

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice PARTHA SARATHI SEN

WPA 4419 of 2019

Ram Asheesh Yadav.

-Vs-

Union of India & Ors.

For the Petitioner: Mr. Sanjoy Mukherjee, Adv.

For the respondents: Mr. Ram Chandra Agarwal, Adv.

Hearing concluded on: 19.03.2024.

Judgment on: 27.03.2024.

PARTHA SARATHI SEN, J. :-

1. By filing the instant writ petition, the writ petitioner has prayed for quashing of the Discharge Order dated 13.04.2018 as issued by the respondent no.2/ authority under cover of its letter dated 13.04.2018.

2. For effective adjudication of the instant writ petition the facts leading to filing of the instant writ petition is required to be dealt with in a nutshell.

3. On 09.10.2014 the writ petitioner was provisionally selected as constable in the RPF. He was asked for attending training and at that time he was further asked to bring an affidavit as per proforma enclosed with such call letter. The writ petitioner duly sworn such affidavit and furnished the same with respondents/authorities. The petitioner had also

furnished an attestation form bearing some questionnaires with the respondents/authorities as per rule.

4. In course of time a report was received by the respondents/authorities from the District Magistrate, Gorokpur from which it revealed that as against the writ petitioner one criminal case bearing no.1 of 2011 under Sections 341,504 and 506 IPC was registered. However, the writ petitioner was subsequently discharged from the said criminal case. The respondents/authorities found that the writ petitioner had furnished false information and/or suppressed factual information both in the attestation form as well as in the affidavit and thus found it fit to discharge him from his service and accordingly, the writ petitioner was discharged by an order dated 31.07.2015 as issued by the I.G-cum-Chief Secretary-cum- Commissioner/RPF South-Eastern Railways, Gardenreach, Kolkata.

5. The petitioner carried the matter in a writ petition before the Allahabad High Court and by an order dated 08.01.2018 the said writ petition was allowed and the Discharge Order dated 31.07.2015 was set aside and the High Court of Allahabad directed the respondents/authorities to reconsider the matter and thereafter to pass a fresh appropriate order after giving proper opportunity of hearing to the writ petitioner keeping in mind the observations of the Supreme Court in the reported decision of ***Avtar Singh vs. Union of India and Ors.*** reported in **2016 (8) SCC 471**. As discussed above the respondent no.2/authority reconsidered the matter afresh in the light of the

observation made in the reported decision of **Avtar Singh (supra)** and thus passed the order of Discharge dated 13.04.2018 which has been challenged in this writ petition.

6. In course of hearing Mr. Mukherjee, learned counsel for the writ petitioner at the very outset draws attention of this Court to the affidavit as sworn by the writ petitioner and as has been submitted by the writ petitioner with the respondents/authorities. Attention of this Court is also drawn to the copy of the judgement as passed in connection with Case no.8 of 2011 arising out of Crime no. 01 of 2011 by the learned ACJM, Gorokpur whereby and whereunder the present writ petitioner along with the other co-accused persons were discharged from the offences punishable under Sections 341/504/506 IPC. Drawing attention to the reasoned order as passed by the respondent no.2/authority it is contended that in the attestation form the petitioner had duly answered to the questionnaires in respect of his character and antecedents and even then the respondents/authorities have found that the answers as given by the writ petitioner is not correct and thus wrongly held that such wrong answers as alleged to have been given by the writ petitioner tantamounts to furnishing wrong information which according to the respondents is a disqualification for the writ petitioner to continue with his service and accordingly the said Discharge Order has been passed.

7. In course of his submission Mr. Mukherjee, further contended that because of his rural background the petitioner was not aware of the true implication of the affidavit and thus inadvertently furnished the

information which is apparently not correct. It is further submitted by Mr. Mukherjee that on account of lack of sufficient education the petitioner had furnished some information in respect of the questionnaires as available in the attestation form but later it was detected that out of the said answers two answers are not appropriate which according to Mr. Mukherjee does not tantamount to material suppression as has been mentioned in the said reasoned order.

8. It is further argued by Mr. Mukherjee, learned advocate of the writ petitioner that the writ petitioner was involved in a criminal case on account of a village dispute and the offences with which he was charged are minor offences which involves no ingredients of moral turpitude. It is further submitted by Mr. Mukherjee that the post in which the writ petitioner was selected is the lowest grade of the RPF and by no stretch of imagination it can be said that the said post is very much sensitive and thus for furnishing the alleged wrong and/or false informations it cannot be held that the writ petitioner is not at all fit for the said post.

