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

% ***Reserved on: October 20, 2022***
Pronounced on: November 02 , 2022

\+ W.P.(C) 2074/2018

ANIL KUMAR ..... Petitioner
Through: Mr. Jitendra Kumar Singh & Ms. Anjali Kumari, Advs.

Versus

UNION OF INDIA & ORS. ..... Respondents
Through: Mr. Vikrant N. Goyal, Mr. Ajay Singh & Mr. Shikhar Sardana, Advs. for Respondent No.1. Ms. Ankita Sarangi, Adv. for Respondent No.2. Sh. Hemendra Singh, Deputy Commandant (Law) BSF.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

SAURABH BANERJEE, J.

1. As per petitioner, he was falsely implicated in an FIR when he was a *minor*. Thereafter, without disclosing about FIR, he was appointed as a Constable in the Border Security Force[1] and completed his basic training. However, upon coming to know of the FIR during the course of his verification, BSF issued a Show Cause Notice dated 04.02.2012 to the petitioner. Not finding a satisfactory answer dated 08.02.2012 from him, he was dismissed from service without any pensionary benefits vide order

[1]Hereinafter referred as "**BSF**"

dated 18.02.2012. He also pleaded, the appeal thereagainst was dismissed by Appellate Authority vide order dated 07.03.2016 and the revision thereagainst is pending before the appropriate authority.

2. Hence the present writ petition seeking reliefs as under:-

> *"I. issue a writ of mandamus or any other appropriate writ(s), order(s) and direction(s) thereby quashing and setting aside the impugned order dated 07.03.2016 and dismissal order dated 18.02.2012 issued by respondent department.*
>
> *II. Issue a writ of certiorari for any other appropriate writ(s), order(s) and direction(s) thereby directing the respondents to reinstate the petitioner back into service with effect from his date of dismissal with all consequential benefits."*

3. Learned counsel for petitioner contended that as the petitioner was admittedly below 18 years of age at the time of incident, he was a 'juvenile' and the entire proceedings involving arrest and trial qua a juvenile like petitioner must be initiated and decided by the Juvenile Justice Board[2] under The Juvenile Justice (Care and Protection of Children) Act, 2000[3]. Thus, the proceedings against petitioner before any Court of law, as in the present case, barring the said Board are vitiated in law. Further, relying upon *Section 19* and *Section 21* of the Act, learned counsel also contended that there was no need for petitioner to disclose information regarding his childhood as there is a specific bar thereunder.

4. In support of the above contentions learned counsel for petitioner has placed reliance upon ***Mukesh Yadav Vs Union of India & Ors[4]., Amit Vs. Union of India& Ors.[5],*** and ***Jitender Vs Union of India & Ors.[6],*** to contend that similarly situated personnel(s) belonging to other paramilitary forces

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[2]Hereinafter referred as "**Board**"
[3]Hereinafter referred as "**Act**"
[4]2017 SCC OnLine Del 12581
[5] 2015 SCC OnLine Del 13129
[6] Writ Petition (Civil) 7034/2015 dated 31.08.2015 Delhi High Court[DB]

like the petitioner herein were given benefit of *Section 19* and *Section 21* of the Act and the respective termination orders in those cases were quashed and the respondents were directed to reinstate the petitioners therein.

5. Learned counsel for respondents on the other hand contended that at the time of filing his 'Attestation & Enrolment Form'[7], the petitioner had initially given false information as he did not disclose about the said FIR and its after effects and then gave an unsatisfactory response to the Show Cause Notice contrary to the factual position on ground as the investigation conducted by BSF revealed otherwise. Finding the same detrimental and finding the petitioner unlikely to become an efficient member of the Force, respondents dismissed him from service without pensionary benefits. Thereafter, the respondents clarified that both, appeal and revision petition of the petitioner, already stand dismissed.

6. Having perused the documents on record and heard the learned counsel for parties at length, it emerges that prior to joining BSF, i.e. while applying for the concerned post in BSF, in response to a specific query in the Form "*Have you ever been arrested, prosecuted, convicted, imprisoned, bound over, interned, externed or otherwise dealt with under any law in Force in India or Outside. If so State particulars?* " the petitioner wrote "*NO*" contained therein. Based on findings contrary thereto, the respondents issued a Show Cause Notice categorically stating the above, to which, once again the petitioner replied as under:

> "*I hereby submit that the facts like FIR registered against me in P.S. Pilua, my jail term and my bail from the court regarding my character verification, I am neither aware of any such fact nor I have done any such act. Sir, I have never been arrested nor I have ever been granted bail from the*

[7]Hereinafter referred as "**Form**"

> *court. Sir, I am unaware of any such FIR and incident. Therefore, at the time of recruitment, in enrolment form question no. 1 to 17, whatever informations I have furnished, are cent-percent true to my knowledge. Through these, it seems that either my neighbour or some other person has conspired to frame me.* "

