

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.151 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 20071 of 2010**

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Niraj Kumar, Son of Sri Vijay Singh, Resident of Village- Kormathu, P O
Kotmathu, P.S. Belaganj, District- Gaya

.... Appellant/s

Versus

1. The Union of India Through The Inspector General, Central Industrial Security Force, C I S F, NS, Hqrs, Saket, Post Nalviya Nagar, New Delhi- 17.
2. The Inspector General, Central Industrial Security Force, (Ministry Of Home Affairs), CISF, NS, Hdqs, Saket, Post- Malviya Nagar, New Delhi- 17.
3. The Deputy Inspector General, Central Industrial Security Force, (Ministry Of Home Affairs), CISF, EZ Hdqs, Patliputra, Boring Road, Patna- 13 (Bihar)
4. The Assistant Inspector, CISF, Eastern Zone, Hqrs, Patliputra, Boring Road, Patna- 13
5. The Group Commandant, Central Industrial Security Forces, (Ministry Of Home Affairs), CISF, GP, Hdqs, Saket, New Delhi- 17.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shailesh Kumar, Advocate
For the Respondent/s : Mr. Sanjay Kumar, Asstt. SG
Mr. Anjani Kumar Sharan, CGC

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 27-04-2016

The order dated 14th February, 2011 passed by the learned
Single Judge in CWJC No. 20071 of 2010, whereby the writ
application filed by the appellant against the order of termination of
his services by the Group Commandant, Central Industrial Security
Forces, G.P., Headquarters, Saket, New Delhi, and the order in appeal
on 11th June, 2009, passed by the Inspector General, Central Industrial

Security Forces, NS Headquarters, remained unsuccessful.

The appellant was appointed on 3.8.2006 as Constable/GD in the Central Industrial Security Forces (CISF, in short). The appellant joined on 2.9.2006. Before joining, the appellant was required to fill up an Attestation Form which the appellant filled up on 26.8.2006. The questions in the Attestation Form included as to whether a candidate had ever been arrested, prosecuted or kept in detention. The answers of the appellant against all those questions were in negative. There was condition in the Attestation Form if any information is found to be incorrect, it will amount to disqualification and would likely to render the candidate unfit for employment under the Government.

On verification of the character and antecedents of the appellant, it was found that two criminal cases bearing Belaganj P.S. Case No. 66/2003 under Sections 448, 341, 380, 435, 504, 34 of the Indian Penal Code and Belaganj P.S. Case No. 89/2003 under Sections 341, 325, 504, 34 of the Indian Penal Code were pending against the appellant when he submitted the Attestation Form. It is on the basis of such information; services of the appellant were terminated by the Group Commandant and affirmed by the Inspector General. Challenge to the said order before the learned Single Judge remained unsuccessful. Hence, this appeal.



Before this Court, learned counsel for the appellant argued that the order of termination could not have been passed without any enquiry or even show cause notice. Such order violates the principles of natural justice. It is also argued that it was inadvertent mistake on the part of the appellant that the information about the cases could not be furnished. However, both the cases have ended in acquittal in the year 2007 on the basis of settlement arrived at between the parties before filling up the Attestation Form. He refers to a judgment of the Supreme Court in the case of *Commissioner of Police vs. Sandeep Kumar [(2011) 4 SCC 644]* to contend that minor mistake should have been ignored when the candidate is young.

We have heard learned counsel for the parties and find no merit in the appeal. The Attestation Form was clear and categorical to disclose all information relating to pending cases. The appellant has conveniently omitted to give the information so as to mislead the employer. It was on verification of antecedents, it came out that the appellant was involved in two cases and that too of offences under Sections 448, 341, 380, 435, 504, 34 of the Indian Penal Code. The failure to disclose such information amounted to disqualification. It is not the case of the appellant that no case was pending at the time when he furnished the Attestation Form. It is however asserted on behalf of the appellant that it is a case of inadvertent mistake. In view



of the admitted fact that the cases were pending when the appellant submitted the Attestation Form, the consequence is disqualification as per the conditions stipulated in the Attestation Form itself. When the facts are admitted on the pending criminal cases and that too is non-disclosure, the consequence is obvious. A person who intends to join Government Service is not entitled to any indulgence.

