribed may, subject to any rules made under this Act, award in lieu of, or in addition to, suspension or dismissal any one or more of the following punishments to any member of the Force whom he considers to be guilty of disobedience, neglect of duty, or remission in the discharge of any duty or of other misconduct in his capacity as a member of the Force, that is to say,--

(a) reduction in rank;

- (b) fine of any amount not exceeding one month's pay and allowances;
 - (c) confinement to quarters, lines or camp for a term not exceeding one month;
 - (d) confinement in the quarter-guard for not more than twenty-eight days, with or without punishment drill or extra guard, fatigue or other duty; and
 - (e) removal from any office of distinction or special emolument in the Force."
- (underlining added)

5. The contention of Mr. S.S. Ray, learned counsel appearing for the Petitioner that although Section 11 of the Act is captioned "Minor Punishment", the most severe and major punishment is contained therein. The challenge to the legality of the provisions of Section 11 of the Act has already been examined by two different Division Benches. In *Deen Dayal Yadav v. The Deputy Inspector General of Police*, C.R.P.F. 1974 LAB. I.C. 929, after taking note of the provisions of Section 11 of CRPF Act, 1949, the Court was of the view that it cannot be said that the punishment of removal or dismissal from the Force can only be passed u/s 12 of the Act, that too only when a person has been sentenced, to imprisonment. In *Shyamsingh Vs. Deputy Inspector General of Police, Central Reserve Police and Others*, , similar views were expressed. These decisions, however, do not further the case of the Respondents in any wise. The fulcrum, of the Petitioner's contention is that it was within the discretion of the Disciplinary Authority not to have dismissed the Petitioner, even while exercising power u/s 11 of the Act.

6. In my view the petition is well founded. The Petitioner had from the commencement admitted his guilt in furnishing a false educational certificate, but pertaining only to his age. Admittedly when the dismissal order was passed he had already diligently served the Respondents for over seven years. It also appears that there is some substance in the Petitioner's plea that he was given to believe that his case would be treated sympathetically and the severest of punishment would not be awarded. He, Therefore, rested his oars believing that the factum of his having placed his true educational certificate, as well as his OBC Certificate, would be given due weightage, especially since he possessed all the requisites for recruitment. It should not be lost sight of that under Rule 11(h), had the true educational certificate been considered, by virtue of the relaxation of the upper age limit, the Petitioner would have been eligible and entitled to recruitment. The Petitioner was ignorant of these provisions and, Therefore, committed the error which he had readily acknowledged. In the milieu such as prevailing in our country, where employment is so hard to come by, a humane approach would not be out of place even in those circumstances where a party has submitted a false certificate. Such an approach is essential where, even without the face certificate, the person concerned would otherwise have been eligible for the employment. A sympathetic approach is certainly called for where the Petitioner has already been in service for several years. I am mindful of the fact that in advocating this approach there would be a danger of giving a

premium to falsity and an impetus for perpetrating a fraudulent act. Because of rampant unemployment one cannot but be emphatic towards the Petitioner who was obviously ignorant of the fact that he was eligible because of his entitlement to relaxation of the upper age limit. In the case of District Collector & Chairman Vizianagaram (Social welfare Residential School Society) Vizianagaram and Anr. v. M. Tripura Sundari Devi 1990 (4) SLR 237, the Hon'ble Supreme Court had firstly opined that in matters of employment the dispute should not be viewed as subsisting merely between the employer and employee. Since every citizen is entitled to seek employment, it was found that the Respondents-employers were not empowered to disregard the particular qualifications specified in its advertisement and that the "aggrieved are all those who had similar or even better qualification than the appointee or appointees who had not applied for the post because they did not possess the qualifications mentioned in the advertisement". The Court, however, looked upon the Petitioner with sympathy, as is evident from the following passage:

"We are however, informed that the respondent subsequently acquired another degree in M.A. with second class and has qualified herself to be appointed to the said post. Whatever the merits of the decision given by the Tribunal, we cannot forget that she was entitled to rely upon it till this time where she had succeeded. She was not allowed to join service on January 2, 1986 and thereafter she had approached the Tribunal in January, 1987. The decision of the Tribunal was of 31st August, 1987 and thereafter the present Civil Appeal was pending in the court from December, 1987 till this day. Considering the fact that she is compelled to serve, that she has acquired the requisite qualification that today she may be over aged for the post and the further fact that many who were under qualified were appointed to the post earlier we feel that it will be unjust to deprive her of the post at this stage. We, Therefore, set aside the impugned order of the Tribunal but allow the appeal partially and direct that the Respondent should be appointed in the post from the beginning of the ensuing academic year 1990-91. Since Shri Madhav Reddy contended that there is no vacant post at present we further direct that if necessary, a post be created to accommodate her. She will however not be entitled to any benefits including back wages till her appointment."

7. The Disciplinary Authority was well aware of the discretion available to him which is palpably evident from the underlined portions in the extract of the impugned order given above. He himself stated that he could have taken a lenient view. This is also borne out from the provisions of Section 11 of the Act itself. It does not mandate that a dismissal order must be passed in all cases. The Petitioner could have been punished with a reduction in rank, or a fine not exceeding one month's pay and allowances, or confinement to quarters etc. or removal from any office of distinction or special emolument. The officer did not correctly exercise the discretion expected of him in holding that the intentions of the delinquent were purposeful. Had his action not been "purposeful", necessary means read or guilt would have been absent and he would not have been liable

to any punishment. The Disciplinary Authority ought to have also kept in mind the fact that the Petitioner had already served for over seven long years and that his ignorance was writ large by the fact that he could have otherwise been recruited by invoking the relaxation contained in Rule 11 (h) of the Rules. Courts of law do not normally review the exercise of jurisdiction. Such judicial review is, however, called for where the exercise of discretion is perverse or lacking in substance.

8. In these circumstances, the impugned order dated 8.12.1997 whereby the Petitioner was struck off the strength of F/81 BN. CRPF is set aside. The Respondents are directed to reinstate the Petitioner. Mr. S.S. Ray, learned counsel for the Petitioner, had submitted that the period commencing from 8.12.1997, when the Petitioner was dismissed till the passing of this order may not be taken into account for any pecuniary benefit or entitlement, by way of punishment for his having filed the false educational certificate. Infact this punishment would be harsher than loss of pay for one month, which is one on the Minor Punishments which could have been imposed on the Petitioner in lieu of suspension or dismissal. In my view this would more than adequately meets the ends of justice. It is more severe than the punishments adumbrated in Section 11(a) to 11(e) of the Act. I order accordingly. The Petitioner is reinstated, but he shall not be entitled to any salary or pecuniary benefits from 8.12.1997 to March 30, 2001.

9. With the above observations the petition is disposed off.

10. The parties shall bear their respective costs.