

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

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WP (C) No.6922/2009

Date of decision: 23rd July, 2012

SATISH CHAND

..... Petitioner

Through Mr.Vishwendra Verma, Adv.

Versus

UNION OF INDIA & ORS.

.... Respondents

Through Mr. Anil Gautam, Adv.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE J.R. MIDHA

GITA MITTAL, J (Oral)

1. The petitioner before this court assails the speaking order dated 16th October, 2004 passed by the respondents holding that the petitioner had given wrong information at the time of his recruitment into the Indo-Tibetan Border Police (hereafter referred to as 'ITBP') and thereby terminating his services in exercise of the powers conferred by Rule 22 read with Rule 17(iv) of the Indo-Tibetan Border Security Force Rules, 1994. The petitioner also assails the order dated 23rd June, 2005 passed by the Director General, ITBP rejecting the appeal of the petitioner against the earlier order.

2. The facts giving rise to the instant petition are in a narrow compass. The petitioner was recruited in the ITBP in the year 1990. On 6th February, 2003, he was sent on deputation to the Special Protection Group (SPG) which caused verification of his credentials and

antecedents to be done through the Intelligence Bureau. On conducting such verification, the SPG addressed a letter dated 3rd July, 2003 to the DIG (Administration) of the ITBP which was in the following terms:-

"This is in continuation of this office order No.27/SPG-Admn/2003(42) dated 3.7.2003. During the course of verification enquiries of character and antecedents in respect of Constable/WC Satish Chandra, No.900080059, ITBP, it has been transpired that the photograph affixed on the first page of the verification form is that of Harish Chandra and not Satish Chandra, though the verification form was in respect of Satish Chandra. It appears that there are 5 brothers, namely, Satish Chandra, Harish Chandra, Girish Chandra, Suresh Chandra and Umesh Chandra. Satish Chandra is the eldest brother who is serving as a Constable in 'C' Coy of 56 Btn. BSF (Regimental No.91254116), Distt. Kutch, Gujarat. It further transpires that Harish Chandra, the second brother of Satish Chandra might have used the educational certificates of his elder brother Satish Chandra and also his name in order to get a job in ITBP.

In column No.7(f) of the verification form, the name of only 3 brothers namely Girish Chandra, Suresh Chandra & Umesh Chandra has been mentioned while the name of Harish Chandra has been suppressed. Therefore, it appears to be a case of wrongful use of educational qualification certificate i.e. impersonation.

It is requested that the matter may be verified and suitable legal/departmental action may be initiated accordingly."

The SPG repatriated the petitioner to the ITBP.

3. On receipt of this information, the respondents caused a court of inquiry to be conducted which was constituted under the order no.2105-05 dated 31st July, 2003. In this exercise, the petitioner, his father and brothers were joined and made statements. On the basis of the inquiry conducted, the respondents were of the view that the real name of the petitioner was Harish Chandra and that he had used the

educational documents of his brother Satish Chandra while seeking recruitment into the ITBP. Consequently, a show cause notice dated 23rd June, 2004 was issued to the petitioner in accordance with the requirements of Rule 17(iv) read with Rule 22 of the ITBP Force Rules, 1994. The petitioner stood informed at the time of his appointment that his service could be terminated on the basis of his giving false information. The petitioner was also given an opportunity by the same notice to produce his documents in his defence which was required to be produced within a month. The petitioner replied to the show cause under cover of a letter dated 21st July, 2004 contending that no false information was given; that he was born on 4th September, 1969 at Mal Road, Pauri, District Garhwal and enclosed a copy of the birth certificate issued by the Municipal Corporation, Pauri. The petitioner also enclosed a certificate issued by the Thornburn Primary School at Chopra, Pauri, district Garhwal to support the same. He claims that he passed the Junior High School at Surkhet, Pauri, Garhwal and enclosed a mark sheet and certificate issued by the school.

4. The petitioner denied that there was any Harish Chand in his village and that his name was correctly informed to be Satish Chand. He further stated that Satish Chand (himself) and Satish Chand Lal are two brothers and that Satish Chand Lal, his brother was in Border Security Force. He insisted that there was nothing false and incorrect in the verification of his client.

5. We may note that the petitioner challenged the inquiry being conducted by the respondents before this court by way of WP (C) No.15454/2004. This court was not inclined to examine the matter in

view of the fact that the inquiry was being conducted pursuant to the notice to show cause issued to the petitioner. In this background, in the order dated 24th September, 2004, it was observed that the matter was not being interfered with. The writ petition was disposed of with the direction to the respondents to consider the reply filed by the petitioner to the show cause notice and to consider the pleas raised therein and thereafter to pass a reasoned order in the matter. Liberty was given to the petitioner to file any other document that he deemed appropriate in support of his pleas before the respondents.

