

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.9862 OF 2015

Dnyaneshwar s/o Madhavrao Kure,
Age: 25 years, Occ - Nil,
R/o. Khujada, Tq. Mudkhed
Dist. Nanded.

.. Petitioner

VERSUS

1. Union of India,
Through Ministry of Railways
Rail Bhawan,
New Delhi.
2. The Director General
Railway Protection Security Force
Rail Bhawan,
New Delhi.
3. Inspector General (Admn)
Rail Bhawan,
New Delhi.
4. Additional Chief Security Commissioners
North-East Frontier Railway
Malegaon, Dist. Dhule (M.S.)
5. Senior Commanding Officer-
No.6 Battalion
Railway Protection Security Force
Dayabasti, New Delhi.

.. Respondents

Mr.S.V.Kurundkar, Advocate for Petitioner;

Mr. M.N. Navandar and Mr.S.B.Deshpande, Advocates for
Respondent Nos. 1 to 5.

CORAM : S.S.SHINDE &
P.R.BORA, JJ.

DATE OF RESERVING JUDGMENT : 10th February, 2016
DATE OF PRONOUNCING JUDGMENT:06th May ,2016.

JUDGMENT (PER:-P.R.BORA, J.)

1) Heard. Rule. Rule made returnable
forthwith by consent of parties.

2) The petitioner has filed the present
petition seeking quashment of order dated 19th
June, 2015, whereby the Additional Chief Security
Commissioner, North-East Frontier Railway,
Maligaon (Respondent No.5) has discharged the
petitioner from the service of the Railway
Protection Security Force (for short, RPSF).

3) As stated in the petition, the
petitioner was selected as Constable in the
selection process carried out in the year 2013-

2014. In the month of June-2013, the petitioner had appeared for written examination and on succeeding in the written examination the petitioner was called for physical examination in March 2014. He was found physically fit and his interview was, therefore, conducted in June 2014. He got through the interview also and was finally selected for the post of Constable. The appointment order was issued in his favour by Respondent No.5 on 5.10.2014 and he was directed to report to SSB Constable Training Centre, Sonitpur in Assam State w.e.f. 1.11.2014. Since the said date till 19th June, 2015, i.e. till date of his discharge, the petitioner served with the respondent as Trainee Constable.

4) The petitioner came to be discharged from the services of RPSF on the ground that he suppressed the material fact and submitted false information in the attestation form that he was never detained / prosecuted or punished in any criminal case. According to the respondents, the

petitioner has, thus, violated the provisions contained in Para 3 of the Attestation Form, rendering him unfit for the Government service. The discharge order reveals that in view of the provision contained in Para 3 of the Attestation Form and under Rule 55.2 and 67.2 of the Railway Protection Force Rules, 1987, the petitioner was discharged from the services of RPSF.

5) As is revealing from the material on record, the petitioner was prosecuted in the court of Judicial Magistrate First Class, Mudkhed for the offences punishable under Sections 353, 332 and 504 of Indian Penal Code, vide SCC No. 136/2014. It was alleged that on 28.11.2013, the petitioner voluntarily caused hurt to the Conductor of ST bus to deter him from his duty. It was also alleged that he assaulted the conductor of the said bus to deter him from discharging his duty. However, the petitioner was acquitted of the offences so charged against him; vide Judgment and Order passed by the

Judicial Magistrate First Class, Mudkhed on 21.8.2014 in the aforesaid Summary Criminal Case.

6) According to the terms of appointment for Constable Recruit in RPSF, the candidature of the petitioner for enlistment in the provisional selection list was subject to satisfactory police verification. The terms provide that in case of adverse report, the services of the petitioner were liable to be terminated with immediate effect. As per the said terms the petitioner was required to submit an attestation form along with his affidavit at the time of joining initial training. In the said affidavit, for which there was a prescribed format, the candidate swearing such affidavit was required to clarify whether he was ever been arrested and/or prosecuted; kept under detention or fined or convicted by any court of law for any offence or debarred or disqualified by any Railway Recruitment Board or any Recruitment Board/Commission of the Government of India or any of the State of India.

It was further required that the deponent shall also clarify whether any criminal case is pending against him in any court of law.

7) It is not in dispute that the petitioner had also sworn the affidavit in the aforesaid proforma, wherein he had not disclosed the fact of his prosecution for the offences under Sections 332 and 353 of Indian Penal Code in the court of Judicial Magistrate First Class, Mudkhed in SCC No.136/2014. The material on record further reveals that the matter was referred for verification of the character and antecedents of the petitioner to the Superintendent of Police, Nanded. The Superintendent of Police, Nanded, vide communication dated 26th May, 2015, informed the Senior Commandant, Headquarters 6 Battalion, Railway Protection Force, Delhi that the petitioner was involved in an offence and criminal case under Section 353, 332 and 504 of Indian Penal Code was registered against him at Police Station, Mudkhed. It was also informed by

the Superintendent of Police, Nanded that the petitioner has been acquitted of the offences for which he was prosecuted in the Court of Judicial Magistrate First Class, Mudkhed.

8) Respondent No.5, however, holding that the petitioner did not disclose the true facts and suppressed the material fact of his prosecution, discharged him from the services of RPSF.

