

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.3316 of 2000

Date: 01-6-2015

Between

Jadhav Babu Rao

... Petitioner

and

Union of India,

Rep. by its Director General,

Railway Protection Force,

Rail Bhavan, New Delhi;

and 2 others

... Respondents

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.3316 of 2000

Order:

Pursuant to the Notification dated 15-10-1998, the petitioner applied

for the post of Constable in Railway Protection Force (RPF, for short). He was selected for the said post and was sent for initial training. While undergoing training, by order dated 22-02-2000 passed by the 2nd respondent, the petitioner was discharged from training under Rule 67.2 of Railway Protection Force Rules, 1987 (RPF Rules, for short). The ground on which the petitioner was discharged was that having been involved in 3 criminal cases viz., Crime Nos.123 of 1989 and 24 of 1996, and Sessions Case No.54 of 1992, mentioned in the Attestation Form which was required to be filled up by the candidates that he was not involved in any criminal cases. Against the said discharge order, the petitioner filed the present writ petition seeking a Writ of *mandamus* declaring the action of the 2nd respondent in discharging him from training by order dated 22-02-2000 under Rule 67.2 of RPF Rules as illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India and to direct the respondents to continue the petitioner as RPF Constable.

2. It is submitted by the petitioner that in Crime Nos.123 of 1989 and 24 of 1996, he was acquitted of the charges consequent to the withdrawal of the complaints by the *de facto* complainants. In Sessions Case No.54 of 1992, he was acquitted after full-fledged trial. According to the petitioner, he was in fact never involved in commission of any criminal offence but was falsely implicated in those cases. The version of the petitioner is that discharging him from training long after his acquittal in the aforesaid criminal cases without affording him any opportunity is illegal, arbitrary and in violation of principles of natural justice.

3. The respondents filed counter contending, *inter alia*, as follows:

The duration of the training of the petitioner was 9 months. While inducting him into training he was informed vide letter dated 20-5-1999 that his candidature was purely provisional and subject to character and antecedent verification and successful

completion of training. He was also advised that his candidature would be cancelled immediately if the character and antecedent verification report was against him or if the undertaking submitted by him is found to be false/misleading/incorrect. The petitioner was furnished a Declaration Form wherein he declared that he had never been prosecuted, kept under detention or bound down/fined, convicted by a Court of law of any offence. In case his statement of declaration of joining or the Attestation Form was found to be false or misleading, he was liable to be discharged without any notice or without assigning any reasons at any time during his service. Therefore, according to the respondents, the petitioner was rightly discharged as he declared in the Attestation Form that he was not involved in any criminal case which was found to be false on verification. Therefore, it is contended on behalf of the respondents that since the petitioner both in the Attestation Form as well as in the Declaration did not reveal the fact that he was involved in the criminal cases, he was rightly discharged from training for suppression of facts and making a misleading statement and no notice is required before discharging him as per Rule 67.2 of RPF Rules. The version of the respondents is that false declaration is a crime and a person making false declaration is not fit for joining the Armed Forces of the Union.

4. In the Reply Affidavit, the petitioner submitted that in fact, no statement was recorded from him on 16-02-2000 while he was undergoing training and the contents were not explained to him in Hindi. Since he was acquitted of the criminal cases he never intended to suppress his involvement in criminal cases and stated 'no' in the Attestation Form as well as in the Declaration Form.

The forms were filled up as 'no' unintentionally but not to declare that he was never involved in criminal cases in the declaration taken at the time of recruitment. According to him, since there was no intention to conceal the involvement in the criminal cases on his part, he cannot be deprived of the employment for the post which he was selected.

5. I have heard Sri J.M.Naidu, learned counsel appearing for the petitioner and Sri Gowri Shankar Sanghi, learned Standing Counsel appearing for the respondents-Railways.

6. Both the learned counsel relied on several judgments on the point whether an employee can be discharged for not disclosing material facts which he is required to disclose while submitting the Attestation Form or making declaration. In **RAJESH KUMAR SRIVASTAVA v. STATE OF JHARKHAND**, the Supreme Court took the view that in course of adjudging suitability of appellant's probation when it was found that the performance of the appellant was not satisfactory and he was not suitable for the job, it is only a termination simpliciter and not removal from service on the grounds of indiscipline or misconduct. Therefore, such decision cannot be said to be stigmatic or punitive, in such an event neither is any notice required to be given nor is required to be given any opportunity of hearing.

7. The ratio laid down in **RAJESH KUMAR SRIVASTAVA** (1 *supra*) is not applicable to the facts of the present case since the petitioner was not discharged on the ground that his performance was not satisfactory but he was discharged on the ground that he having been involved in criminal cases, filled up the Attestation Form stating that he was not involved in any criminal cases and also made a declaration to the effect that he was not involved in any criminal cases at any point of time.

8. Similar view was taken by the Supreme Court in **KENDRIYA VIDYALAYA SANGATHAN v. ARUNKUMAR MADHAVRAO SINDDHAYE** holding that when an order terminating the services of the respondent was wholly innocuous, not containing any stigma against him and having been passed in terms of the appointment order, the respondent's services were not terminated by way of punishment and therefore, non-observance of the prescribed rules of procedure or principles of natural justice would not vitiate the preliminary enquiry.

9. The ratio laid down by the Hon'ble Supreme Court in **ARUNKUMAR MADHAVRAO SINDDHAYE** (2 *supra*) is also not applicable to the facts of the present case as having been rendered with regard to altogether different set of facts and circumstances.

10. Likewise, in **UNION OF INDIA v. A.NAGAMALLESHWAR RAO**, the Supreme Court took the view that but for the wrong declaration of marks in SSC examination the respondent could not have given appointment and therefore, his dismissal can be upheld.

