

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.4060/2004 & CM No.3333/2004**

Reserved on : 25th November, 2010
Date of Decision : 22nd March, 2011

ABHISHEK KUMAR Petitioner
Through Mr. K.C. Mittal, Adv. with Mr. Tarunesh
Kumar, Adv. & Mr. Dushyant Singh, Adv.

versus

CISF & ORS. Respondents
Through Mr. Jaswinder Singh, Adv.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE J.R. MIDHA

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| 1. Whether reporters of local papers may be allowed to see the Judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

GITA MITTAL, J

1. The writ petitioner assails an order dated 6th September, 2003 passed by the respondents discharging him from service and the order dated 30th October, 2003 passed by the Inspector General, CISF, Mumbai, as the appellate authority as well as an order dated 15th January, 2004 passed by the Director General of the CISF rejecting the petitioner's revision assailing the two previous orders against him.

2. The factual narration giving rise to the present case to the extent necessary is briefly noted hereafter. On the 21st April, 2002, the petitioner was enrolled as a Constable with the Central Industrial Security Force ('CISF' hereafter) on probation for a period of two years. The petitioner had submitted the requisite attestation form on 2nd April, 2002 for verification of his character and antecedents.

3. The respondents had forwarded a request to the District Magistrate, District Kangra, Himachal Pradesh to conduct a verification of the character and antecedents of the petitioner from several aspects including the issue as to whether the petitioner's name figured in police records of the place of his permanent address; whether the petitioner was involved in any criminal/subversive/anti-national activities and acts involving moral turpitude. The District Commissioner, Kangra, Himachal Pradesh responded and returned the attestation form on 30th of June, 2003 after verification with a remark that a case bearing no.30/96 dated 28th May, 1996 under Sections 325, 323 & 506 read with Section 34 of the IPC had been registered against the petitioner at the Lambagaon police station. The authorities also informed the respondents that a judgment of conviction was pronounced by the court of the Judicial Magistrate First Class on 21st June, 2000 against the accused persons. It was further informed that after a hearing on the quantum of sentence, by an order dated 30th August, 2000, the accused/convicted persons had been released on probation of good conduct on execution of personal and surety bond to the tune of Rs.5,000/- for a period of one year.

The petitioner has contended that on 29th August, 2001, the period of probation also came to an end without any further complaint against the petitioner.

4. On examination of the above verification report dated 2nd of April, 2003, the respondents took the view that the petitioner had furnished false information and suppressed material facts in column no.12 (d) & (f) of the attestation form. The petitioner was accordingly issued a notice to show cause dated 14th July, 2003 requiring him to furnish his explanation for the same.

5. Interestingly the petitioner sought repeated extensions of time and finally submitted a reply dated 21st July, 2003 without disputing the fact that

he had furnished false information and also suppressed material facts from the respondents in his attestation form. The petitioner simply stated that though he was convicted for offences under Sections 325, 323 & 506 read with Section 34 of the Indian Penal Code, he had been given benefit of Section 4 of the Probation of Offenders Act, 1958. It was urged that the petitioner was released on the 30th August, 2000 after entering into the afore-noticed bonds which had also lapsed on 29th August, 2001. It was explained by the petitioner that during the currency of the bond, he did not commit any act so as to invite any punitive or penal action. The petitioner took a stand that in this background in view of his good conduct between 30th August, 2000 & 29th August, 2001, as well as thereafter, he did not fall in the category of "convict".

6. The respondents, however, did not find the petitioner's explanation satisfactory and an order dated 6th September, 2003 was passed against the petitioner by the Commandant of the CISF Unit, ONGC, Mumbai 400 016 in exercise of power under Rule 25(2) of the CISF Rules, 2001 terminating the services of the petitioner and discharging him from the force with effect from the date of service of the order with one month's pay in lieu of one month notice in terms of the said rule. The said order notices that the petitioner has furnished false information and suppressed material facts in column no.12 (d) & (f) of the attestation form at the time of his appointment despite the caution contained in the form with regard to such actions.