Still further, the appellant had completed period of two years in terms of Rule 25 of the Central Industrial Security Forces Act, 2001. But admittedly, there was no order of confirmation of his service on the post was passed. Therefore, the appellant would continue to be a probationer unless there is an order of confirmation passed in respect of his service.

The judgment in **Sandeep Kumar's** case (supra), is of no help to the appellant. That was a case where the criminal case for offence under Section 325 and 34 IPC ended in acquittal even before the advertisement for the post was published. In the present case, criminal trial was pending against the appellant when he submitted the Attestation Form. In fact, the criminal cases ended in acquittal in 2001 when he was already working under the respondents. Therefore, the said judgment is of no assistance to the arguments raised by the appellant. In fact, in another recent order reported as ***Jainendra Singh v. State of U.P., (2012) 8 SCC 748***, the Supreme Court has referred

the issue to larger bench after considering the judgment in Sandeep Kumar's case while observing to the following effect:-

“29. As noted by us, all the above decisions were rendered by a Division Bench of this Court consisting of two Judges and having bestowed our serious consideration to the issue, we consider that while dealing with such an issue, the Court will have to bear in mind the various cardinal principles before granting any relief to the aggrieved party, namely:

29.1. Fraudulently obtained orders of appointment could be legitimately treated as voidable at the option of the employer or could be recalled by the employer and in such cases merely because the respondent employee has continued in service for a number of years, on the basis of such fraudulently obtained employment, cannot get any equity in his favour or any estoppel against the employer.

29.2. Verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to the post under the State and on account of his antecedents the appointing authority if finds it not desirable to appoint a person to a disciplined force can it be said to be unwarranted.

29.3. When appointment was procured by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer and, therefore, it would create no equity in his favour or any estoppel against the employer while resorting to termination without holding any inquiry.

29.4. A candidate having suppressed material information and/or giving false information cannot claim right to continue in service and the employer, having regard to the nature of employment as well as other aspects, has the discretion to terminate his services.

29.5. The purpose of calling for information regarding involvement in any criminal case or detention or conviction is for the purpose of verification of the character/antecedents at the time

of recruitment and suppression of such material information will have a clear bearing on the character and antecedents of the candidate in relation to his continuity in service.

29.6. The person who suppressed the material information and/or gives false information cannot claim any right for appointment or continuity in service.

29.7. The standard expected of a person intended to serve in uniformed service is quite distinct from other services and, therefore, any deliberate statement or omission regarding a vital information can be seriously viewed and the ultimate decision of the appointing authority cannot be faulted.

29.8. An employee on probation can be discharged from service or may be refused employment on the ground of suppression of material information or making false statement relating to his involvement in the criminal case, conviction or detention, even if ultimately he was acquitted of the said case, inasmuch as such a situation would make a person undesirable or unsuitable for the post.

29.9. An employee in the uniformed service presupposes a higher level of integrity as such a person is expected to uphold the law and on the contrary such a service born in deceit and subterfuge cannot be tolerated.

29.10. The authorities entrusted with the responsibility of appointing constables, are under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of a constable and so long as the candidate has not been acquitted in the criminal case, he cannot be held to be suitable for appointment to the post of constable.

30. When we consider the above principles laid down in the majority of the decisions, the question that looms large before us is when considering such claim by the candidates who deliberately suppressed information at the time of recruitment, can there be different yardsticks applied in the matter of grant of relief.”

Learned counsel for the respondents refers to Division Bench judgment of this Court in the case of **Navin Kumar vs. State of Bihar & Ors. [2015 (2) PLJR 739]**, wherein it has been held that suppression of information regarding pendency of criminal case at the time of filling of the Attestation Form is sufficient to terminate the services.

In view of the decision of this Court in Navin Kumar's case (supra), and the fact that the judgment in Sandeep Kumar (supra) is not applicable to the facts of the present case, we do not find any error in the order of the learned Single Judge. The appeal is accordingly dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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