

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.04.2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.26305 of 2012

T.Rajesh Kanna
(Ex.Constable No.055037199,
49 Battalion)

.. Petitioner

vs

1. Union of India
Represented by its Secretary to Government,
Ministry of Home Affairs,
New Delhi.
 - 2.The Director General of Police,
Central Reserve Police Force,
C.G.O.Complex,
Lodhi Road, New Delhi
 3. The Deputy Inspector General
Group Centre, CRPF,
Avadi, Chennai - 65.
 4. The Commandant
49, Battalion, CRPF,
Karan Nagar,
Sri Nagar, Jammu and Kashmir
 5. The Deputy Inspector of Police
Range II, FOY Sagar Road,
Ajmer, Rajasthan - 305 005
- [R5 is impleaded as per order dated
29.08.2016 in W.M.P.No.24738 of 2016
in W.P.No.26305 of 2012]

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus praying to call for the records of the respondents in connection with the impugned orders passed by the fourth and fifth respondents in their proceedings No.P-VIII-3/2011-49-EC-II dated 05.09.2012 and No.R-13-19/2012-Est.3 dated 27.11.2012 respectively and quash the same and further direct the respondents to reinstate the petitioner into service with all consequential and monetary benefits.

[prayer amended as per order dated 29.08.2016 in W.M.P.No.24739 of 2016 in W.P.No.26305 of 2012]

For Petitioner : Mr.R.Dhinesh Kumar

For Respondents : Mr.J.Madhana Goopal Rao,
Senior Central Government
Standing Counsel

O R D E R

The writ petitioner approached this Court under Article 226 of Constitution of India seeking a relief to reinstate him as Constable in the Central Reserve Police Force. The order of rejection issued by the fourth respondent in proceedings dated 05.09.2012 and the order of the fifth respondent in proceedings, dated 27.11.2012, are under challenge.

2. The writ petitioner joined in the services of the Central Reserve Police Force as Constable on 21.11.2005 under the control of the Deputy Inspector General, Group Centre, CRPF, Avadi, Chennai-600 065. On completion of training for about 11 months, the petitioner was posted to Assam in 49th Battalion. Thereafter, he was shifted to Sri Nagar.

3. The respondents came to know about the involvement of the writ petitioner in a criminal case as accused and a criminal case was registered against him under Sections 147, 323, 325 read with 149, 294(b) and 506(ii) of I.P.C in C.C.No.119 of 2005 on the file of the Judicial Magistrate Court No.II, Dharmapuri. At the time of appointment of the writ petitioner, the criminal case was pending and subsequently, after his joining into Central Reserve Police Force, the criminal case ended with an order of acquittal on 20.10.2010. In view of the fact that the writ petitioner suppressed the pendency of the criminal case at the time of recruitment, the fourth respondent issued a charge memo under Section 11(1) of the Central Reserve Police Force Act and the following charge was framed:

"That No.055037199, CT/GD T.R.Kanna, E/49, Bn, being 9 member of the force has committed an offence under Section 11(1) of CRPF Act 1949. A criminal case was registered against No.055037199 CT/GD T.R.Kanna in PS.Adhyamankottai under Sections 147, 148, 325, 326, 323 and 294(B). The individual has not made any petition of this case in character and authorised certification hall (CRP-23) at the time of recruitment it shows that the individual has concealed the fact while filling the certification

hall they misguided the force. Therefore, he committed heinous offence under Section 11(1) of CRPF Act, 1949."

4. Enquiry was conducted. During the course of enquiry, the Writ Petitioner had submitted the order passed in the criminal case by the learned Judicial Magistrate, Dharmपुरi on 20.10.2010. The Enquiry Officer submitted a report holding that the charge against the writ petitioner has been proved. Pursuant to the proved charge, the Writ Petitioner was removed from service through the impugned order dated 05.09.2012, which was confirmed in appeal by proceedings dated 27.11.2012.

5. The sole point to be considered in this writ petition is that whether there is any suppression of fact on the part of the petitioner at the time of recruitment or not?

6. Suppression of fact with regard to the pendency of the criminal case is a serious misconduct to be viewed against the writ petitioner, since the selection was for appointment to the post of Constable in the Central Reserve Police Force, which is an Uniformed and Disciplined force. The Uniformed Forces are handling arms and rebellion and the conduct and the behaviour have to be screened carefully and no person of criminal case history be recruited in such disciplined uniform services.

7. The learned SCGSC appearing for the respondents contended that even in the application form submitted by the writ petitioner, he has suppressed the fact regarding the pendency of the criminal case. The learned SCGSC has taken this Court to Column 12 of the verification Roll Form, which is extracted hereunder.

(a) Have you ever been arrested, prosecuted, kept under detention or bound down/fined, convicted by a Court of law for any offence or debarred/disqualified by any Public Service Commission from appearing at its examination/selections or debarred from taking any examination/rusticated by any university or any other education authority / Institution.

(b) Is any case pending against you in any Court of law, University or any other education authority / Institution at the time of filling up this verification roll? If answer to (a) is 'Yes' then given details of prosecution, detention, fine, conviction and punishment etc and state about the case pending with the Court / University/educational authority at the time of filling in this form.

