

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 3225 of 2016

**Sankar Mandal
Versus
Union of India & Ors.**

For the petitioner : Mr. Achin Kumar Majumder

For the respondents : Mr. Ajit Choubey

Heard on : 24th November, 2023

Judgment on : 5th February, 2024.

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, *inter alia*, challenging the order dated 5th January, 2016, whereby, the appointment of the petitioner for the post of Constable in the Railway Protection Special Force had been forfeited, *inter alia*, on the ground of non-disclosure of a pending police case in the Attestation Form dated 17th June, 2014. The petitioner had participated in a recruitment process vide Employment Notice No. 01/2011, issued by the Railway Protection Force, for the post of Constable. Having become successful, the petitioner was called for training and was required to report to the

SSB ATC Debandra nagar, Sonitpur, Assam, on 1st November, 2014, along with other successful candidates. It is the petitioner's case that he had successfully completed his training and was posted at the 8th Battalion, Railway Protection Special Force CLW at Chittranjan where he also successfully completed his practical training. Unfortunately for the petitioner, he received a discharge letter dated 5th January, 2016, thereby, discharging him from enlistment for the post of Constable in Railway Protection Special Force, *inter alia*, on the ground of providing false declaration in the Attestation Form dated 17th June, 2014. Challenging the order of discharge the present writ petition has been filed on 22nd February, 2016.

2. It is the petitioner's case that the respondents had mechanically dismissed the petitioner from service without taking note of the order of acquittal passed in the criminal case wherein the petitioner was a co-accused.
3. Mr. Majumder, learned advocate representing the petitioner, by drawing attention of this Court to the judgment and order dated 5th September, 2014, passed by the Additional Chief Judicial Magistrate, Baruipur, submits that since, the prosecution had failed to prove that the accused persons had committed any offence, the learned Additional Chief Judicial Magistrate was, *inter alia*, pleased to conclude that the accused persons are not guilty of the charges levelled against them. The petitioner was only a co-accused in

connection with a false complaint lodged against the petitioner relating to a dispute with his neighbor and on the basis of the that the aforesaid criminal case was proceeded with.

4. By referring to the charges it is submitted that the charges are of trivial nature. Admittedly, none of the charges could be proved. The petitioner had, in effect, been honourably acquitted. The discharge/dismissal of service of the petitioner amounts to violation of Articles 14 and 19(1)(g) of the Constitution of India. As such, the suppression and/or misrepresentation complained of against the petitioner, should be treated to be a mere omission and nothing more. In support of the aforesaid contention, he has relied on the following judgments: -

- (i) An unreported judgment delivered by a Coordinate Bench of this Court in the case of ***Sri Sukdeb Mandal v. Union of India & Ors.***, in **WPA No. 28149 of 2015**;
- (ii) The unreported judgment delivered by a Division Bench of this Court in **FMA No. 1434 of 2022** arising out of **WPA No. 28149 of 2015** in the case of ***Union of India & Ors. v. Sri Sukdeb Mandal***;
- (iii) ***Avtar Singh v. Union of India & Ors.***, reported in **(2016) 8 SCC 471**;
- (iv) ***Mohammed Imran v. State of Maharashtra & Ors.***, reported in **AIR 2018 SC 4895**;

(v) ***Pawan Kumar v. Union of India & Anr.***, reported in **2022 SCC OnLine SC 532.**

(vi) ***State of West Bengal & Ors. v. Mitul Kumar Jana***, reported in **2023 SCC OnLine SC 1070.**

