

Ex Const/ Dvr Mukesh Kumar Raigar vs Union Of India on 16 January, 2023

Author: Bela M. Trivedi

Bench: Bela M. Trivedi, Ajay Rastogi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. 10499 OF 2022

EX-CONST/DVR MUKESH KUMAR RAIGAR PETITIONER

VERSUS

UNION OF INDIA & ORS.

.... RESPONDENT

JUDGMENT

BELA M. TRIVEDI, J.

1. The present special leave petition is directed against the judgment and order dated 16.11.2021 passed by the High Court of Judicature for Rajasthan Bench at Jaipur, whereby the Division Bench has allowed the D.B. Special Appeal Writ No. 637 of 2021 filed by the respondents-Union of India (appellants before the Division Bench), and has set aside the order dated 17.02.2021 passed by the Single Bench, which had allowed the Civil Writ Petition No. 17475 of 2018 filed by the present petitioner (respondent before the Division Bench).

2. The present petitioner was appointed on the post of constable in the CISF on 03.11.2007. In April, 2009 the petitioner received a notice/Memorandum of charge under the Rule 36 of CISF Rules 2001 (hereinafter referred to as the "the said Rules") from the office of Commandant Discipline, CISF in which it was alleged that the petitioner at the time of submitting verification of his character certificate had suppressed the fact that he was involved in a criminal case for the offence under sections 323, 324 and 341 of IPC in respect of which an FIR being No. 153/2003 was registered against him on 21.10.2003; and that on the Investigating Officer in the said proceedings having submitted the charge-sheet before the concerned Court, the case was pending for trial before the said Court when the character certificate was submitted by the petitioner to the CISF authorities. It was also stated therein that since the act of suppression of information regarding pendency of the criminal litigation in his character certificate filed along with the appointment letter, was under

the category of gross misconduct and indiscipline, he was not eligible to be appointed in a very disciplined police force i.e. CISF. Thereafter, disciplinary proceedings were initiated against the petitioner. During the course of disciplinary proceedings, the petitioner accepted his mistake. The Commandant Discipline, CISF, keeping in view the young age and future prospects of the petitioner, imposed punishment of reduction of pay by one stage from Rs. 6320- 6070/- in the pay band of Rs.5200-20,200/- with grade pay. However, on 06.10.2009, the Deputy Inspector General (West Zone), Air Port Head Quarter – Navi Mumbai – suo motu took the cognizance of the matter revising the order dated 11.07.2009 and remitted the matter back for fresh departmental enquiry against the petitioner invoking Rule 54 of CISF Rules, 2001. The said departmental enquiry culminated into the removal of the petitioner from service on 09.03.2010, against which the petitioner had filed a departmental appeal, however, the said appeal came to be dismissed by the appellate authority vide the order dated 23.06.2010. The revision petition filed by the petitioner before the competent authority assailing the said order dated 23.06.2010 also came to be dismissed by the Revisional Authority vide the order dated 21.12.2010.

3. Being aggrieved by the said orders, passed by the various authorities of CISF, the petitioner filed a writ petition being No. 8190 of 2012 before the High Court of Judicature for Rajasthan at Jaipur. The Single Bench vide order dated 16.02.2018 set aside the order of removal passed against the petitioner and directed the petitioner to file a detailed representation before the appointing authority for reconsideration of his case in the context of the judgment of the Supreme Court in case of Avtar Singh Vs. Union of India & Ors¹ and directed the appointing authority to decide the representation of the petitioner by a reasoned and speaking order with reference to the said judgment. The Commandant CISF Unit CSIA, Mumbai after considering the representation of the petitioner in the light of the judgment in case of Avtar Singh (supra), held that the CISF being an Armed Force of Union of India, which is deployed in sensitive sectors, the force personnel are required to maintain discipline of the highest order, and that the involvement of the petitioner in the grave offences debarred him from the appointment to such force and, therefore, he was not found suitable for the appointment in CISF for the post of constable/GD vide order dated 14.05.2018.