6. The respondents considered the reply of the petitioner as well as all documents filed by him and thereafter passed the reasoned and detailed order dated 16th October, 2004. The observations and the findings show complete application of mind to the material placed before the respondents. The respondents have dealt with all documents which were produced by the petitioner. The observations can be summarized up thus:-

(i) At the time of his recruitment with the ITBP in 1990, Satish Chand submitted a class VIII certificate which pertained to 'Satish Chander Lal'. As per the legal notice/reply of the petitioner dated 21st of July, 2004, Satish Chander Lal was his brother.

(ii) In the legal notice/reply dated 21st of July, 2004, the petitioner had suggested to the respondents that he did not like 'Lal' with his name and, therefore, he had stopped using 'Lal' and was using only Satish Chander at the time of his recruitment. This was a new plea taken for the first time falsified by the other documents including a

birth certificate dated 3rd July, 2004 containing his name as Satish Chand only.

(iii) The respondents have noted that the petitioner had not taken any legal action or effected publication in the newspaper etc. for change of his name.

(iv) A certificate of the Junior High School in the name of 'Satish Chander Lal' was placed before the inquiry officer, whereas the certificate of the Junior High School which was enclosed with the legal notice dated 21st July, 2004 was in the name of 'Satish Chand'. Both these educational certificates referred the same roll no.2311.

The year, roll number and marks in these two educational certificates were identical. The respondents, therefore, disbelieved the correctness and authenticity of the certificate for the reason that educational certificate of two different persons cannot be similar.

7. As noted above, the educational certificate given to the battalion related to Satish Chander Lal whereas Shri R.D. Rathore, Advocate enclosed the same certificate in the name of Satish Chander only. The above clearly suggested tampering and fortified the respondents' contention that the petitioner had used the 8th class certificate of his brother Satish Chander Lal for recruitment.

8. Another new plea was raised to defend the allegations. Shri Mohan Lal, father of the petitioner had given a statement that Satish Chand and Satish Chand Lal are twins. However, no disclosure of the date of birth of these two persons was made whereas the date of birth of Satish Chand, son of Mohan Lal shown as 4th September, 1969 as per the provisional certificate issued on 28th August, 1989 by the

Secretary of the Junior High School Examination Committee, Surkhet, Pauri, Garwal. In the legal notice/reply dated 21st July, 2004, the petitioner also did not set up any plea of existence of any twin brother.

9. Learned counsel for the petitioner has at length urged that the birth certificate and the other documents produced by him, clearly show that Satish Chand and Satish Chand Lal are two different persons.

10. We may note that the petitioner has placed before this court reliance on a birth certificate which is dated 3rd July, 2004. The same has, therefore, been got issued after the issuance of the notice to show cause dated 23rd June, 2004 to support the completely false plea. The same refers to a single birth on 4th September, 1969 and incorporates the name of Satish Chand in the certificate. Incorporating the name of a newly born was certainly not the practice in 1969. The petitioner has also placed reliance before this court on a certificate dated 16th September, 2003 got issued from the St. Joan's Convent in the name of Satish Chand Lal to certify that Master Satish Chander Lal born on 4th September, 1969 was the student of the school. This certificate has also been procured after the controversy had arisen and after the petitioner's repatriation from the SPG.

11. We may note that the petitioner has taken contradictory pleas. At places he has urged that he was known as Satish Chand Lal and has dropped use of 'Lal' as part of his name. Elsewhere he has stated that Satish Chand and Satish Chand Lal are two different persons. Now he is claiming that they are twins. The petitioner's choice of plea has rested on the contents of the document in which he was relying on.

12. The petitioner has also attempted to establish the false case that there are twin brothers Satish Chand and Satish Chand Lal. We may note that the petitioner is the son of Mohan Lal and he used "Lal" as a last name. It is impossible that any parent would name two offspring with the same first name.

13. The respondents have urged that the petitioner has given different addresses in the domicile certificate and his casualty sheet. He has provided different information at different times.

