

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 758 of 2005

U.P.Singh

---- **Petitioner**

Versus

State of Madhya Pradesh and others

---- **Respondents**

For Petitioner : Mr. Parag Kotecha with Mr. Waquar Naiyer, Advocates
For State : Mr. Manish Nigam, Panel Lawyer

S.B.:Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

04/11/2016

Heard.

1. The petitioner filed an application in the year 1993 before the State Administrative Tribunal, Madhya Pradesh challenging legality and validity of order dated 09.09.1989 imposing penalty of dismissal from service and orders passed in appeal, review and mercy appeal affirming the order passed by the disciplinary authority. After abolition of the Tribunal, the application came to be transferred to this Court and registered as a writ petition.

2. The facts of the case, in nutshell, are that the petitioner, desirous of seeking employment in the Police department submitted an application form offering his candidature for appointment to the post of Constable. The petitioner was selected and appointed as constable vide order dated 02.03.1986. While the petitioner was continuing in service, the employer came to know about institution and pendency of a criminal case against the petitioner, at the time, the petitioner had applied for appointment to the post of constable as also an order passed by the Criminal Court on 08.12.1988 by which, the petitioner was held guilty of commission of offence under Section 392 of IPC though granted benefit of Section 4 of the Probation of Offenders Act, 1958 (for short "the Act of 1958") and released. It then led to institution of a departmental enquiry by issuance of

a charge-sheet on 29.10.1988 leveling two charges against the petitioner which are as under :

“चरित्रसत्यापन संबंधी फार्म के कालम क्रमांक 13 में अपराधिक प्रकरण की जानकारी जानबूझकर छिपा अवैधानिक रूप से कर्तव्यों पर बने रहकर संदिग्ध आचरण प्रदर्शित कर विभाग को धोखा देना।”

“अपराध क्रमांक 34/81 धारा 392/440 भा0द0वि0 थाना गढ जिला सीवा के प्रकरण में अपराधी होकर शासकीय सेवा के अयोग्य होते हुए पुलिस रेग्यूलेशन के पैरा-57 का उल्लंघन कर शासकीय सेवा प्राप्त कर विभाग में कर्तव्यरत रहकर शासन को आर्थिक क्षति पहुँचाना।”

3. The enquiry eventually resulted in submission of enquiry report finding charges proved against the petitioner which led to imposition of penalty of dismissal from service vide order dated 09.09.1989. The petitioner preferred appeal which was dismissed. Thereafter, a review petition was also filed that was also dismissed. The petitioner then preferred a mercy appeal in disguise but did not get any result in his favour. Finally, the petitioner filed this petition.

4. Assailing correctness and validity of order, learned counsel appearing for the petitioner contended that the impugned order of penalty of dismissal from service, imposed on the petitioner, is illegal because firstly, the disciplinary authority did not properly take into consideration the petitioner's probable defence that at the time of offering candidature, the petitioner being young boy, not conversant with the intricacies depended upon another employee of the police department who actually filled up the form and petitioner did not fill up the form. Secondly, that in the departmental enquiry, out of six documents, enlisted with the charge-sheet, three documents were not supplied to the petitioner despite petitioner having made an application on 08.07.1989 vide Annexure A/6 for supply of document. Therefore, on account of non- supply of document, the petitioner suffered serious prejudice. Thirdly, that the respondents changed the enquiry officer but the petitioner was not given due and timely information of change of enquiry officer. Fourthly, it is submitted that the petitioner was not informed of his right to engage as defence assistant as provided in Rule 14(8) of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 (for short “the Rules of 1966”). The petitioner was a constable being a low paid employee. He did

