
(2012) 08 DEL CK 0444
In the Delhi High Court
Case No : Writ Petition (C) 1354 of 1999

Sri. Pati Ram

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-08-2012

Acts Referred:

Citation : (2012) 08 DEL CK 0444

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : Apurb Lal, for the Appellant; Rajinder Nischal, for the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.—It is not in dispute that the petitioner was appointed as a Sepoy in Bihar Military Police on September 15, 1968. The Unit of Bihar Military Police with which petitioner was attached being merged with CRPF on April 01, 1969, the petitioner became an employee of CRPF. While joining service under Bihar Military Police, no proof of age of the petitioner was taken and thus whatever age was disclosed by the petitioner was accepted. Petitioner stated that he was 20 years old when he joined Bihar Military Police service and this fact was noted in the service record.

2. But on becoming a Constable under CRPF, and required to furnish proof of his age, the petitioner furnished a school leaving certificate which recorded that he was born on 01.11.1948.

3. The petitioner continued to serve, till it was brought to the notice of the department that the petitioner had interpolated the school leaving certificate by changing the year "1954" to "1948" i.e. the date of birth which was recorded as "01.11.1948" was actually "01.11.1954".

4. Preliminary inquiry revealed that there was an interpolation in the school leaving certificate. The year "1954" was altered to "1948".

5. A charge-sheet was issued and served upon the petitioner. Inquiry Officer was appointed. Witnesses were examined.
6. The Inquiry Officer gave a report opining that there was an interpolation in the school leaving certificate for the reason it was proved that in the school record the date of birth of the petitioner was 01.11.1954. As per the school record, this was the date of birth mentioned in the school leaving certificate and that the year 1954 was converted, by manipulation, to read : 1948.
7. But the Inquiry Officer held that there was no evidence to prove that the petitioner had manipulated so.
8. The Disciplinary Authority disagreed with the reasoning of the Inquiry Officer and while forwarding the report of the Inquiry Officer, penned a note of disagreement, and called upon the petitioner to respond thereto.
9. At this stage, we note that one grievance raised by the petitioner is that the note of disagreement penned by the Disciplinary Authority was sent to the petitioner after he had responded to the findings returned by the Disciplinary Authority, but we note that the petitioner has withheld the fact that he was forwarded the report of the Inquiry Officer under cover of a letter dated January 17, 1997, which forms part of the official record seen by us, and the letter in question encloses the note of disagreement to the report of the Inquiry Officer, as tentatively formed by the Disciplinary Authority.
10. On February 18, 1997 the Disciplinary Authority levied the penalty of compulsory retirement upon the petitioner. He opined that the petitioner would be the only beneficiary of altering the date of birth as recorded in the school leaving certificate i.e. 01.11.1954 and converting the same to 01.11.1948. He opined that in the enrolment form the petitioner had disclosed his age to be 20 years. He took employment on 15.09.1968. The altered date of birth i.e. 01.11.1948 would obviously conform to his being 20 years of age.
11. Noting that the misconduct was grave, the Disciplinary Authority took into account that 27 years had gone by. During these 27 years the petitioner had rendered an unblemished service and had a family to support.
12. Unfortunately for the petitioner, the Appellate Authority opined that the penalty was grossly inadequate and accordingly on April 05, 1997, issued a notice to the petitioner to show cause as to why the penalty be not enhanced to one of removal from service. After considering the reply sent by the petitioner, the Appellate Authority, as per order dated May 26, 1997, enhanced the penalty to one of removal from service. The petitioner filed a further appeal which was dismissed vide order dated September 23, 1998.
13. The petitioner has challenged the order levying penalty of removal from service as also the order imposing penalty of compulsory retirement.
14. Learned counsel for the petitioner urges that indeed there is no proof that

the petitioner interpolated the school leaving certificate. Learned counsel urges that if petitioner was born on 01.11.1954 he would be hardly 14 years of age and this would have been detected when petitioner joined service on 15.09.1968.

15. The argument advanced by learned counsel for the petitioner is ignoring the fact that at the inquiry, it was the stand taken by the petitioner that the school leaving certificate filed by him recorded his date of birth to be 01.11.1954. It was his case that somebody had interpolated by changing the year 1954 to 1948.

16. It is also relevant to note that even in the writ petition, the petitioner places reliance upon Annexure P-4, as per which the Headmaster of the school had forwarded a certified copy of the school leaving certificate issued to the petitioner. The said copy has not been filed by the petitioner, but counsel admits that as per the same the date of birth of the petitioner as recorded is 01.11.1954.

17. Now, the petitioner was obviously around 14 years of age on 15.09.1968, and how he managed employment, when the minimum age had to be 18 years would remain a mystery for us. Nay! It is obviously a case of corruption. Petitioner's father bribed his way and got the petitioner employment at the tender age of 14 years. The petitioner's father well knew of said fact. So that the record was straight, the strategy of contrivance adopted was to interpolate the school leaving certificate to show that the petitioner was born in the year 1948.

18. We have repeatedly asked learned counsel for the petitioner as to whether the petitioner admits that in the school leaving certificate which was furnished by him, was his date of birth recorded as 01.11.1954. The counsel admits so. When we asked learned counsel for the petitioner whether the year 1954 was interpolated to read 1948, counsel admits, but simultaneously urges, that there is no proof that the petitioner did so.

19. Irrespective of the fact whether petitioner made the interpolation, the fact of the matter would remain that the petitioner admits being born on 01.11.1954. He obviously got employment on false information pertaining to his age. On 15.09.1968, he could not be 20 years old. He was barely 14 years of age.

20. We concur with the view taken by the Disciplinary Authority that there is enough circumstantial evidence to establish that the petitioner is the culprit.

21. Holding against the guilt of the petitioner, the Disciplinary Authority took into account two mitigating factors; being firstly that the petitioner had served for 27 years and had a family to support; secondly, the service rendered was blameless. The Appellate Authority took a contra view i.e. that the offence was too serious to be condoned.

22. Now, there is enough evidence to support the finding of fact that the petitioner was 14 years old when he was employed in Bihar Military Police. He was too young to manipulate evidence. It is obvious that his father managed an employment for the petitioner and it was the father, who, in all probability is a culprit. No doubt, the beneficiary is the petitioner, but the department also took

too long a time to verify the school leaving certificate submitted by the petitioner when Bihar Military Police was merged in the CRPF. By the time the penalty was imposed the petitioner had rendered 27 years blameless service.

23. Under the circumstances, we dispose of the writ petition quashing the order dated May 26, 1997 as also the order dated September 23, 1998 and restore the order dated February 18, 1997 by which the petitioner was levied the penalty of compulsory retirement with all pensionary benefits admissible under the Rules.

24. Petitioner be paid the arrears of pension and other admissible dues which he would be entitled to on being compulsorily retired. Necessary payment be made within eight weeks from today. Future pension be paid as per Rules. No costs.