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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

DINESH MAHESHWARI; M.M.SUNDRESH, JJ.

APRIL 5, 2022

CIVIL APPEAL NO. 2754 OF 2022 (Arising Out of SLP (C) NO. 26402 OF 2019)

UNION OF INDIA & ORS. *VERSUS* **DILIP KUMAR MALLICK**

Service Law - A non-disclosure of material information itself could be a ground for cancellation of employment or termination of services - Employer would not be obliged to ignore such defaults and shortcomings. Where suppression of relevant information is not a matter of dispute, there cannot be any legal basis for the Court to interfere - The cases of non-disclosure of material information and of submitting false information have been treated as being of equal gravity. *[Referred to Avtar Singh v. Union of India (2016) 8 SCC 471] (Para 13-16)*

Summary - Appeal against Orissa High Court direction to impose 'any lesser punishment' to employee terminated from service for non-disclosure of criminal cases - Allowed - In a case of the present nature where a criminal case was indeed pending against the respondent and the facts were altogether omitted from being mentioned, the employer would be obliged to ignore such defaults and shortcomings.

(Arising out of impugned final judgment and order dated 25-03-2019 in WA No. 223/2018 passed by the High Court of Orissa at Cuttack)

For Petitioner(s) Mr. B. V. Balaram Das, AOR Ms. Sakshi Kakkar, Adv. Mr. G. S. Makkar, Adv. Ms. Nidhi Khanna, Adv. Mr. A. K. Sharma, AOR; For Respondent(s) Mr. Pijush K. Roy, Adv. Mrs. Kakali Roy, Adv. Ms. Ankita Sharma, Adv. Mr. Rajan K. Chourasia, AOR

O R D E R

DINESH MAHESHWARI,J.

Leave granted.

2. The challenge herein is to the judgment and order dated 25.03.2019 in Writ Appeal No. 223 of 2018, whereby the Division Bench of the High Court of Orissa at Cuttack, in partial disapproval of the order dated 10.04.2018 passed by the learned Single Judge of the High Court in Writ Petition(C) No. 24085 of 2018, interfered with the punishment of removal from service, as awarded to the respondent; and directed the present appellants to impose *'any lesser punishment as deemed just and proper'*.

3. The only question for consideration in this appeal is, as to whether the Division Bench of the High Court was justified in interfering with the quantum of punishment awarded to the respondent? The background aspects may be noticed to the extent relevant for the present purpose.

4. In the year 2003, the respondent was appointed under the Central Reserve Police Force ('CRPF') Group Centre, Bhubaneswar. While continuing in service, a departmental inquiry was initiated against him on the allegations that though he was involved in Kendrapara Police Station Case No. 349 dated 26.09.2001 for the offences punishable under Sections 341, 323, 294, 337, 506 read with Section 34 of the Indian Penal Code and was charge-sheeted for the said offences on 01.12.2001; and though the said criminal case was pending before the competent Court but, while filling up the verification roll, he suppressed/concealed the said fact and such an act was prejudicial to the discipline of CRPF. The respondent participated in the inquiry and ultimately, he was awarded the punishment of removal by the Disciplinary Authority. The appeal taken by the respondent was also dismissed by the Appellate Authority on 31.07.2009.

5. However, on 02.02.2012, a writ petition filed by the respondent bearing No. 14945 of 2009 was allowed by the High Court to the extent that the Appellate Authority was directed to reconsider the appeal within two months in light of the judgment of this Court in the case of *Commissioner of Police and Ors. v. Sandeep Kumar*: (2011) 4 SCC 644. The Appellate Authority, thereafter, passed a fresh order on 22.08.2012, again dismissing the appeal and declining to interfere with the decision of the Disciplinary Authority. The respondent again approached the High Court by way of the writ petition leading to the present appeal, being W.P.(C) No. 24085 of 2012.

6. The plea taken by the present respondent before the learned Single Judge in this writ petition was that, he had not suppressed any information so as to be held guilty in disciplinary proceedings. In respect of the particular column in the verification roll, it was submitted, he had neither mentioned 'Yes' nor mentioned 'No' as regards the criminal case. It was also asserted that he was neither arrested nor remanded to judicial custody; and the matter having been settled between the parties in the village, he did not know about the pendency of the case and hence, did not state any information in that regard in the relevant column of the verification roll. The present appellants opposed the writ petition with the submissions that the respondent left the relevant column blank, though the criminal case was pending against him and such an act was that of concealment/suppression of material facts.

6.1. The learned Single Judge did not agree with the contentions of the present respondent (writ petitioner) and on 10.04.2018, dismissed the writ petition while concluding that he had concealed the facts about his involvement in the criminal case.

