

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

+ W.P.(C) 7009/2015

Reserved on : 13.01.2016

Pronounced on : 22.01.2016

IN THE MATTER OF:

MANOJ KUMAR

..... Petitioner

Through: Mr. Rajendra Prasad, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. J.K. Singh, Advocate.

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

HON'BLE MR.JUSTICE R.K. GAUBA

HIMA KOHLI, J.

1. The petitioner prays for issuance of a writ of certiorari for quashing the Memorandum dated 15.6.2015 issued by the respondent/Railway Protection Force (RPF) discharging him from training with immediate effect and cancelling his selection to the post of Constable.

2. The undisputed facts of the case are that the respondent /RPF had invited applications for recruitment to the post of Constables vide Employment Notice No.1/2011. In the recruitment advertisement, the applicants were called upon to declare as to

whether any case was registered against them or they had ever been arrested or prosecuted. The petitioner had applied in response to the said advertisement and he was selected and asked by the respondent/RPF to report for training. At the time of presenting himself for training, the petitioner was required to fill up an Attestation Form furnishing *inter alia*, certain information. In column no. 12 of the Attestation Form amongst others, the petitioner was required to state if he had ever been arrested, prosecuted, kept under detention, bound down or fined/convicted by any court of law. Apart from the Attestation Form, the petitioner was also required to furnish an affidavit declaring *inter alia* if he had ever been arrested, prosecuted, kept under detention, bound down or fined/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 Govt. of India or any State of India. He was also called upon to state if any case was pending against him in any Court of law.

3. The replies submitted by the petitioner to the queries posed in column no. 12 of the Attestation Form dated 10.6.2014 were all in the negative. Similarly, in his affidavit dated 13.10.2014, the petitioner had denied having ever been arrested, prosecuted, kept under detention, bound down or fined/convicted by any court of

law. He had also denied that any case was pending against him in any Court of law.

4. While undergoing his official training but before reaching the stage of practical training, the petitioner's police verification report was received by the respondent No.2/RPF from S.P., Janpad Shamli (U.P.), which revealed that a case had been registered against him at P.S. Kandhala, U.P., vide Crime No. 113A/2011 under Sections 147,148,149,323,324,352,504,506 of the IPC.

5. Immediately upon receiving the aforesaid information, a notice to show cause dated 4.5.2015 was issued to the petitioner. In his representation dated 6.5.2015, the petitioner admitted to the fact that a case was registered against him at P.S. Kandhala, U.P. but he claimed that he had been acquitted in the said case and his name was excluded in the FIR. He also sought to explain that since he was never detained in police custody/judicial custody, he thought that it was not necessary for him to state the said facts in the Attestation Form and the affidavit.

6. Taking note of the fact that the petitioner had admitted the registration of a criminal case against him in the year 2011 and gone on to state that he was acquitted in the said case and the said fact had been withheld by him in the Attestation Form and the

affidavit, vide impugned Memorandum dated 15.6.2015, the petitioner's selection to the post of Constable in the RPF was cancelled on the ground that he had contravened Para 9 of the Advertisement for selection of Constables in RPF/RPSF and Para 1 of the Attestation Form and had made a false declaration in the affidavit.

7. Learned counsel for the petitioner had argued that no FIR was registered against the petitioner and no charge sheet was framed against him and nor had he ever been arrested for any offence in any Police Station including PS Kandhala, U.P. and therefore, the petitioner did not consider it necessary to furnish the relevant information in the Attestation Form and the affidavit. He contended that the police had erred in giving an adverse report at the time of the petitioner's verification which is liable to be quashed and he is entitled to be reinstated in the service.

8. In their counter affidavit, the respondent Nos.1 and 2/RPF have referred to Para 9F of the Employment Notification No.01/2011 that mentioned that false declaration is an offence under the law and would lead to disqualification of the applicant and to dismissal from service, if employed, apart from institution of a criminal case. Similarly, it has been stated in the first para of the format of the Attestation Form prescribed in the employment notice

that furnishing false information or suppression of any factual information would lead to disqualification of the applicant and render the candidate unfit for employment and if appointed, would result in dismissal from service. In this context, reference was also made to Letter No. 88(e) RC-3/6 (IR) (TRG) dated 16.11.2005, issued by the Ministry of Railways stating *inter alia* that furnishing of false information or suppression of factual information in the Attestation Form shall make the candidate unfit for the course.

9. Counsel for the respondents stated that the petitioner had admittedly suppressed material facts and given false information which had resulted in issuance of the impugned Memorandum, cancelling his selection to the post of a Constable in the RPF. In support of his submission that the respondent No.2/RPF is justified in issuing the impugned Memorandum, learned counsel had relied on the judgment dated 17.11.2015, pronounced by a Co-ordinate Bench in **W.P.(C) No. 5291/2015** Pravin Kumar vs. Ministry of Railway & Ors.

10. We have perused the averments made in the petition and the counter affidavit and heard the arguments advanced by learned counsels for the parties. The original records of the case handed over by learned counsel for the respondents have also been carefully examined.

