

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

+ **W.P.(C). 222/2006**

Decided on: 10.02.2016

IN THE MATTER OF:

PARMOD KUMAR Petitioner

Through: Mr.Rajinder Dhawan and Mr.
B.S. Rana, Advocates

versus

UOI & ORS.Respondents

Through: Ms.Barkha Babbar and Ms.
Dipanjali Tyagi, Advocates

CORAM:

**HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE SUNIL GAUR**

%

HIMA KOHLI, J. (Oral)

1. The petitioner, after being selected for the post of a Constable with the respondents-CISF on 28th October, 1996, has assailed an order dated 8th November, 2005, passed by the respondent No.3- Director General-CISF, rejecting his revision petition against the order dated 11th/13th November, 2004, passed by the Deputy Inspector General-CISF (the Appellate Authority), imposing upon him the penalty of removal from service.

2. The facts of the case are that in the year 1995-1996, the respondents-CISF had issued an Advertisement for recruitment to the post of Constables. The petitioner had applied in response to the said advertisement, and on 28th October, 1996, he had appeared for the examination at the CISF Unit, BSL/Bokaro and was declared qualified. Prior to his formal appointment, the petitioner was required to fill up an Attestation Form, which he had filled up on 14th November, 1996 and submitted to the respondent-CISF. In Column No.12 of the said Attestation Form, the petitioner was required to state as to whether he had ever been arrested or prosecuted or kept under detention or bound down or fined by a court of law or convicted by a court of law for any offence. Apart from the aforesaid information required to be submitted by the petitioner in Column No.12, the opening paras of the Attestation Form had declared as below: -

"(i) 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.

(ii) If detained, convicted, debarred etc. subsequent to the completion and submission of this Form, the details should be communicated immediately to the authority to whom the Attestation Form has been sent earlier, failing

which it will be deemed to be a suppression of factual information.

(iii) If the fact that false information has been furnished or that there has been suppression of 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.”

3. At the time of submitting the Attestation Form, the petitioner had replied in the negative to all the queries raised in Column No.12. Thereafter, vide order dated 10th June, 1997, the petitioner was recruited by the respondents as a Constable (GD).

4. What the petitioner did not reveal at the time of filling up of the Attestation Form was that in the year 1995, pursuant to a dispute that had erupted between his family and some of his relatives on the paternal side, an FIR was registered against his father and him (GR No.881/1995 at P.S. Suryagarha, District Lakhisarai, Bihar) under Sections 341/323/447 and 307/34 of the IPC. Furthermore, prior to his applying to the CISF for being recruited as a Constable in the year 1995, the petitioner had obtained anticipatory bail from the criminal court in respect of the aforesaid FIR, which fact was also not intimated to the respondents.

5. After summons were issued to the petitioner and his father (both as accused persons), they had appeared before the learned

Additional Chief Judicial Magistrate (in short ACJM), Lakhisarai, evidence was led in the case and their statements were recorded under Section 313 of the Cr.P.C.. Vide judgment dated 17th April, 2003, the petitioner and his father were found guilty under Section 323 of the IPC and were convicted. Further, their bail-bonds were cancelled and they were taken into judicial custody.

6. The respondents remained unaware of the above developments all along and the things remained *hunky dory* on the employment front of petitioner between 1997-2003, till 16th September, 2003, when the respondents received a letter from the District Prosecution Office, Sessions Court, Lakhisarai enclosing therewith a copy of the judgment dated 17th April, 2003 passed by the learned ACJM. In view of the aforesaid judgment, vide order dated 24th September, 2003, a preliminary inquiry was directed against the petitioner and he was called upon to submit his reply. On 29th September, 2003, the petitioner had submitted a reply admitting *inter alia* that the learned ACJM had imposed a sentence of imprisonment for one year on him in Case No.GR 881/1995. However, he claimed that the said case was false and stated that he had been granted bail. He further informed the respondents that he had preferred an appeal against the judgment of the learned ACJM

before the Sessions Judge, which was pending. Dissatisfied by the reply furnished by the petitioner, vide order dated 29th November, 2003, the respondents dismissed him from service.

7. Aggrieved by the aforesaid order, the petitioner filed an appeal before the Appellate Authority and vide order dated 17th March, 2004, he was reinstated in service with a direction to initiate fresh disciplinary action against him under Rule 36 of the CISF Rules, for suppression of factual information. As a consequence, a fresh Memorandum dated 26th April, 2004 was issued to the petitioner, leveling two charges against him. The first charge was of deliberately furnishing wrong information and concealing correct information from the Department in the Attestation Form and the second charge was of failing to disclose the information to the Department till as late as 28th September, 2003, that a criminal case was pending against him where he had obtained anticipatory bail and was issued summons by the criminal court in the year 2002 and that he had presented himself before the concerned court on 17th April, 2003, when he was awarded the punishment of imprisonment for one year.

