

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Letters Patent Appeal No.1627 of 2017**

**In**  
**Civil Writ Jurisdiction Case No.1404 of 2015**

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Madan Mohan Kumar, Son of Haleshwar Prasad Yadav, resident of Ariya,  
P.O.- Balha, P.S. Parbatta, District- Khagaria.

... .. Appellant

Versus

1. The Union of India through the Director, Central Industrial Security Force (C.I.S.F.), Ministry of Home Affairs, New Delhi.
2. Inspector General, Central Industrial Security Force (C.I.S.F.), Eastern Zone, H.Q. Boring Road, Patna- 13 (Bihar).
3. Deputy Inspector General (Training), Central Industrial Security Force (C.I.S.F.), FHQr, New Delhi.
4. Assistant Inspector General (L & R), Central Industrial Security Force (CISF), FHQr, New Delhi.
5. Deputy Inspector General, Central Industrial Security Force (C.I.S.F.), Eastern Zone, H.Q. Boring Road, Patna- 13.
6. Group Commandant, Central Industrial Security Force (C.I.S.F.), Ministry of Home Affairs, Group H.Q. Boring Road, Patna through Chairman, DOSSIER Scrutiny Board.
7. Principal, C.I.S.F., RTC Behror (Rajasthan).
8. Deputy Commandant, Central Industrial Security Force (C.I.S.F.), Behror (Rajasthan).
9. Assistant Commandant, Central Industrial Security Force (C.I.S.F.), M.P.R.T.C., Behror (Rajasthan).

... .. Respondents

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**Appearance :**

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|----------------------|---|------------------------------------------------------------------------|
| For the Appellant/s  | : | Mr. Shekhar Kumar Singh, Advocate<br>Mr. Raja Surendra Mohan, Advocate |
| For the Respondent/s | : | Mr. S.D Sanjay (Addl. Soc. Gen.)<br>Ms. Punam Kumari Singh, C.G.C.     |

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**

**And**

**HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)**

**Date : 05-12-2018**

This Intra-Court Appeal arises from a judgment and  
order dated 13.04.2015 passed by the learned writ court in CWJC  
No. 1404/2015 whereby the writ petition has been dismissed.

Mr. Shekhar Kumar Singh, learned counsel has  
appeared on behalf of the appellant-writ petitioner while the



respondents are represented by Mr. S.D. Sanjay, Additional Solicitor General.

Shorn of unnecessary details the relevant facts leading to the order under challenge passed on the writ petition is that following the selection process initiated by the respondents for appointment of Constable in the Central Industrial Security Force (hereinafter referred to as the "CISF") that the petitioner was provisionally selected for appointment vide order dated 08.10.2013. The selection letter required the petitioner to file an attestation form and it is during this exercise that it came to the knowledge of the respondents that appellant-petitioner was involved in a criminal case arising from Parbatta P.S. Case No. 210/2009 registered under Section 363 and 365/34 of the Indian Penal Code. A copy of the attestation form is enclosed at Annexure-D to the counter affidavit filed in the writ proceeding and the appellant-petitioner has fairly informed regarding the pending case on the date of submission of such attestation form which was submitted on 22.10.2013. It is gathering such information that the respondents vide letter dated 29.11.2013 required the petitioner to submit all documents related to the criminal case including the F.I.R., the Charge-Sheet and the order, if any, so passed by the competent court which was duly submitted. In between this exchange, the judgment and order of



the trial court was pronounced on 13.01.2014 upholding the allegations against the petitioner and thus convicting him along with some others under Sections 363 and 365/34 of the I.P.C.

There were several other applicants to the selection in question, who had similar background and all these matters came up for consideration before a competent authority for their decision thereon in the backdrop of the pending criminal case status of the respective candidates. The decision of the competent authority taken thereon on 11.04.2014 is enclosed as Annexure-I to the counter affidavit filed in the present appeal by the respondents and a reading thereof transpires that 52 such cases came into light on submission of attestation forms and required a decision in the light of the policy guidelines in force as on 01.02.2012. It is on applying those guidelines that while 23 of such applicants were found suitable for appointment, those at serial no. 24 to 37 including the present appellant-writ petitioner were not found suitable for appointment. There were others whose cases required examination of further documents.

The decision of the competent authority was communicated to all the Appointing Authority, i.e., D.I.G. of the Regional Training Centres vide Annexure-I/1 which is dated 13/14.04.2014 and it is following such decision that the order impugned at Annexure-3 to the writ petition was issued on



18.04.2014 by the Deputy Commandant, C.I.S.F. informing the appellant-petitioner that he was not found suitable for appointment and the provisional offer of appointment bearing No. E-32023/EZ/OOA/Combined Rectt/Const.-12-13/2013-2902 dated 08.10.2013 (wrongly mentioned as 06.10.2013) was withdrawn and cancelled. It is feeling aggrieved by this cancellation that the appellant-petitioner approached this court through the writ petition in question which has been dismissed in consideration of the facts and documents on record and feeling aggrieved the writ petitioner as appellant is before this Court.

