

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 9533 of 2014 (O&M)

Date of decision : 6.9.2016

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Rajesh

.....Petitioner

vs.

Union of India and others

.....Respondents

Coram: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. Sushil Jain, Advocate for the petitioner.

Mr. J.S. Lalli, Advocate for Union of India-respondents.

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P.B. Bajanthri, J.

In the instant writ petition, the petitioner has assailed the orders dated 27.7.2013 and 19.11.2013, Annexure P-6 and Annexure P-11, passed by 3rd respondent and 2nd respondent, respectively. Further prayed for a direction to the respondents to appoint the petitioner on the post of Constable with all service benefits.

2) Respondents advertised for the posts of Constable (GD) in CPMFs for the year 2011-2012. The petitioner is one of the candidate for the recruitment to the post of Constable (GD) in CPMFs. He was qualified and was selected and offered appointment for CISF to the post of Constable and the same was communicated to the petitioner on 14.1.2013 vide Annexure P-2. Superintendent of Police, Rohtak gave a certificate on 22.1.2013. Similarly, Sub Divisional Magistrate, Rohtak issued a character certificate.

3) Appointed candidates were required to fill an Attestation Form. Relevant clauses of Attestation Form are reproduced hereunder:-

“1. The furnishing of false information or suppression of any factual information in the Attestation Form would be a disqualification and is likely to render the candidate unfit for employment under the Government.

XXX XXX XXX

3. If the fact that false information has been furnished or that there has been suppression of any factual information in the Attestation Form comes to notice at any time during the service of a person, his services would be liable to be terminated.

XXX XXX XXX

12.(a) Have you ever been arrested?

(b) Have you ever been prosecuted?

(c) Have you ever been kept under detention?

(d) Have you ever been bound down?

(e) Have you ever been fined by Court of law?

(f) Have you ever been convicted by a

Court of law for any offence?

(g) Have you ever been debarred from any examination or rusticated by any University or any other Educational Authority/Institution?

(h) Have you ever been debarred/disqualified by any Public Service Commission for any of its examinations/selections?

(i) Is any case pending against you in any Court of law at the time of filling of this Attestation Form?

(j) Is any case pending against you in any University or any Educational Authority/Institution at the time of filling of this Attestation Form?

(k) Whether discharged/expelled/withdrawn from any Training Institution under the Government or otherwise?

The answer to any of the above mentioned question is 'yes' give full particulars of the case/arrest/detention/fine conviction / sentence/punishment and/or the nature of the case pending in the Court/University/

Educational Authority etc. at the time of filling up this Form.”

4) After receipt of the Attestation Form of the petitioner by the respondents, verification of character and antecedents of candidates for the post of Constable GD in CISF was sent to District Magistrate, District Rohtak, (Haryana). District Magistrate, Rohtak furnished information to the Deputy Inspector General, CISF, furnishing information that “necessary enquiries have been made by local police and found case FIR No. 302 dated 3.12.2007 under Section 323/325/34 IPC Police Station Sampla, District Rohtak, has been registered against Rajesh son of Sh. Ram Kumar, Caste Jat, r/o village Bakheta, Police Station Sampla, District Rohtak and acquitted on 7.4.2008 by the Court of Sh. Chander Hass, JMIC, Rohtak, District Rohtak.” Based on the above information, Commandant issued a termination notice dated 25.7.2013 (Annexure P-5) under Sub-Rule (2) of Rule 25 of the Central Industrial Security Force Rules, 2001 on the ground of suppression of fact in Attestation Form at Sr.No. 12 (b). On 27.7.2013, the Commandant terminated services of the petitioner vide Annexure P-6. Against the order of termination, the petitioner preferred appeal before the Appellate Authority. Petitioner's appeal was rejected on 19.11.2013. Thus the petitioner has presented this petition questioning the validity of termination order, as well as, rejection of his appeal.

5) Learned counsel for the petitioner submitted that it is true that he was involved in a criminal case in the year 2007. On 7.4.2008,

he had been acquitted, whereas the process of selection and appointment to the post of Constable (GD) was in the year 2011. Petitioner was selected and appointed in the year 2013. Therefore, the question of suppression whether the petitioner was prosecuted or not may not arise since he has been acquitted. It was further submitted that information sought in the Attestation Form by the authorities from the candidate is not very clear and specific. In other words whether a candidate was prosecuted and acquitted column is not forthcoming. Therefore, there is a confusion whether acquitted persons should state that whether candidate has been prosecuted. Thus, there was no intention of the candidate in not stating in the Attestation Form that he was prosecuted and acquitted. Whereas there are columns like – have you ever been fined by Court of law or have you ever been convicted by a Court of law for any offence. If such information is to be furnished that if a candidate is acquitted but still he has to answer 'yes', acquittal information is to be furnished, is not forthcoming, even in the last column quoted supra i.e. 'the answer to any of the above mentioned question is 'Yes' give full particulars of the case/arrest/detention/fine conviction/sentence/ punishment etc.' In the absence of 'acquittal' in a case whether a candidate is acquitted of the charges, he is required to give information or not to give information, to that extent, there is a confusion. Had the Attestation Form indicated that if a candidate was prosecuted and acquitted, even then he is required to furnish necessary particulars, then view of the respondents that petitioner has suppressed while filling the