8. On 11th May, 2004, an Inquiry Officer was appointed to inquire into the charges levelled against the petitioner. The

proceedings held before the Inquiry Officer have been perused by us in the course of arguments. It is relevant to note that during the Inquiry, the Inquiry Officer had posed several questions to the petitioner. The relevant queries and the replies of the petitioner are reproduced below for ready reference:-

"Question 3 *Did you know that a FIR has been registered against you?*

Ans. *In respect of FIR, I only know that my grandfather got a FIR registered in this matter and later on the matter was settled in a village panchayat. This was informed to me by my father.*

Question 6 *Why did not you mention about incident of 14.11.1995 in case No.881/95 while filling up the attestation form on 14.11.1996?*

Ans. *Sir, I know that a panchayat had been conducted in that matter and both the parties resolved the matter hence considering the matter to be over, I did not mention about it in the attestation form.*

Question 7 *Is it in your knowledge that a settlement has been prepared?*

Ans. *Sir, settlement papers were prepared.*

Question 7(A) *Can you present settlement prepared in the matter?*

Ans. *Sir, settlement papers in Suryagarha Police Station but it is difficult to find them now.*

Question 8 *Were you ever arrested by Police or fined by court or trialed before your recruitment in CISF?*

Ans. *Before recruitment in CISF, a false case was leveled against me in the year 1995. I came to know about the said case in the year 2002 as informed by my father and neither I was fined by any court nor arrested by police.*

Question 9 *Did you come to know that the matter has gone to court?*

Ans. *Sir, I came to know that the matter has gone in the court in the year 2002.*

Question 11 *You knew that case No.881/95 is pending in the court, did you inform the department about it?*

Ans. *Sir, I was advised by my advocate to not to inform the department and I was not aware of departmental rules.*

Question 13 *Did you appear in the court at that time because case no.881/95 was decided on 17.04.2003?*

Ans. *Sir, I appeared in ACJM Court Lakhsarai on 17.04.2003.*

Question 14 *Why did you conceal/did not give the*

information regarding conviction by court from/to the department from 17.04.2003 to 28.09.2003?

Ans. *Before the order of conviction on 17.04.2003, bail was granted by ACJM Lakhisarai and an appeal was filed in the court of Addl. Sessions Judge-VIII Munger against the order of conviction. Sir, being an unaware of departmental rules, I did not inform the department about this case. Sir, if I have violated any rule then I apologize for it.*

Question 15 *When did you inform about case No.881/95 to the department?*

Ans. *Sir, for the first time, I informed the department on 29.09.2003 about this case."*

9. Based on the findings of the Inquiry Officer, vide order dated 23rd July, 2004, the Disciplinary Authority imposed the following punishment on the petitioner: -

"On the basis of abovementioned discussion I, under the power conferred upon me under Rule 32 read with List-1 and Rules 34(v) of the CISF Rules 2001, order that from the date of issuance of this order the pay of the charged employee should be reduced by two stages for two years from Rs.3500 to Rs.3350 in the time scale of Rs.3050-75-3950-80-4590. I further order that he will not earn increment of pay during the period of reduction and that on expiry of this period the reduction will have the effect of postponing his future increments in pay."

10. Aggrieved by the order passed by the Disciplinary Authority, the petitioner preferred an appeal. After considering the submissions made by the petitioner, the Appellate Authority issued him a notice to show-cause dated 22nd September, 2004 expressing an opinion that the penalty awarded by the Disciplinary Authority was not commensurate with the gravity of the misconduct committed by the petitioner and intimating him that it was proposed to enhance the penalty imposed upon him to removal from service. The petitioner was called upon to respond to the notice to show-cause, which he did by submitting a representation dated 1st October, 2004, whereafter he was given a personal hearing by the Appellate Authority on 29th October, 2004. After considering his representation, vide order dated 11th/13th November, 2004, the Appellate Authority set aside the punishment awarded by the Disciplinary Authority and imposed the penalty of removal from service upon the petitioner. The petitioner preferred a Review Petition against the order dated 11th/13th November, 2004, which was rejected vide order dated 19th March, 2005 passed by the Inspector General (I.G.), CISF stating *inter alia* that there were no mitigating circumstances that deserved interference with the orders passed by the Appellate Authority.