Mr. Singh, learned counsel for the appellant-petitioner has primarily relied upon the judgment and order of the appellate court to espouse the claim of the appellant-petitioner because the Appellate Court vide judgment and order passed on 16.10.2014 has acquitted the appellant-petitioner of the charges. According to Mr. Singh, the offence was trivial in nature and since the appellant-petitioner had fairly disclosed the pendency of the criminal case, there was no suppression on disclosure. According to Mr. Singh bearing note of the fact that even after disclosure of the pending criminal case by the appellant-petitioner, the respondents had allowed him to participate in the process, there was no fresh ground available for cancellation.

Mr. Singh relying upon a judgment of Hon'ble



Supreme Court in the case of ***Commissioner of Police & Ors. Vs. Sandeep Kumar*** reported in ***2011(2) PLJR (SC) 196*** and in an attempt to draw parity with the case of the appellant, made reference to the observation present at paragraph-15 & 19 of the judgment which advises the Appointing Authority to be lenient in the matter where the applicants are not found involved in serious offences like murder, dacoity and rape.

Learned counsel also made reference to a judgment of Hon'ble Supreme Court in the case of ***Avtar Singh Vs. Union of India & Ors.*** reported in ***(2016) 8 SCC 471*** to submit that the discretion has been left open for the employer to decide bearing in mind the seriousness of the charges and in the nature of the allegations that were put up against the appellant-petitioner, according to Mr. Singh, it did not warrant a cancellation of the selection order since the charges resulted in an order of acquittal by the Appellate Court.

Opposing the claim of the appellant-petitioner, it is the submission of Mr. S.D. Sanjay, Additional Solicitor General, that the required discretion as advised by the Supreme Court has indeed been exercised by the Appointing Authority which is manifest from the decision of the competent authority dated 11.04.2014 enclosed as Annexure-I to the counter affidavit filed in the present proceedings where it is in consideration of each of the



claims of the applicant in the backdrop of the policy decision taken by the respondents dated 01.02.2012, a copy of which is enclosed as Annexure-K to the counter affidavit, while 23 of the applicants were found suitable for appointment, those at serial no. 24 to 37 were not found suitable and in some cases, there were certain documents yet required for a final decision. He submits that the name of the appellant-petitioner appears at serial no. 34 of the list of candidates who were not found suitable and the reason can be found in the policy guideline at Annexure-K which at paragraph-2(III) lists the circumstances in which the candidature would not be found suitable for recruitment.

Learned counsel has next referred to the list of offences enclosed at Annexure-A to the guidelines to submit that the offences under Section 363 and 365 of the I.P.C. are a part of the list of offence, which have been held not suitable for consideration for appointment and were held disqualification for such appointment.

Learned counsel has next referred to the stipulation present at paragraph-2(V) to submit that where the offences are such serious in nature, a subsequent acquittal unless accompanied with a certification by the court concerned that the candidate is fit enough for government employment, would apply as a bar to such appointment.



According to Mr. S.D. Sanjay, learned Additional Solicitor General, it is the stipulation so present in the policy guidelines dated 01.02.2012 which has been applied by the competent committee for a decision at Annexure-I dated 11.04.2014 that has resulted in the issuance of the order impugned dated 18.04.2014 cancelling the offer of appointment of the appellant-petitioner.

We have heard learned counsel for the parties and we have perused the records and in the nature of the discussions that we have made above, we are persuaded to accept the submissions of Mr. Sanjay because it is not in dispute that as on the date of cancellation of selection, i.e. 18.04.2014, the appellant-petitioner was yet a convict. In such view of the matter, where the offer of appointment was yet to be translated into a formal order of appointment and it is during the course of the verification of the documents that it transpired that the criminal case instituted against the appellant-petitioner had resulted in his conviction, we are satisfied to hold that the decision taken by the competent authority on 11.04.2014 to hold the appellant-petitioner not suitable for appointment in view of the stipulation so present in the guidelines dated 01.02.2012 of the Government of India in its Ministry of Home Affairs enclosed at Annexure-K which specifically disqualifies those involved in a criminal case arising



*inter alia* under Sections 363 and 365 of the I.P.C., suffers no infirmity. That the appellant-petitioner was a convict on the date when the order of cancellation was passed, i.e., 18.04.2014, we find no infirmity either with the order of cancellation impugned in the writ petition or in the expression found in the order of learned Single Judge to interfere therewith. Even the judgments so relied upon by learned counsel for the appellant, does not come to the rescue of the appellant rather supports the impugned action.

The appeal is dismissed.

**(Jyoti Saran, J)**

**( Rajeev Ranjan Prasad, J)**

*Arvind/Rajeev*

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