not know about the procedural niceties and therefore, was unable to defend by himself. In the absence of a defence assistant, the petitioner could not effectively defend, himself, resulting in violation of principle of natural justice in addition to violation of statutory provisions. Fifthly, the petitioner was not allowed to cross-examine any of the prosecution witnesses. Sixthly, ground taken by the petitioner is that as the petitioner was ultimately given benefit of Section 4 of the Act of 1958 and released without any jail sentence, it was an extremely relevant consideration for the departmental authorities to consider whether extreme penalty of dismissal from service should be imposed on the petitioner and for that reason coupled with the fact that the petitioner was a student and he was falsely implicated in the case of robbery by the bus conductor on a petty dispute, imposition of punishment of dismissal from service is shockingly disproportionate to the gravity of misconduct. In support of his submission, learned counsel for the petitioner relied upon the judgments of the Supreme Court in the cases of **State of Uttaranchal & Others V. Kharak Singh, [2008 AIR SCW 7507]**, **Shankar Dass V. Union of India and another, [1985 (2) SCC 358]**, **Karri Ram Babu and others V. Chairman, State Level Police Recruitment Board, Hyderabad and others, [2014 AIR SCW 5559]** and **Avtar Singh V. Union of India and others, [AIR 2016 SCW 3598]**.

5. Per contra, learned State counsel in rebuttal submitted that the petitioner applied for appointment to a disciplined force as constable. The verification forms seek information, with the definite object to verify the antecedents of the applicant before considering suitability for entering into disciplined force as constable. In the relevant columns where the petitioner was required to disclose information with regard to pendency of criminal case, conviction, arrest etc, the petitioner deliberately suppressed these relevant informations by writing "No or Nil". At the time when the petitioner filled up application form, a criminal case was pending against the petitioner on the allegation of having committed offences under Section 392 and 440 IPC that the petitioner along with other accused persons had robbed the conductor of a bus and money was looted. The petitioner was fully aware of the institution of criminal case but he conveniently avoided to disclose the information only with the view to procure public employment. After appointment of the petitioner, the criminal case was decided, resulting in conviction vide order dated 08.12.1988. Even though, the

petitioner was released by giving benefit of Section 4 of the Act of 1958, the guilt of the petitioner was proved. Therefore, in these circumstances, the petitioner was clearly found to have procured public employment in a fraudulent manner by suppression of the material fact regarding institution and pendency of a criminal case against him. These facts were collected during enquiry and not disputed. It is further submitted that the petitioner has failed to show any prejudice caused to him on account of non-supply of stated document. There is nothing in the Rules which enjoined a duty on the enquiry officer to inform the delinquent employee of his right to be assisted by the defence assistant. The petitioner chose not to cross-examine the prosecution witnesses therefore he has to blame himself. The story that some other person filled up the application form and not the petitioner, was rightly disbelieved because there is no evidence led by the petitioner to prove this fact by leading oral or documentary evidence. Lastly, it is submitted looking to the facts that the petitioner applied for appointment as constable which is disciplined force and where the antecedent, character play a very important role in assessing suitability, the decision taken by the disciplinary authority to dismiss the petitioner from service on the ground of suppression of material fact cannot be said to be shockingly disproportionate so as to warrant interference of this Court.

6. From the petition, reply and the documents on record, the fact that on the date of filling up the application form, criminal case was pending against the petitioner on the allegation of having committed offence under Section 392 & 440 IPC is not disputed. It is not the case of the petitioner that on the date of submission of the application form, criminal case was not instituted or not pending or that such a case came up only after submission of the application form. Moreover, it is not the defence of the petitioner, as seen from his reply to the charge sheet, that even though some crime was registered against him by the police, the petitioner was not knowing about the registration of any such crime in police station or institution of a criminal case before a Criminal Court. It is also not in dispute that during the service, the Criminal Court passed final order on 08.12.1988 in which, the petitioner was found guilty of commission of offence under Section 392 IPC though acquitted of other charges. The defence of the petitioner as carved out from the reply is that the petitioner was not knowing about the requirement of disclosure and in fact the application form was not filled up by the petitioner but it was filled up by

another police officer extending him some kind of help and the petitioner had only put signature without reading and verifying whether the information given in the application form were truthful and correct.

