

**IN THE HIGH COURT OF TRIPURA
AGARTALA**

W.P.(C) 88 of 2008

Sri Binoy Kumar Thakur,
son of Sri Ram Paravesh
Thakur, resident of village &
P.O. Gangauli, P.S. Simari,
District – Buxar, Bihar

..... **Petitioner**

- V e r s u s -

- 1. The Union of India,**
represented by the Home
Secretary, Government of
India, North Block, New Delhi
- 2. The Director General**
Central Reserve Police Force
(CRPF), CGO Complex, Lodhi
Road, New Delhi
- 3. The Inspector General,**
C.R.P.F., Eastern Sector, HC
Block, Sector – III, P.O. I.B.
Market, Salt Lake, Kolkata
- 4. The Commandant,**
66 Bn. C.R.P.F., Kumarghat,
P.O. Kumarghat, North
Tripura

..... **Respondents**

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the petitioner	:	Mr. K.N. Bhattacharji, Sr. Advocate, Mr. S. Acharji, Advocate				
For the respondents	:	Mr. A. Roy Barman, C.G.C.				
Date of hearing	:	29.06.2015				
Date of delivery of Judgment & Order	:	17.08.2015				
Whether fit for reporting	:	<table border="1"><tbody><tr><td>YES</td><td>NO</td></tr><tr><td> </td><td> </td></tr></tbody></table>	YES	NO		
YES	NO					

JUDGMENT & ORDER

(S. Talapatra, J)

By means of this writ petition, the notice of termination No.D.V-2/06-66-EC-II dated 21.02.2006, Annexure-1 to the writ petition, issued under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965 has been challenged by the petitioner who was a constable (CT/GD) in the Central Reserve Police Force.

[2] The petitioner had undergone training from 01.08.2004 to 08.08.2004 in the CRPF Training Centre at Bhubaneswar and on successful completion of the training, he was posted in 66 Bn. CRPF, Kumarghat, North Tripura. During his posting at Kumarghat, he had received the impugned notice of termination dated 22.02.2006. By the said notice, the petitioner was communicated as under:

In pursuance of sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I D.K. TRIPATHI COMMANDANT -66 Bn. hereby give notice to SI No. 041708391 CT/GD Vinay Kumar that his services shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice is served on or, as the case may be, tendered to him.

[3] According to the petitioner, the said order of termination is not a termination simplicitor. It is stigmatic as its foundation is the petitioner's involvement in a criminal case. The petitioner has further asserted that he has been denied reasonable opportunity to defend as protected under Article

311 (2) of the Constitution of India. The petitioner was never asked to show cause on allegation against him. Even his representation, which was forwarded to the Commandant, 66 Bn. CRPF by the forwarding letter dated 19.03.2006 was not considered at all.

[4] Before approaching this Court, the petitioner approached the Patna High Court for the same cause by filing a writ petition being C.W.J.C No.9146 of 2006 but the said writ petition had been disposed by the order dated 02.04.2007 observing that the Patna High Court lacked in the territorial jurisdiction. However, the petitioner was given liberty to approach the court of competent jurisdiction for the same cause. The petitioner had filed an appeal being L.P.A No.555 of 2007 in the Division Bench of the said High Court. The said appeal was dismissed as withdrawn by the order dated 10.08.2007. The respondents by filing the counter affidavit did not dispute the basic facts related to the petitioner's selection, appointment and training, but they have disclosed in their counter affidavit that the Commandant, 170 Bn. CRPF by the letter No.D.V-I-05-170-II dated 30.01.2006 intimated the petitioner that on verification of his character and antecedent, the District Magistrate, Buxar by the letter No.927 dated 08.09.2005 intimated the GC, CRPF, BBSR that the petitioner was accused in the Simare P.S. case No.81/2004 dated 25.05.2004 and he was charge-sheeted for committing the

offence punishable under Sections 147/148/149/447/504/307 of the I.P.C. and under Section 27 of the Arms Act. It was further intimated that at the relevant point of time, the petitioner was on bail and the case was pending in the Court of the Chief Judicial Magistrate, Buxar. According to the said report, the petitioner was the main accused in that case.

[5] The respondents have clearly contended in their counter affidavit that the petitioner had suppressed the fact that a criminal case, as referred, was pending against him, in the Court of the Chief Judicial Magistrate, Buxar and by way of suppression, he had obtained the service under the respondents. As the petitioner was a temporary employee, his service was terminated under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 without any stigma. According to the respondents, there is no illegality or infirmity in the process.