7. Aggrieved by the termination of his services, the petitioner made a representation dated 30th October, 2003 to the Inspector General of the CISF. This representation was considered and rejected by the Inspector General by the order dated 17th December, 2003 holding that the same was devoid of merit. A further representation was made by the petitioner to the Director General of the CISF which was rejected by an order dated 15th January, 2004

on the ground that there was no provision in the Central Industrial Security Force Act & Central Industrial Security Force Rules for considering an appeal/revision by the Director General of the CISF.

8. These orders have been assailed by way of the present writ petition on the ground that in the order dated 30th August, 2000 passed by the Judicial Magistrate First Class, the learned Judge had found the convicts, including the petitioner, as entitled to the benefit of Section 4 of the Probation of Offenders Act, 1958 and had so released them after executing a personal and surety bond to the tune of Rs.5,000/- on probation of good conduct for a period of one year. It is argued that for this reason, by virtue of operation of Section 12 of the Probation of Offenders Act, 1958, all disqualifications attached to the conviction stood removed. For this reason, information about the conviction was not a material fact which could have influenced the petitioner's enrollment or service. Mr. K.C. Mittal, learned counsel appearing for the petitioner, has urged at great length that the petitioner had so understood the impact of the order dated 30th August, 2000 and for this reason, had not given the details of his conviction in the attestation form under such an impression. It is urged that in these facts the petitioner cannot be vested with the serious consequence of termination of service.

It has further been urged that the bona fide in the petitioner's conduct is manifested in the fact that in answer to the query in column no.12(b), the petitioner had made the disclosure of the fact that he had been prosecuted.

9. Mr. Jaswinder Singh, learned counsel appearing for the respondents has opposed all contentions of the petitioner. Learned counsel has urged at great length that the information which was required to be furnished by a candidate was clearly stated on the form. The submission is that there was neither ambiguity nor scope for interpretation. It is pointed out that the petitioner has knowingly suppressed material information. So far as the

impact of the benefit under the Probation of Offenders Act is concerned, placing reliance on ***JT 2001 (10) SC 350 Ashutosh Kumar Manoj Vs. State of Bihar (page 58); 1976 SCC (L & S) 398 The Divisional Personnel Officer, Southern Railway & Anr. Vs. T.R. Chellappan and connected petitions; (1990) 2 SCC 426 Union of India & Ors. Vs. Bakshi Ram & AIR 1988 SC 285 Trikha Ram Vs. V.K. Seth & Anr,*** it is submitted that the conviction would not stand obliterated. It is also asserted that in any case, the impugned order is premised on the suppression of material information and not on the orders of the learned Judge.

10. Inasmuch as the petitioner answers to some of the queries in this form which has given rise to the dispute, the same need to be considered in some detail. At serial no.12 in the form, the respondents had sought certain information with regard to implication/arrest etc. in cases. The petitioner is stated to have given incorrect answer to some of the queries. The pertinent queries and the petitioner's answer thereto read as follows:-

- “12. (a) Have you ever been arrested? . . . Yes/No✓
- (b) Have you ever been prosecuted? . . . ✓Yes/No
- (c) Have you ever been kept under detention? . Yes/No✓
- (d) Have you ever been bound down?. . . Yes/No✓**
- (e) Have you ever been fined by Court of Law? . Yes/No✓
- (f) Have you ever been convicted by a Court of Law for any offence? . . . Yes/No✓**
- (g) Have you ever been debarred from any examination or prosecuted by any University or any other educational authority/Institution? . Yes/No✓
- (h) Have you ever been debarred/punished by any Public Service Commission for any of its examinations/selections? . . . Yes/No✓
- (i) Is any case pending against you in any court of

law at the time of filling up this attestation form? Yes/No✓

(j) Is any case pending against you in any University or any other Educational authority/Institution at the time of filling up this Attestation form? . . . Yes/No✓

(k) Whether discharged/expelled/withdrawn from any training Institution under the Government or otherwise? Yes/No✓”

The petitioner had carefully scored out the other option in the queries.