7. On procedural propriety of the departmental enquiry instituted against the petitioner, it has been urged before the Court that some of the documents were not supplied to the petitioner. A perusal of the petitioner's application dated 08.07.1989 (Annexure A/6) shows that the petitioner had demanded three documents. These documents also find place in the list of documents attached with the charge sheet. However, there is nothing on record nor in the pleading to demonstrate how the petitioner was prejudiced on account of non-supply of these documents. It is trite law that mere non-supply of document is not by itself sufficient to vitiate departmental enquiry. The delinquent employee is required to establish that non-supply of the document caused to him some kind of prejudice. In the present case, the petitioner has failed to demonstrate as to how these three documents played any role in arrival of any conclusion of guilt against the petitioner. This Court cannot ignore admitted facts referred to herein above with regard to institution and pendency of a criminal case at the time of filling up application form and non-disclosure of the information in the application form. Therefore, in this factual backdrop, it is required to be examined whether any prejudice was caused to the petitioner. In the writ petition, there is hardly any pleadings made by the petitioner to suggest how and in what manner the petitioner was prejudiced. It was open for the petitioner to demonstrate this by reference to the finding of the enquiry officer in the enquiry report that those three documents which were not supplied to the petitioner, were made basis to record a conclusion against the petitioner. However, the petitioner has not even placed the copy of enquiry report before this Court much less demonstrating any prejudice caused to him.

8. The other submission that the petitioner was not apprised of his right to be assisted by the defence assistant, is without any force and liable to be rejected, because there is nothing in the relevant statutory Rules contained in the Rules of 1966 obliging the disciplinary authority or enquiry officer or the Presenting officer to inform the delinquent employee of such a right. Rule 14(8) of the Rules of 1966, confer a right on the delinquent employee to be assisted by a defence assistant with the permission of the disciplinary

authority. But it nowhere mentions regarding any obligation cast on any of the officers to give such an information or apprise the employee. In the absence of there being any such legal obligation, all that can be said is that the petitioner cannot take benefit of ignorance of law. The Rule confers such a right on the petitioner but the petitioner did not exercise that right for which he has to blame himself but that cannot be a reason to hold the entire enquiry vitiated for that reason.

9. During the course of argument, learned counsel for the petitioner submitted that the petitioner was not permitted to cross-examine the prosecution witnesses. This argument is not supported by proper pleadings in that regard. I do not find any specific pleading in the petition that the petitioner was not noticed regarding dates on which the prosecution witnesses were to be examined. On the contrary, the text and tenor of petitioner's pleading is that for want of proper knowledge, understanding of the proceeding, the petitioner could not examine prosecution witnesses. Thus, pleadings in this regard are blissfully vague and therefore, no relief can be granted.

10. The petitioner has also raised grievance with regard to the change of enquiry officer. The pleading, itself, shows that the petitioner was informed regarding change of enquiry officer. In any case, it could not be demonstrated from the provision of law as to how appointment of subsequent enquiry officer was in any manner illegal or contrary to the provision of relevant service Rules. How it prejudiced the petitioner, has nowhere been demonstrated. In the absence of there being any allegation against the enquiry officer, who conducted the enquiry and brought it to the logical conclusion by submission of enquiry report, on this ground, I am not inclined to hold that it had any vitiating effect on the departmental enquiry.

11. The submission of learned counsel for the petitioner is that the disciplinary authority did not properly appreciate the petitioner's defence that the petitioner did not actually fill up the form but another police officer filled up the form. It also cannot be accepted. From the reply of the petitioner, it is found that it was the sole defence of the petitioner that he actually did not fill up the form. It was, therefore, the burden of the petitioner to prove this fact by leading oral or documentary evidence. There is nothing on record much less in the pleadings that the petitioner ever made any

application before the enquiry officer to call as defence witness, that particular officer whom the petitioner alleged to have actually filled up the verification form/ application form. It is also not the case of the petitioner that any document in writing, evidencing this fact, lying on record of the employer was not produced despite application made by the petitioner in that behalf. Therefore, the petitioner having failed to lead such evidence, the departmental authority cannot be faulted in rejecting this defence.

