
(2002) 08 DEL CK 0071
In the Delhi High Court
Case No : CWP 5552 of 2000

Tara Chand

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-08-2002

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 11(1)
Central Reserve Police Force Rules, 1955 — Rule 11

Citation : (2002) 08 DEL CK 0071

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : Ajay Veer Singh and Charuwali Khanna, for the Appellant; Saroj Bidawat, for the Respondent

Judgement

S.B. Sinha, C.J.—A short question which arises for consideration in this writ petition, which is directed against an order dated 17th January 1999 passed by the third respondent herein whereby and whereunder the petitioner has been awarded with a sentence of dismissal from the services, is as to whether a misconduct was committed by the petitioner herein in submitting a metriculation certificate granted by an institution which was an unrecognized one.

2. The basic fact of the matter is not in dispute.

An advertisement was issued for general recruitment in the Central Reserve Police Force (CRPF for short) in the year 1986. The petitioner joined the said service on 22nd May 1988. At the time of his recruitment, he submitted that his educational qualification and other certificates upon verification thereof as also upon conducting his medical examination, he was selected.

3. Allegedly on the ground that various complaints had been received by the respondents herein to the effect that a large number of persons had obtained employment on the basis of the certificates or marks sheets of an unrecognized educational institution known as the Central Board of Higher Education,

Vachaspati Bhavan, Uttam Nagar, New Delhi, (hereinafter called and referred to for the sake of brevity as "the said Board"), the petitioner was charge-sheeted by an office order dated 17th January, 1999 which is in the following terms:

"OFFICE ORDER

INTRODUCTION

No. 881120577 Ct. Tara Chand of this unit was enlisted in CRPF on 22.5.88 basing on his civil education as metric pass from Central Board of Higher Education, Vachaspati Bhawan, Uttam Nagar, New Delhi vide Education metriculation Certificate bearing No. 8053 issued during 1986 by the said Education Board. During May 94 D.D. (ESTT) vide his office letter No. R. II-15/94-Estt-2 dated 6.5.94 intimated that Central Board of Higher Education, Vachaspati Bhawan, Uttam Nagar, New Delhi is not an authorised Education Board as verified from Deputy Secretary (Exam St.) Board of Secondary Education, New Delhi vide letter No. Mish/80 ? (depending on judgment)/92/13/866 dated 27.11.92 and Joint Secretary Association of Indian Universities, New Delhi vide his letter No. E.V./11(673)/94/225523 dated 28.3.94. It was also directed to scrutinize the Education Certificate of all personnel and prepare list of such personal who were enlisted on the basis of education certificate issued by the above Board and to take action against such personnel by unit commandant as per Govt. of India DOP & T letter No. 11012/7/91-Estt(A) dated 19.5.93 (GONO-49/93 of July 93). In compliance to above instructions DIGP, Ajmer vide his office letter No. C.IV-2/94-EC-1 dated 20th July 94 intimated this office to take necessary disciplinary action against No. 881120577 Ct. Tara Chand as he had secured employment in CRPF as Ct. on the basis of metriculation Certificate issued by the Central Higher Education Board, Vachaspati Bhawan, Uttam Nagar, New Delhi."

4. In the said disciplinary proceedings, an enquiry officer was appointed who found the petitioner guilty of the said charges. The Article of Charge is as under:

ARTICLE 1

That the said No. 881120577 Ct. Tara Chand of A/13 Bn, CRPF committed an act of misconduct under the provisions of Gazette order No. 49/93 dated 19.5.93 in that he produced a false metriculation Certificate No. 8053 Along with the mark sheet issued by unrecognized educational institution i.e. The Central Board of Higher Education, Vachaspati Bhawan, Uttam Nagar, New Delhi 1986 intentionally for securing recruitment in CRPF during the year 1988. He had knowingly concerned the information regarding non-recognition of the Institution by the Ministry of Human Resource & Development, Deptt. of Education. Thus, he has committed an offence of misconduct u/s 11(1) of CRPF Act 1949."

5. Before the Inquiry Officer, the authorities of the said Board certified that the said certificate was genuine. By reason of the impugned order dated 17th January 1999, an order of dismissal from service was imposed upon the

petitioner by the third respondent herein. An appeal was preferred there against by the petitioner but the same appeal was dismissed on 10.4.99 (Annexure-D).