11. The respondents have placed the original record before us. We find that the attestation form also contained certain cautions to the candidates. On the top of form, at serial nos.1, 2 & 3, the respondents had warned the candidates as follows:-

“1. The furnishing of false information or suppression of any factual information in the Attestation Form would be a disqualification and is likely to render the candidate unfit for employment under the Government

2. If detained, convicted, debarred etc. subsequent to the completion and submission of this Form the details should be communicated immediately to the authority to whom the Attestation Form has been sent earlier failing which it will be deemed to be a suppression of factual information.

3. If the fact that false information has been furnished or that there has been suppression of a factual information in the Attestation Form comes to notice at any time during the service of a person, his services would be liable to be terminated.”

12. The above would show that the respondents had emphasised that a fair and complete disclosure in answer to the queries in the form was essential. It is also evident that information was sought of not only convictions but also of detention etc. With regard to the queries at serial no.12, the candidate was specifically informed on the form by a note below the query at serial no.12(j) that *“If the answer to any of the above mentioned question is ‘Yes’ give full particulars of the case/arrest/detention/fine/conviction/sentence/punishment etc. and/or the nature of the case pending in the Court/University/Educational Authority etc.*

at the time of filling up the form”.

The petitioner's response to the query at serial no.12(b) with regard to prosecution was in the positive. As such, the petitioner was required to give the complete details of the case.

13. The petitioner has placed reliance on an order dated 24th August, 2001 passed by the Supreme Court reported at ***JT 2001 (10) SC 350 Ashutosh Kumar Manoj Vs. State of Bihar*** wherein the court was considering a challenge by an employee of the Canara Bank of his conviction, for an offence under Section 324 of the Indian Penal Code. The court had rejected the prayer for acquittal of the petitioner. The court observed that the petitioner had a handicapped child and was a bank employee. Therefore, while confirming the conviction instead of sentencing him, the Supreme Court directed his release under Section 4 of the Probation of Offenders Act, 1958 subject to execution of a bond before the trial court to keep good behaviour for a period of three years. The Supreme Court had clarified that the benefit had been granted to the petitioner to protect him from being dismissed from service or otherwise dealt with by the bank on the strength of conviction.

14. So far as the effect of the benefit of Section 12 of the Probation of Offenders Act, 1958 to a person who stands convicted of any offence is concerned, the same is well settled. Learned counsel for the respondents has placed before us the pronouncement of the Supreme Court reported at ***1976 SCC (L & S) 398 The Divisional Personnel Officer, Southern Railway & Anr. Vs. T.R. Chellappan and connected petitions*** wherein the court had laid down the principles thus:-

“12. Another point which is closely connected with this question is as to the effect of Section 12 of Act which runs thus:

Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under

the provisions of Sections or Section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.

It was suggested that Section 12 of the Act completely obliterates the effect of any conviction and wipes out the disqualification attached to a conviction of an offence under such law. This argument, in, our opinion, is based on a gross misreading of the provisions of Section 12 of the Act. The words "attaching to a conviction of an offence under such law" refer to two contingencies: (i) that there must be a disqualification resulting from a conviction; and (ii) that such disqualification must be provided by some law other than the Probation of Offenders Act. The Penal Code does not contain any such disqualification. Therefore, it cannot be said that Section 12 of the Act contemplates an automatic disqualification attaching to a conviction and obliteration of the criminal misconduct of the accused. It is also manifest that disqualification is essentially different in its connotation from the word 'misconduct'. Disqualification cannot be an automatic consequence of misconduct, unless the statute so requires. Proof of misconduct may or may not lead to disqualification, because this matter rests on the facts and circumstances of a particular case or the language in which the particular statute is covered. In the instant case neither Article 311(2) proviso (a) nor Rule 14(i) of the Rules of 1968 contain any express provision that the moment a person is found guilty of a misconduct on a criminal charge he will have to be automatically dismissed from service. Article 311(2) proviso (a) is an enabling provision which merely dispenses with the various stages of the departmental inquiry and the show cause notice. Rule 14 despite incorporating the principle of proviso (a) to Article 311(2) enjoins on the disciplinary authority to consider the circumstances of the case before passing any order. Thus, in our opinion, it is a fallacy to presume that the conviction of a delinquent employee simpliciter without anything more will result in his automatic dismissal or removal from service.

