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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 17.11.2015

+ W.P.(C) No. 5291/2015

PRAVEEN KUMAR

..... Petitioner

Through: Mr Sachin Chauhan, Adv.

versus

MINISTRY OF RAILWAY & ORS

..... Respondents

Through: Mr J.K. Singh, Standing Counsel
for Railways

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The petitioner seeks a direction for quashing of an order dated 18.02.2015 cancelling his candidature to the post of Constable; the order was issued by the Railway Protection Force (RPF).

2. The uncontested facts are that the petitioner successfully participated in the recruitment process initiated by Eastern Railway for filling up the post of Constable in the RPF. He was cleared in the medical examination and called for interview. Based upon his performance, he was asked to report for training on 07.10.2014 which he did. Whilst on training, the petitioner's services were terminated on 18.02.2015 by the impugned order. The petitioner unavailingly represented to the respondents who rejected his pleas. Consequently, he has approached this Court.

3. The ground on which the impugned order terminating the petitioner's services reads as follows:-

“In terms of NR HQ office letter No.220-E/2-RPF/CT-Rect/PVR/2015 dated 16.02.2015, your candidature for the Constable Recruit is cancelled on the ground of submitting false Attestation Form with regard to facing of criminal case.

Sr. Div. Security Commissioner
RPF, Ambala Division
Sr. DSC-Incharge of
PRTC/Jehankhelan-Hoshiarpur”

4. It is contended by the petitioner that the charge of suppression of material facts should not have been levelled considering that he was acquitted of the allegations made against him in the criminal case by the Competent Authority, i.e., the Judicial Magistrate-1st Class, Mohindergarh. The petitioner was arrayed as an accused in FIR No.154/2008, Police Station Kanina, and alleged to have committed offence under Section 323, 325, 506 read with Section 34 IPC. The prosecution was on the basis of an incident which allegedly occurred on 27.05.2008 where the accused, including the petitioner had caused hurt with blunt weapon to various persons, including one Sarita Devi. A copy of the judgment acquitting the petitioner reveals that three prosecution witnesses were examined. All of them turned hostile which impelled the Trial Court to acquit the petitioner on 14.09.2010. The petition has been supported by a police report dated 25.02.2015 which clearly reveals that the FIR had been lodged and that acquittal was recorded on 14.09.2010.

5. Mr Chauhan, learned counsel for the petitioner, submits that the impugned order is unsustainable and relies upon the decision of the Supreme Court in ***Commissioner of Police vs. Sandeep Kumar 2011(4) SCC 644*** and ***Commissioner of Police vs. Naveen Kumar Mandiwal, W.P.(C) No.7808/2011***, decided on 02.11.2011. It is submitted by the counsel that the petitioner, no doubt, suppressed information with respect to his prosecution, but, this omission, *inter alia*, was on account of a bona fide mistake. It was urged that the allegations levelled against the petitioner were entirely false as the incident in question was a group clash which involved him and his cousins. Emphasizing that the petitioner was a candidate from a rural background and, therefore, could be attributed with some ignorance about the true nature of the information sought, counsel urged, this Court to adopt what he termed as a lenient approach in the light of the decision in ***Naveen Kumar Mandiwal (supra)*** and ***Sandeep Kumar (supra)***. He has also relied upon a decision of this Court in ***Jitender vs. Union of India W.P.(C) No. 7034/2015***, decided on 31.08.2015.

6. The respondents point out that it is not the nature of the offence or the acquittal of the petitioner which led to the issuance of the impugned order. It is submitted that what is important is that on no less than three occasions, i.e., at the stage while applying for the post, filling the attestation form and furnishing the affidavit before joining, the petitioner kept the RPF in the dark and unscrupulously avoided any reference to the criminal case in which he was arrayed as an accused. This implicated his suitability for the position which was entirely for the Force to judge. After the verification report was

received from the local police, the RPF decided that the petitioner was not a suitable candidate and consequently terminated his services. As is evident from the above discussion, the petitioner is not denying that at different points of time, he suppressed information. What he has urged, on the other hand, is that the Court should adopt a graded approach in considering that such behaviour, i.e., as to whether the concerned candidate is accused of a grave or serious offence or a minor one. As part of this argument, it is highlighted that often young boys are involved in altercations in rural areas.

7. In ***Jitender*** (*supra*), this Court had observed as follows:-

“We notice that in ***Sandeep Kumar’s*** case (*supra*) as well as ***Naveen Kumar Mandiwal’s*** case (*supra*) (the latter view being confirmed by the Supreme Court which rejected Special Leave Petition subsequently), the Courts took a relaxed standard into consideration and held that where the criminal charges are not serious and appeared to have levelled at the stage when the applicant was a youth (though of tender years), the fact that omission to disclose these particulars ought not to be used so strictly so as to deprive the public employment altogether. A somewhat similar approach was indicated in ***Ram Kumer vs. State of Uttar Pradesh (2011) 14 SCC 709*** when the Court held that mere fact that a criminal charge had been levelled at some stage in the past cannot be a solitary ground for refusal of public employment when the larger issue of suitability is involved.”

8. The decision in ***Sandeep Kumar*** (*supra*) and several judgments of the Supreme Court starting with ***Delhi Administration through its Chief Secretary & Ors. v. Sushil Kumar, (1996) 11 SCC 605,***

Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav, AIR 2003 SC 1709; and *A.P. Public Service Commission v. Koneti Venkateswarulu*, AIR 2005 SC 4292, *State of Haryana & Ors. v. Dinesh Kumar*, AIR 2008 SC 1083, *R. Radhakrishnan v. Director General of Police & Ors.*, AIR 2008 SC 578 was considered in a later judgment delivered after *Sandeep Kumar (supra)*, i.e., *Davender Kumar vs. State of Uttaranchal and Others* (2013) 9 SCC 363. The Supreme Court highlighted that the question of suitability is one which lies in the exclusive domain of the executive, i.e., the public employer and that as to the criminal nature of the charge levelled against the employee is not something which the Court in exercise of judicial review would be concerned with. The Court held “*the purpose of seeking such information is not to find out the nature or gravity of the offence or the ultimate result of a criminal case, rather such information is sought with a view to judge the character and antecedents of the job seeker or suitability to continue in service. Withholding such material information or making false representation itself amounts to moral turpitude and is a separate and distinct matter altogether than what is involved in the criminal case.*”

9. This Court is of the opinion that the petitioner’s arguments are entirely unfounded. Apart from what is emphasized by the Supreme Court in *Davender Kumar (supra)*, another material circumstance is that there is every likelihood that other candidates placed similarly (like the petitioner who might have been arrayed as accused, but later acquitted) disclosed the true facts and were excluded from employment. Allowing leniency, especially by the Court, in cases

where there is deliberate suppression of information, is not only unfair to those who disclosed antecedents and were thus rejected at the very outset, but also akin to facilitating a backdoor entry, thereby subverting the entire process. The public employer's exercise of discretion in determining that such individuals are unsuitable for being continued in employment is a factor which the Court cannot ignore and make a distinction on the basis of which offence is more grave and the litigant before has not been charged for a grave offence. Such distinctions undermine the discretion of the public employer altogether in view of the subsequent acquittal—a factor which is irrelevant given the nature of information elicited at the relevant stage.

For the above reasons, this Court finds no reason to interfere with the impugned order. The writ petition is dismissed.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

NOVEMBER 17, 2015
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