11. Aggrieved by the decision of the Appellate Authority, the petitioner filed a Revision Petition before the Directorate General, CISF on 14th June, 2005, which was also turned down vide order dated 8th November, 2005, with the observation that there was no ground made out for interference and the punishment inflicted on the petitioner was commensurate with the gravity of the proven misconduct on his part. The petitioner has challenged the aforesaid orders in the present petition.

12. Mr. Dhawan, learned counsel for the petitioner, argues that the petitioner had not made any disclosure about the pendency of the FIR against him at the time of filling up of the Attestation Form and nor had he made any mis-statement therein for the reasons that the Attestation Form did not contain any column requiring him to disclose any such information. He further states that the Attestation Form was verified by the Local Police and as per their verification report dated 15th August, 1998, there was nothing on record against the petitioner. He submits that as the report of P.S. Surajgarh was not against the petitioner, the respondent should not have proceeded to take any action against him. Further, a fine line is sought to be drawn between the terms "*Prosecuted*" and "*Bound-down*", used in Column No.12 of the Attestation Form, to urge that

the petitioner had neither been "*prosecuted*" at the time of filling up of the Attestation Form, in the year 1996, nor had he been "*bound down*".

13. It is however, not denied that the petitioner had intimated the fact of his conviction to the respondent on 29th September, 2003 i.e. after the respondent had received the letter dated 16th September, 2003 from the District Prosecution Office, Sessions Court, Lakhisarai and after the order dated 24th September, 2003 came to be passed directing initiation of a preliminary Inquiry against him. In support of his submissions that the impugned punishment inflicted upon the petitioner is liable to be set aside, learned counsel for the petitioner relies on following decisions: -

- (i) **(1991) 4 SCC 109** Union of India and Others v K.V. Jankiraman and Others
- (ii) **(2011) 4 SCC 644** Commissioner of Police and Others v Sandeep Kumar

14. *Per contra*, learned counsel for the respondents disputes the submissions made by the other side and states that the offer of appointment issued to the petitioner vide letter dated 3rd June, 1997 had clearly stipulated therein that he would be subjected to the provisions of the CISF Acts and Rules and any other Rules and Regulations of the Central Government that may be framed from

time to time. She particularly draws the attention of this Court to para 1.16 of the CISF Recruitment Manual that refers to verification of character and antecedents. The said para is reproduced hereunder for ready reference: -

"1.16 No person will be appointed to the Force unless his character and antecedents are verified on the form of certificate of character (Annexure IV) by the concerned Dist. Magistrate or Sub-Divisional Magistrate or their superior officers as per instructions contained in the form. As soon as one is enrolled, his character and antecedents shall be verified through detailed verification in accordance with the procedure prescribed by the Central Govt. from time to time through the Dist. Magistrate/Deputy Commissioner of the District concerned or such other authorities as may be deputed by the Govt. from time to time.

(b) The verification roll shall be in CISF Attestation Form and after verification it shall be attached to the service documents of the individual concerned.

(c) The contents of 'warning' printed on verification roll should be fully explained to the individual and they may be cautioned that any attempts towards suppression of facts or submission of incorrect information is liable to render their appointment invalid.

(d) If a person is adversely reported upon in the verification roll by the local authorities his services will be terminated by giving him one month notice or one month's

pay in lieu thereof under CISF Rule 19 read with para 2(a) of Form of Agreement executed by him under Rule 15 of CISF Rules, 1969.”

15. Learned counsel for the respondents contends that prior to his formal appointment in the CISF, the petitioner was required to fill up an Attestation Form, which he did on 14th November, 1996 and he was conscious of the fact that certain warnings had been printed on the very first page of the said Form. Despite the same, the petitioner had proceeded to furnish false information and had suppressed factual information in the said Attestation Form, thus, rendering him ineligible for employment with the respondent-CISF. To fortify her submission that the question of suitability of a candidate lies within the exclusive domain of the respondent/employer and the Court while exercising its power under judicial review is not expected to examine the nature of the criminal case, but is only required to satisfy itself as to whether the petitioner had revealed all the material information to the respondent at the time of seeking employment, learned counsel for the respondents relies on the judgment of the Supreme Court in the case of Devender Kumar v State of Uttaranchal & Ors. **(2013) 9 SCC 363** and the judgment dated 17th November, 2015, passed by a co-ordinate Bench of this Court in **W.P.(C). 5291/2005** entitled **W.P.(C) 222/2006**

Praveen Kumar v. Ministry of Railways and Ors..

