

Union Of India vs Santosh Kumar Singh on 26 April, 2023

Author: Aravind Kumar

Bench: Aravind Kumar

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8889/2022

UNION OF INDIA & ORS.

.....

VERSUS

SANTOSH KUMAR SINGH

.....

J U D G M E N T

SANJIV KHANNA, J.

This appeal by the Union of India, Director General - Railway Protection Force and four others takes exception to the judgment and order dated 09.03.2021, whereby the Division Bench of the Calcutta High Court has allowed the appeal preferred by the respondent - Santosh Kumar Singh with the direction that he be appointed in the Railway Protection Force¹ within four weeks from the date of communication of the judgment.

2. The facts are not in dispute. The respondent – Santosh Kumar Singh was given employment as a Constable on compassionate grounds in the Force. The respondent-Santosh Kumar Singh had filled up the Attestation Form on 27.01.2009 and was permitted to join the training course which had commenced on 01.03.2009. As per the terms of engagement, the antecedents of the respondent – Santosh Kumar Singh had to be verified before being formally enrolled. Accordingly and as required, the authorities had written to the police to verify the antecedents of the respondent – Santosh Kumar Singh and came to know that on 16.02.2009, First Information For short, ‘the Force’.

Report² no. 18 of 2009 had been registered against, inter alia, the respondent – Santosh Kumar Singh at police station Mashrakh/Mashrak, District Chhapra, Saran, Bihar for the offences punishable under Sections 304-B, 498-A, 302, 201 read with Section 34 of the Indian Penal Code, 1860³ and Sections 3 and 4 of the Dowry Prohibition Act, 1961. On receipt of the said information and details, by an order/letter dated 23.04.2010⁴, the respondent – Santosh Kumar Singh was discharged from service in terms of Rules 52.2 and 67.2 of the Railway Protection Force Rules,

19875.

3. The respondent – Santosh Kumar Singh did not immediately challenge the discharge order/letter dated 23.04.2010. However, on being acquitted vide judgment dated 23.09.2015, the respondent – Santosh Kumar Singh made a representation on 20.10.2015 to the Director General, the Force, which was not accepted. Thereupon, he preferred a writ petition⁶ before the learned single Judge of the Calcutta High Court in 2016. The writ petition was dismissed by the learned single Judge on 06.04.2016, inter alia, recording that there was substantial delay of over six years in challenging the order of discharge; the respondent – Santosh Kumar Singh was at fault in not disclosing and informing about his involvement in the FIR, which was registered on 16.02.2009; the respondent – Santosh Kumar Singh's wife had met with an unnatural death; the acquittal of the respondent – Santosh Kumar Singh was on account of the For short, FIR'.

For short, 'IPC'.

Letter No. EG/TRG/2/2/90 dated 23.04.2010 issued by the Security Commissioner-cum-Principal, RPF Training Institute, Valsad, Gujarat.

For short, the '1987 Rules'.

Writ Petition No. 5845 (W) of 2016.

informant turning hostile; the respondent – Santosh Kumar Singh, was not a regular employee; and the authorities were well within their powers in terms of Rules 52.2 and 67.2 of the 1987 Rules to discharge the respondent – Santosh Kumar Singh after recording reasons in writing, if it is fit to do so in the interest of the Force.

4. Aggrieved, the respondent – Santosh Kumar Singh preferred an intra-court appeal⁷. The Division Bench, in the intra-court appeal, had proceeded on the basis that the respondent – Santosh Kumar Singh had not given false and wrong information in the Attestation Form. As the respondent – Santosh Kumar Singh had been acquitted in the criminal trial, his discharge from service would not be valid.

5. We have heard the learned counsel for the parties and, in our opinion, the impugned judgment cannot be sustained for several reasons.

6. Rules 52.1, 52.2 and 67.2 of the 1987 Rules read as under: -

“52.1 As soon as a recruit is selected but before he is formally appointed to the Force, his character and antecedents shall be got verified in accordance with the procedure prescribed by the Central Government from time to time.

52.2 Where after verification, a recruit is not found suitable for the Force, he shall not be appointed as a member of the Force.

xxx xxx xxx 67.2 A direct recruit selected for being appointed as enrolled member, till such time he is not formally appointed to the Force, is liable to be discharged at any stage if the Chief Security Commissioner for reasons to be recorded in writing, deems it fit so to do in the interest of the Force.”