13. It was, however, suggested that Rule 14(i) of the Rules of 1968 is the provision which contains the disqualification by dispensing with the departmental inquiries contemplated under Rules 9 to 13 of the said Rules. This cannot be the position, because as we have already said Rule 14(i) only incorporates the principle of proviso (a) to Article 311(2). If Section 12 of the Probation of Offenders Act completely wipe out the disqualification contained in Article 311(2) proviso (a) then it would have become ultra vires as it would have come into direct conflict with the provisions of the proviso (a) to Article 311(2). In our opinion, however,

Section 12 of the; Act refers to only such disqualifications as are expressly mentioned in other statutes regarding holding of offices or standing for elections and so on. This matter was considered by a number of High Courts and there is a consensus of judicial opinion on this point that Section 12 of the Act is not an automatic disqualification attached to the conviction itself.

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15. On the same issue, the judgment of the Supreme Court reported at **(1990) 2 SCC 426 Union of India & Ors. Vs. Bakshi Ram** is topical. The relevant portion thereof may be usefully extracted and read as follows:-

“10. In criminal trial the conviction is one thing and sentence is another. The departmental punishment for misconduct is yet a third one. The Court while invoking the provisions of Section 3 or 4 of the Act does not deal with the conviction; it only deals with the sentence which the offender has to undergo. Instead of sentencing the offender, the Court releases him on probation of good conduct. The conviction however, remains untouched and the stigma of conviction is not obliterated. In the departmental proceedings the delinquent could be dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; (See Article 311(2)(b) of the Constitution and Tulsiram Patel case: 119851 Supp. 2 SCR 131.

11. Section 12 of the Act does not preclude the department from taking action for misconduct leading to the offence or to his conviction thereon as per law. The section was not intended to exonerate the person from departmental punishment. The question of reinstatement into service from which he was removed in view of his conviction does not therefore, arise xxx”

16. Learned counsel for the petitioner relies on the observations of the Supreme Court in para 13 of this judgment which reads as follows:-

“13. Section 12 is thus clear and it only directs that the offender "shall, not suffer disqualification, if any, attaching to a conviction of an offence under such law". Such law in the context is other law providing for disqualification on account of conviction. For instance, if a law provides for disqualification of a person for being appointed in any office or for seeking election to any authority or body in view of his conviction, that disqualification by virtue of Section 12 stands removed. That in effect is the scope and effect of Section 12 of the Act. But that is not the same thing to state that the person who has been dismissed from service in view of his conviction is entitled to reinstatement upon getting the benefit of probation

of good conduct. Apparently, such a view has no support by the terms of Section 12 and the order of the High Court cannot, therefore, be sustained.”

17. On the same issue, in **AIR 1988 SC 285 Trikha Ram Vs. V.K. Seth & Anr.** the court had rejected the contention that the appellant was convicted for a criminal offence and should have been heard by the disciplinary authority before imposing the punishment of dismissal from service. However, since the appellant had been released on probation by the trial court, in view of Section 12 of the Probation of Offenders Act, 1958, the court considered this fact and held as follows:-

“xxx Since it is statutorily provided that an offender who has been released on probation shall not suffer disqualification attaching to a conviction of the offence for which he has been convicted notwithstanding anything contained in any other law, instead of dismissing him from service he should have been removed from service so that the order of punishment did not operate as a bar and disqualification for future employment with the Government. Under the circumstances, the impugned order of dismissal is converted into an order of removal from service. Subject to this modification the appeal fails and is dismissed. There will be no order as to costs.”

