

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15716 of 2015

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Rajesh Sutrakar S/o Gyasi Ram Sutrakar R/o Village Unao Balaji, P.S.
Unao Balaji, District Datia (Madhya Pradesh).

.... Petitioner/s

Versus

1. The Union of India through Secretary, Ministry of Public Grievances and Pensions, Department of Personal and Training, North Block, New Delhi.
2. The Director General, CISF Head Quarter, No. 13, CGOs Complex, Lodhi Road, New Delhi-100003.
3. The Group Commandant, CISF Group Head Quarters, Patna.
4. The Deputy Inspector General/EZ, CISF EZ Head Quarter, Patna.
5. The Deputy Commandant, CISF Unit, KBUNL, Kanti, Muzaffarpur.
6. The Assistant Commandant, CISF Unit KBUNL, Kanti, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nadim Seraj, Adv.
Mr. Shailesh Kumar, Adv.
For the Respondent/s : Mr. S.D Sanjay (Addl. Soc. Gen.)
Dr. Punam Kumari Singh, CGC

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 06-10-2015 The prayer of the petitioner in this writ application reads
as follows:-

- “1(i) *For issuance of a writ of certiorari for quashing of termination order no. 41099/CISF/Group/Doc /CXA/ 1501 dated 28.04.2014 issued by the Group Commandant, CISF Group, HQ, Patna (Respondent No.5) whereby and where under the petitioner has been terminated from his service of Constable/GD CISF No. 120519390 on the basis of vague allegation of furnishing in-correct information in his attestation form without any notice of show cause/opportunity of hearing to the petitioner.*
- (ii) *For issuance of writ of certiorari for quashing of order vide letter no. 7501 dated 15.07.2015*

passed by the Inspector General, CISF Campus, Eastern Zone Head Quarter, Boring Road, Patna whereby and whereunder an appeal filed by the petitioner against the order of termination dated 28.04.2014 passed by respondent no.5 has been rejected by ignoring the petitioner's pleadings and the materials available on record.

- (iii) *For issuance of writ of mandamus for direction to the respondents to reinstate the service of the petitioner to the post of Constable/GD No. 120519390 CISF with all consequential benefits by considering the innocence of the petitioner and in light of judicial pronouncement of the Hon'ble Apex Court."*

2. Learned counsel for the parties has submitted that the petitioner had not concealed any information while submitting his attestation form at the time of his appointment on the post of Constable in the Central Industrial Reserve Force (CISF) in the month of July, 2012 and, as such, the impugned order passed by the Commandant and affirmed by the Inspector General are bad both on fact and in law. In this regard reliance has been placed by the learned counsel for the petitioner on the judgment of the Apex Court in the case of *Commissioner of Police & Ors. Vs. Sandeep Kumar* reported in (2011) 4 SCC 644.

3. On the other hand, learned counsel for the respondents has supported both the impugned orders by explaining that the petitioner at the time of his appointment while submitting the



attestation form had suppressed the information as with regard to his being accused in a criminal case and, as such, the services were terminated. In this regard, he has placed reliance on a Division Bench judgment of this court in the case of *Navin Kumar Vs. State of Bihar & Ors.* reported in 2015 (2) PLJR 739 wherein the protection given to Sandeep Kumar has been considered and distinguished by placing reliance on a large number of decisions of the Apex Court.

4. The facts which would be necessary to be taken into consideration lie in a very narrow compass. The petitioner was an applicant for the post of Constable and upon his selection he was sent an offer of appointment and had been asked to fill up an attestation form. In the attestation form, the column no.12 as filled by the petitioner reads as follows:-

- “12(a) Have you ever been arrested? - No*
- (b) Have you ever been prosecuted? - No*
- (c) Have you ever been kept under detention? - No*
- (d) Have you ever been bound down? - No*
- (e) Have you ever been fined by Court of law? - No*
- (f) Have you ever been convicted by a Court of Law for any offence? - No*
- (g) Have you ever been debarred from any examination of or rusticated by any University or any other educational Authority/Institution? - No*
- (h) Have you ever been debarred/disqualified by any Public Service Commission for any of its examinations/selections? - No*

(i) *Is any case pending against you in any Court of law at the time of filing of this Attestation Form? - No*

(j) *Is any case pending against you in any University or any other educational Authority Institution at the time of filing up this Attestation Form? - Yes/No*

(k) *Whether discharged/expelled/withdrawn from any (illegible) under the government or otherwise? - Yes/No*

If the answer to any of the above mentioned question is "Yes" give full particulars of the case arrest/detention/fine conviction/sentence/punishment etc. and/or the nature of the case pending in the Court/University/Educational Authority etc. at the time of filling up this form.

Note: (i) Please also see the "warning" at the top of the Attestation Form.