11. The decision in **A.NAGAMALLESHWAR RAO** (3 *supra*) also cannot be applied to the facts of the present case since the petitioner was acquitted of all the criminal cases, he could have been selected for the post of RPF Constable despite his involvement in the criminal cases.

12. The only question requires determination in the present writ petition is whether the petitioner is liable to be discharged from the post of RPF Constable for not disclosing his involvement in criminal cases for which he was acquitted long prior to his appointment in the Attestation Form as well as in the Declaration.

13. The learned counsel appearing for the petitioner submits that since the petitioner was acquitted of the criminal cases long prior to his selection, the petitioner under *bona fide* impression that he need not disclose the said information failed to disclose the same in the Attestation Form as well as in the Declaration and therefore, discharging him from service without affording him an opportunity to explain the circumstances of non-disclosure and the nature of the cases in which he was allegedly involved is illegal, arbitrary and is liable to be set aside in the present writ petition.

14. On the other hand, the learned Standing Counsel for the respondents-Railways would contend that the RPF Rules governing

the petitioner specifically provide that his appointment was purely provisional and subject to the character and antecedent verification and his candidature will be cancelled immediately if the declaration made by him is found to be false/misleading/incorrect. According to the learned Standing Counsel, since the petitioner having been involved in 3 criminal cases gave a declaration that he was never involved in any criminal cases, his appointment being purely provisional and on account of non-disclosure of material fact, he was rightly discharged from training as RPF Rules do not provide for any notice or opportunity of hearing before passing the discharge order.

15. In **COMMR. OF POLICE v. SANDEEP KUMAR**, the Supreme Court held as follows:

“8. In order to appreciate the rival submissions it is necessary to take note of column 12 of the attestation form and column 3 of the declaration. The relevant portions are quoted below:

“Column 12.—Have you ever been convicted by a court of law or detained under any State/Central preventive detention laws for any offence whether such conviction sustained in court of appeal or set aside by the appellate court if appealed against.”

“Column 3.—I am fully aware that furnishing of false information or suppression of any actual information in the attestation form would be a disqualification and is likely to render me unfit for employment under the Government.”

9.

10.

11. The question whether he was a desirable person to be appointed in government service was not the subject-matter of adjudication and the Tribunal was not justified in recording any finding in that regard. Whether a person is fit to be appointed or not is a matter within the special domain of the Government. For denying somebody appointment after he is selected, though he has no right to be appointed, has to be governed by some statutory provisions. That was not the issue which was to be adjudicated in the present case. The only issue related to suppression of facts or misdeclaration.

12. In view of the aforesaid, we find no merit in this appeal which is accordingly dismissed with no order as to costs.”

16. Similar issue relating to identical facts came up for consideration before the Hon'ble Supreme Court in **Jainendra Singh vs State of U.P. Tr. Prinl. Sec. Home**, wherein the Supreme Court held as follows:

“At the very threshold, we are confronted with a question as to which of the judgments which have taken conflicting views have to be followed in the matter of termination of a Constable in the Police Department, who concealed certain relevant facts which he was called upon to disclose after his selection was finalized and after order of appointment was issued by placing him on probation.

Though there are very many decisions in support of the various points culled out in the above paragraphs, inasmuch as we have noted certain other decisions taking different view of coordinate Benches, we feel it appropriate to refer the above mentioned issues to a larger Bench of this Court for an authoritative pronouncement so that there will be no conflict of views and which will enable the Courts to apply the law uniformly while dealing with such issues.”

17. Thus, the issue similar to the one involved in the present case was referred to the larger Bench by the Supreme Court and it seems it is pending consideration by the larger Bench. This Court, however, is not supposed to postpone the issue till the matter is decided by the larger Bench since the petitioner in the present case was appointed as RPF Constable in the year 1999. This Court has to pronounce upon the issue involved in the present writ petition basing on the judicial pronouncements applicable to the facts of the present case and taking into consideration the nature and effect of the statement made by the petitioner in the Attestation Form as well as in the Declaration.

18. There is no denial to the fact that the petitioner was acquitted of

all the criminal cases long prior to his appointment as RPF Constable. The material papers relating to the criminal cases in which he was allegedly involved clearly demonstrate that the offences alleged against him are not of serious nature. Since the petitioner was acquitted of all the criminal cases in which he was made an accused, his normal thinking at the time of filling up of the Attestation Form or making declaration would be that he need not disclose the involvement in the criminal cases as he had already acquitted of the criminal charges levelled against him. He might be under the impression that if he discloses his involvement in the criminal cases he would be denied the appointment. As he was acquitted of the criminal charges he thought it fit not to disclose the information. It is true that the rules governing the service of the petitioner enable the respondents to discharge the petitioner from service during probation without notice and without affording him an opportunity of hearing, in the opinion of this Court that merely because the rules enable the respondents to discharge the petitioner from service at any time during probation without issuing notice, they can do so without taking into consideration the nature of the offence in which the petitioner was allegedly involved and also the factum of acquittals recorded by the respective Courts. The respondents would have at least afforded the petitioner an opportunity to explain the circumstances under which he failed to mention about his involvement in the criminal cases. When the disclosure of involvement in criminal cases is inconsequential, the respondents ought not to have penalised the petitioner for non-disclosure.

19. In the facts and circumstances of the present case, this Court is of the considered view that discharging the petitioner from training is unwarranted and also illegal. Consequently, the order dated 22-02-2000 passed by the 2nd respondent discharging the petitioner from training is set aside. The respondents are directed to take back the petitioner into service as RPF Constable. The writ petition is allowed accordingly. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

R.KANTHA RAO, J.

01st June, 2015.

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HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.3316 of 2000

01st June, 2015.

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