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IN THE HIGH COURT OF DELHI AT NEW DELHI

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DECIDED ON: 03.08.2015

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W.P. (C) 3402/2005

S.K.HABIBUR RAHMAN

..... Petitioner

Through: Mr. Yash Anand with Mr. David A
and Mr. Yash Singhal, Advocates.

versus

UOI & ORS.

..... Respondents

Through: Mr. Ruchir Mishra with Mr.
Mukesh Kumar Tiwari, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE V.K. SHALI

S.RAVINDRA BHAT, J. (OPEN COURT)

1. The petitioner is aggrieved by the order of the Central Reserve Police Force ("CRPF") removing him from its services. He argues that the penalty was utterly unwarranted and that no case of misconduct had been established against him.

2. The facts of the case are that the petitioner joined service in the CRPF as a Constable (General Duty) on 02.11.1970. At that relevant time when he was recruited, no educational qualifications were prescribed in respect of the post of Constable. On 06.10.1970 the Petitioner underwent an extensive Medical Test –conducted by the CRPF. The Medical Officer recorded satisfaction that he was

medically fit, and opined that: "*His age according to his own statement (sic) 19 years, 6 months and by appearance 19 years.*" The petitioner had to furnish his particulars in the CRPF Verification Roll, which he did. This was then authenticated. All the petitioner's service records were based on the date of birth in terms of the affidavit affirmed by his late father namely Sk. Yead Rahman on oath before the Learned First Class Judicial Magistrate, Burdwan. The affidavit affirmed the correct date of birth of the petitioner as 01.05.1951 and that the age of the petitioner was 19 years, 4 months and 20 days as on the date of the affidavit i.e. 21.09.1970.

3. The petitioner served the CRPF for 30 years and was promoted to the rank of Head Constable (Havildar). He had the requisite qualifying service to apply for pension as per the conditions of service and the Rules. It is stated that due to ill health and domestic problems he sought voluntary retirement from service in the year 1996 after serving for 30 years. Then, he was, for the first time, asked to produce a certificate of his date of birth issued by the authorities, apart from the other documents (father's affidavit and the department's medical records). It is alleged by the petitioner that during his childhood, he had studied at his native place at Burdwan in a Madrasah, viz. Kulgoria High Madrasah, Dist. Burdwan. He asserts that given the prevailing lack of knowledge and levels of ignorance, parents or guardians did not concern themselves about the children's age factor and the school Madrasah authorities/head of institution used to record the date of birth of the children "*as per their own sweet will/statements.*" It is submitted that the petitioner obtained a

certificate from the West Bengal Madrasah Education Board and only then became aware that the date of birth in the said certificate was incorrectly recorded as 01.04.1954.

4. The Petitioner was served with a memorandum of charges dated 29.02.2000 issued by the Commandant, 55 Bn., CRPF along with the statement of Article of Charges framed against him and a statement of alleged imputation of disobedience. It was alleged that the petitioner got enlisted in CRPF as Constable (GD) on 02.11.1970 by producing the copy of the High Madrasah Examination mark sheet issued by the Registrar, West Bengal Madrasah Education Board according to which (as well as the sworn affidavit of his father) his date of birth was 01.05.1951. The charge Sheet alleged that the Secretary West Bengal Board of Madrasah Education intimated that in the school record his date of birth was 01.04.1954. A Deputy Commandant was appointed as the Enquiry Officer to conduct enquiry into the allegations.

5. The Enquiry Officer, after completing the proceedings, submitted his report on 08.01.2001 holding that the charges against the petitioner were fully proved and that he was guilty under Section 11(1) of the Central Reserve Police Force Act. By an Office order dated 28.02.2001 issued by the Commandant 55, Bn., CRPF the petitioner was removed from service. The order also directed that all medals and accessories of the petitioner be seized from him. The petitioner's administrative remedies- by way of appeal and revision, were of no avail and were rejected by superior authorities/officers. He approached the Calcutta High Court by filing W.P. 231(W)/ 2003;

however, that was dismissed by the said High Court by its order dated 30.06.2004 for want of territorial jurisdiction; the petitioner was given the leave to approach the appropriate forum. He has therefore preferred this proceeding under Article 226 of the Constitution of India.

6. Learned counsel for the petitioner submits that his actual date of birth is 01.05.1951 and that was known to his father viz. Sk. Yead Rahman. The affidavit was therefore, sworn before the the First Class Magistrate, Burdwan declaring the date of birth of the petitioner as 01.05.1951. This was the basis of the P petitioner's recruitment. All service records/documents in CRPF were made, maintained and time to time verified for a more than considerable period of at 30 years. No questions or doubt were ever raised for 30 long years. It is contended that based upon such documents, the petitioner cleared various departmental promotional examinations and never was any discrepancy detected. Furthermore, the petitioner was never asked at any material point of time to procure certificate of his birth from the West Bengal Madrasah Education Board or any other statutory body of the West Bengal. Emphasizing that at the relevant time, there was no requirement for the production of any academic certificate, Counsel submitted that the petitioner had no knowledge of the date of birth recorded in the record of the Madrasah, where he completed primary schooling.