12. In the present case, the order sheet shows that at one point of time, the Tribunal had directed on 10.05.99 to produce the records of departmental enquiry and thereafter on a subsequent date of hearing, it was informed to the Tribunal on 16.07.99 that the records are available with the Government Advocate who represented the Government. However, today, during the course of hearing, these records have not been produced. On account of non-production of the record, learned counsel for the petitioner prayed for drawing adverse inference against the respondents.

13. It is not a case where on a substantial issue, categorical pleadings have been made by the petitioner and which could not be traversed for want of records. On the aspect of procedural impropriety, it is not the case of the petitioner that a particular document was relevant it was taken into consideration by the enquiry officer and relied upon to hold charges proved yet it was not supplied. Had there been specific pleadings to that effect, perhaps non-production of record would have resulted in drawing of adverse inference against the respondents on account of non-production of departmental enquiry record.

14. Likewise in the absence of there being any specific pleadings that the petitioner was not noticed of the dates on which prosecution witnesses were to be examined, no adverse inference can be drawn only on the ground of non-production of record of enquiry. It is also not a case based on any pleadings that the petitioner applied for supply of any particular document or witness in defence, who was not produced. Therefore, non-production of departmental enquiry record, in the peculiar facts and circumstances of the present case and the pleadings of the parties particularly taking into consideration that some of the relevant facts are admitted, I am of the opinion that only on that ground, adverse inference against the respondents on the ground examined herein above cannot be

drawn.

15. Having examined the procedural impropriety aspect, the other questions which needs to be examined is with regard to the punishment imposed on the petitioner.

16. It cannot be lost sight of the fact that the petitioner had applied for appointment to the post of constable i.e. in disciplined force. Rule 57 of the Police Regulation is relevant as it reflects upon the importance of police verification of a person who is desirous of seeking employment as police personal.

“57. यदि उम्मीदवार नियुक्ति के लिए उपयुक्त के रूप में पास होता है तब अधीक्षक उसके चरित्र एवं पूर्व आचरण के संबंध में जांच करेगा। यदि परिणाम संतोषप्रद हुआ तब रिक्त स्थान होने पर वह नियुक्त किया जाएगा। उम्मीदवारों को यह चेतावनी दी जानी चाहिए कि उनके पूर्व आचरण का विवरण के संबंध में विवरण, जो कि भविष्य में किसी भी समय असत्य होना पाए जाएंगे तो बकाया सभी वेतन के समपहरण सहित उन्हें पदच्युत करने के लिए उत्तरदायी होंगे।”

A perusal of the aforesaid Rule emphasizes the importance of truthful declaration and the consequences when such declaration are not truthfully made. The appointment to the post of constable is an appointment in a disciplined force to a person who is to protect law and order, life and liberty of the people. If the applicant who, himself, is facing criminal case for commission of offence of robbery, filling up an application form suppressing the fact of pendency of a criminal case which has ended in his conviction, this assumes great significance and has material bearing on the suitability of the candidate. It has to be seen that it is not only institution of a criminal case or gravity of offence or the ultimate result in the criminal case which is important but the conduct of suppression of a very material fact is equally important.

17. In a recent case of **Avtar Singh (supra)**, the Supreme Court has surveyed earlier decisions on the issue with regard to consequences of suppression of fact of pendency or conviction in any criminal case while obtaining public employment. After survey of several decisions, the conclusions summarized by the Supreme Court in para 30 of its judgment

are read as under :

“30. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

(1) Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

(2) While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

(3) The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

(4) In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted : -

(a) In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

(b) Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

(c) If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

(5) In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

(6) In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its

discretion may appoint the candidate subject to decision of such case.

(7) In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

(8) If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

(9) In case the employee is confirmed in service, holding Departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

(10) For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

(11) Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.”