7. The intra-court appeal against the order so passed by the learned Single Judge was considered and decided by the Division Bench of the High Court by the impugned order dated 25.03.2019. The Division Bench of the High Court examined all the contentions raised before it with reference to several decisions of this Court and found no reason to interfere with the basic findings of the learned Single Judge as regards guilt/delinquency of the appellant and affirmed the conclusion in that regard in the following terms: -

"In view of the aforesaid settled positions of Law and the facts and circumstances of the present case as to non-supply of required information of which the petitioner-appellant has been found guilty, we do not find any cogent reason to interfere with the findings reached by the learned Single Judge in that regard."

7.1. However, thereafter, the Division Bench of the High Court referred to a few passages in the 3-Judge Bench decision of this Court in *Avtar Singh v. Union of India and Others*: (2016) 8 SCC 471, and observed that the respondent had been acquitted in the said criminal case prior to awarding of punishment in the disciplinary proceedings. The Division Bench also observed that the matter was earlier remanded to the Appellate Authority for re-consideration in light of the decision of this Court in the case of *Sandeep Kumar* (supra) but, the Appellate Authority again stuck to the punishment of removal and thereby, set at naught the directions of the Court. On these considerations, the Division Bench formed the view that the punishment of removal from service was too harsh and thus, directed the present appellants to impose *'any lesser punishment as deemed just and proper'.* The Division Bench also issued consequential orders and directions as regards continuity of service of the respondent. The relevant and concluding part of the order impugned reads as under: -

"10. In the instant case, the petitioner-appellant was charge-sheeted along with others for the offences punishable under Sections 341/323/294/337/506 read with Section 34 of the Indian Penal Code. offences are petty offences said the petitioner-appellant along the others stood acquitted with the specific observation of the learned trial court that the matter has been compromised between the parties, which was the specific pica of the petitionerappellant that he had no knowledge about the pendency of case since the matter was compromised at the village. It may also be mentioned here that when the petitioner was first awarded with the punishment of removal from service, he had approached this Court in W.P.(C) No. 14945 of 2009 and this Court had set aside the punishment directing the appellate authority to reconsider the matter in the light of the judgment rendered by the Hon'ble Apex Court in the case of Sandeep Kumar (supra). But the appellate authority again stuck to the punishment of removal thereby setting the direction of this Court at naught. Keeping in view the discussed facts and circumstances we are of the considered opinion that the punishment of removal from service as has been imposed against the petitioner-appellant was too harsh calling for interference by this Court in exercise of power under Article 226 of the Constitution of India.

11. Accordingly, the appeal is allowed in part. Only the punishment of removal from service as has been awarded against the petitioner-appellant is set aside and the opposite parties-respondents are directed to impose any lesser punishment as deemed just and proper. The petitioner-appellant shall be deemed to be continuing in service notionally from the date he was removed from service and shall be considered for the purpose of all consequential service benefits subject to any lesser punishment, if any, to be awarded by the competent authorityopposite parties-respondents.

However, the petitioner-appellant shall not be entitled to any pecuniary benefit for the period he was out of service.

The writ appeal is disposal of accordingly. No order as to cost."

8. Assailing the order aforesaid, it has been strenuously argued by Ms. Nidhi Khanna, learned counsel for the appellant that, furnishing of false information and suppression of any relevant fact in the verification roll could only be viewed disfavourably and a person like the respondent, with the admitted position of suppression of material fact about pendency of the criminal case against him, could not have been ordered to be taken back in service; and the punishment of removal from service in this matter called for no interference. Learned counsel has particularly referred to and relied upon the 3-Judge Bench decision of this Court in the case of *Avtar Singh* (supra).

9. *Per contra*, it is submitted by Mr. Piyush Kumar Roy, learned counsel for the respondent that the respondent had been serving the appellants without any cause of complaint since after his appointment in the year 2009. It is submitted with reference to the judgment and order dated 01.05.2008, as passed by the Sub-Divisional Judicial Magistrate, Kendrapara in Trial No. 33 of 2002 pertaining to GR Case No. 613 of 2001, that the respondent was honourably acquitted in the said case pertaining to the offences of petty nature where more than 50 persons of the village were parties and it had not been a matter of criminality of conduct of the respondent. Learned counsel for the respondent has strenuously argued that the respondent had not been guilty of supplying any false information; and in such a case of trivial nature, where the respondent was ultimately acquitted honourably, the punishment of removal from service would be too harsh and in the totality of the circumstances, the Division Bench has rightly interfered to the limited extent of requiring the authorities to re-consider the matter on the quantum of punishment.