[6] The petitioner in his rejoinder has stated that he had no knowledge when he filed the attestation form that a criminal case was pending against him. It came to his knowledge when he returned home after termination. From his father, he came to know that as an off-shoot of a land dispute one Sumer Thakur lodged that false case framing the petitioner and others therein. He has further stated that after trial the Addl. Sessions Judge, Civil Court, F.T.C, 2nd Buxar, Bihar by the

judgment and order dated 16.03.2011 delivered in case No. S.T.393 of 2006, Annexure-X to the rejoinder, acquitted him from the charge. He has also admitted that even though he was acquitted from the charge under Sections 307/149 of the I.P.C. and under Section 27 of the Arms Act but the offence punishable under Sections 447/504 of the I.P.C. were compounded and on such basis, the petitioner was not convicted.

[7] Mr. K.N. Bhattacharji, learned senior counsel appearing for the petitioner has submitted that it would be apparent from the documents produced before this Court in terms of the order dated 23.03.2015 that the petitioner obtained the pre-arrest bail from the Patna High Court on 07.04.2005. The petitioner had no knowledge of the said criminal case at the time of his entry in the service under the respondents. The respondents should not have, without any opportunity taken a decision adverse to the petitioner on the purported ground of 'suppression'. Unless there is knowledge of certain happening nobody can be accused of suppression of that happening. Mr. Bhattacharji, learned senior counsel to buttress his contention has referred a decision of the apex court in **Ramkumar vs. State of U.P. and others**, reported in **AIR 2011 SC 2903**. In that decision, it has been held by the apex court that it was the duty of the appointing authority to be satisfied whether 'the constable' was suitable for

appointment having reference to the nature of suppression and the substance of the criminal case, instead of holding mechanically that the selection was irregular and illegal because 'the constable' had furnished an affidavit stating the facts incorrectly at the time of recruitment. The apex court, relying on **Kendriya Vidyalaya Sangathan vs. Ram Ratan Yadav**, reported in **AIR 2003 SC 1709** has further observed that the character, conduct and antecedents have to be considered having due regard to the duties and responsibilities, the employee would be required to discharge.

[8] Mr. Bhattacharji, learned senior counsel has urged this Court that since there was no suppression and the statement made in the attestation form by the petitioner as to his involvement in any criminal case is entirely attributable to his lack of knowledge, no penal consequence should have visited the petitioner.

[9] From the other side, Mr. A. Roy Barman, learned C.G.C appearing for the respondents has submitted that it is highly improbable that the petitioner had no knowledge of the criminal case. Mr. Roy Barman, learned C.G.C. has referred a series of decisions of the apex court viz. **Kendriya Vidyalaya Sangathan vs. Ram Ratan Yadav**, reported in **AIR 2003 SC 1709**, **Union of India and others vs. Bipad Ranjan Gayen**, reported in **(2008) 11 SCC 314**, **Daya Shankar Yadav vs.**

Union of India and others, reported in **2011 AIR SCW 396** and **Devendra Kumar vs. State of Uttaranchal and others**, reported in **(2013) 9 SCC 363**. Having surveyed those cases, it appears that while obtaining appointment, if the material information is suppressed in respect of the criminal antecedent or involvement in the criminal case, the apex court has uniformly held that suppression of such material information itself amounts to moral turpitude which is a separate and distinct 'matter'. In such a case service of the appointee concerned is liable to be dispensed with, even if on trial the person concerned stood acquitted/discharged. But the case in hand is premised differently. This Court has not found any record to indicate that the petitioner had knowledge of the police case before or on the day of filing the attestation form. The petitioner was enrolled on 20.07.2004. As such, it has to be assumed that the attestation form was filed prior to 20.07.2004. There is no dispute that the police case was lodged on 25.05.2004. Even though knowledge is probable, since there is no record to indicate that the petitioner had knowledge of the said criminal case no adverse inference can be drawn on 'suppression'. From the records produced by the petitioner amidst the hearing in terms of the order of this Court dated 23.03.2015 it has been revealed that the petitioner obtained the anticipatory bail from the Patna High Court on 07.04.2005. This information derived from the judicial record,

from the order dated 07.04.2005 by the Patna High Court in Cr. Misc. No.11662 of 2005 and from the records of the first track court, the court of the Addl. District Judge, 2nd, Buxar in S.T. 251 of 2006, clinches the claim of the petitioner. This Court in **Suraj Rupini vs. State of Tripura** (judgment and order dated 06.06.2014 delivered in W.P.(C) 44 of 2014) having regard to the decision of the apex court in **Commissioner of Police and others vs. Sandip Kumar**, reported in **(2011) 4 SCC 644** had remitted the matter for reconsideration after setting aside the order of termination, consistent with the principle as laid down in **Commissioner of Police and others vs. Sandip Kumar**. It would as such be apposite to revisit the law as enunciated in **Commissioner of Police and others vs. Sandip Kumar**. Hence, the relevant extracts are reproduced hereunder:

12. We respectfully agree with the Delhi High Court that the cancellation of his candidature was illegal, but we wish to give our own opinion in the matter.