16. We have carefully considered the arguments advanced by learned counsels for the parties and have examined the records as also the decisions cited by both sides. The settled legal position on the question of obtaining an appointment from the public authority by concealment/misrepresentation of facts, was recently noted by a Division Bench of which one of us (Hima Kohli, J.) was a member, in **W.P.(C). 7009/2005** entitled, "Manoj Kumar v. Union of India and Ors." decided on 22nd January, 2016, wherein it was observed as below: -

"11. Coming straight to the settled legal position on the issue of obtaining an appointment from a public authority by concealment/misrepresentation of facts, there are several decisions of the Supreme Court and High Courts that have consistently held that when an applicant gets an office by misrepresentation of facts or by playing a fraud upon the competent authority, such an order is unsustainable in the eyes of law on the principle that fraud vitiates even the most solemn proceedings and misrepresentation itself amounts to fraud. In the case of Delhi Administration through its Chief Secretary and Ors. vs. Sushil Kumar reported as **(1996) 11 SCC 605**, the Supreme Court had the occasion to examine a similar case where the appointment of the respondent therein to the post of a

Constable was refused by the Delhi Govt. and it was observed as under:-

"17. It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. **Though he was found physically fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force.** The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. **Though he was discharged or acquitted of the criminal offence, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof.** If the actual result happened to be in a particular way, the law will take care of the consequence. **The consideration relevant to the case is of the antecedents of the candidate.** Appointing authority, therefore, has rightly focused this aspect and found it not desirable to appoint him to the service." (emphasis added)

12. In the case of Devendra Kumar vs. State of Uttaranchal and Ors. reported as **(2013) 9 SCC 363** where the Supreme Court was examining the validity of the termination of an employment to the post of a Constable obtained by the applicant by suppressing material facts at the time of his appointment, on a conspectus of the case law on the said point, including the judgments in the case of District Collector and Chairman, Vizianagaram Social

Welfare Residential School Society vs. M. Tripura Sundari Devi reported as **(1990) 3 SCC 655**, S.P. Chengalvaraya Naidu (Dead) by LRs vs. Jagannath (Dead) by LRs and Ors. reported as **AIR 1994 SC 853**, Andhra Pradesh State Financial Corporation vs. GAR Re-Rolling Mills and Anr. reported as **AIR 1994 SC 2151**, Union of India and Ors. vs. M. Bhaskaran reported as **AIR 1996 SC 686**, United India Insurance Co. Ltd. Vs. Rajendra Singh and Ors. reported as **AIR 2000 SC 1165**, Ram Chandra Singh vs. Savitri Devi and Ors. reported as **AIR 2004 SC 4096**, Vice-Chairman, Kendriya Vidyalaya Sangathan and Anr. vs. Girdharilal Yadav reported as **(2004) 6 SCC 325**, A.P. Public Service Commission vs. Koneti Venkateswarulu reported as **AIR 2005 SC 4292** and R. Radhakrishnan vs. Director General of Police and Ors. reported as **AIR 2008 SC 578**, the Supreme Court had held that suppressing material information itself amounts to moral turpitude, irrespective of the gravity of the offence. The following pertinent observations were made by the Supreme Court in the said case:-

“10. So far as the issue of obtaining the appointment by misrepresentation is concerned, it is no more *res integra*. The question is not whether the applicant is suitable for the post. The pendency of a criminal case/proceeding is different from suppressing the information of such pendency. **The case pending against a person might not involve moral turpitude but suppressing of this information itself amounts to moral turpitude. In fact, the information sought by the employer if not disclosed as required, would definitely amount to suppression of material information. In that**

eventuality, the service becomes liable to be terminated, even if there had been no further trial or the person concerned stood acquitted/discharged.

XXX

XXX

XXX

22. The purpose of seeking such information is not to find out the nature or gravity of the offence or the ultimate result of a criminal case, rather such information is sought with a view to judge the character and antecedents of the job seeker or suitability to continue in service. **Withholding such material information or making false representation itself amounts to moral turpitude and is a separate and distinct matter altogether than what is involved in the criminal case.”** (emphasis added)

17. Mindful of the guidelines laid above, we return to the facts of the case in hand that are undisputed. Before the petitioner had appeared in the examination for recruitment to the post of a Constable in the respondent-CISF in October, 1995, a criminal case had been registered against him in P.S. Suryagarh, District Lakhisarai, Bihar. Admittedly, the petitioner did not furnish the said information to the respondent either at the time of applying for the post of a Constable, or at the time of filling up and furnishing the Attestation Form. In fact, as noted above, the petitioner was recruited in CISF, on 10th June, 1997 and it was only after the passage of six years, when the District Prosecution Office, Sessions Court, Lakhisarai had dispatched a copy of the judgment dated 17th April, 2003, pronounced by the learned ACJM, Lakhisarai in Case

No.GR 881/1995, intimating the respondent that the petitioner had been sentenced for imprisonment for a period of one year for an offence committed under Section 323 of the IPC, that the petitioner had admitted to his conviction on 29.09.2003. The records reveal that not only was the petitioner aware of the institution of a criminal case against him, but he had also taken steps to obtain anticipatory bail in the said case in the year 1995, which had also happened prior to his applying to the respondent for recruitment as a Constable.