(ii) Specific answers to each of the questions should be given by striking out "Yes" or "No" as the case may be.

(l) "Are you or have you ever been a member of a Party or Organization of Political Communal or Cultural nature? If so, state the name of the Party or Organization with the period/periods of your membership therein."

5. As column no.12 is also referable to the warning given on the first page of the attestation form, the same is also reproduced herein below:-

"Warning

1. The furnishing of false information or suppression of any factual information in the Attestation Form would be a disqualification and is likely to render the candidate unfit for employment under the Government.

2. If detained, convicted, debarred etc. subsequent to the completion and submission of this Form the details should be communicated immediately to the authority to whom Attestation Form has been sent earlier failing which it will be deemed to be a suppression of factual information.

3. *If the fact that false information has been furnished or that there has been suppression of any factual information in the Attestation Form comes to notice at any time during the service of a person, his services would be liable to be terminated."*

6. Thus, it becomes very clear that when the petitioner had filled up the attestation form on 12.7.2012 prior to his appointment on 16.7.2012, he had made a false declaration with regard to his having never been made accused in any criminal case vide column no.12(b). It has to be kept in mind and in fact it is not being disputed that the petitioner was made an accused in the year 2009 in which some sort of compromise was made in the year 2010 but then he had no reason to withhold this information, inasmuch as, the consequence of withholding of such information has been clearly incorporated in the warning giving to this effect that the services of a person found to have made a false declaration in the attestation form was liable to be cancelled. As a matter of fact, since the petitioner was prosecuted in a criminal case even as per his own case, he was, in compliance to the requirement of Clause 12, also required to give full particulars of the case but the petitioner had very cleverly withheld this information by giving a false information that he was never prosecuted in a criminal case.

7. It is this aspect of the matter which has been



considered at length by the Division Bench of this Court in the case of Navin Kumar (supra) wherein after discussing the law laid down by the Apex Court in various judgments, namely, in the case of Delhi Administration though its Chief Secretary and Others v. Sushil Kumar, reported in (1996) 11 SCC 605, Union of India and Others v. M. Bhaskaran, reported in 1995 Supp (4) SCC 100, Regional Manager, Bank of Baroda v. Presiding Officer, Central Govt. Industrial Tribunal and Another, reported in (1999) 2 SCC 247, Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav, reported in Patna High Court LPA No.818 of 2014 dt.21-01-2015 (2003) 3 SCC 437, Secretary, Department of Home Secy., A.P. and Others v. B. Chinnam Naidu, reported in (2005) 2 SCC 746, Union of India v. Bipad Bhanjan Gayen, reported in (2008) 11 SCC 314, R. Radhakrishnan v. DG of Police, reported in (2008) 1 SCC 660, Daya Shankar Yadav v. Union of India and Others, reported in (2010) 14 SCC 103, and State of West Bengal and Others v. Sk. Nazrul Islam, reported in (2011) 10 SCC 184, it was held that where a candidate was required to fill up an attestation form for the purpose of verification of criminal antecedent and that a candidate who suppresses material information or gives false information cannot claim right to continue in service.

08. The Division Bench in the case of Naveen Kumar

(supra) in this regard had also considered the case of Sandeep Kumar (supra) in paragraph no.48 in the following terms:-

48. While considering the case of Sandeep Kumar (supra), it needs to be noted, as pointed out by Mr. Jitendra Singh, learned Amicus Curiae, that the facts were that Sandeep Kumar was acquitted, on compromise, in a criminal case on 18.01.1998. The advertisement, for appointment on the post of Head Constable, was issued in January, 1999, and he applied on 24.02.1999; but he did not mention about the above criminal case. He qualified in all the tests and, thereafter, in his attestation form, submitted on 03.04.2001, he, for the first time, disclosed about the above criminal case, which had ended in acquittal on compromise in the year 1998.

09. Finally in paragraph no.51 the Division Bench had also distinguished the judgment of Sandeep Kumar (supra) and Ram Kumar v. State of Uttar Pradesh and Others reported in 2011(14) SCC 709 while holding as follows :-

51. In the cases of Sandeep Kumar (supra) and Ram Kumar (supra), the consequence of non- disclosure were not so vital inasmuch as the non-disclosure or suppression of truth was after the criminal cases had ended; whereas in the case at hand, the criminal case was still pending against the appellant, when he made the declaration that no case, civil or criminal, was pending against him. Thus, the appellant's declaration was wholly false and suffered from suppression of truth. His conduct cannot, but be regarded as an attempt to obtain employment to a post of Sub Inspector of Police by committing fraud.

