

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2701 of 2018

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Ankush Kumar, son of Soti Paswan Resident of Village - Biliya, Ward No. - 08, Police Station - Kharagpur, District - Munger.

... .. Petitioner

Versus

1. The Union of India through the Chief Secretary, Govt. of India, New Delhi.
2. The Principal Secretary, Home Department, Govt. of Bihar, Patna.
3. The Directorate General, C.R.P.F., CGO Complex, New Delhi.
4. The Medical Officer, Sadar Hospital, Munger, Bihar.
5. The Medical Officer, Commandant (M.E.D.), 56th BN, SSB, Araria, Bihar.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Bindhyachal Singh, Advocate Mr. Vipin Kumar Singh, Advocate
For the Union of India	:	Mr. S.D. Sanjay, Addl. S.C.) Mr. Kumar Priya Ranjan, (C.G.C.)
For the Respondent/s	:	Mr. P.K. Verma- AAG-3 Mr. S.K. Sharma, A.C. to A.A.G.-3

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 20-11-2018

Heard learned counsel for the petitioner and
learned counsel for Union of India.

2. In the present writ petition, the petitioner is challenging the letter no. 7699 dated 05.09.2017 issued under signature of Commandant C.I.S.F., R.T.C., Bhilai, whereby and whereunder the offer of appointment of the petitioner has been cancelled on account of fact that he consciously suppressed the fact that he was an accused in a criminal case.

3. The short facts of this case are that the petitioner applied against an advertisement published by the Staff



Selection Commission for recruitment of constables in different organizations namely, Central Armed Police Force, National Investigation Agency, Constable in Secretariat Security Force (General Duty) and Assam Rifle including selection of Constables for Central Industrial Security Forces. The petitioner was allotted registration no. 51154596959 and roll number was allotted vide roll number 3201053928. The petitioner appeared and successfully cross all the hurdles, accordingly, appointed for the post of Constable (GD), CISF. Before he could have been formally joined and sent for training, it transpired to the Authority that he was involved in the criminal case, but suppressed this important fact and vide letter dated 05.09.2017, the offer of appointment has been cancelled having mentioning that “you are not suitable for appointment in CISF”. The reason has been mentioned that he is involved in criminal case in past.

4. Learned counsel for the petitioner submits that though he has been made an accused in criminal case vide Kharagpur PS Case No. 86 of 2014 for offences under Sections 147, 148, 149, 323, 341, 384 and 504 of the Indian Penal Code, in which allegation was made by the informant that while he was returning on completing the work, while he reached near newly constructed Hanuman Mandir, the accused persons have



surrounded and started abusing and assaulting him, one Santosh Paswan has caused head injury that led to oozing out of the blood. He raised alarm, with the help of the people of the locality he could save his life. As all the witnesses have turned hostile, led to acquittal of the petitioner vide order dated 24.05.2017 and on that account he has not mentioned about his involvement in the criminal case.

5. Learned counsel for the petitioner further submits that it was a mere mistake committed by the petitioner having not mentioned about the involvement in the criminal case and for that his entire career has been ruined, as it was a simple mistake committed by him, and for that he should not be awarded such a punishment, whereby taking away the bread which he could have secured by clearing all the obstacles of the recruitment process, and as such the action of the respondents in canceling his appointment is completely out of proportion, requires interference by this Court.

6. In support of his submission, learned counsel for the petitioner has placed reliance on the judgment of Hon'ble Supreme Court in the case of *Commissioner of Police & Ors. Vs. Sandeep Kumar*, reported in (2011) 4 SCC 644, in that case also the petitioner was selected, later on it was found that he had



suppressed his involvement in the criminal case and the Court has taken a lenient view having interfered with the action of the Commissioner of Police, whereby his service was protected. However, there is certain distinguishing facts between the case of Sandeep Kumar (Supra) and the present case, as in the aforesaid case, Sandeep Kumar himself filed an affidavit, wherein he disclosed about his involvement in criminal case, but in the present case the petitioner has not come forward and made any statement of his involvement in the criminal case.

7. Learned counsel for the Union of India has supported the action of the respondent in cancelling the appointment of the petitioner and placed reliance on the latest judgment of Hon'ble Supreme Court in the case of ***Avtar Singh vs. Union of India & Ors.***, reported in ***(2016) 8 SCC 471***, in that case also there was suppression of facts about the involvement of Avatar Singh in a criminal case and that led to termination of his service. The matter went to the Hon'ble Supreme Court and the Hon'ble Supreme Court in a detailed discussion placing reliance on different judgments has arrived to a conclusion that the suppression of fact is a serious business and the person who is intending to get an appointment he must come with clean hand, if he has suppressed any material fact he



cannot claim his retention in police force.

8. It will be relevant to quote paragraph no.38 of the said judgment, which is as follows:-

“30. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

38.1. Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3. The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted: -

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young



age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.

38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were



pending may not be proper.

38.8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. In case the employee is confirmed in service, holding Departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11. Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.”

9. Taking into consideration the earlier view and the latest view, in the present case also in the application form there are different columns, seeking information about the criminal antecedent, it was a duty of the candidate to give the correct information



regarding criminal antecedent, the consequences should be left to the employer, but he cannot say that as because he was acquitted he was not required to give information to the employer. It is nothing but obtaining an employment by suppression of material fact regarding his involvement in the criminal case.

10. In such view of the matter, this Court does not find any merit in this writ petition, accordingly, the same is dismissed. It is clarified that the cancellation of appointment letter will not be treated to be any stigma in the future appointment.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
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