7. The aforesaid was found untrue. So much so, the learned counsel for petitioner has not disputed about the FIR and has contended otherwise in view of the Act. The aforesaid shows that the petitioner has been giving false information since the very beginning, initially whence he was filling up the Form at the time of applying for the concerned post in BSF, when he was yet to commence his training and before joining the BSF and thereafter once again when he gave a reply to the Show Cause Notice after joining and sought protection from the BSF. The petitioner has been guilty of giving false information, contrary to the factual position and what was within his knowledge. This Court finds it extremely hard to believe that the petitioner was unaware of the FIR or the proceedings emanating therefrom, including the arrest and/or bail as the petitioner would certainly have been a party to all those at every stage. This does not behove good of any prudent civilian like, the petitioner, while filling up the Form while applying for a job in a coveted Force-BSF. This also does not behove good of any prudent Armed Forces personnel like the petitioner while replying to the Show Cause Notice when he was already a part of the coveted Force-BSF. Nobody, especially the petitioner, at any stage i.e., at the time of joining or after joining the Armed Forces can be allowed to make such mistake(s). The same are not only detrimental but also contrary to the expected norms. The phraseology used by petitioner in his reply dated 08.02.2012 is scathing and loaded with falsities. In view of the above, the petitioner is guilty of committing a

blunder, not once, but twice. Such act(s) are not pardonable in the Armed Forces.

8. Having said that, the position of law qua a '*juvenile*' is well laid out in the Act. The Act is a benevolent piece of legislation primarily enacted to do away with the stigma attached to a juvenile, who, unfortunately, prior to attaining the age of majority is guilty of committing an offence. The Act, in fact, gives a protection to a juvenile, who for reasons enumerated therein cannot be proceeded against and the disclosure thereof is not fatal. A reading of *Section 19(1)* of the Act bears out that the same is a safe-guarding provision which specifically enumerates that even if a juvenile, after committing any offence, has been held guilty and punished/arrested/convicted under any other law(s) by any Court of law, the same will be nugatory and have no-effect. So much so, *Section 19(2)* of the Act mandates the Board to remove the relevant records of such conviction at the relevant stage as stated as per the prescribed rules. Similarly, *Section 21* of the Act casts a prohibition of publication of details of a juvenile as no report of any kind of any inquiry regarding such juvenile, in conflict with law or one who is in need of care and protection under the Act is to be disclosed.

9. There is no gain saying qua the above law laid down in the aforesaid judgments cited by the learned counsel for petitioner. We, thus, need not dwell upon the same. In any event, the position of law enumerated hereinabove only solves the issue qua non-disclosure of pendency of FIR by petitioner in the Form. However, the Order dated 18.02.2012 was passed by the respondents after "*Considering the matter in its entirety… …*", which included the petitioner supplying information false to his own knowledge on two occasions. The disposal of belated appeal of the petitioner vide Order

dated 07.03.2016 by the respondents also reinforces the same as the said appeal was filed beyond the statutory limit of three months provided under *Rule 28A* of the BSF Rules, 1969, and hence, rejected as being grossly time barred.

10. The case of the respondents before this Court is qua non-disclosure and also qua supplying false information of the FIR by the petitioner. Though the petitioner has protection by virtue of the Act for the non-disclosure made by him but, in our view, he cannot claim any protection for supplying false information twice, as the petitioner on the second occasion had admittedly attained majority and was gainfully under the services of BSF. Without going into the merit or the status of the FIR, the petitioner was duty-bound to truthfully apprise the respondents about the actual true status thereof. Having not done so, the petitioner is grossly guilty of both withholding and for divulging wrong fact about the FIR on more than one occasion. Such a statement and the act(s) twice do not behove of a soldier, especially the one who is on the verge of joining BSF. The reliance upon the false information by the respondents while issuing the Show Cause Notice, while deciding the representation, the appeal and the review petition of the petitioner, including the pleadings before us, are correct and with basis. The above acts of the petitioner shows that it will be difficult for the respondents to exude confidence upon him as he is guilty of acting detrimental to the interest of respondents on the very threshold.

11. Based thereupon, the respondents rightly proceeded against the petitioner and rightfully passed the impugned Orders. Though the petitioner was a minor at the time of committing the act but he had attained the age of majority while he committed the wrongful acts of making false statements detailed hereinabove and that too when he was in the services of BSF, twice

over again. The petitioner was, thus, rightly held guilty of non-disclosure and wrong disclosure.

12. Considering the facts of the present petition, the legal position, since crystallised by the co-ordinate bench of this Court in ***Mukesh Yadav (supra), Amit (supra)and Jitender (supra)*** wherein it has been repeatedly held that a juvenile is entitled to the benefit of *Section 19* and *Section 21* of the Act and thus non-disclosure qua the pendency of an FIR is not fatal, cannot come to the aid of the petitioner as they have no application to the facts of the present case as the situation is totally different therefrom.

13. As such, in view of the facts and circumstances of the present case, we hereby hold that neither the Act nor settled position of law hereinabove are of any assistance to the petitioner as they are not applicable.

14. Consequently, the present writ petition is dismissed. The parties are left to bear their own costs.

(SAURABH BANERJEE)
(JUDGE)

(SURESH KUMAR KAIT)
(JUDGE)

NOVEMBER 02, 2022
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