18. So far as the present consideration is concerned, it is important to bear in mind the material difference in the fact situation and the issues which were before the courts in the afore-noticed precedents. The action taken by the respondents against the petitioner was not influenced by or premised on his conviction by the judgment dated 28th May, 1996. If this had been the position, the petitioner could have placed reliance on the order dated 30th August, 2000 and Section 12 of the Probation of Offenders Act, 1958 and urged that no disqualification would enure to him because of the conviction. The respondents have taken action against the petitioner for the reason that the petitioner had furnished false information despite the specific queries which have been sought from him in the attestation form.

19. The petitioner had merely stated that he had been prosecuted. Despite the requirement of the attestation form to disclose the full particulars of the case/arrest/detention/fine/conviction/sentence/punishment etc., the petitioner did not disclose any of the details of these details. On the contrary, the petitioner had specifically stated that he had never been convicted by the court of law of any offence. In addition thereto, the petitioner had also wrongly stated that he had never been bound down whereas he had been given the benefit of the probation subject to execution of the bonds.

19. The petitioner does not dispute his answers on the attestation form. It is also not the petitioner's contention in his reply dated 21st July, 2003, that he did not understand the queries in the attestation form. Conscious of the requirement of ensuring that the candidates fully understood the queries in the form, the respondents have published the questions as well as all warnings and cautions in the English as well as the Hindi languages. The petitioner has carefully tick marked his answers and scored out the alternate option as noted above which manifests that he has consciously marked his response to the questions. In view of the caution contained on the attestation form, the petitioner was also aware that his services were liable to be terminated in case it was revealed that false information had been furnished or that there had been suppression of factual information in the attestation form.

20. The judgment dated 21st June, 2000 by the Judicial Magistrate discloses that the petitioner had defended a protracted trial. He had also furnished the ordered bonds of good behaviour on the 30th August, 2000. In this background, the petitioner was fully aware of the implications of the trial and his conviction. The petitioner's contention that his understanding that he was "not convicted because of the order dated 30th August, 2000" does not inspire any confidence at all. The explanation for furnishing the wrong information

by the petitioner therefore does not hold any water.

21. Similar issues have arisen before us on earlier occasions. In a decision dated 11th July, 2010 passed in WP (C) No.117/1993 **Joice Michael Vs. Union of India & Ors.** on similar facts, we had noticed certain binding judicial precedents which have a bearing in the instant case as well. The relevant extract thereof, as noticed in our judgment dated 13th July, 2010, reads as follows:-

“9. Our attention has been drawn to the pronouncement of the Apex Court reported **(2008) 1 SCC 660 R. Radhakrishnan. Vs. Director General of Police & Ors.** wherein similar conduct as that of the present petitioner arose for consideration. On similar facts, the court had observed as follows:-

“10. Indisputably, the appellant intended to obtain appointment in a uniformed service. The standard expected of a person intended to serve in such a service is different from the one of a person who intended to serve in other services. Application for appointment and the verification roll were both in Hindi as also in English. He, therefore, knew and understood the implication of his statement or omission to disclose a vital information. The fact that in the event such a disclosure had been made, the authority could have verified his character as also suitability of the appointment is not in dispute. It is also not in dispute that the persons who had not made such disclosures and were, thus, similarly situated had not been appointed.

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13. In the instant case, indisputably, the appellant had suppressed a material fact. In a case of this nature, we are of the opinion that question of exercising an equitable jurisdiction in his favour would not arise.”

While drawing the above conclusion, the court had relied on an earlier pronouncement reported at **(1996) 11 SCC 605 Delhi Administration Through its Chief Secretary & Ors. Vs. Sushil Kumar** wherein it was observed that verification of the character and antecedents is one of the important criteria of test whether the selected candidate is suitable for post.

10. On this very issue, we may usefully refer to the pronouncement of the Apex Court reported at **(2005) 2**

**SCC 746 Secretary, Department of Home Secretary,
A.P. & Ors. Vs. B. Chinnam Naidu.**

“..... As is noted in Kendriya Vidyalaya Sangathan case the object of requiring information in various columns like column 12 of the attestation form and declaration thereafter by the candidate is to ascertain and verify the character and antecedents to judge his suitability to enter into or continue in service. When a candidate suppresses material information and/or gives false information, he cannot claim any right for appointment or continuance in service. There can be no dispute to this position in law. But on the facts of the case it cannot be said that the respondent had made false declaration or had suppressed material information.”