9) Shri Kurundkar, learned Counsel appearing for the petitioner, submitted that before discharging the petitioner from the services of RPSF, the Respondent did not give him any opportunity to put-forth his case and thus, according to him the discharge-cum-termination order, was in utter violation of principles of natural justice and hence cannot be sustained. The learned Counsel further argued that the petitioner did provide a plausible explanation for not disclosing the fact of his prosecution

while filling in the Attestation Form and swearing the affidavit, stating that he did not understand the terms and conditions incorporated in the order of appointment as well as the contents of the prescribed proforma of the affidavit, which was in English language, and as such, he erred in furnishing the necessary particulars. The learned Counsel urged that the petitioner was never intending to suppress the said fact since he was not convicted in the aforesaid criminal case. The learned Counsel further submitted that the petitioner has proved his merit by succeeding in the written examination; physical test and oral interview and merely because he failed in providing information about his prosecution in the proforma affidavit, he cannot be punished by discharging from the services. The learned Counsel relied upon the judgment of the Hon'ble Apex Court in the case of **Commissioner of Police and Ors. Vs. Sandeep Krishna - 2011 (4) SCC 644**, to support his argument that lenient view ought to have been

taken by the respondents/authorities. The learned Counsel, therefore, prayed for quashing and setting aside the aforesaid communication and consequently for direction to the respondents to reinstate the petitioner on the post of Constable with all consequential benefits.

10) Shri Navandar, the learned Counsel appearing for the respondents, resisted the contentions raised on behalf of the petitioner. The learned Counsel, relying upon the judgment of Hon'ble Apex Court in the case of Union of India and Ors. Vs. Bipad Bhanjan Gayen reported in 2008 (8) Scale 483, submitted that the misconduct alleged against the petitioner was of incorrect filing of the Attestation form and not being involvement in criminal case and as such, the mere fact that the petitioner has been acquitted would not have any effect on the merits of the controversy. The learned Counsel further submitted that an employment in the Railway Protection Force as a police constable

presupposes a higher level of integrity, because such a person is expected to uphold the law and if it is found that at a very initial stage somebody has tried to suppress the material fact, alike the petitioner, he cannot be continued in the services of RPSF. The learned Counsel, therefore, prayed for dismissal of the petition.

11) We have carefully considered the submissions advanced on behalf of learned Counsel appearing for the parties. In the affidavit, sworn in and submitted by the petitioner, in terms of the appointment order at the time of proceeding for training, the petitioner has admittedly not disclosed the fact that he was prosecuted for offence punishable under Sections 353, 332 and 504 of Indian Penal Code in SCC No. 136/2014 in the court of Judicial Magistrate First Class, Mudkhed. On the contrary, the petitioner has submitted an affidavit, contending therein that he was never arrested and/or prosecuted by any court of law for any offence.

There is further no dispute that the petitioner was acquitted in the aforesaid criminal case on 21.8.2014, i.e. prior to swearing of affidavit, as aforesaid, by him. Vide order dated 5.10.2014, issued by Respondent no.4, the petitioner was provisionally selected as a Constable in RPSF on the basis of his overall merit position. Vide order dated 5.10.2014, the petitioner was directed to report at SSB Constable Training Centre at Sonitpur in Assam on 1.11.2014. He was further informed that on successful completion of the training and subject to fulfillment of other conditions, he will be appointed by the competent authority as Constable in RPSF. The petitioner was further required, vide said communication to submit an affidavit in prescribed proforma, duly executed on non-judicial stamp paper of at least Rs.10/-.

12) On 5.10.2014, admittedly, no criminal case was pending against the petitioner and the criminal case which was filed against him, had

ended in acquittal. The question arises, "whether non-disclosure of the fact that he was prosecuted for certain offences under Indian Penal Code , in spite of his acquittal therefrom, shall be held to be suppression of fact or providing false information and shall result into his discharge from the services of RPSF ?"

13) There cannot be a dispute that employment as police officer pre-supposes a higher level of integrity, because such a person is expected to uphold the law. It also cannot be disputed that the purpose of seeking the information whether any criminal case is pending against a candidate concerned or whether at any point of time, he was arrested or prosecuted in any offence, is to judge the character and antecedents of the said candidate for his continuation in service.

14) In the present case, the petitioner admittedly did not disclose the fact of his prosecution for the offences referred above. The

question is, had the present petitioner disclosed the fact of his prosecution for the offences referred above and also about his acquittal in the said criminal case, whether the competent authority would have discharged him from the services on the ground that he might have been acquitted in the said criminal case, but the fact remains that there was criminal prosecution against him. The answer emphatically is "No". In such a case, the competent authority has to look into the nature of allegations against the candidate concerned and further has to see whether on what grounds ultimately he was acquitted. The competent authority has to form its opinion about the integrity and overall character of the incumbent on the basis of material before it and to take decision whether to continue him in services or otherwise. It is thus evident that even if any such information is timely provided, then also the competent authority has to objectively form its opinion as stated herein above.

15) In the instant case, such objective assessment does not seem to have been made by the Competent Authority before discharging the petitioner from the services. In the circumstances, we deem it appropriate to quash and set aside the order dated 19th June, 2015 and remit back the matter to Respondent No.4 with a direction that Respondent No.4 shall objectively assess the suitability of the petitioner for continuation of the petitioner in the services on the basis of verification report received from the Superintendent of Police, Nanded and more particularly having concern to the acquittal recorded in favour of the petitioner in the criminal case against him and take the appropriate decision as expeditiously as possible.

16) The petition thus stands partly allowed in the aforesaid terms with no order as to costs. Rule is made absolute in the aforesaid terms.

(P.R.BORA)
JUDGE

(S.S.SHINDE)
JUDGE