9. Mr. Mukherjee while drawing the attention of this Court to the reported decision of ***Avtar Singh (supra)*** contended that though the Allahabad High Court directed the respondents/authorities to pass a reasoned order in the light of the observation of the Supreme Court in the reported decision of ***Avtar Singh (supra)*** but in fact the respondents/authorities have failed to appreciate the case of the writ petitioner in the light of the said reported decision. While placing reliance upon another reported decision namely; ***State of West Bengal Vs. Mitul***

Kumar Jana reported in **(2023) SCC Online (SC) 1070** Mr. Mukherjee, learned advocate for the writ petitioner contended that the respondents/authorities have failed to visualize that the writ petitioner has got no actual knowledge with regard to the pendency of a criminal case as against him for which he has mistakenly furnished some wrong information which ought to have been ignored by the respondents/authorities in view of the dictum of the Supreme Court in the reported decision of **Mitual Kumar Jana (supra)**. Mr. Mukherjee also places his reliance upon a judgement dated 06.09.2022 as passed by a Co-ordinate Bench of this Court in WPA 28149 of 2019.

10. Per contra, Mr. Agarwal, learned advocate for the respondents in course of his submission draws attention of this Court to paragraph 5 of the writ petition. It is contended by him that the writ petitioner is not only found to be guilty for furnishing wrong information before the respondents/authorities but also furnished wrong information before this Court with regard to his alleged date of knowledge regarding pendency of a criminal case as against him. It is further argued by Mr. Agarwal, learned advocate for the respondents that from the Annexure P1 of the writ petition it would reveal that the appointment of the writ petitioner in the post of constable was purely provisional and the same was subject to satisfactory police verification report. Drawing attention to the internal page of the reasoned order dated 13.04.2018 it is argued by Mr. Agarwal, learned advocate for the respondents that from the report of the District Magistrate, Gorokpur as received by the respondents/authorities it

reveals that prior to joining in the said service the writ petitioner was involved in a criminal proceeding under Sections 341/504/506 IPC in which he obtained bail on 27.01.2011 and therefore the petitioner was supposed to give due information with regard to his alleged involvement in the said criminal proceeding and in not doing so he has violated the condition of his provisional appointment and therefore the respondents/authorities are perfectly justified in passing the said Discharge Order.

11. It is further argued by Mr. Agarwal that furnishing of wrong information in the attestation form which is printed in both English and Hindi and swearing of false affidavit themselves show deliberate suppression of material facts at the instance of the writ petitioner which raises a serious doubt with regard to the honesty and integrity of the writ petitioner. It is further argued on behalf of the respondents that since the post of constable in RPF is very sensitive, it is expected that the candidates who are selected for the post must possess a good moral character which the petitioner is found to be lacking for which no leniency should be shown to him. Mr. Agarwal thus submits that it is a fit case for dismissal of the instant writ petition.

12. This Court has meticulously gone through the entire materials as placed before this Court. This Court has also considered the rival submissions as made at the Bar. This Court has also perused the reported decisions as cited from the side of the appellant and the respondents. This Court has also perused the photocopy of the affidavit

dated 21.10.2014 and the photocopy of the attestation form dated 24.05.2014 as executed by the writ petitioner as have been handed over by the learned advocates for the parties in course of hearing.

13. For effective adjudication of the instant writ petition this Court proposes to have a look to the affidavit as sworn by the writ petitioner on 21.10.2014 and the relevant portion of such affidavit is reproduced hereinbelow in verbatim:-

“ That I have never been arrested and/or prosecuted kept under detention or detention or fined /convicted by any court of law for any offence or debarred or disqualified by any Railway recruitment Board or any Recruitment Board/Commission of the Govt. of India or of any State of India.”

14. Since it has been alleged that the writ petitioner has also furnished incorrect informations in respect of the questionnaires the relevant part of such attestation form is also reproduced hereinbelow in verbatim:-

“

<i>a. Have you ever been arrested?</i>	<i>No</i>
<i>b. Have you ever been prosecuted?</i>	<i>No.</i>
<i>c. Have you ever been kept under detention?</i>	<i>No</i>
<i>d. Have you ever been fined?</i>	<i>No</i>
<i>e. Have you ever been convicted by a court of law for any offence?</i>	<i>No</i>
<i>f. Have you ever been debarred from any examination or rusticated by any other educational authority/Institution?</i>	<i>No</i>
<i>g. Have you ever been debarred from any examination or rusticated by a University or any other educational authority/Institution?</i>	<i>No</i>

<i>h. Have you ever been debarred/disqualified by any railway or Public Service Commission from appearing at its examination/selection?</i>	No
<i>i. Is any case pending against you in any court of law at the time of filing up this Attestation Form?</i>	No
<i>j. Is any case pending against you in any University or any other educational authority/Institution at the time of filling up this Attestation Form?</i>	No

15. At this juncture this Court considers that some dates are very much relevant which are available from the materials as placed before this Court by way of exchange of affidavit.

Dates	Events
27.01.2011	Petitioner was enlarged on bail in Criminal Case no.01 of 2011 under Sections 341/504/506 IPC.
03.02.2011	The petitioner was examined by the I.O in connection with Criminal Case no.01 of 2011
24.05.2014	The attestation form was filled up by the petitioner.
28.05.2014	The petitioner claimed that he for the first time came to learn with regard to the pendency of the said Criminal Case.
21.10.2024	The alleged false affidavit was sworn by the petitioner.
29.05.2015	The petitioner was discharged in connection with Criminal Case.