7. The petitioner submits that since he had no recorded date of birth before the Civil Statutory body, i.e., Municipal Corporation or Gram Panchayat or before the Registrar, Birth/Death, there was no

proof of his age, at the time when he was enrolled. He claims to be in the dark about the date of birth recorded with the Kulgoria Madrasah at his locality. Counsel also relies on the remark of the Medical Officer who carried out his physical and medical tests at the time of his recruitment and that the said doctor did not declare the petitioner to be the minor. On the other hand, his age was determined to be over 19 years. Such remark reflected in the CRPF recruitment made in Form-I in conformity to the Rule 13 of the CRPF Rules, 1955.

8. Learned counsel for the petitioner relies on the judgment of the Supreme Court in ***Jiwan Kishore v. Delhi Transport Corporation and Anr*** 1981 SCC (L&S) 448, to the following effect:

"In view of this considerable discrepancy, the employer, the Delhi Transport Corporation, appointed its Medical Board to fix the age of the appellant and according to the assessment of the age by the Medical Board, it is seen that he was 51 on June 13, 1975. We see no reason to ignore this scientific fixation of age when we have records which are flagrantly conflicting."

9. It is submitted that upon being selected for the position of Constable (General Duty), the Petitioner had to furnish his particulars in the CRPF Verification Roll, which after being verified obtained the shape of an authenticated document. All service records are based on the affidavit affirming the correct date of birth of the petitioner as 01.05.1951 and that the age of the petitioner was 19 years, 4 months and 20 days as on the date of the affirmation. This verification is done under section 14 of the CRPF Rules, 1955 which states that:-

“Section 14. Verification. - (a) As soon as a man is enrolled, his character, antecedents, connections and age shall be verified in accordance with the procedure prescribed by the Central Government from time to time. The Verification Roll shall be sent to the District Magistrate or Deputy Commissioner of the District of which the recruit is a resident.

(b) The Verification Roll shall be in CRP Form-25 and after verification shall be attached to the Character and Service Roll of the member of the Force concerned.”

10. It is argued that the recruiting authority had verified the documents but the CRPF authorities did not at any point of time, allege any discrepancy about the petitioner's pensionable service, nor point out that he was minor at the time of his enrolment, nor at any time ask for any documentary evidence regarding the age or educational qualification details. In these circumstances, he argues that after 30 years of satisfactory service tenure the respondent authorities never brought in any new fact to deprive the petitioner of his legitimate claim to pension. It is submitted that the disciplinary authority and subsequent appellate authority solely based their finding on the basis of the Madrasah document. No other corroborating evidence was produced. The petitioner had produced the affidavit of his father at that time sworn before Judicial Magistrate First Class stating the age to be 19 years 4 months and 20 days as on the date of affirmation.

11. That if at the time of recruitment documentary evidence regarding educational qualifications had been asked for, it would have come to the knowledge of the petitioner and he would have consequently taken proper steps for correction of his date of birth. It is

argued that even if it is accepted that the Madrasah document's age were true, then at time of recruitment he would have been barely 14 years, and it would have been easily detected merely by appearance that the petitioner was a minor. He would have not passed the scientific tests for age verification and would have easily been identified by medical examination board. The Petitioner was, however, examined by the CRPF's medical expert who in his report, stated that his age was 19 years and 6 months.

12. It is contended that the petitioner was promoted as Head Constable (Havildar) and completed the required qualifying pensionable service of 30 years devoting his entire youth and life for the sake of CRPF. Due to ill health, coupled with various domestic problems he sought voluntary retirement from the CRPF service in the year 1996, while he was posted at 55 Bn. CRPF. The CRPF authorities insisted that he ought to produce a certificate from the school/Board, where he had studied, though there was no need of asking for certification of his date of birth since everything was a matter of record.

13. It is argued on behalf of the CRPF that the petitioner's entry into service was questionable, given that the Madarsah Board stated – in answer to a query addressed by the authorities that the correct date of the petitioner's birth, according to its records was 01.04.1954 and not 01-05-1951. This clearly meant that he was ineligible for appointment; his candidature could not have been entertained. Having obtained employment under false pretenses, the petitioner could not claim any equity or sympathy by reason of a long spell of service.

Learned counsel relied on the findings recorded in the disciplinary proceedings and submitted that the replies of the Board clearly implicated the petitioner, who could not now claim that he was ignorant of his true date of birth, or fall back upon the affidavit sworn by his father. It was contended that the CRPF was bound to expose the fraud and take necessary action, as and when true facts emerged, as they did in the present case and that the lapse of time is an irrelevant factor. Counsel relied on the decision of the Supreme Court in ***District Collector & Chairman Vizianagaram (Social Welfare Residential School Society) v. M. Tripura Sundari Devi*** 1996 (2) SCC 605 and submitted that the said decision is an authority for the proposition that there is no fetter on a public employer from taking action against someone who obtains employment without disclosing full and material facts. Counsel also relied on the judgment of the Supreme Court in ***Ram Saran v Inspector General*** (2006) 2 SCC 541 and argued that mere length of service would not absolve a fraud played on the public employer and that upon detection, a dismissal or removal order is warranted.