If the case of the petitioner is examined in the light of principles which has been laid down by the Supreme Court and various decisions which has been considered in the aforesaid decision, particularly when it is an admitted fact that on the date of submission of application form, criminal case on the allegation of robbery was pending against the petitioner, imposition of a penalty of dismissal from service can neither be said to be illegal nor shockingly disproportionate to the gravity of misconduct. It is not a case of petty offence but offence of robbery. It is also not a case that ultimately the petitioner was acquitted of the charges. Release of the petitioner by giving benefit of Section 4 of the Act of 1958 may not have resulted in actual sentence imposed on the petitioner, the fact remains that the petitioner was convicted for an offence which cannot be said to be petty in nature. What is more important is the conduct of the petitioner in

suppressing a very relevant information of a pendency of criminal case particularly when he was applying for the post of constable in a disciplined force.

18. In particular with regard to such cases where suppression of criminal case is while seeking employment to disciplined force, the Supreme Court had occasion to deal with the matter with a little different approach. In the case of **Avtar Singh (supra)**, the Supreme Court took note of its earlier decisions in the cases of **Commissioner of Police, Delhi & Anr. V. Dhaval Singh**, [(1999) 1 SCC 246], **Union of India & Ors. V. Bipad Bhanjan Gayen**, [(2008) 11 SCC 314], **R. Radhakrishnan v. Director General of Police & Ors.**, [(2008) 1 SCC 660] and **Secretary, Department of Home Secy., A.P. & Ors. vs. B. Chinnam Naidu**, [(2005) 2 SCC 746]. The relevant factual background in which the Supreme Court decided such cases, are extracted herein below :

“7. Another decision of this Court which has been noted in the order is [Commissioner of Police, Delhi & Anr. v. Dhaval Singh](#) (1999) 1 SCC 246. It was a case pertaining to the verification or antecedents form in August, 1995 in which pendency of criminal case was not mentioned but it was disclosed on 15.11.1995. An application was submitted mentioning that he had inadvertently failed to mention in the appropriate column regarding the pendency of the criminal case and the latter may be treated as an information despite such disclosure before passing an order of cancellation of candidature, was not taken into consideration by the concerned employer. This Court has held that cancellation of the candidature of Dhaval Singh was not appropriate. It was without proper application of mind and without taking into consideration all relevant material. The tribunal has therefore rightly set it aside. This Court has laid down thus :

“5. That there was an omission on the part of the respondent to give information against the relevant column in the Application Form about the pendency of the criminal case, is not in dispute. The respondent, however, voluntarily conveyed it on 15-11-1995 to the appellant that he had inadvertently failed to mention in the appropriate column regarding the pendency of the criminal case against him and that his letter may be treated as

9. xxx

10. In Secretary, Department of Home Secy., A.P. & Ors. v. B. Chinnam Naidu (2005) 2 SCC 746, the case pertained to suppression of material information and/or giving false information in the attestation form. In the attestation form the respondent had not mentioned about his arrest and pendency of a case against him. The tribunal held that the employee had suppressed material information while filling up the attestation form and upheld the order of termination. The High Court set aside the order of the tribunal holding that the employer was not justified in

denying appointment to the respondent. This Court has noted that as per the relevant column of the attestation form the candidate was required to indicate whether he had ever been convicted by a court of law or detained under any State/Central preventive detention laws. He was not required to indicate whether he had been arrested in any case or any case was pending against him. In view of the relevant column in the form it could not be said that the respondent had made false declaration or had suppressed material information. As such this Court held that the action of the employer in not permitting the respondent to join the training due to suppression of truth in the attestation form, was not sustainable. This Court observed that the requirement in the present case was “conviction” and not “prosecution”. This Court has held thus :