4. The petitioner again filed a writ petition being No. 17475/2018 assailing the said order dated 14.05.2018. The Single Bench again set aside the said order and allowed the writ petition directing the respondents to reinstate the petitioner in service with all consequential benefits vide the order dated 17.02.2021. The respondents filed the Special Writ Appeal before the Division Bench, against the order passed by the Single Bench, which appeal came to be allowed by the Division Bench vide the impugned order. 1 (2016) 8 SCC 471

5. Ms. Asifa Rashid Mir, learned counsel appearing for the petitioner vehemently submitted that the petitioner was involved in a criminal case when he was hardly aged about 19 years and the said case had resulted into a compromise between the parties. According to her, on the basis of the said compromise, the Trial Court had closed the case on 21.11.2007, and the petitioner was appointed as constable in CISF on 03.11.2007. Relying upon the various decisions of this Court and other High

Courts, she further submitted that considering the nature of offence in which the petitioner was allegedly involved, the removal from service on the ground of non-disclosure of pendency of the said case could not be said to be a grave misconduct attracting the harsh punishment of removal from service. The Division Bench of the High Court, runs the submissions of the counsel for the petitioner, should not have interfered with the well-reasoned order passed by the Single Bench which had found the involvement of the petitioner in a case of trivial nature. According to her, even if a deliberate suppression by the petitioner as alleged by the respondents was found to have taken place at the time of filing the character certificate, a lenient view should have been taken by the respondents considering his age and considering the fact that the petitioner had accepted his mistake.

6. The Senior Advocate Mr. R. Bala Subramanian, appearing for the respondents however, taking the Court to the CISF Rules 2001, the circulars applicable to all Central Armed Police Force (CAPF) including the CISF regarding the policy guidelines to be followed in respect of the candidates against whom criminal cases are pending vide OM dated 01.02.2012, dealing with suppression of information or submitting false information in the verification form, submitted that the CISF being very disciplined police force and the post of constable being very sensitive post, the petitioner who was found to be guilty of gross misconduct of suppressing the material fact of his involvement in the criminal case at the time of seeking appointment, could not have been continued in service, and that the Division Bench has rightly considered the facts of the case and upheld the decision of the respondent authority, which may not be interfered with.

7. In the instant case, both the learned counsels for the parties have relied upon decision of this Court in Avtar Singh (supra) in which a three-judge Bench emphasizing the need of verification of character and antecedents of the person to be appointed in the government service and after considering the various previous judgments of this Court, had summarized the principles in para 38 which reads as under:

“38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:

38.1. Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3. The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.

38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. In case the employee is confirmed in service, holding departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant

comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness.

However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11. Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him”.

8. It may be noted that even after the guiding principles laid down in the case of Avtar Singh by the three-judge Bench, divergent views were expressed by the various benches of this Court. Therefore, this Court in case of Satish Chandra Yadav Vs. Union of India & Others. 2, after taking into consideration the inconsistent views taken in the cases of Union of India & Ors. Vs Methu Meda³; Union of India vs. Dilip Kumar Mallick⁴; Pawan Kumar vs. Union of India & Anr. 5; Rajasthan Rajya Vidyut Prasaran Nigam Limited & Anr. vs. Anil Kanwariya⁶; Mohammed Imran Vs. State of Maharashtra & Others⁷; etc., further laid down following principles:

“89. The only reason to refer to and look into the various decisions rendered by this Court as above over a period of time is that the principles of law laid therein governing the subject are bit inconsistent. Even after, the larger Bench 2 (2022) SCC Online SC 1300 3 (2022) 1 SCC 1 4 (2022) 6 Scale 108 5 (2022) SCC Online SC 532 6 (2021) 10 SCC 136 7 (2019) 17 SCC 696 decision in the case of Avtar Singh (supra) different courts have enunciated different principles.

90. In such circumstances, we undertook some exercise to shortlist the broad principles of law which should be made applicable to the litigations of the present nature. The principles are as follows:

a) Each case should be scrutinised thoroughly by the public employer concerned, through its designated officials-more so, in the case of recruitment for the police force, who are under a duty to maintain order, and tackle lawlessness, since their ability to inspire public confidence is a bulwark to society's security. [See Raj Kumar (supra)]

b) Even in a case where the employee has made declaration truthfully and correctly of a concluded criminal case, the employer still has the right to consider the antecedents, and cannot be compelled to appoint the candidate. The acquittal in a criminal case would not automatically entitle a candidate for appointment to the post. It would be still open to the employer to consider the antecedents and examine whether the candidate concerned is suitable and fit for appointment to the post.

c) The suppression of material information and making a false statement in the verification Form relating to arrest, prosecution, conviction etc., has a clear bearing on the character, conduct and antecedents of the employee. If it is found that the

employee had suppressed or given false information in regard to the matters having a bearing on his fitness or suitability to the post, he can be terminated from service.

d) The generalisations about the youth, career prospects and age of the candidates leading to condonation of the offenders' conduct, should not enter the judicial verdict and should be avoided.

e) The Court should inquire whether the Authority concerned whose action is being challenged acted mala fide.

f) Is there any element of bias in the decision of the Authority?

g) Whether the procedure of inquiry adopted by the Authority concerned was fair and reasonable?"