16. If the chronology of the events as shown in the aforementioned table are compared with the relevant portion of the aforementioned affidavit and the answers given by the writ petitioner in respect of the

aforementioned questionnaires it would reveal that on 27.01.2011 the writ petitioner along with other co-accused persons were taken into judicial custody and subsequently he was enlarged on bail along with other co-accused persons. It reveals further that on 03.02.2011 the writ petitioner was examined by the I.O in connection with the said criminal case which is evident from the report received from the District Magistrate, Gorokpur by the respondents/authorities and therefore the petitioner's claim that on 28.05.2004 he for the first time came to learn regarding the pendency of a Criminal Case against him is found to be incorrect and this Court has got no hesitation to hold that the writ petitioner has not only sworn a false affidavit on 21.10.2014 but also has not furnished correct information before this Court while filing the instant writ petition.

17. This Court has also noticed that in the attestation form dated 24.05.2014 the writ petitioner has furnished two wrong informations i.e. in respect of question no.12 I (B) and 12 I (i) though it was very much within the knowledge of the writ petitioner that he has been prosecuted in connection with aforementioned criminal case and on the day of submission of attestation form i.e on 24.05.2014 the said Criminal Case was pending as against him. It is worth to mention here that the aforementioned attestation form was printed both in English and Hindi and therefore the writ petitioner's claim that he had furnished some wrong information on account of his rural background and lack of higher education does not appear to be much convincing.

18. Since learned advocate for the writ petitioner and learned advocates for the opposite parties in connection of their respective arguments placed their reliance upon the reported decision of **Avtar Singh(supra)** and since as per direction of the Allahabad High Court the Discharge Order has been passed by the respondent no.2/authority in the light of the reported decision of **Avtar Singh (supra)** this Court also proposes to have a glance to the said reported decision. In considered view of this Court some paragraphs of the reported decision of **Avtar Singh (supra)** are found to be very much vital for effective disposal of the instant writ petition and those are reproduced hereinbelow in verbatim:-

“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.....

38.4.....

38.4.1.....

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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 suggesstio falsi**, knowledge of the fact must be attributed to him.*

39.....”

19. Keeping in mind the aforementioned proposition of law as discussed (supra) this Court shall make an endeavour to come to a logical finding as to whether the respondents/authorities are at all justified in discharging the present writ petitioner from his service and as to whether the wrong information as alleged to have been supplied by the writ petitioner either by way of furnishing an affidavit or by way of giving answers to the questionnaires can be considered as willful suppression of material facts which affects the suitability of the writ petitioner for the post in which he was selected.

20. From the discussion as made (supra) it appears that the writ petitioner has knowingly suppressed the information regarding the pendency of a criminal case against him not only in the affidavit dated

21.10.2014 but also in the attestation form dated 25.04.2014. Though it has been argued on behalf of the writ petitioner that on 28.05.2014 the petitioner for the first time came to learn about the pendency of the aforementioned criminal case but from the materials as placed before this Court it has been established that such averment of the writ petitioner is contrary to the truth since on 27.01.2011 he was taken into custody and subsequently he was enlarged in bail in connection with the aforementioned criminal case.

21. An argument was advanced on behalf of the writ petitioner that since the post in which the writ petitioner was selected is not at all sensitive, the respondents/authorities ought to have been lenient in this regard since the writ petitioner was not at all involved in a criminal case involving moral turpitude and that the writ petitioner was subsequently discharged from the said criminal case.

22. In considered view of this Court the argument of Mr. Mukherjee, learned advocate for the writ petitioner is found to be not convincing since the post of constable in RPF is very much sensitive as a constable in discharge of his duty is duty bound to keep constant vigil for protection of the properties of the Railway Authorities as well as for protection of the lives of the passengers on board. Since a constable of RPF belongs to a uniformed service it is expected that each candidate selected for the post must be free from all vices, possesses sense of sufficient responsibility, truthful, dutiful, vigilant as well as honest. From the conduct of the writ petitioner as available from the record it reveals that while entering into

service and while remaining in service the writ petitioner has practiced fraud upon the respondents/authorities by swearing false affidavit and by furnishing wrong information and thereby suppressed material information simply for securing a job.

23. This Court considers that the conduct of the writ petitioner is unbecoming for appointment as a constable in RPF which is a disciplined force if any leniency is shown to the writ petitioner the entire discipline of such uniformed service would become weak which may in long run affect the safety and security of our country.

24. In further considered view of this Court the reported decision of **Mitual Kumar Jana (supra)** is found to be no way helpful to the writ petitioner inasmuch as in the said reported decision the issue relating to suppression of material information and/or submitting false information are found to be distinguishable from the facts and circumstances of the instant case.

25. In view of the discussion made hereinabove this Court thus finds no illegality and/or irregularity in the order dated 13.04.2018.

26. Accordingly, the instant writ petition is devoid of merit and is hereby dismissed.

27. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(PARTHA SARATHI SEN, J.)