“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. A bare perusal of the extracted portions shows that the candidate is required to indicate as to whether he has ever been convicted by a court of law or detained under any State/Central preventive detention laws for any offences whether such conviction is sustained or set aside by the appellate court, if appealed against. The candidate is not required to indicate as to whether he had been arrested in any case or as to whether any case was pending. Conviction by a court or detention under any State/Central preventive detention laws is different from arrest in any case or pendency of a case. By answering that the respondent had

not been convicted or detained under preventive detention laws it cannot be said that he had suppressed any material fact or had furnished any false information or suppressed any information in the attestation form to incur disqualification. The State Government and the Tribunal appeared to have proceeded on the basis that the respondent ought to have indicated the fact of arrest or pendency of the case, though column 12 of the attestation form did not require such information being furnished. The learned counsel for the appellants submitted that such a requirement has to be read into an attestation form. We find no reason to accept such contention. There was no specific requirement to mention as to whether any case is pending or whether the applicant had been arrested. In view of the specific language so far as column 12 is concerned the respondent cannot be found guilty of any suppression.”

11. This Court in [R. Radhakrishnan v. Director General of Police & Ors.](#) (2008) 1 SCC 660 considered a case where the appellant intended to obtain appointment in police force. Application for appointment and the verification roll were both in Hindi and also in English. The application was filed for appointment to the post of a Fireman on 5.1.2000. He was involved in the criminal case which occurred on 15.4.2000 under [section 294\(b\)](#) IPC. He was released on bail and was acquitted of the said charge on 25.9.2000. However his services were dispensed with on the ground of suppression of pendency of the criminal case. This Court upheld the order and had held thus :

10. Indisputably, the appellant intended to obtain appointment in a uniformed service. The standard expected of a person intended to serve in such a service is different from the one of a person who intended to serve in other services. Application for appointment and the verification roll were both in Hindi as also in English. He, therefore, knew and understood the implication of his statement or omission to disclose a vital information. The fact that in the event such a disclosure had been made, the authority could have verified his character as also suitability of the appointment is not in dispute. It is also not in dispute that the persons who had not made such disclosures and were, thus, similarly situated had not

been appointed.”

In **R. Radhakrishnan (supra)** this Court had taken note of the decision in Sushil Kumar (supra) in which the background facts of the case in which the employee was involved were considered, and the antecedents were not found good.

12. In Union of India & Ors. v. Bipad Bhanjan Gayen (2008) 11 SCC 314, the facts indicate that the respondent was selected for training as a Constable in Railway Protection Force, and pending verification of Form 12, he was sent for training. It was found on verification that he had been involved in FIR 20/1993 for an offence punishable under [section 376](#) IPC and another case under [section 417](#) was pending in the court. On 10.7.1995 his services were terminated with immediate effect because of his involvement in the police case and suppression of factual information in the attestation form by the candidate. It was an admitted fact that two prosecutions were pending on the date when he filled in the form. The employee was under probation at the time of termination of his service. This Court has held thus :

“8. We have heard the learned counsel for the parties and gone through the record. Rule 57 of the Rules provides for a probation period of 2 years from the date of appointment subject to extension. Rule 67 provides that a direct recruit selected for appointment as an enrolled member of the Force is liable to be discharged at any stage if the Chief Security Officer, for reasons to be recorded in writing, deems it fit to do so in the interest of the Force till such time as the recruit is not formally appointed to the Force. A reading of these two rules would reveal that till a recruit is formally enrolled to the Force his appointment is extremely tenuous.

9. It is the admitted case that the respondent was still under probation at the time his services had been terminated. It is also apparent from the record that the respondent had been given appointment on probation subject to verification of the facts given in the attestation form. To our mind, therefore, if an enquiry revealed that

the facts given were wrong, the appellant was at liberty to dispense with the services of the respondent as the question of any stigma and penal consequences at this stage would not arise.