7. As stated above, it is an accepted and admitted position that the wife of the respondent – Santosh Kumar Singh had died on 16.02.2009.

The unnatural death had taken place in the house where the respondent – Santosh Kumar Singh was residing with his wife, with whom he had got married in the year 2006. No doubt, the father - Baijnath Singh (PW-5) and the brother

- Manoj Kumar Singh (PW-6) of the deceased-wife had turned hostile, but there are several other facts which would indicate that the respondent – Santosh Kumar Singh was present in the house. The trial Court, no doubt, acquitted the respondent – Santosh Kumar Singh, by giving benefit of doubt, but the acquittal itself was not in debate. The question was the validity and legality of the order/letter of discharge dated 23.04.2010, which was challenged after nearly six years. Even if we can grant some latitude and indulgence to the respondent Santosh Kumar Singh on the ground of delay, as he had suffered incarceration for about five years by that time, it is difficult to find any legal fault with the discharge order/letter dated 23.04.2010.

8. Rules 52.1 and 52.2 of the 1987 Rules show that upon selection of a recruit but before his formal appointment to the Force, his character and antecedents have to be verified as per the procedure prescribed by the Central Government. If, on verification, the recruit is not found to be suitable for the Force, he shall not be appointed. Rule 67.2 of the 1987 Rules states that a direct recruit selected for being appointed as enrolled member, till the time he is not formally appointed to the Force, can be discharged at any stage if the Chief Security Commissioner, for reasons to be recorded in writing, deems it fit in the interest of the Force. It is an accepted case that the respondent – Santosh Kumar Singh was not formally appointed. It is during the character and antecedents verification exercise that the respondent – Santosh Kumar Singh’s involvement in the criminal case had come to the notice of the authorities. The authorities had, thereupon, in exercise of power under Rules 52.2 and 67.2 of the 1987 Rules, passed an order/letter dated 23.04.2010 recording in writing that the respondent – Santosh Kumar Singh was not deemed to be fit for service in the interest of the Force. The discharge order/letter dated 23.04.2010 expressly states that the respondent – Santosh Kumar Singh had conducted himself in an unbecoming manner and, keeping in view that he was facing serious criminal charges under Sections 304-B and 201 read with Section 34 of the IPC, it was decided to discharge him. In the given facts, it is difficult to find any legal fault with the discharge order/letter dated 23.04.2010.

9. During the course of hearing, the learned counsel for the respondent – Santosh Kumar Singh has relied upon the judgment of this Court in Pawan Kumar vs. Union of India & Anr.8, which, in our opinion, is not applicable to the facts of the present case. The case in Pawan Kumar (supra) was of failure or lapse in mentioning a criminal case in the Attestation Form. In Pawan Kumar (supra), records that the complainant had filed an affidavit stating that the FIR was registered with some

misunderstanding and he did not want to pursue the case. The criminal case was of trivial nature.

10. Learned counsel for the respondent – Santosh Kumar Singh also relies on the judgment in Union of India & Ors. vs. Methu Meda⁹, Civil Appeal no. 3574/2022 decided on 02.05.2022. Civil Appeal no. 6238/2021 decided on 06.10.2021. which, in fact, does not help and assist the respondent – Santosh Kumar Singh. This judgment holds that if a person is acquitted, giving him the benefit of doubt or because the witnesses turned hostile, but was charged with an offence involving moral turpitude, it would not automatically entitle him for the employment, that too in disciplined force. Further, the employer has a right to consider his candidature in terms of the circulars issued by the Screening Committee. Furthermore, mere disclosure of the offence(s) alleged and the result of the trial is not sufficient.

11. In the present case, the order/letter of discharge dated 23.04.2010 was passed after consideration of the relevant facts and circumstances, which order/letter, we feel, could not have been interfered with or set aside by the Division Bench of the Calcutta High Court.

12. Resultantly, the appeal is allowed and the impugned judgment dated 09.03.2021 is set aside. Writ Petition No. 5845 (W) of 2016 filed by the respondent - Santosh Kumar Singh before the Calcutta High Court will be treated as dismissed.

Pending application(s), if any, shall stand disposed of.

.....J. (SANJIV KHANNA)J. (ARAVIND KUMAR) NEW DELHI;

APRIL 26, 2023.