10. Thus, having regard to the aforesaid law laid down by the Division Bench in the case of Navin Kumar (supra), this Court



will have no difficulty in holding that the case of the petitioner is also squarely covered by it inasmuch as, there also the attestation form had alike in the present case contained a warning. Thus, whatever was said in the case of Sandeep Kumar (supra) by the Apex Court has to be left confined to the facts of that particular case which more or less is an order of the Apex Court in terms of article 142 of the Constitution of India and thus having no binding precedent.

11. As a matter of fact, this aspect of the matter has been considered by the appellate authority in a very graphic manner in the impugned order dated 15.7.2015 wherein it was held as follows:-

“8. AND WHEREAS, on examination of the case file, relevant material held on record and submission made by the petitioner in his appeal petition, it is found that prior to his appointment in CISF, a Criminal case No. 92/2009 U/s 294, 323, 506 B and 34 IPC was instituted against him. He was produced before the Hon’ble Court of JMFC, Distt- Datia and was acquitted on 11.05.2010 on the basis of compromise held between both the parties. This clearly reveals that the petitioner was well aware of institution of said criminal case prior to his appointment in CISF. Further, both the Attestation Form and Questionnaire Form also contains WARNING in bilingual in Hindi & English that furnishing false information or suppression of factual information in the Attestation form would make him disqualify his service and liable to be terminated as and when it comes to the notice at any time during the



service. But even then the petitioner, while filling up the Attestation Form at the time of his appointment, willfully suppressed the fact of his prosecution in said criminal case by giving false declaration as "NO" against the question "Have you ever been prosecuted?" in column No.12(b) of the Attestation Form. Besides this, he also suppressed the fact about lodging of FIR in past against him in column No.4 of Questionnaire Form i.e. Appendix-'E' at the time of appointment. The same was later disclosed on verification of his character and antecedents from the concerned district authority. The petitioner's contentions at (i) & (ii) above are not tenable. Institution of said criminal case against him as well as his acquittal from the said criminal case both took place well before his appointment in CISF. Further, his acquittal from said criminal case was based on the compromise held between both the parties. This clearly shows that the petitioner was well aware of institution of said criminal case against him and leads to prove that he willfully suppressed both the factual information regarding lodging of FIR against him in column No.4 of the Questionnaire Form and his prosecution in column No. 12(b) of the Attestation form. Further, whether he was falsely implicated by local police or otherwise in said criminal case is not a matter of fact for consideration. The only fact remains to consider in this case as to whether he suppressed the fact of lodging FIR against him and his prosecution in said criminal case from the department or otherwise and it is clearly established from the facts mentioned here-in-above that he willfully suppressed such factual information from the department at the time of appointment in CISE. His further contention at (iii) above is also not tenable. Suppression of such factual information from the department amounts to breach of agreement between employee and employer and



the petitioner, by committing so, rendered himself unfit for further retention in service and thus he has been rightly terminated from service. His further contention at (iv) above is also not tenable. The petitioner has been terminated from service on the ground of furnishing false/incorrect information at the time of appointment in CISF and thus the fact as to whether he was penalized for negligence in past or otherwise has nothing to do with the instant case of termination. Further, probation needs to be extended only when performance during probation is found un-satisfactory and not at all in the case of suppression of such factual information. The petitioner, by suppressing of such factual information from the department himself breach the agreement between employee and employer and thereby he rendered himself unfit for further continuance in service and thus his termination from service was inevitable.

9. *AND THEREFORE, on perusal of the case files with reference to the pleas put forth by the petitioner in his appeal, I find that the petitioner was appointed in CISF on 16.07.2012. FIR followed by a Criminal Case No. 92/2009 U/s 294, 323, 506 B and 34 IPC was instituted against him during 2009 and he was acquitted from said criminal case during 2010 on the basis of compromise held between both the parties, well before his appointment in CISF. This clearly shows that the petitioner was well aware of institution of the said FIR and criminal case against him as well as his acquittal on compromise from the said criminal case but even then he deliberately suppressed this factual information from the department by giving wrong declaration in the respective column of questionnaire form and attestation form at the time of appointment in CISF. This clearly amounts to breach of agreement between the employee and employer*



and by doing so the petitioner rendered himself disqualified for further service and thus his termination was inevitable. The appointing authority has rightly adjudged his case and terminated him from service. I do not find any cogent reason or extenuating circumstances to interfere with the order and therefore I reject his appeal being devoid of merit.”

(underlining for emphasis)

12. Thus, having analyzed the fact of this case as also the law laid down by the Apex Court as discussed at length in the judgment of the Division bench of this Court in the case of Navin Kumar (supra), there will be no escape from the irresistible conclusion that the termination of the services of the petitioner on the ground of suppression of material information by him in the attestation form does not suffer from any infirmity either on fact or in law.

13. That being so, this application is wholly misconceived and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

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