10. It bears repetition that what has led to the termination of service of the respondent is not his involvement in the two cases which were then pending, and in which he had been discharged subsequently, but the fact that he had withheld relevant information while filling in the attestation form. We are further of the opinion that an employment as a police officer pre-supposes 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.” The fact remains that this Court in **Bipad Bhanjan Gayen (supra)**, the case in which the offence involved was with respect to commission of rape under [section 376](#) and cheating under [section 417](#). The case involved moral turpitude, as such suppression was material as that would have clear impact on the antecedents and suitability of an incumbent for being appointed in the service. Thus the suppression was material and was such that the employer could have safely taken the view to terminate the services. Such an incumbent cannot be said to have any equity to seek employment till he is given a clean chit by the courts of law and his antecedents are otherwise found to be good besides the acquittal.”

19. A common thread running through the judgment particularly in cases where the delinquent was seeking employment in disciplined force, pendency of a criminal case and gravity of offence have been considered to be very relevant information in order to decide the suitability of the candidate. That is what has also been reflected in Regulation 57 of the Police Regulation referred to above.

20. Learned counsel for the petitioner places reliance on judgment of the Supreme Court. In the case of **State of Uttaranchal & Ors vs. Kharak Singh (supra)**, the Court took into consideration number of illegality and irregularities committed which included the role played by the enquiry officer as that of a prosecutor and judge, that was the case where other

kind of illegality like non-supply of document, denial of opportunity to cross examine the witness, denial of defence witnesses were taken into consideration. On facts, the aforesaid case is distinguishable from the present case, as has been considered herein above. The other decision cited by learned counsel for the petitioner i.e. **1985 (2) SCC 358 (Shankar Dass Vs. Union of India and another)** is also not of great help because it is not a case where the petitioner's service has been dispensed with only on the ground of he having suffered disqualification upon his conviction. Present is a case where the petitioner was issued a charge sheet and the graveness of charge against the petitioner, is of suppression of most material information regarding institution of a criminal case against him while seeking employment to a disciplined force. The third decision in the case of **Karri Ram Babu and others (supra)** is again distinguishable on facts because present is not a case where the petitioner has come out with the defence that institution of a criminal case was not within his knowledge by the time he filled up the application form. The facts of this case which is admitted is that the petitioner had full notice and knowledge of pendency of criminal case against him but he chose not to disclose these information. The observations made by the Supreme Court in the case of **Avtar singh (supra)** are pertinent. It was held thus ;

“24. No doubt about it that once verification form requires certain information to be furnished, declarant is duty bound to furnish it correctly and any suppression of material facts or submitting false information, may by itself lead to termination of his services or cancellation of candidature in an appropriate case. However, in a criminal case incumbent has not been acquitted and case is pending trial, employer may well be justified in not appointing such an incumbent or in terminating the services as conviction ultimately may render him unsuitable for job and employer is not supposed to wait till outcome of criminal case. In such a case non disclosure or submitting false information would assume significance and that by itself may be ground for employer to cancel candidature or to terminate services.

25. The fraud and misrepresentation vitiates a transaction and in case employment has been obtained on the basis of forged documents, as observed in M. Bhaskaran's case (supra), it has also been observed in the reference order that if an

appointment was procured fraudulently, the incumbent may be terminated without holding any inquiry, however we add a rider that in case employee is confirmed, holding a civil post and has protection of Article 311(2), due inquiry has to be held before terminating the services. The case of obtaining appointment on the basis of forged documents has the effect on very eligibility of incumbent for the job in question, however, verification of antecedents is different aspect as to his fitness otherwise for the post in question. The fraudulently obtained appointment orders are voidable at the option of employer, however, question has to be determined in the light of the discussion made in this order on impact of suppression or submission of false information.

26. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.

27. Suppression of 'material' information presupposes that what is suppressed that 'matters' not every technical or trivial matter. The employer has to act on due consideration of rules/instructions if any in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.

28. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by concerned authorities considering post/nature of duties/services and power has to be exercised on due consideration of various aspects."

21. Having applied the aforesaid principle to the facts of the present case, I have to hold that the imposition of penalty of dismissal from service cannot be termed as illegal much less shockingly disproportionate so as to warrant interference by this Court.

22. In the result, the petition is dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Rekha