6. In the afore-mentioned premises, the petitioner has filed this writ petition inter alias praying for issuance of a writ of mandamus directing the respondents to consider his case and reinstate and pay him back wages and other consequential benefits.

7. Mr. Ajay Veer Singh, learned counsel for the petitioner would contend that it is accepted that the petitioner did not file any forged or false certificate. According to the learned counsel, the question as to whether his institution is recognized by the Govt. of NCT of Delhi or not is a matter which would not be within the knowledge of the candidates concerned. In any event, contends the learned counsel, that the recruitment process having been started in the year 1986, no disciplinary proceedings could have been initiated against him relying on or on the basis of the purported letter of the said Board on 6th May 1994 and other documents.

8. Learned counsel appearing on behalf of the respondents, on the other hand, would contend that the petitioner having obtained employment on the basis of a certificate granted by an institution which is not a recognized one, he is guilty of commission of a misconduct and, thus, the impugned order cannot be said to be bad in law.

9. It is now a well-settled principle of law that the Department must prove the charges against the delinquent officer.

From the Articles of Charges, as noticed hereinbefore, it is evident that the gravamen thereof was that he produced a certificate bearing No. 8053 issued by an unrecognized educational institution intentionally for securing recruitment in CRPF during 1988.

In the afore-mentioned situation, a question arises as to whether passing of the metriculation examination was an essential educational qualification.

Rule 11 of the CRPF Rules, 1955 as it stood at the relevant time, prescribes the enlisting standard in the following terms:

"11. Enlistment standards. --(a) Save as herein otherwise provided, no man shall be enrolled as a member of the Force unless he conforms to the following minimum standard:

(1) Height 5'-7";

(2) Chest 31 1/2"-expanded 33 1/2";

(3) Age not less than 18 and not more than 23 years;

(4) Following shall be additional minimum qualifications for subordinate or under officer, appointed direct:

Subedars (Inspectors)--Intermediate } or equivalent Jemadars (Sub-Inspectors)--
Matriculation} Army Head Constables or

qualifications.

Nails--Middle School }

(b) The minimum standard height laid down in (a) above may be relaxed from 5'-7" to 5'-5" in the case of men belonging to Hill tribes who have special army traditions, for example, Gorkhas, Garhwalis.

(c) The minimum standard height laid down (a) above may further be relaxed by one inch in case of men who have attained the age of eighteen years but not more than twenty years."

10. A perusal of the said Rule would, Therefore, show that at the relevant point of time, no educational qualification was necessary for obtaining an employment in the post of a Constable.

11. It stands accepted that the petitioner filed the said certificate in the year 1986. It also is not in dispute that the recruitment process began in the year 1986.

12. The respondents in their counter-affidavit, inter alia, stated:

"D. That in reply to ground D it is submitted that even though the Central Board of Higher Education, Uttam Nagar, New Delhi has accepted in their letter dated 11/10/94 that the certificate issued by them to the petitioner is genuine, the allegation of producing a false certificate made against the petitioner is correct because the certificate/mark sheet which were brought by the petitioner from above said Institution for employment in CRPF is not a recognised institution by the Govt. as explained in para 2(i) and para 2(ii) above."

13. Once the certificate is held to be genuine, the question of producing a false certificate would not arise. The question which ought to have been raised in the afore-mentioned situation was as to whether the petitioner obtained employment in violation of the essential conditions of service rules. The services rules were amended in the year 1987 whereas the recruitment process had started in the year 1986. Only because the petitioner had filed the certificate to show his educational qualification, it cannot be said that he committed a misconduct of filing a false certificate to secure employment. The question of filing a false certificate to secure employment would arise provided holding of the said qualification was an essential term in terms of the statutory rules or otherwise.

14. Misconduct, as is well known, having not been defined in the Act, must carry its ordinary meaning.

15. In *Probodh Kumar Bhowmick v. University of Calcutta and Ors.* 1994 (2) Cal. LJ 456, it was observed:

"14. Misconduct, inter alia, envisages breach of discipline, although it would not

be possible to lay down exhaustively as to what would constitute conduct and indiscipline, which, however, is wide enough to include wrongful omission or commission whether done or omitted to be done intentionally or unintentionally. It means, "improper behavior; intentional wrong doing on deliberate violation of a rule of standard or behavior":

"Misconduct is a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand; it is a violation of definite law, a forbidden act. It differs from carelessness. Misconduct even if it is an offence under the Indian Penal Code is equally a misconduct."