Attestation Form, would arise. Therefore, the respondents have terminated the services of the petitioner on the sole ground that he has suppressed the fact that he was prosecuted and acquitted, is incorrect. In support of the petitioner's claim, he has relied on the following decisions :-

- i) *Commissioner of Police and others vs. Sandeep Kumar* 2011 (4) SCC 644;
- ii) *Dinesh Kumar vs. State of Haryana and others* 2006 (4) SCT 429;
- iii) *Joginder Singh vs. Union Territory of Chandigarh and others* 2015 (2) SCC 377;
- iv) LPA No. 1059 of 2015 titled as State of Haryana and others vs. Pawan Kumar, decided on 26.5.2016; and
- v) LPA No. 228 of 2015, titled as Central Industrial Security Force and another vs. Yogesh Kumar, decided on 21.7.2015.

6) While relying on the aforesaid decisions, learned counsel for the petitioner submitted that if a candidate had been acquitted prior to his selection, then not furnishing information relating to prosecution and acquittal would not be a hurdle for selection and appointment and it does not amount to suppression of facts. Hence, petition is to be allowed.

7) Per contra, learned counsel for the respondents submitted

that writ petition itself is not maintainable since the impugned order is passed by the authorities who are not under the territorial jurisdiction of this Court for the reasons that petitioner was undergoing training by CISF, RTC, Barwaha in the State of Madhya Pradesh and the termination order was considered and rejected at Hyderabad with the State of Telangana. Learned counsel for the respondents submitted that petitioner has suppressed the fact that he was prosecuted and acquitted in the years 2007-2008. The said information has been withheld by him while filling up the Attestation Form. It was further contended that acquittal is not on merit, it was based on compromise. With holding of information relating to the fact that he was subjected to criminal proceedings, by the petitioner therefore, is in violation of condition Nos. 1 and 3 read with 12 (b) of the Attestation Form. Thus petitioner's services have been rightly terminated. Therefore, there is no infirmity in the impugned actions.

8) Learned counsel for the respondents relied on decision of the Supreme Court, which is reported in **Daya Shanker Yadav vs. Union of India and others** 2010 (14) SCC 103, wherein the Apex Court considered identical matter, petitioner Daya Shanker Yadav, who was a candidate for recruitment to the post of Constable CRPF, even he was involved in a criminal case. He was discharged. Both the events relate prior to commencement of recruitment. Even Daya Shanker Yadav in that case suppressed the fact that he was prosecuted and discharged in the criminal proceedings, wherein the Supreme Court has held that in not giving information relating to prosecution

and discharge amounts to false statement. Therefore, terminating services of Daya Shanker Yadav, was justified in dispensing with his service for not being truthful in giving material information regarding his antecedents, which were relevant for employment in a uniformed service. The decisions cited by the petitioner's counsel are distinguishable from the facts of the present case, whereas the facts in respect of Daya Shanker Yadav's case is aptly and identical. Therefore, the petitioner has not made out a case so as to interfere with the order of termination, as well as, rejection of petitioner's appeal by the Appellate Authority.

9) Heard counsel for the parties.

10) The respondents have raised a preliminary objection relating to territorial jurisdiction of this Court on the score that petitioner was undergoing training in Madhya Pradesh, the order of termination, as well as, Appellate Authority's decision passed in Hyderabad – Telangana State, therefore, this Court has no territorial jurisdiction. So far as preliminary objection is concerned, it is to be noted that the petitioner is a resident of village Bakheta, District Rohtak, State of Haryana. After his termination from service, he is not expected to remain in Hyderabad and file a writ petition in the territorial jurisdiction of Andhra Pradesh – Telangana State and prosecute the matter in Hyderabad. The cause of action could be taken with reference to residence of the petitioner. Therefore, the preliminary objection raised by the respondents is hereby rejected.

11) Whether the petitioner has withheld information relating

to prosecution and acquittal in criminal proceedings or not, is the core question. Admittedly, petitioner has not disclosed in the Attestation Form. Whereas reading of the Attestation Form, it speaks of arrested, prosecuted, kept under detention, bound down, fine by court of law, and convicted by a Court of Law for any offence and if it is 'yes', candidate is required to give further particulars of the case/arrest/detention/fine conviction/sentence/ punishment. There is no requirement of giving full particulars of the case if a candidate is “acquitted” in a criminal case. Therefore, candidate is under confusion that when he had been acquitted, whether he should furnish the information that he was prosecuted and to give full particulars of the case read with acquittal. In the absence of necessary information to be sought by the authorities in respect of a candidate who has been prosecuted and acquitted, the petitioner cannot be blamed. Therefore, the impugned action of the respondents is arbitrary. Had the respondents sought one word information that candidate has been prosecuted and acquitted in such of those cases to furnish full particulars of the case, then the matter would have been different.

