

(2008) 05 DEL CK 0207

Delhi High Court

Case No: Writ Petition (C) No. 1396 of 2006

Akhilesh Pratap Singh

APPELLANT

Vs

Director General, ITBP

RESPONDENT

Date of Decision: May 22, 2008

Acts Referred:

- Penal Code, 1860 (IPC) - Section 307, 504, 506

Citation: (2008) 103 DRJ 433 : (2009) 1 ILR Delhi 157 : (2009) 3 SLJ 281

Hon'ble Judges: Sanjay Kishan Kaul, J; Mool Chand Garg, J

Bench: Division Bench

Advocate: Pradeep K. Gaur, for the Appellant; Sonia Mathur, for the Respondent

Final Decision: Allowed

Judgement

Sanjay Kishan Kaul, J.

Rule DB.

2. At the request of the learned Counsels for the parties, the petition is taken up for final disposal.

3. The petitioner joined the services of the ITBP as a Constable/GD on 19.11.2002 and is aggrieved by the action of the respondent in removing him from service on the ground that he had given false information at the stage of his enrollment while filling up the character verification form on 14.12.2002.

4. The petitioner was a witness in a murder case against one Shri Harkesh Bahadur Singh for murder of the Uncle of the petitioner. Shri Harkesh Bahadur Singh made a complaint on 30.10.2002 to the effect that there was a murder attempt on him by the petitioner. On the said complaint being made, FIR No. 315/2002 under Sections 307/504/506 of the IPC was registered at P.S. Lai Gary, District Pratap Garh, U.P. The IO was deputed to investigate the matter and on investigation found, after recording of statements of witnesses at the place of occurrence, that it is the

complainant himself who had fired on himself and got himself injured to get the complaint against the petitioner registered with the object of pressurizing the petitioner not to make the statement in the murder case registered against the complainant. The closure report was, thus, filed on the same date.

5. The complainant, not being satisfied by the closure report made a representation to the SP for further investigation and in pursuance to the said request further investigation was made. On further investigation it was found that the petitioner had been selected in the ITBP and his character verification was pending and thus the complainant was bent upon pressurizing the petitioner and his family members to somehow not make statements against him in order to avoid his conviction. Thus, a fraudulent, fabricated and manipulated injury was made by the complainant on himself to register the criminal case and the 10 had properly investigated the case. This report was submitted by the Inspector-in-Charge of the police station.

6. The aforesaid, thus, put an end to the matter insofar as the petitioner is concerned and the petitioner got recruited on 19.11.2002 thereafter and filled in the character verification form on 14.12.2002. The petitioner naturally answered in the negative to the following questions:

12. (a) Have you ever been arrested, prosecuted, kept under detention or bound down/fined, convicted by a court of law for any offence or debarred/disqualified by any Public Service Commission from appearing at its examination/selections or debarred from taking any examination/rusticated by any University or any other educational authority/Institution?

(b) Is any case pending against you in any court of law, University or any other educational authority/Institution at the time of filling up this Verification Roll.

7. The complainant, however, filed a protest petition before the court of CJM against the closure report and in terms of an order dated 26.2.2003, the CJM deemed it appropriate to issue summons to the petitioner as prima facie he found that there was material to carry out a trial. The next date fixed was 16.6.2003 when the petitioner appeared and after trial the petitioner has been acquitted in terms of order dated 15.12.2006.

8. The complainant Harkesh Bahadur Singh not only filed the protest petition but made a complaint to the ITBP that there was a criminal case pending against the petitioner and the respondents deemed it appropriate to act in pursuance to the complaint. A show cause notice dated 31.3.2004 was served on the petitioner to which the petitioner filed a reply. Another show cause notice dated 20.5.2004 was issued to the petitioner to file the relevant documents and thereafter vide order dated 12.6.2004 the services of the petitioner had been terminated on the ground that he had wrongly answered in the negative against the aforesaid columns/questions. The petitioner filed a statutory appeal which has been rejected by the appellate authority on 6.9.2005. The petitioner has thereafter approached

this Court.

9. We have heard learned Counsels for the parties. There is no dispute about the proposition that if a false information is given by a candidate like the petitioner the respondents would be well within their rights to terminate the services of such a person. Learned Counsel for the respondent in this behalf referred to the judgements of the Supreme Court in [Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav](#), a Division Bench judgement of this Court in WP(C) No. 5213/2000 titled Gagan Singh v. Director General, CRPF and Ors. decided on 28.1.2008 and another judgement of a Division Bench of this Court in WP(C) No. 1446/2003 titled Harnarain v. UOI decided on 12.12.2007. In fact, no judgements were really required for the said proposition as the proposition itself is not disputed. Learned Counsel also sought to emphasise that the subsequent acquittal of the petitioner would not justify a false declaration being made. Once again there is no dispute about this proposition.

10. The only question to be considered is as to whether on the date when the petitioner filled the character verification form on 14.12.2002 it can be said that the petitioner had furnished wrong information against the columns/questions mentioned aforesaid. The petitioner has never been arrested, kept under detention or fined as on that date. No case was pending in any court of law against the petitioner nor was the petitioner prosecuted. All that has happened was that on a false complaint being made by Shri Harkesh Bahadur Singh, the FIR was registered (which naturally had to be so registered) and a closure report was filed on the same date on 30.10.2002. The request for further investigation made by the complainant to the SP also resulted in reaffirmation of the closure report on 14.11.2002. Thus, on the date of filling of the form nothing was pending against the petitioner. The petitioner would be unaware of the FIR registered against him and in any case the FIR is nothing else but a statement of fact on the allegations made by none other than the person who apprehended deposition against him in a murder case. On investigation the case was found to be false.

11. It is only when the closure report was filed before the court of CJM and a protest petition was filed by the petitioner that the CJM in his wisdom decided to issue summons on 26.2.2003. The said date is after the form was filled in. The occasion for the petitioner to come to know of the pendency of any case against him only arose when he received the summons issued by the CJM on 26.2.2003 returnable on 16.6.2003.

12. In view of the aforesaid it can hardly be said that there was any case pending against the petitioner or that he made any false declaration which would give occasion to the respondents to terminate his services.

13. No doubt the subsequent acquittal of the petitioner would not justify a false declaration being made but we are constrained to note that the complainant

(accused in a murder case) has succeeded in his endeavour, thanks to the respondents. He first filed a false complaint and kept on prosecuting the false complaint. The report of the In-charge of the police station on re-investigation shows that the object was to see that the petitioner did not get recruited in the ITBP in case he insisted on being a witness in a murder case against the complainant. It is the Uncle of the petitioner who had been murdered. The given facts of the case which were brought to the notice of the authorities of the respondents should have made them even more cautious while taking such a decision but the respondents threw the caution to the wind while deciding to terminate the services of the petitioner.

14. In an age where endeavour is made for witness protection programme witnesses like the petitioner have been made to suffer by the conduct of the respondents.

15. The petitioner has unnecessarily suffered on account of the illegal and arbitrary action of the respondents and is liable to be restored to service with all consequential benefits.

16. A writ of mandamus is issued quashing the orders dated 12.6.2004 and 6.9.2005 and the petitioner is directed to be restored to the service with all consequential benefits including back wages within a period of two (2) months from today.

17. In the given facts of the case we also consider it appropriate to impose costs on the respondents of Rs. 5,000.00.

18. Petition stands allowed in the aforesaid terms.

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19. In view of the orders passed in the petition, the applications do not survive for consideration and are accordingly disposed of.