18. The contention of the learned counsel for the petitioner that the Attestation Form did not specify that the applicant is required to furnish any information with regard to any FIR registered against him, is untenable and unfounded. Column No.12 of the Attestation Form is crystal clear. The same poses a series of queries to an applicant. A relevant extract of Column No.12 of the Attestation Form, is as under: -

- "12. (a) Have you ever been arrested?
(b) Have you even been prosecuted?
(c) Have you even been kept under detention?
(d) Have you even been bound down?
(e) Have you even been fined by Court of Law?
(f) Have you even been convicted by a Court of Law for any offence?"*

19. It has also been rightly pointed out by learned counsel for the respondents that the Attestation Form opens with a warning that if detained, convicted or debarred subsequent to completion or submission of the Form, an applicant is required to communicate the relevant details to the concerned authorities, failing which it shall be deemed that it was a case of suppression of factual information. In the teeth of the said words of caution inserted in the Attestation Form, the petitioner had elected to remain silent till he was confronted with the order dated 24th September, 2003, wherein preliminary inquiry was directed against him. By the said time, the learned Additional Chief Judicial Magistrate had pronounced the judgment dated 17.04.2003 and the petitioner was arrested. It is a different matter that subsequently, on the petitioner preferring an appeal against the said decision, the sentence imposed against him was suspended. This will, however, not wipe away the fact that the petitioner was all along aware of the grave and adverse consequence of furnishing false information to the respondent or the fact that the said false information would lead to his appointment being rendered invalid. Therefore, an adverse inference shall have to be drawn against the petitioner.

20. The submission of the learned counsel for the petitioner that

the petitioner comes from a rural background, was about 20 years of age at the relevant time and his case was being conducted mainly by his father and therefore, he was unaware of the fact position of the said case, which should be sufficient ground to extend him the benefits of the decision in the case of Sandeep Kumar (supra), would not be of any assistance to him. As noted in a subsequent decision of the Supreme Court in the case of Devender Kumar (supra), the purpose of seeking the information by an employer is not to find out or assess the nature or gravity of an offence that may or may not result in a criminal case. The information is required to be furnished to examine the character and antecedents of an applicant and consider his suitability to continue in service.

21. Rather, we are inclined to concur with the findings of the Appellate Authority, who had observed that the act of the petitioner could not be taken leniently and not only had he suppressed the pendency of the criminal case against him at the time of his employment in the CISF, while in employment, he had suppressed the fact that he had been attending court proceedings, had obtained bail and remained present in the Court at the time of his conviction. If personnel belonging to a force like the CISF are let off by a lesser

penalty and continue to remain in service, it would erode the very fiber of a disciplined force. The respondent-CISF being a disciplined force is well entitled to impose the strictest of norms at the time of the entry of an employee.

22. Furthermore, if the petitioner is treated on a different footing and the norms are relaxed for him, it would result in causing injustice to other similarly placed applicants, who were honest enough to have disclosed their antecedents and based on the said disclosures, the respondent had rejected their applications at the very outset. While examining the impugned penalty awarded by the respondents, the Court is not expected to examine the nature of offence alleged against the petitioner and the consequences of the criminal case.

23. We therefore, conclude that even if the petitioner has partly succeeded in the appeal filed against the judgment of the learned Additional Chief Judicial Magistrate, and the sentence imposed on him stood suspended whereafter he has been placed on probation, it would not count in his favour, for the reason that this Court in exercise of its powers of judicial review is required to examine the decision making process adopted by the respondents and not the punishment ultimately imposed upon him, unless the same is

absolutely perverse or completely disproportionate to the nature of the offence alleged against him. The respondent being a paramilitary force, cannot be expected to place confidence in a person, who had suppressed material information at the time of his entry.

24. In the given facts and circumstances of the case, we find no perversity in the impugned orders and so, they are upheld and the present petition is dismissed as being devoid of merits. No orders as to costs.

(HIMA KOHLI)
JUDGE

(SUNIL GAUR)
JUDGE

FEBRUARY 10, 2016

S