12) The petitioner, when he was involved in a criminal case, he may be a student at the relevant point of time, he hails from a remote village, namely, Bakheta in District Rohtak. In his student days he must have quarreled and petitioner's name have been implicated among others, later on it was compromised among the land holders including the petitioner. The same cannot be stigmatic to his entire life so as to deny Government employment. Even if the

termination order is upheld, if the petitioner seeks an alternative employment like in the private company or organization, they may also verify the antecedents of the petitioner and they would learn that petitioner was selected and appointed to the post of Constable and his services have been terminated on the score that 'he was involved in the criminal proceedings and even though he has been acquitted, but still the Government authorities, as well as, if the court held that he is not entitled to Government employment', would be taken into consideration for the purpose of denial of appointment. In other words, in his entire life he may not get employment, merely once he was involved in criminal case and wherein he has been acquitted, denial of employment throughout for his life would be too harsh. The Supreme Court in the case *Sandeep Kumar's case (Supra)* relied on *Morris vs. Crown Office* (1970) 2 Q.B. 114. An extract of the judgment is reproduced in para 14, which reads as under :-

“14. We may also here refer to the case of Welsh students mentioned by Lord Denning in his book 'Due Process of Law'. It appears that some students of Wales were very enthusiastic about the Welsh language and they were upset because the radio programmes were being broadcast in the English language and not in Welsh. Then came up to London and invaded the High Court. They were found guilty of contempt of

court and sentenced to prison for three months by the High Court Judge. They filed an appeal before the Court of Appeals. Allowing the appeal, Lord Denning observed :-

"I come now to Mr. Watkin Powell's third point. He says that the sentences were excessive. I do not think they were excessive, at the time they were given and in the circumstances then existing. Here was a deliberate interference with the course of justice in a case which was no concern of theirs. It was necessary for the judge to show - and to show to all students everywhere - that this kind of thing cannot be tolerated. Let students demonstrate, if they please, for the causes in which they believe. Let them make their protests as they will. But they must do it by lawful means and not by unlawful. If they strike at the course of justice in this land - and I speak both for England and Wales - they strike at the roots of society itself, and they bring down that which protects

them. It is only by the maintenance of law and order that they are privileged to be students and to study and live in peace. So let them support the law and not strike it down.

But now what is to be done? The law has been vindicated by the sentences which the judge passed on Wednesday of last week. He has shown that law and order must be maintained, and will be maintained. But on this appeal, things are changed. These students here no longer defy the law. They have appealed to this court and shown respect for it. They have already served a week in prison. I do not think it necessary to keep them inside it any longer. These young people are no ordinary criminals. There is no violence, dishonesty or vice in them. On the contrary, there was much that we should applaud. They wish to do all they can to preserve the Welsh language. Well may they be proud of it. It is the language of the bards - of the poets and the singers -

more melodious by far than our rough English tongue. On high authority, it should be equal in Wales with English. They have done wrong - very wrong - in going to the extreme they did. But, that having been shown, I think we can, and should, show mercy on them. We should permit them to go back to their studies, to their parents and continue the good course which they have so wrongly disturbed."

[Vide : **Morris Vs. Crown Office, (1970) 2**

Q.B. 114]"

13) It was also observed that it was not such a serious offence like murder, dacoity or rape and hence a more lenient view should have been taken in the matter. In that case Sandeep Kumar was also involved in a criminal case for the offences under Section 325/34 IPC and it was compromised matter. Further it was observed that modern approach should be to reform a person instead of branding him as a criminal all his life. The case of Sandeep Kumar is later than the Daya Shankar Yadav. The Supreme Court in the later case appreciated the backdrop of young people often commit indiscretions and such indiscretions can often be condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence the approach should be to condone

minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

14) Supreme Court in its recent decision passed in the case of *Avtar Singh vs. Union of India and others* decided on 21.7.2016 2016 (7) JT 300, held as under :-

“30. (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.”

In the present case Attestation Form do not pose a question to appointed candidate whether appointee was prosecuted and acquitted.

Hence to that extent Attestation Form would be vague.

15) In view of the above facts and circumstances, the impugned orders dated 27.7.2013 (Annexure P-6) and 19.11.2013 (Annexure P-11), are hereby set aside.

16) The respondents are directed to take back the petitioner into service by giving him all service benefits for the intervening period from the date of termination till reinstatement into service, within a period of three months from today.

September 6th, 2016
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(P.B. Bajanthri)
Judge

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No