13. When the incident happened the Respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often be condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

14. In this connection, we may refer to the character 'Jean Valjean' in Victor Hugo's novel 'Les Miserables', in which for committing a minor offence of stealing a loaf of bread for his hungry family Jean Valjean was branded as a thief for his whole life.

15. The modern approach should be to reform a person instead of branding him as a criminal all his life.

16. We may also here refer to the case of Welsh students mentioned by Lord Denning in his book 'Due Process of Law'. It appears that some students of Wales were very enthusiastic about the Welsh language and they were upset because the radio programmes were being broadcast in the English language and not in Welsh. Then came up to London and invaded the High Court. They were found guilty of contempt of court and sentenced to prison for three months by the High Court Judge. They filed an appeal before the Court of Appeals. Allowing the appeal, Lord Denning observed:

I come now to Mr. Watkin Powell's third point. He says that the sentences were excessive. I do not think they were excessive, at the time they were given and in the circumstances then existing. Here was a deliberate interference with the course of justice in a case which was no concern of theirs. It was necessary for the judge to show - and to show to all students everywhere - that this kind of thing cannot be tolerated. Let students demonstrate, if they please, for the causes in which they believe. Let them make their protests as they will. But they must do it by lawful means and not by unlawful. If they strike at the course of justice in this land - and I speak both for England and Wales - they strike at the roots of society itself, and they bring down that which protects them. It is only by the maintenance of law and order that they are privileged to be students and to study and live in peace. So let them support the law and not strike it down.

But now what is to be done? The law has been vindicated by the sentences which the judge passed on Wednesday of last week. He has shown that law and order must be maintained, and will be maintained. But on this appeal, things are changed. These students here no longer defy the law. They have appealed to this Court and shown respect for it. They have already

served a week in prison. I do not think it necessary to keep them inside it any longer. These young people are no ordinary criminals. There is no violence, dishonesty or vice in them. On the contrary, there was much that we should applaud. They wish to do all they can to preserve the Welsh language. Well may they be proud of it. It is the language of the bards - of the poets and the singers - more melodious by far than our rough English tongue. On high authority, it should be equal in Wales with English. They have done wrong - very wrong - in going to the extreme they did. But, that having been shown, I think we can, and should, show mercy on them. We should permit them to go back to their studies, to their parents and continue the good course which they have so wrongly disturbed.

[Vide: *Morris v. Crown Office* (1970) 2 Q.B. 114]

17. In our opinion, we should display the same wisdom as displayed by Lord Denning.

18. As already observed above, youth often commit indiscretions, which are often condoned.

[10] One distinguishing feature that we have considered is that in **Commissioner of Police and others vs. Sandip Kumar**, the appointee had suppressed the fact but that was condoned on considering his age. Sandip Kumar, the terminated appointee at the time of enrolment was 20 years of age. The petitioner in this case was as well 20 years of age at the time of his enrolment. But whether the petitioner would be retained in the service or not, according to us, should exclusively be decided by the competent authority. As we have observed that apparently there was no deliberate suppression

of fact, the competent authority shall decide afresh whether the petitioner shall be retained in the service or not.

[11] Having held so, the impugned notice dated 21.02.2006, Annexure-1 to the writ petition, is set aside. But the petitioner cannot be reinstated forthwith. Such reinstatement shall be subject to the fresh consideration by the competent authority i.e. the Commandant, 66 Bn. of Central Reserve Police Force or his superiors. Hence, the Commandant, 66 Bn. of Central Reserve Police Force, the respondent No.4 or the superior authorities shall having appreciated the materials of that criminal case, decide whether the petitioner shall be retained in the service or not within a period of 3(three) months from the day when the petitioner shall furnish a copy of this order to the respondent No.4. While considering the matter, the principle as reflected in **Commissioner of Police and others vs. Sandip Kumar** be given due regard for avoiding any mechanical consideration.

With these observation and directions, this writ petition stands allowed to the extent as indicated above.

There shall be no order as to costs.

JUDGE

CHIEF JUSTICE

Sujay