9.1. With reference to the decision in *Avtar Singh* (supra) and particularly to the summation in paragraph 38.4 and its subparagraphs, the learned counsel would submit that this being a matter of trivial nature, where the respondent had been honourably acquitted, the employer in its discretion could ignore such alleged suppression of facts, which did not carry the element of any ill-intent on the part of the respondent. Learned counsel has also made a fervent plea for leniency, particularly with reference to the facts that the respondent comes from a humble background and has a family to support.

10. Having given thoughtful consideration to the rival submissions and having examined the material placed on record, we find it difficult to endorse the approach and views of the Division Bench of the High Court in this matter.

11. The fact that the respondent was guilty of suppressing material fact is not of any doubt or dispute. He had indeed left the relevant columns in the verification roll blank; and thereby, had been wanting in forthrightness while filling up the verification roll for employment with the appellant. Admittedly, at the time of filling up the verification roll, the criminal case was pending. The respondent cannot feign ignorance about the said case because he indeed surrendered before the Trial Court and was granted bail. That being the position, the findings whereby he is held guilty of misconduct of suppression/concealment of material information, cannot be faulted at. In fact, such

findings of the Disciplinary Authority and the Appellate Authority have been affirmed by the learned Single Judge as also by the Division Bench in the order impugned. The question, then, is as to whether the Division Bench was justified in interfering with the quantum of punishment? In our view, the answer could only be in the negative.

12. As regards the effect of suppression of facts, the 3-Judge Bench of this Court in the case of *Avtar Singh* (supra), has stated the principles in no uncertain terms thus: -

"32. No doubt about it that once verification form requires certain information to be furnished, declarant is duty-bound to furnish it correctly and any suppression of material facts or submitting false information, may by itself lead to termination of his services or cancellation of candidature in an appropriate case. However, in a criminal case incumbent has not been acquitted and case is pending trial, employer may well be justified in not appointing such an incumbent or in terminating the services as conviction ultimately may render him unsuitable for job and employer is not supposed to wait till outcome of criminal case. In such a case non-disclosure or submitting false information would assume significance and that by itself may be ground for employer to cancel candidature or to terminate services."

12.1. Of course, in *Avtar Singh*, various eventualities and the applicable principles have been summarised in paragraph 38 and sub-paragraph thereof. We may reproduce the relevant parts, as occurring in paragraphs 38.1 to 38.4.3, as under: -

"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 or 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 filing 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 employees.

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."

13. Thus, it remains beyond the pale of doubt that the cases of non-disclosure of material information and of submitting false information have been treated as being of equal gravity by this Court and it is laid down in no uncertain terms that non-disclosure by itself may be a ground for an employer to cancel the candidature or to terminate services. Even in the summation above-quoted, this Court has emphasized that information given to the employer by a candidate as to criminal case including the factors of arrest or pendency of the case, whether before or after entering into service, must be true and there should be no suppression or false mention of the required information.

14. In case of suppression, when the facts later come to the knowledge of employer, different courses of action may be adopted by the employer depending on the nature of fault as also the nature of default; and this Court has indicated that if the case is of trivial nature, like that of shouting slogans at a young age etc., the employer may ignore such suppression of fact or false information depending on the factors as to whether the information, if disclosed, would have rendered incumbent unfit for the post in question.

14.1. However, the aforesaid observations do not lead to the corollary that in a case of the present nature where a criminal case was indeed pending against the respondent and the facts were altogether omitted from being mentioned, the employer would be obliged to ignore such defaults and shortcomings. On the contrary, as indicated above, a non-disclosure of material information itself could be a ground for cancellation of employment or termination of services.

15. We have also taken note of the fact that the decision of the so-called honourable acquittal was rendered by the Trial Court as late as on 01.05.2008. This leads to the position that the respondent, who entered the employment in CRPF in the year 2003 without disclosing the fact of pendency of criminal case against him, had continued to remain as a pending-trial accused person without the knowledge of the department, until the facts were noticed and he was subjected to departmental proceedings.

16. In the given set of facts and circumstances, where suppression of relevant information is not a matter of dispute, there cannot be any legal basis for the Court to interfere in the manner that the employer be directed to impose *'any lesser punishment'*, as directed by the Division Bench of the High Court. The submissions seeking to evoke sympathy and calling for leniency cannot lead to any relief in favour of the respondent.

17. Accordingly, and in view of the above, this appeal succeeds and is allowed; the questioned part of the impugned order dated 25.03.2019, i.e., paragraph 11 where the Division Bench interfered with the quantum of punishment, is set aside. The writ petition filed by the respondent shall stand dismissed without any order as to costs.