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

Decided on : 05.01.2016

+ **W.P.(C) 12/2016, C.M. NOS.45-46/2016**

RAKESH KUMAR

..... Petitioner

Through : Sh. Chandra Shekhar and Sh. Ajesh
Luthra, Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through : Ms. Nisha, proxy counsel.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The petitioner's grievance is that the Discharge Order initially made against him by the Railway Protection Force (RPF) on 29.04.2015 has not been withdrawn. He relies upon a previous order of this Court in *Rakesh Kumar v. UOI and Ors.* [W.P.(C) 5857/2015, decided on 31.08.2015]. In that, the Court had taken into consideration the present petitioner's almost 20 years of previous army employment, the certificate issued by the Indian Army, and directed re-consideration of the matter by the RPF authorities. The RPF had made the impugned order of discharge/termination from employment dated 29.04.2015 on the ground that the petitioner had failed to disclose that a criminal case, i.e. No.43/1999, alleging commission of

offences punishable under Sections 323/324/341/34 IPC had been charged against him (though he was later acquitted by the competent court by order dated 04.11.2008). The RPF had relied upon para 9-F of the Employment Notification No.1/2011 and also the 'Caution' administered in the Notification that if false information or material information were withheld by any candidate, he would face termination of employment.

2. After the order was made by this Court on 31.08.2015, the RPF authorities considered the judgment of the competent criminal court as well as the certificate and recorded as follows:

"It is a fact that Sh. Rakesh Kumar (appellant) was discharged from satisfactory service from Indian Army. But on going through the trial court judgment dated 4.11.2008 it is found that on 29.4.1999 at about 3.00 A.M. in the area of village Rankoli both the accused in furtherance of their common intention wrongfully confined Mahender Singh and voluntarily caused simple injuries to him with blunt and sharp edged weapons. On the basis of statement of complainant Mahender Singh recorded by ASI Hari Charan, formal FIR was registered and investigations were launched. Rough site plan of the place of occurrence was prepared. Injured was medically examined. He was also radiologically examined. Accused was arrested and he also got recovered the weapons used in the occurrence. Statements of witnesses under Section 161 of the Code of Criminal Procedure were recorded. After completion of other formalities of investigations, final report under Section 173 Cr.PC was prepared and submitted in the Court for putting them on trial."

3. The impugned order further noticed that the main witness of the case could not be examined and ultimately this led to his acquittal. The RPF was of the opinion that the petitioner was not exonerated of all the charges on merits. Importantly, it was of the opinion that the RPF personnel are

deployed among passenger area and as such are expected to display cool and submissive temperament with public. On the contrary, the petitioner had wrongfully confined a person and voluntarily caused injury with sharp as well as blunt weapon. It also noted as follows:

“It would not be out of place to mention here that the petitioner was selected as Constable in RPF and he was undergoing his initial training. He was not yet appointed as Constable.

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The petitioner while submitting his Attestation Form, had not mentioned in column No.12(a-f), (i) and (I) that he had been charged with a criminal case and tried to suppress the fact by furnishing false information. Not only this, the petitioner further submitted an affidavit on non-judicial stamp paper on 27.10.14 that he had never been arrested or prosecuted by any court of law and if at any time information submitted by him is found to be false, or misleading he will be liable to be discharged without any notice. As such misconduct of the petitioner cannot be treated as ignorance of the implication opted for the negative response or otherwise.”

4. Learned counsel urged that the RPF’s appreciation of the judgment of the competent criminal Court is flawed. The petitioner could not be attributed with any malice or ill-motive given that he wished employment and that the trial had concluded in 2008. He highlighted that the nature of the charges could not be treated as heinous or serious but were trivial given the entirety of circumstances.

5. This Court is of the opinion that the narrow controversy is as to the nature of appreciation by the RPF of facts and circumstances of the petitioner’s case in the context of the previous order dated 31.08.2015. That the executive authorities have a latitude in appreciating what constitutes

material circumstances cannot be disputed; the Attestation Form's particulars were specific in that detailed information as to the criminal charges pending against each applicant were to be disclosed along with its outcome as also information as to their detention etc. The petitioner cannot claim ignorance in this; he blatantly suppressed the information. It was in the context of the fact that the petitioner had served about 20 years previously in the Indian Army that the Court was of the opinion that the RPF should take all circumstances, including his previous army service. However, there is nothing in the previous order stating that the factors which are otherwise relevant, i.e. the nature of the behaviour, (in this case indulging in suppression of facts), should be ignored.

6. This Court notices that the RPF took into consideration the previous army service and the records. At the same time, it determined that the petitioner was nevertheless ineligible given the suppression and deceit practiced by him. This determination, in our opinion, cannot be characterised as arbitrary, motivated or beyond the purview of executive decision-making. As a result, the writ petition is without merit. It is accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

JANUARY 05, 2016/ajk