Analysis and Conclusions

14. The facts are virtually not disputed; the petitioner was enlisted with the CRPF in 1970. At that time, his father had sworn an affidavit, affirming his true date of birth to be 01.05.1951. That the petitioner was examined, and the claim of his father (based on the affidavit) found credible as well as tenable, is beyond question, because he was given employment. It is also a matter of record that the petitioner

rendered meritorious service, and apparently earned medals. He was also promoted as Head Constable. While so, after over 26 years of regular service (and after he concededly qualified for minimum pension) he applied for voluntary retirement, citing illness and domestic problems. The CRPF, at that time insisted that he ought to produce a birth certificate or some such document evidencing his date of birth. Independently, action upon a circular – issued in 1993 and based on the decision in *District Collector & Chairman Vizianagaram (Social Welfare Residential School Society)* the West Bengal Madrasah Board was asked about the documents in its possession. The Board apparently said that according to its records, the petitioner's date of birth was 01.04.1954. The CRPF conducted an inquiry, in the course of which, the material relied on were the Board's letter and the petitioner's father's affidavit. A finding of guilt was rendered and the petitioner was removed from service.

15. This Court is un-persuaded by the respondent's submission that regardless of the lapse of time, any misstatement or suppression of fact, found to be material later entails, invariably, in forfeiture of a public employee's service. The reliance placed on *District Collector & Chairman Vizianagaram (Social Welfare Residential School Society)* in the context, according to us, is misplaced. In that decision the Supreme Court had to contend with an entirely different set of facts, where the antecedents of the candidate were such that he was found to be undesirable. Furthermore, the Court was not concerned with circumstances, like in the present case, where an employee renders

long and unblemished- even meritorious service. The CRPF's stand of unwavering insistence cannot be countenanced.

16. The petitioner is right, when he contends that at the time of enlistment, what prevailed with CRPF was the affidavit of his father. There may be more than a grain of truth in his assertion that the true date of birth was correctly disclosed in the affidavit, but some other date was casually given to the Board. Whatever be the case, the Court cannot be oblivious of the circumstances, which prevailed at the time and the general (lack of) awareness in such matters at least in 1970.

17. The facts of the present case are in our opinion, different from those in *Ram Saran* (supra). There, the employee had in fact produced a certificate, which was false. The primary circumstance to weigh with the Supreme Court was the element of falsity; that the certificate produced was forged with the intention of deceiving the authorities and securing appointment in violation of the Rules. Here, the petitioner did not rely on any certificate; but on an affidavit where his father had vouchsafed his date of birth and age. This affidavit was not only verified by the authorities but was also never questioned in regard to its genuineness and truth. There is no averment or proof as to a fraud played by the appellant, and herein lies the distinction between the case at hand and *Ram Saran* (supra). Additionally persuading us is the fact that the CRPF doctor had in fact examined the petitioner and found him to be aged 19 years.

18. *Dev Singh vs. Punjab Tourism Development Corporation Ltd & Anr.* 2003 (8) SCC 9; *Kailash Nath Gupta vs. Enquiry Officer (R.K. Rai), Allahabad Bank and Ors.* 2003 (9) SCC 480; and *Union*

of India and Ors. vs. M.A. Jaleel Khan, 1999 SCC (L & S) Cases 637 are authorities for the proposition that courts should take into consideration whether in the given facts of a case, the penalty or action is proportionate to the misdeed or misconduct of the delinquent or public employee. In **Dev Singh** (supra) unblemished service of 20 years was held to be a relevant factor and that the penalty imposed was a “*punishment which is totally disproportionate to the misconduct alleged and the same certainly shocks our judicial conscience. Hence, having considered the basis on which the punishment of dismissal was imposed on the appellant and the facts and circumstances of this case, we think to avoid further prolonged litigation it would be appropriate if we modify the punishment ourselves.*” In **Kailash Nath Gupta** (supra) the Court adopted a similar approach.

19. Having regard to the above discussion, this Court is of opinion that the penalty of removal – which in effect resulted in the forfeiture of the petitioner’s terminal benefits, as well as pension, was completely disproportionate. It ignored his meritorious service, the promotions earned and his unblemished record with the CRPF. In the circumstances, CRPF is hereby directed that in substitution of the penalty of removal, the petitioner shall be treated as having compulsorily retirement w.e.f. 28.02.2001. All consequential benefits- by way of terminal dues, gratuity, pensionary arrears, arrears on account of fixation of pension due by virtue of the Sixth Pay Commission recommendations, and other benefits which he would have been entitled to as one retiring on basis of order of compulsory retirement shall be determined, and appropriate orders made within 10

weeks from today. Payment of such arrears, etc. shall be ensured to the petitioner within 12 weeks from today.

20. The writ petition is allowed in the above terms, with no order as to costs.

S. RAVINDRA BHAT, J

AUGUST 03, 2015

V.K. SHALI, J

