

CASE NO.:
Appeal (civil) 3044 of 2003

PETITIONER:
Ram Saran

RESPONDENT:
I.G. of police, CRPF and Ors.

DATE OF JUDGMENT: 02/02/2006

BENCH:
Arijit Pasayat & Arun Kumar

JUDGMENT:
JUDGMENT

ARIJIT PASAYAT, J.

Appellant calls in question legality of the judgment rendered by a Division Bench of the Bombay High Court, Nagpur Bench, Nagpur, dismissing the writ petition filed by the petitioner under Article 226 of the Constitution of India, 1950 (in short 'the Constitution').

Background facts in a nutshell are as follows:-

The appellant applied for appointment as a Constable in Central Reserve Police Force (in short 'CRPF') and appeared for recruitment test on 1.5.1951. In support of his claim of age he produced a certificate where his date of birth was stated to be 1.1.1951. But in reality as was revealed later, his date of birth was 1.7.1951. Therefore, he was not eligible to be appointed as he was less than 18 years of age. He undisputedly rendered about 27 years of service. But on the basis of certain allegations he faced departmental inquiry. Article of charge reads as follows:-

"ARTICLE - 1

That the said HC No.690342131 HC Ram Saran of C/45 Bn CRPF has committed an offence on his part that he furnished a false information about his date of birth by making alteration in his school certificate to secure appointment as constable for which he was not eligible in terms of recruitment rules which is punishable under section 11(1) of CRPF Act, 1949 read with Rule 11(2) of CCS (CCA) Rule 1965."

The Deputy Commandant 45/BN. CRPF was appointed as Inquiry Officer to conduct the Departmental Enquiry. After enquiry the Inquiry Officer submitted the inquiry report. The Commandant (S.G.), the Disciplinary Authority after considering the report was of the view that the charge official deserves stringent punishment. But keeping in view his long service of 28 years with good grading for the past 10 years, he was inclined to take a lenient view and in purported exercise of power under Section 11(1) of the Central Reserve Police Force Act, 1949 (in short the 'Act') and Rule 27 of the Central Reserve Police Force Rules, 1955 (in short the 'Rules') imposed penalty of reduction to the rank of NK (GD) for a period of one year from 10.9.1997 to 9.9.1998 without cumulative effect. The matter was placed before the Deputy Inspector General of Police, C.R.P.F., Nagpur who by order dated 16.1.1998 differed from the proposed punishment and directed dismissal from service. Accordingly, notice was issued to the appellant. After considering the reply the punishment awarded was dismissal from service. The said order was challenged in appeal before the Departmental Appellate Authority which was dismissed. Thereafter, the writ petition was filed, which as noted above was dismissed.

The High Court noted that under Rule 29(d) of the Rules the concerned authority had power to enhance the punishment. Since the appellant had entered into service on the basis of false date of birth, the writ petition was not entertained and it was observed that the appellant on removal from service was not entitled to gratuity and other such benefits.

In support of the appeal learned counsel for the appellant urged that the appellant poor youngster belonging to remote rural place had with a view to obtain an employment submitted a certificate. The age of appellant then was only two months short of the requisite age. After serving for nearly 28 years when he was about to take voluntarily retirement from service, the proceedings were initiated. The order of removal of service is very bad and if the same is maintained he would not be entitled to any gratuity or pension.

In response, learned counsel for the respondents submitted that in a disciplined force there was no scope for taking lenient view for a person who obtained employment on the basis of forged document. It was pointed out that on the basis of binding instructions contained in Government of India, Department of Personnel and Training, OM No.11012/7/91 Estt. (A) dated 19.5.93 (G.O. No. 29/93) dismissal from service was the only punishment imposable. In fact, the DIG, CRPF had referred to said instructions while differing from the punishment proposed. Rule 24 of the CCS (Pension) Rules reads as follows:-

"24. Forfeiture of service on dismissal or removal:

Dismissal or removal of a Government servant from a service or post entails forfeiture of his past service."

Therefore, in case of removal from service, the entitlement of pension is statutorily taken away. The only other plea advanced by learned counsel for the appellant seems the completion of 27 years of service. It was pointed out that the punishment was disproportionate to the alleged infraction.

The Courts should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in (CA) Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223: [1947] 2 All ER 680(CA) commonly known as Wednesbury's case the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision. (See: V. Ramana v. A.P. SRTC and Ors., [2005] 7 SCC 338).

In R. Vishwanatha Pillai v. State of Kerala and Ors., [2004] 2 SCC 105 it was observed as follows:

"It was then contended by Shri Ranjit Kumar, learned Senior Counsel for the appellant that since the appellant has rendered about 27 years of service, the order of dismissal be substituted by an order of compulsory retirement or removal from service to protect the pensionary benefits of the appellant. We do not find any substance in this submission as well. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. The appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eye of the law. The right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on a false caste certificate. A person who entered the service by producing a

false caste certificate and obtained appointment for the post meant for a Scheduled Caste, thus depriving a genuine Scheduled Caste candidate of appointment to that post, does not deserve any sympathy or indulgence of this Court. A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practising fraud."

Though the case related to a false caste certificate, the logic indicated clearly applies to the present case.

This is a case which does not deserve any leniency otherwise it would be giving premium to a person who admittedly committed forgery. In the instruction (G.O. No.29/93), it has been provided that whenever it is found that a government servant who was not qualified or eligible in terms of the recruitment rules etc. for initial recruitment in service or had furnished false information or produced a false certificate in order to secure appointment should not be retained in service. After inquiry as provided in Rule 14 of the CCS(CCA) Rules, 1965 if the charges are proved, the government servant should be removed or dismissed from service and under no circumstances any other penalty should be imposed.

In that view of the matter the appeal is without merit and is dismissed but in the circumstances without any order as to costs.