15. Even in Industrial laws, acts of misconduct specified in standing order framed under Industrial Employment (Standing Order) Act, 1946 is not treated to be exhaustive. Various misconducts specified in Clause 14(3) of Model Standing Order are merely illustrative.

16. In (5) Mahendra Singh Dhantwal Vs. Hindustan Motors Ltd. and Others, , a three Judge Bench of the Supreme Court observed "standing orders of a company only describe certain cases of misconduct and the same cannot be exhaustive of all the species of misconduct which a workmen may commit. Even though a given conduct may not come within the specific terms of misconduct described in the standing order, it may still be a misconduct in the special facts of a case, which it may not be possible to condone and for which the employer may take appropriate action."

17. Even in the absence of the rules specifying misconduct, it would be open to the employee to consider reasonably what conduct can be properly treated as misconduct.

See (6) W.M. Agnani v. Badri Das, reported in (1963) 1 LLJ 684.

18. In (7) Delhi Cloth and General Mills Co., Ltd. Vs. Workmen and Others etc., Shah, J. states "misconduct spreads over a wide and hazy spectrum of industrial activity; the most seriously subversive conducts rendering an employee wholly unfit for employment to mere technical default covered thereby."

19. To some extent, it is a civil crime, which is visited with civil and pecuniary consequences. See (8) Ramakant Mishra v. State of U.P., reported in 1982 LIC 1790.

20. The Supreme Court in (9) State of Punjab and Others Vs. Ram Singh Ex. Constable, , upon which Mr. Mukherjee himself has placed reliance upon held:-

"5. Misconduct has been defined in Black's Law Dictionary, Sixth Edition at Page 999 thus:

"A Transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior, its synonyms are misdemeanour, misdeed, misbehavior, delinquency, impropriety, mismanagement, offence, but not negligence or a carelessness."

Misconduct in offence has been defined as:

"Any unlawful behavior by a public office in relation to the duties of his office, willful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly and failure to act in the face of an affirmative duty to act."

21. P. Ramanath Aiyar's Law Lexicon, Reprint Edition 1987 at Page 821 defines "misconduct" thus:

"The term misconduct implies a wrongful intention and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskilfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act and is necessarily indefinite. Misconduct in office may be defined as unlawful behavior or neglect by a public officer, by which the rights of a party have been affected."

6. Thus it could be seen that the word "misconduct" though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behavior; unlawful behavior, willful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character."

16. This aspect of the matter has recently been considered by the Apex Court in Baldev Singh Gandhi Vs. State of Punjab and Others, in the following terms:

"9. "Misconduct" has not been defined in the Act. The word "misconduct" is antithesis of the word "conduct". Thus, ordinarily the expression "misconduct" means wrong or improper conduct. Unlawful behavior, misfeasance, wrong conduct, misdemeanour etc. There being different meaning of the expression "misconduct", we, Therefore, have to construe the expression "misconduct" with reference to the subject and the context wherein the said expression occurs. Regard being had to the aims and objects of the statute..."

17. Can it, in the afore-mentioned premise, be said that the petitioner has committed a misconduct? The answer thereto must be rendered in the negative.

Firstly, the petitioner did not file any false or forged document with a view of securing employment; secondly, the qualification of holding a metriculation certificate being not essential, it is wholly immaterial as to whether such a certificate was filed for the purpose of showing the educational qualification held by the petitioner; and thirdly, the rules which were prevailing at the time when the recruitment process started would be applicable in the instant case (See A.A. Calton Vs. Director of Education and Another, , P. Mahendran and others Vs. State of Karnataka and others,

18. For the reasons afore-mentioned, we are of the opinion that the impugned order cannot be sustained which must be set aside. Let a writ of mandamus be issued directing the respondents to reinstate the petitioner with all consequential benefits.

19. In the facts and circumstances of the case, the petitioner shall also be entitled to costs which are quantified at Rs. 1000/-.