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

+ W.P.(C) 5857/2015 and CM No.10548/2015 and CM No.10549/2015
RAKESH KUMAR Petitioner

Through: Mr Ajesh Luthra and Ms Jyotsna
Kaushik, Advs.

versus

UNION OF INDIA & ORS. Respondent

Through: Mr Nupur Choudhary, Adv for
respondents No. 1 to 3.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **31.08.2015**

The petitioner is aggrieved by order of the Railway Protection Force (RPF), discharging him from the service with effect from 29.04.2015.

The admitted facts are that the petitioner served the Indian Army for the period 1988-2007 and after completing the mandatory service of 20 years period, sought voluntary retirement and was granted the same. On the basis of that, he is drawing military pension. He applied for selection for the post of Constable pursuant to employment Notification No.1/2011 by the RPF. Upon selection, he was appointed to the post in 2014. He was undergoing training when the impugned order was made. The allegation against the petitioner is that while filling the attestation form, a declaration was required to be made as to whether he had ever been arrested, detained or confined. He answered in the negative. Subsequently, the respondents became aware that he was, in fact, involved in a criminal case and faced charges for committing offence under Sections 323, 324, 342 and 34 IPC. The charges ended in his acquittal by the Competent Court, i.e., the Judicial

Magistrate (First Class), Charkhi Dadri on 04.11.2008. The petitioner contends that in view of acquittal in 2008, the question of disclosing previous criminal charge and any developments which have no relevance in 2011 did not arise. Counsel for the respondent submitted that having regard to the specific questions in the form, which was attested by the petitioner, he could not have suppressed the facts which are relevant and material which was relevant factors to be considered by the Competent Authority offering employment.

The petitioner had, during the course of hearing, relied upon a judgment of Supreme Court reported as ***Ram Kumar vs. State of U.P.*** 2011 (14) SCC 709. In that case, the Court had emphasized that omission to furnish an affidavit or in the proforma of verification roll that a criminal case has been registered against the petitioner *ipso fact* would not be a bar to his consideration. Since the employing authority has to “*satisfy himself on the point as to whether the appellant was suitable for appointment to a post of a Constable with reference to nature of suppression and nature of the criminal case.*”.

The respondents’ counsel relied upon the judgment of the Supreme Court in ***State of M.P. vs. Parvez Khan*** AIR 2015 SC 602. The said judgment has noticed some previous judgments, including ***Commissioner of Police vs. Mehar Singh*** AIR 2013 SC 2861. The Court dealt with the distinction between ‘*honourable acquittal and benefit of doubt*’ in such cases. In ***Parvez Khan*** (*supra*), the Court had noticed in para 4 that the applicant had been prosecuted for offences under Section 323, 324, 325, 294 and 506-B/34 of IPC. The charges were grave and serious. Furthermore, the judgment in ***Ram Kumar*** (*supra*) was not noticed. We are informed that a

reference with regard to correct approach to be adopted in cases where candidates do not disclose relevant facts as to the previous criminal prosecution and its outcome is pending before a larger Bench of Supreme Court.

Having regard to the conspectus of the circumstances, this Court is of the opinion, especially when the petitioner has served the Indian Army almost 20 years (19 years in fact), that the solitary instance of not disclosing the pending prosecution should not have been the only basis for his discharge, rather the authority should have looked into the nature of charge, the findings of the Criminal Court as well as his past service and then take a decision. In view of this matter, the impugned order is hereby set aside. The respondents are hereby directed to look into the entire record, including the character certificate of the Indian Army which may subsequently disclose with respect to the awareness or otherwise of pending criminal case which ended in the petitioner's acquittal in 2008. It is open to the petitioner to produce the said certificate within four weeks from today. The respondents shall pass a speaking order in this regard within 12 weeks from today. The said order shall also indicate the manner in which the petitioner's service is to be treated for the interregnum period, i.e. date of discharge till the date of the said order.

The writ petition is disposed of in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

AUGUST 31, 2015/bg