5. Having regard to the aforesaid, it is submitted that the present writ petition should be allowed and the respondents should be directed to reinstate the petitioner in service by setting aside the order of discharge.
6. *Per contra*, Mr. Ghosh, learned advocate, appearing for the respondents, by placing before this Court the affidavit in opposition, submits that this is a case of deliberate and willful suppression of fact. The petitioner as on the date of filling up the Attestation Form was conscious and was aware that a criminal proceeding was pending. Notwithstanding the knowledge of such criminal case the petitioner had deliberately suppressed the same in the attestation form. The very act of suppression of the criminal case pending against the petitioner while filling up the Attestation Form amounts to furnishing false declaration and misrepresentation. The Attestation Form specifically provided for giving a declaration as to criminal antecedents of the candidate. The petitioner deliberately suppressed and misrepresented information by not declaring the criminal case pending against him. He submits that dishonesty should not be permitted to bear the fruit and benefit to those persons who have misrepresented themselves. In support of his afford contention, he

has placed reliance on the case of ***Devendra Kumar v. state of Uttaranchal***, reported in **(2013) 9 SCC 363**.

7. By referring to Rule 52.2 and 67.2 of the Railway Protection Force Rules, 1987 (hereinafter referred to as the “said Rules”), he submits that on selection of a recruit, the authorities are empowered to verify his candidature. It is while carrying out such verification the respondents had been able to ascertain the deliberate suppression made by the petitioner. As such, on the basis of the aforesaid and in terms of the Railway Board’s letter dated 16th November, 2005 which declares that a false declaration in the Attestation Form shall amount to unfitness of candidate for appointment in the Force, had discharged the petitioner in terms of Rule 52.2 and 67.2 of the said Rules. There is no irregularity on the part of the authorities in that regard.
8. While distinguishing the judgments relied on by Mr. Majumder, he submits that in none of the cases a person who is charged with a heinous or a serious offence has been let off. Admittedly, in the case of ***Avtar Singh*** (*supra*), the Hon’ble Supreme Court in no uncertain terms had recorded that even if a person is acquitted in a case which involves moral turpitude or offence of heinous/serious nature, it is still open to the authorities to take appropriate decision as regards continuance of such employee.
9. Having regard to the aforesaid, it was well within the domain of the employer to consider whether or not to take the petitioner in

employment. The respondents cannot be faulted for having discharged the petitioner from service.

10. In any event, it is submitted that the judgments relied on by Mr. Majumder in case of **Sri Sukdeb Mandal** (*supra*) are otherwise distinguishable on facts. Not only the allegations in the criminal case were found to be trivial in nature but in the aforesaid case the respondents were primarily called upon to decide the suitability of the candidate in the light of the decision rendered in the case of **Avtar Singh** (*supra*). He, however, submits that having regard to the aforesaid the case of the petitioner may also be remanded to the authorities for a decision in the matter in the light of the judgment delivered in the case of **Avtar Singh** (*supra*).
11. Heard the learned advocates appearing for the respective parties and considered the materials on record. As it is apparent from the sequence of events narrated hereinabove, the petitioner was discharged vide a letter dated 5th January, 2016 on account of non-disclosure of a pending police case in the attestation form dated 17th June, 2014. Since, according to the respondents the aforesaid amounted to a false declaration, the competent authority in terms of Rule 52.2 and 67.2 of the said Rules, had discharged the petitioner from enlistment for the post of constable in RPSF, with immediate effect. Records, however, reveal that the writ petitioner was charged under Section 147, 447, 323, 324, 427 and 506 of the Indian Penal Code, 1860 in connection with a complaint case

wherein, the writ petitioner was a co-accused. In connection with the aforesaid, a G.R case no. 3353 of 2011 was started and a trial was conducted by the Court of the Additional Chief Judicial Magistrate, Baruipur. By a judgment and order dated 5th September, 2014, by holding that the prosecution had failed to establish that the accused persons are guilty of the charges leveled against them, acquitted the accused persons and discharged them from bail bonds by setting them at liberty. Admittedly, as on the date the petitioner was discharged by an office order dated 5th January, 2016, the petitioner had already been acquitted. Unfortunately, the factum of the acquittal of petitioner was not taken into consideration by respondents while issuing the order of discharge. It is true, that an employer while passing an order of discharge/termination from service or cancelling the candidature for giving false information may take into consideration the criminal antecedents and has a right to consider continuance of such candidate. The employer cannot be compelled to appoint such a candidate with criminal antecedents. It would, however, appear from the judgment delivered by the Hon'ble Supreme Court in the case of **Avtar Singh** (supra) that their lordships by analyzing various decisions on the subject as to whether the employer is bound to consider the factum of acquittal, notwithstanding pendency of a criminal proceedings at the time of verification, *inter alia*, including suppression of such information had been pleased to

summarize the discussions in paragraph 38 of such judgment, which is extracted hereinbelow:

***“38.** We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:*

***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 of 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 filling 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 employee.*

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.*

38.5. *In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.*

38.6. *In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.*

38.7. *In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.*

38.8. *If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.*

38.9. *In case the employee is confirmed in service, holding departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.*

38.10. *For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.*

38.11. *Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.”*

12. I have also noticed that in the case of **Pawan Kumar** (*supra*) that the Hon’ble Supreme Court in paragraph 13 thereof, had categorically come to a finding that mere suppression of material or false information in a given case does not authorize the employer to arbitrarily discharge/terminate the employee from service. Similar view has been taken in the case of **Mitul Kumar Jana** (*supra*). The Hon’ble Supreme Court in the case of **Mohammed Imran** (*supra*) had reiterated by placing reliance on the case of **Avtar Singh** (*supra*) holding that although, empanelment creates no right to appointment, there cannot be any arbitrary denial after

empanelment as well. The Coordinate Bench of this Court in the case of **Sri Sukdeb Mondal** (*supra*) had in similar set of facts interfered with the order of termination/discharge of the employee concern from service and although, an appeal was preferred, the Division Bench of this Court in the case of **Union of India & Ors. v. Sri Sukdeb Mondal** (*supra*) had in fact held that the Learned Single Judge had rightly directed reinstatement of the employee in service in the post of constable at the stage from where he was dismissed/discharge by his employer and had consequentially affirmed the said direction.

13. In the present case, having regard to the aforesaid, I find that the order of discharge was passed by the competent authority by overlooking the order of acquittal of the petitioner. It may however, be noticed that when the order of discharge was passed the authority was not aware of the judgments delivered in the case of **Avtar Singh** (*supra*), the case of **Pawan Kumar** (*supra*) and the other judgments delivered by this Court. In so far as the judgement delivered in the case of **Devendra Kumar** (*supra*) is concerned, factually, the said judgement is distinguishable. Further, the judgement delivered in the case of **Avtar Singh** (*supra*) takes into consideration all eventualities, including the constitutional goal and the chance of reformation afforded to young offenders in suitable cases and the objective determination for continuation of

employment to suitable candidates and the yardstick applicable considering the nature of offence and the sensitivity of the post.

14. Taking note of the aforesaid and further having noticed that apart from the failure of the petitioner to disclose the relevant information in its verification form as regards pendency of a criminal case wherein he was later acquitted, there is no other conduct for which the petitioner was discharged. **In my view the aforesaid non-disclosure of information cannot form the sole ground for the competent authority of the respondents, by citing Rules 52.2 and 67.2 of the said Rules, to discharge the petitioner by the stroke of a pen.** It may be noted that the petitioner was not charged of any heinous crime. All the charges, appears to be trivial. This apart nothing could be established by the prosecution. In view thereof, I have no doubt in my mind that the order of discharge cannot be sustained, however, since the ultimate consideration vests with the employer though, such decision requires to be taken judiciously, I direct the respondent no. 2, to review the aforesaid decision of discharge in the light of the observation made herein and to reinstate the petitioner. Upon review and on reinstatement his absence from duty shall be regularized as extraordinary leave without break in service. However, the question of back wages shall be considered by the respondents in accordance with law subject to the petitioner furnishing an affidavit that he had remained unemployed during the above period. The aforesaid decision must

be taken by the respondent no. 2 within a period of four weeks from the date of communication of this order and the same must be communicated to the petitioner by passing a reasoned order.

15. With above observation/direction, the writ petition stands disposed of.

16. There shall be no order as to costs.

17. Urgent Photostat certified copy of this order, if applied for, be made available to the parties on priority basis upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)