11. Mr. Ankur Chhiber, learned counsel for the respondents has also placed reliance on a judgment passed by a Division Bench of this court of which one of us (Gita Mittal, J) was a member. Learned counsel in this regard has drawn our attention to para 12 of the judgment reported at **113 (2004) DLT 373 (DB) Samim Akhtar Khan Vs. Union of India & Ors.** wherein a challenge to similar order of discharge for the reasons of suppression of material and factual information in the attestation form was laid. It was held by this court that the petitioner had not only suppressed material and factual information in the attestation form but he had also furnished false information. No information was given by the petitioner regarding the institution and pendency of the aforesaid criminal case against him in which even the charge-sheet stood filed. Such information was required to be disclosed at the time of enrolment and filling up the attestation form and that the petitioner had deliberately given wrong information to the respondents against the same queries as have been asked by the respondents in the instant case.”

22. It is noteworthy that in **Joice Michael case (supra)**, the case against him had been pending on the date of termination of his service and he was finally acquitted by the trial court. Based on this acquittal, Joice Michael had sought reinstatement in service. In this case, the services of Joice Michael had been terminated for the reason that he had failed to disclose registration of a criminal case by the police against him. On a consideration of the matter, it had been held that the petitioner had deliberately and knowingly

concealed the information in the attestation and verification forms and for this reason, the action of the respondents in holding that the petitioner was unfit for retention in service could not be faulted. The writ petition had been dismissed with the following observations:-

“15. It is trite that so far as the suitability of a person for appointment to a service or his continued retention in service, it is for the respondents to assess and it is not for this court in exercise of writ jurisdiction to adjudicate on the same. In any case, the petitioner having concealed material facts and having given incorrect information to the respondents in the attestation form, we are not inclined to exercise our discretionary jurisdiction in favour of the petitioner. The acquittal of the petitioner in the criminal case subsequent to his termination would have no bearing on the issue under consideration. It is the conduct of the petitioner in concealing a material fact and deliberately furnishing false information in the attestation form which formed the basis of the impugned order.”

23. A similar view was taken by us in the judgment dated 15th July, 2010 in WP (C) No.1851/1993 **Ashok Kumar Vs. UOI & Ors.** This petitioner had set up a plea that information about criminal case was not given in the attestation form on the ground that it already stood compromised and that the same had been lodged on account of certain misunderstandings. This case also related to termination from service on the ground that information with regard to the criminal case had not been furnished in the attestation form submitted to the CISF. It had also been urged on behalf of the petitioner that non furnishing of the information was a minor mistake which deserved to be dealt with leniently. This court had held that the petitioner had deliberately not disclosed the registration and implication in the criminal case as well as the fact that he was on bail and had the furnished bail bond.

24. For all the foregoing reasons, the submissions on behalf of the petitioner premised on Section 12 of the Probation of Offenders Act, 1958 so far as the present case is concerned, are of no legal consequence and effect.

The contention that the order dated 6th September, 2003 has not taken into consideration the petitioner's explanation in the reply dated 21st July, 2003 is also devoid of merit inasmuch as the petitioner does not dispute the fact that he has incorrectly filled up the form and has not furnished the specific information which had been explicitly sought.

25. The columns in the form were clear and self-explanatory. It was not for the candidates filling up the form to decide as to what information was material or immaterial, relevant or irrelevant. The petitioner was duty bound to have made a fair and candid disclosure of the complete information which had been sought from him. Employment with the security force is a serious matter. Certainly, furnishing of false information at the threshold of entering service deserves to be seriously viewed.

For all these reasons, we find no merit in the writ petition and application which are hereby dismissed.

GITA MITTAL, J

J.R. MIDHA, J

March 22nd , 2011
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