8. This apart, even during the course of enquiry, the petitioner himself had submitted a copy of the judgment rendered by the learned Judicial Magistrate in the criminal case showing that he was acquitted from the Criminal case. Acquittal from the criminal case cannot be considered at that point of time, since the petitioner had initially suppressed the fact regarding the pendency of the criminal case and subsequent order of acquittal cannot have any relevance as far as this case is concerned. Even in the case of acquittal, the selecting agency has got every right to reject a candidature, since the candidates having the criminal case history, need not be considered at any point of time, more specifically in the uniformed police services. In respect of the legal issues involving suppression of fact, more specifically in the recruitment process, the Hon'ble Division Bench of this Court has passed detailed order by following the authoritative pronouncement of the Hon'ble Supreme Court of India in this subject. This Court would like to quote certain paragraphs of the said Judgment to re-emphasise the views expressed by us in earlier Judgment.

"9. Thus, the matter came to be considered by a Bench of Three Judges in Avatar Singh Vs. Union of India [reported in 2016 (8) SCC 471]. After reviewing all the earlier cases including the one in Daya Shankar Yadav Vs. Union of India [reported in 2010 (14) SCC 103] and State of West Bengal Vs. S.K. Nazrul Islam [reported in 2011 (10) SCC 184], the following principles have been settled by the Larger Bench in Paragraph 34 of the Judgment in Avatar Singh:

"No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects."

9. The Division Bench has considered the legal aspects dealt by the Hon'ble Apex Court, in the case of Daya Shankar Yadav in Paragraph Nos. 15 & 21, are extracted below:

"15. When an employee or a prospective employee declares in a verification form, answers to the queries relating to character and antecedents, the verification thereof can therefore lead to any of the following consequences:-

(a) If the declarant has answered the questions in the affirmative and furnished the details of any criminal case (wherein

he was convicted or acquitted by giving benefit of doubt for want of evidence), the employer may refuse to offer him employment (or if already employed on probation, discharge him from service), if he is found to be unfit having regard to the nature and gravity of the offence/crime in which he was involved.

(b) On the other hand, if the employer finds that the criminal case disclosed by the declarant related to offences which were technical, or of a nature that would not affect the declarant's fitness for employment, or where the declarant had been honourably acquitted and exonerated, the employer may ignore the fact that the declarant had been prosecuted in a criminal case and proceed to appoint him or continue him in employment.

(c) Where the declarant has answered the questions in the negative and on verification it is found that the answers were false, the employer may refuse to employ the declarant (or discharge him, if already employed), even if the declarant had been cleared of the charges or is acquitted. This is because when there is suppression or non disclosure of material information bearing on his character, that itself becomes a reason for not employing the declarant.

(d) Where the attestation form or verification form does not contain proper or adequate queries requiring the declarant to disclose his involvement in any criminal proceedings, or where the candidate was unaware of initiation of criminal proceedings when he gave the declarations in the verification roll/attestation form, then the candidate cannot be found fault with, for not furnishing the relevant information. But if the employer by other means (say police verification or complaints etc.) learns about the involvement of the declarant, the employer can have recourse to courses (a) or (b) above."

The judgment in Avtar Singh has reiterated approvingly these very principles.

"21.If the object of the query is to ascertain the antecedents and character of the candidate to consider his fitness and suitability for employment, and if the consequence of a wrong answer can be rejection of his application for appointment, or termination from service if already appointed, the least that is expected of the employer is to ensure that the query was clear, specific and unambiguous. Obviously, the employer cannot dismiss/discharge/terminate an employee, for misunderstanding a vague and complex question, and giving a wrong answer. We do hope that the CRPF and other uniformed services will use clear and simple questions and avoid any variations between the English and Hindi Versions. They may also take note of the fact that the ambiguity and vague questions will lead to hardship and mistakes and make the questions simple, clear and straight forward. Be that as it may."

10. In paragraph 26 of the Judgment, the Division Bench had unambiguously and in clear terms expressed its firm opinion as under:

"26.we are, therefore, of the opinion that any attempt of suppression of material facts relating to the involvement of the candidate in any criminal case either before the process of recruitment is initiated or during the process of selection or even thereafter would squarely dis entitle the candidature of such a person to be taken into account, leading to his appointment in the service. Larger public interest demands that no person, who has been involved in a criminal case, but suppressed to disclose such information, is entitled to be appointed to the service."

11. In view of the above legal principle, this Court is of the affirm view that the writ petitioner has suppressed the fact regarding the pendency of the criminal case at the time of his selection as Constable in the Central Reserve Police Force and the same fact was proved through the domestic enquiry and the opportunities were also given by the respondents during the course of the enquiry. Hence, the Writ Petition deserves no merit consideration and the same stands dismissed. No order as to costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

srn/mst

To

1. The Secretary to Government,
Union of India
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Range II, FOY Sagar Road,
Ajmer, Rajasthan - 305 005

+1cc to Mr.R.Dhinesh Kumar, Advocate sr.26256

+1cc to Mr.J.Madanagopal Rao,Advocate sr.26349

W.P.No.26305 of 2012

br(co)
ss(9/5/2017)