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

Date of Decision: 14th December, 2017

+ **W.P.(C) No.6062/2017**

MUKESH YADAV Petitioner
Through Mr.Anil Singal, Adv.

versus

UNION OF INDIA AND ORS Respondents
Through Mr.Jagjit Singh, Adv.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

HIMA KOHLI, J (ORAL)

1. The petitioner is aggrieved by the order dated 11th May, 2017, passed by the Railway Board, Ministry of Railways, Government of India, wherein he was declared unfit for Government service and discharged from the post of Constable in the RPF/RPSF with immediate effect. The reasons for passing the discharge order were that the petitioner had deliberately omitted to furnish vital information with regard to a criminal case against him which was pending trial at the time when he had filled up the attestation form, after being selected to the subject post on clearing the written examination and interview.

2. Mr.Singal, learned counsel for the petitioner submits that a Police Case No.65/2000 under Sections 147/148/149/323/324/504/307 of the Indian Penal Code, was registered against the petitioner and ten others at Vijayipur, District Gopalganj, Bihar. On the date of the alleged offence i.e. on 9th October, 2000, the petitioner was twelve years and five months old, his date of birth being 16th May, 1988. The petitioner attained majority in the year 2006. In the year 2011, the petitioner applied for the

post of Constable in the RPSF. Based on his performance in the written examination and interview, the petitioner was selected to the post of Constable. He was then asked to submit an attestation form wherein he did not mention the factum of the pendency of Police Case No.65/2000 against him. The attestation form filled up by the petitioner was sent to the District Magistrate, Gopalganj (Bihar) for verification of his character and antecedents. Pending verification of his antecedents and his character, the petitioner was permitted to join his training on 17th November, 2014. During the course of the said training, the petitioner was issued a discharge order dated 29th July, 2015, stating *inter alia* that since he had suppressed the fact of the pendency of the criminal case against him while filling the attestation form, he was being discharged as per the conditions mentioned in para 3 of the attestation form.

3. Aggrieved by the discharge order dated 29th July, 2015, the petitioner had filed a writ petition in the High Court at Allahabad (Civil Miscellaneous Writ Petition No.52182/2015) which was allowed vide judgment dated 22nd December, 2016, by quashing the discharge order dated 29th July, 2015 and directing the respondents to re-consider the matter and pass a fresh order after affording an opportunity of hearing to the petitioner. In compliance with the aforesaid judgment, the respondents have passed the impugned speaking order dated 11th May, 2017, once again discharging the petitioner and cancelling his candidature for appointment to the post of a Constable.

4. Mr.Singhal, learned counsel for the petitioner submits that the impugned order is not sustainable in the eyes of law for the reason that on the date when the alleged offence had taken place i.e. on 9th October, 2000, the petitioner was of a tender age of twelve years and five months being a juvenile, the proceedings against him were conducted by the Juvenile Justice Board, District Gopalganj, Bihar. The Board had vide

judgment dated 3rd August, 2015, acquitted the petitioner of the charges by granting him benefit of doubt.

5. Learned counsel for the petitioner relies on Sections 19 & 21 of the Juvenile Justice (Care & Protection of Children) Act, 2000, in support of his contention that as the petitioner was a juvenile at the time of the alleged offence, there was no requirement for him to disclose the information concerning the allegations pertaining to his childhood. Section 19(2) of the Juvenile Justice (Care & Protection of Children) Act, 2000 prescribes that the Board shall direct that the relevant records of conviction, if any, of an offence under the law committed by a juvenile, to be removed after the expiry of the period of appeal or within a reasonable time as prescribed in law. Further, Section 21 prohibits publication of the name of the juvenile in conflict with law or a child in need of care and protection involved in any proceedings under the Act and on the other hand, the Section prescribes that his name or other particulars that can lead to identifying him, shall not be disclosed. It is, thus, stated that given the aforesaid provisions of law and further, having regard to the fact that the Juvenile Justice Board had acquitted the petitioner by giving him benefit of doubt, the respondents had erred in discharging the petitioner from service by disqualifying his candidature.

6. Mr.Jagjit Singh, learned counsel for the respondents opposes the present petition and states that it was the duty of the petitioner to have furnished the relevant details of the criminal case pending against him at the time of filling up the verification form but he failed to do so and the pendency of the said case came to the notice of the respondents only upon undertaking necessary police verification regarding his antecedents.

7. We have heard learned counsel for the parties and examined the documents on the record. The facts of the case are undisputed inasmuch as there is no quarrel with regard to the plea of the learned counsel for the

petitioner that on the date of the alleged offence i.e. on 9th October, 2000, the petitioner was twelve years five months old. It is also not disputed that on the date the petitioner had applied for appointment to the post of a Constable in the year 2011, a case was pending against him before the Juvenile Justice Board and same was the position on 25th May, 2014, when the petitioner was called upon by the respondents to submit an attestation form. The said criminal case attained finality by virtue of the judgment dated 3rd August, 2015, passed by the Juvenile Justice Board, District Gopalganj. However, less than a week prior thereto, the respondents passed the order of discharge against the petitioner, on the ground of withholding material information.

8. Having regard to the legal position, which shows that the petitioner was undoubtedly, a juvenile on the date when the alleged offence had been committed and, therefore, he was required to be dealt with under the Juvenile Justice (Care & Protection of Children) Act, 2000 (hereinafter referred to as the “Act”) which declares that all criminal charges against individuals, who are described as “juvenile in conflict with law” must be initiated and decided by the authorities constituted under the Act by the Juvenile Justice Board. Even if a conviction is recorded by the Juvenile Justice Board, Section 19(1) of the Act, stipulates that the juvenile shall not suffer any disqualification attached to the conviction of an offence under such law. Further, as noted hereinabove, Section 19(2) of the Act contemplates that the Board must pass an order directing that all the relevant records relating to such a conviction, be removed after the expiry of the period of appeal or within a reasonable period as prescribed under the rules, as the case may be.

9. In the present case, the record reveals that the Juvenile Justice Board had acquitted the petitioner for the offence in question and, therefore, this was even otherwise, not a case of conviction for any

offence. It is also noteworthy that Section 21 of the Act prohibits publication of the name of the 'juvenile in conflict with law', the underlying object of the said provision being to protect a juvenile from any adverse consequences on account of the conviction for an offence, committed as a juvenile.

10. Given the aforesaid position, the contention of the respondents is that petitioner was under an obligation to have disclosed the information relating to the pendency of the criminal case against him in respect of an incident that had taken place when he was all of twelve years, would run contrary to the very spirit of the Act. Keeping in mind the fact that the object of the Act is to ensure that no stigma is attached to a juvenile in conflict with law, in our view, once the juvenile has been extended a protective umbrella under the said enactment, there was no good reason for the respondents to have insisted that the petitioner ought to have disclosed the information relating to the allegations against him pertaining to an offence that was committed during his childhood where he was tried by the Juvenile Justice Board, and subsequently acquitted. We may add here that even when police verification in respect of the petitioner was being conducted on the directions of the respondents, the concerned police officials ought to have refrained from revealing the information pertaining to the petitioner in the case in question, since he was a juvenile at that point in time. This was in fact a gross breach of confidentiality contemplated under the Act.

11. For the aforesaid reasons, the impugned order dated 11th May, 2017, is unsustainable and is quashed and set aside. The respondents are directed to reinstate the petitioner within a period of twelve weeks from today along with all the consequential benefits, excluding backwages.

12. The petition is disposed of on the above terms with no orders as to cost.

(HIMA KOHLI)
JUDGE

(REKHA PALLI)
JUDGE

DECEMBER 14, 2017/aa