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)

13. The facts of the instant case are undisputed. On receiving the notice to show cause, vide his representation dated 5.7.2015, the petitioner had conceded that a case had been registered against him in the year 2011 in Police Station Khandala, U.P. He has also admitted to the fact that he did not furnish the said information either at the stage of applying for the post of Constable or while furnishing the Attestation Form and the affidavit before joining his training. In fact, the petitioner had remained dead silent till the respondent No.2/RPF undertook a verification of the information furnished by him and only then did it learn of a criminal case filed against the petitioner, vide Crime No. 113A/2011 and proceeded to issue a notice to show cause to him. While the petitioner accepted the fact that Case No.278/2011 was pending against him before the Judicial Magistrate, District Kairana, U.P., he, however, claimed that the police had wrongly given an adverse report against him which was liable to be quashed.

14. The order sheet reveals that on 02.11.2015, the predecessor Bench had directed the petitioner to place on record the relevant documents with regard to the FIR that had named him. However, compliance has not been made. Instead, learned counsel for the respondents had handed over the original records of the case which contains a certified copy of the judgment dated 21.12.2011, passed by the competent criminal court in Case No.278/2011, arising out

of Crime No.113A/2011. As emerges from a perusal of the aforesaid judgment, the incident in question had taken place on 21.3.2011, when the petitioner along with four others had allegedly barged into the residence of the complainant, armed with *lathis*, swords etc. and the accused had abused and thrashed the complainant, his wife, son and daughter-in-law due to which they had sustained injuries. On hearing the hue and cry, the neighbours of the complainant had come to their rescue. The FIR lodged against the petitioner and four others was registered under Sections 147,148,323,324 IPC read with Sections 149, 352,504 and 506 IPC. A perusal of the judgment dated 21.12.2011 reveals that the complainant (PW-1), PW-2 and PW-3 (family members) had turned hostile and in those circumstances, all the accused including the petitioner herein were acquitted on the ground that they were entitled to benefit of doubt.

15. In light of the aforesaid facts, the contention of the learned counsel for the petitioner that his client had inadvertently not furnished the relevant information while filling up the Attestation Form and the affidavit, is unacceptable. Contrary to the submissions made on behalf of the petitioners that no FIR was registered against him, no charge sheet was framed against him and nor had he ever been arrested in any criminal case, in the course of verification of the information furnished by the petitioner,

the respondent No.2/RPF had come across Crime No.113A/2011 registered against him at PS Kandhala, U.P. It is only when the respondent No. 2/RPF discovered of its own that there was "*Suppressio Veri and Suggestio Falsi*" on the part of the petitioner in his Attestation Form and the affidavit, that the notice to show cause was issued to him.

16. The Attestation Form required to be filled up by the petitioner runs into five pages and 13 columns. Column No.12 of the form requires an applicant to state in the affirmative or negative, if the candidate had ever been arrested, prosecuted, kept under detention, bound down or fined by a court of law. The petitioner had filled up the said form on 10.6.2014 and by the said date, the competent criminal court had pronounced a judgment dated 21.12.2011 in Criminal case No.278/2011, arising out of Crime No.113A/2011 acquitting the petitioner along with the other accused by giving them benefit of doubt. Despite the said fact being well within the knowledge of the petitioner, who had participated in the said proceedings and had remained on bail through out the pendency of the case, he had responded to all the five queries raised in column No.12 of the Attestation Form by replying in the negative.

17. Similarly, in his affidavit duly attested on 13.10.2014, the petitioner had yet again reiterated that he had never been arrested,

prosecuted, kept under detention or fined/convicted by any Court of law for any offence, nor had he been debarred or disqualified by any Railway recruitment Board or any Recruitment Board/Commission of the Govt. of India or of any State of India, when he was all along cognizant of the fact that the said declaration was patently false. He was also aware of the consequences of furnishing false information as the Employment notice had itself spelt out that a false declaration would lead to disqualification. It is of no consequence that petitioner was ultimately acquitted by the criminal court by giving him benefit of doubt. What is relevant is that the petitioner had indulged in suppressing material information at the time of his selection and appointment, which itself would be a ground to terminate his service, even if he stood acquitted or discharged. The respondents are well entitled to claim that considering the fact that the petitioner's appointment is to a public post, his antecedents are of great significance and if not found desirable, they need not appoint him to the said post.

18. Suppression of material information for purpose of verification of the character and antecedents of an applicant/employee and making a false statement would certainly have a bearing and in case of misrepresentation, the employment secured by him would

be voidable at the option of the employer. It was not for the petitioner herein to decide whether the information called for by the respondents was relevant or irrelevant. Having obtained employment on the basis of false information furnished by him at three different stages, i.e., at the stage of submitting his application, then at the stage of filling up the Attestation Form and finally, at the stage of making declarations in his affidavit, the petitioner is disentitled to any relief.

19. We are, therefore, not inclined to accept the submission made by the learned counsel for the petitioner that the Memorandum dated 15.06.2015 issued by the respondent cancelling the selection of the petitioner to the post of Constable in the RPF, deserves interference. For the reasons stated above, the present petition is dismissed being devoid of merits with no order as to costs.

(HIMA KOHLI)
JUDGE

JANUARY 22, 2016
ap/rkb/sk

(R.K. GAUBA)
JUDGE