14. It is on record that Shri Mohan Lal was blessed with five sons namely Satish Chandra, Harish Chandra, Girish Chandra, Suresh Chandra & Umesh Chandra. Shri Satish Chandra Lal was recruited as constable with the Border Security Force ('BSF') before the petitioner had recruited with the ITBP. At the time of his recruitment with the BSF, Satish Chander Lal had given the names of his four remaining brothers i.e. Harish Chand, Girish Chand, Suresh Chand & Umesh Chand in the prescribed format. As against this, the petitioner had filled the verification form with the Special Protection Group. In Column 7(f) thereof, the petitioner has given names of only three persons as his brothers as namely Girish Chand, Suresh Chand & Umesh Chand. The petitioner thus concealed the existence of his brother Satish Chandra Lal. He certainly did not disclose the existence of any twin brother.

15. This plea is in contradiction with the plea set up before this court by the petitioner that his twin brother is named Satish Chand Lal. The petitioner renders no explanation for the documentation and disclosure by his brother at the time of his

recruitment into the BSF. If the pleas set up by the petitioner are accepted, then Satish Chander Lal would appear to have made a false disclosure at the time of his recruitment into the BSF.

16. The SPG in its communication dated 3rd July, 2003 after conducting an inquiry, has informed that the photograph fixed on the first page of the verification form was of Harish Chand and not Satish Chand even though the verification form was in respect of Satish Chand.

17. We may notice another material factor that despite the contention of the petitioner throughout in the reply dated 21st July, 2004 sent under legal advice to the respondents to the effect that Satish Chand and Satish Chand Lal were one and the same person, in realization that the truth has become known, the petitioner in the present writ petition filed in 2009 has attempted to urge that the petitioner was known by two aliases 'Hari' and 'Harish Chandra'. This was never his case prior hitherto.

18. The speaking order dated 16th October, 2004 is a well reasoned order which has taken into consideration all facts and documents urged by the petitioner. Full opportunity has been given to the petitioner in accordance with law, principles of natural justice to place his side of the case. The appellate order dated 23rd June, 2005 is also well reasoned.

19. The instant writ petition would deserve dismissal on the ground that it raises disputed questions of fact and is also delayed having been filed almost five years after 16th of October, 2004 when the speaking order was passed. However, inasmuch as learned counsel for

the parties have placed the afore-noticed submissions before this court, we have dealt with the writ petition on the merits of the case raised before us.

20. Learned counsel for the petitioner has urged that the respondents have no power to terminate the services of the petitioner without holding an inquiry. We may note that the respondents have not set up a case of misconduct against the petitioner. They have exercised jurisdiction under Rule 17(iv) read with Rule 22 of the ITBPF Rules, 1994 which read as follows:-

“17. Termination of service-Authorities specified in the headings of Columns 3 to 6 of the Table given below shall be competent to dismiss, remove, discharge, retire or release a member of the Force specified in the columns, on the grounds stated in the corresponding entries in Column 2, in accordance with the procedure laid down in this chapter. Any power conferred by this rule or any provision of this Chapter on any of the aforesaid authorities may also be exercised by any other authority superior to it.

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22. Termination of service on grounds of furnishing false/incorrect information at the time of appointment-The Central Government, or as the case may be, the authority as specified in rule 17, may terminate the service of a person subject to the Act on grounds of furnishing false/incorrect information at the time of appointment of that person in the service. A show cause notice giving one month's time shall be issued to the individual before termination of his service.”

21. The petitioner was duly informed at the time of his induction into the force as well as on his attestation/verification form that in case any information provided by him are found to be false at any stage, his services are liable to be terminated. Rule 22 of the ITBP Rules amply vests jurisdiction on the respondents to terminate the service of a

person subject to the Acts on the ground of his having furnished false/incorrect information at the time of appointment into the service. The show cause notice prescribed under the rules has been duly served upon the petitioner.

22. It is also to be noted that the respondents have separately filed a complaint with the police authority for the acts of forgery which have been conducted by the petitioner. Action thereon would obviously be taken in accordance with law. The respondents have pointed out that in good faith, the petitioner was permitted to proceed on deputation with the Special Protection Force, an elite force vested with the solemn duty of guarding the Prime Minister of India, Former Prime Ministers and other highly placed dignitaries. A person who had furnished false personal information could not possibly be continued with the disciplinary force as the ITBP or the Special Protection Group.

23. Learned counsel is unable to point out, despite opportunity, any statutory provision mandating an inquiry so far as false information given at the time of his initial recruitment is concerned. The jurisdiction to pass such an order and to terminate the services is clearly statutorily prescribed.

24. For all the above reasons, we find no merit in the writ petition which is hereby dismissed.

(GITA MITTAL)
JUDGE

(J.R. MIDHA)
JUDGE

JULY 23rd , 2012
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