9. Having regard to the guiding principles, laid down in case of Avtar Singh (supra) and in case of Satish Chandra Yadav (supra), this Court has no hesitation in holding that the Single Bench of the High Court had committed an error in interfering with the order passed by the respondents-authorities. The respondents-authorities had after taking into consideration the decision in case of Avtar Singh terminated the services of the petitioner holding inter-alia that while the petitioner was appointed in CISF, a criminal case was pending against him at the time of his enrolment in the force, but he did not reveal the same and that there was deliberate suppression of facts which was an aggravating circumstance. It was also held that CISF being an armed force of Union of India, is deployed in sensitive sectors such as airports, ports, department of atomic energy, department of space, metro, power and steel, for internal security duty etc., and therefore, the force personnel are required to maintain discipline of the highest order; and that the involvement of the petitioner in such grave offences debarred him from the appointment.

Such a well-reasoned and well considered decision of the respondent-authorities should not have been interfered by the Single Bench in exercise of its powers under Article 226 of the Constitution, more particularly when there were no allegations of malafides or of non-observance of rules of natural justice or of breach of statutory rules were attributed against the respondent authorities.

10. The Constitution Bench, in case of State of Orissa & Others vs. Bidyabhushan Mohapatra⁸ had observed way back in 1963 that having regard to the gravity of the established misconduct, the punishing authority had the power and jurisdiction to impose punishment. The penalty was not open to review by the High Court under Article 226. A three-judge Bench in case of B.C. Chaturvedi vs. Union of India & Ors⁹ had also held that judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on the charges of 8 AIR 1963 SC 779 9 (1995) 6 SCC 749 misconduct by a public servant, the Court or Tribunal would be concerned only to the extent of determining whether the inquiry was held by a competent officer or whether the rules of natural justice and statutory rules were complied with.

11. In *Om Kumar & Others vs. Union of India* 10 this Court had also after considering the *Wednesbury Principles* and the doctrine of proportionality held that the question of quantum of punishment in disciplinary matters is primarily for the disciplinary authority, and the jurisdiction of the High Courts under Article 226 of the Constitution or of the Administrative Tribunals is limited and is confined to the applicability of one or the other of the well-known principles known as “*Wednesbury Principles*”¹¹ namely whether the order was contrary to law, or whether relevant factors were not considered, or whether irrelevant factors were considered or whether the decision was one which no reasonable person could have taken.

12. Again, a three-judge Bench in case of *Deputy General Manager (Appellate Authority) & Ors. vs. Ajai Kumar Srivastava* 12 10 (2001) 2 SCC 386 11 *Associated Provincial Picture Houses Ltd. vs. Wednesbury Corporation* [1948] 1 KB 223 12 (2021) 2 SCC 612 circumscribing the power of judicial review by the constitutional courts held as under:

“24. It is thus settled that the power of judicial review, of the constitutional courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The court/tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority are perverse or suffer from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.

25. xxxxxxxx

26. xxxxxxxx

27. xxxxxxxxx

28. The constitutional court while exercising its jurisdiction of judicial review under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at those findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.”

13. In view of the afore-stated legal position, we are of the opinion that the Division Bench of the High Court had rightly set aside the order passed by the Single Bench, which had wrongly interfered

with the order of removal passed by the respondent authorities against the petitioner. The petitioner having been found to have committed gross misconduct right at the threshold of entering into disciplined force like CISF, and the respondent authorities having passed the order of his removal from service after following due process of law and without actuated by malafides, the court is not inclined to exercise its limited jurisdiction under Article 136 of the Constitution.

14. In that view of the matter the SLP is dismissed.

..... J.

[AJAY RASTOGI]J. [BELA M. TRIVEDI] NEW DELHI 16.01.2023