

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

Judgment Reserved on : April 06, 2018
% *Judgment Delivered on : April 12, 2018*

+ **W.P.(C) 6870/2017**

RAHUL CHAUDHARY Petitioner
Through: Mr.Anil Singhal, Advocate.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr.J.K.Singh, Standing
Counsel with Mr.Ranjeet
Kumar, Advocate.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. The petitioner has invoked the writ jurisdiction vested in this Court under Article 226 of the Constitution of India, impugning the order dated 19.05.2017 passed by the IG-cum-CSC, RPSF, New Delhi whereby his candidature for the post of Constable in the RPF/RPSF has been cancelled and he has been discharged.

2. Mr.Anil Singhal, learned counsel for the petitioner submitted that the petitioner has not been found guilty of suppression of facts relating to his involvement in a criminal case as the details of the case were disclosed by him in the Attestation Form. He stated that while issuing the first discharge order dated 29.07.2015, which was set aside

by the High Court of Judicature at Allahabad, the petitioner's candidature was cancelled citing the reason to be 'suppression of fact' in the Attestation Form about the pendency of the criminal case against him thereby violating the provisions contained in Para 3 of the Attestation Form. In the second discharge order dated 19.05.2017, passed on the representation of the petitioner, the respondents have confirmed that the petitioner had made true disclosure about the registration of the criminal case.

3. Mr.J.K.Singh, learned counsel for the respondents/UOI contended that the petitioner was involved in a criminal case and in view of his criminal antecedents, he was not considered fit to be appointed as a member of RPF/RPSF for the reason that the standard expected of a person intending to serve a uniformed force, is distinguishable from other services and that a member of a uniformed service has to be judged on higher standards so far as character and the moral fibre of the candidate is concerned. Learned counsel for the respondents submitted that in W.P.No.52190/2015, the limited relief granted to the petitioner by the High Court of Judicature at Allahabad was that he be given an opportunity before re-considering the matter in the light of the guidelines laid down by the Supreme Court in Avtar Singh vs. Union of India reported as 2016 (8) SCC 471.

4. Leaned counsel for the respondents further submitted that in compliance of the directions issued by High Court of Judicature at Allahabad in the captioned petition, a speaking order dated 19.05.2017 (Annexure-P5) was passed giving reasons for rejecting the petitioner's representation. The petitioner's candidature to the post of Constable

in the RPF/RPSF has been cancelled as a Police Case No.560/2013 under Sections 147/323/148/504/506 IPC was registered against him. Though he had declared about the pendency of the criminal case against him in his Attestation Form, but at the time of filling up the attestation form, his character was not unblemished. The respondents have discharged the petitioner in exercise of powers vested in them under Rules 52.2 and 67.2 of the Railway Protection Force Rules, 1987. Learned counsel has placed reliance on paras 21 and 22 of the Avtar Singh's case (supra) in support of his contentions.

5. The undisputed facts of the instant case are that the petitioner had participated in the recruitment process for the post of Constable in the RPF/RPSF in the year 2011. He was selected after qualifying the written examination and interview and on being declared medically fit to join the force. At the time of submitting the Attestation Form on 31.05.2014, he had unambiguously mentioned about the pendency of Police Case No.560/2013 under Sections 147/323/148/504/506 IPC against him. Despite having the knowledge about the pendency of the criminal case against the petitioner, the respondents issued him a letter of appointment and sent him to undergo training, which had commenced on 01.11.2014.

6. While the petitioner was under training, the matter was listed before the Lok Adalat as the complainant of Police Case No.560/2013 filed an application under Section 320 CrPC seeking permission to compound the offence which was granted by the learned ADJM, Ghaziabad vide order dated 22.02.2015 and had the effect of acquittal.

7. The offences for which FIR No.560/2013 was registered against

the petitioner were compoundable with the permission of the court and on the basis of the application filed by the complainant of case FIR No.560/2013, the offences have been compounded, thereby putting an end to the criminal trial.

8. During the period when the petitioner was undergoing training, the first discharge order dated 29.07.2015 was issued for the following reasons:-

*“As per the report received from District Magistrate, Ghaziabad (UP) that a Police Case No.560/2013 under Section 147/323/148/504/506 IPC, was instituted against you under Masoori Police Station. **But you have suppressed the fact and did not mention in the Attestation Form submitted by you regarding above case. Thus, you have violated the provisions contained in Para No.3 of the “Attestation Form” by suppressing the factual information.***

As per Ministry of Railways Boards standing instructions issued vide No.88/SEC(E)/RC-3/6 [IR(TGR)] dated 16.11.2005, furnishing of false information or suppression of any factual information in attestation form for character and antecedent verification shall render the candidate unfit for Govt. Service.

In view of the above, as per the provision contained in Para No.3 of the Attestation Form and under Rule No.52.2 & 67.2 of RPF Rules, 1987, you are hereby discharged with immediate effect.”

9. The said discharge order was challenged by the petitioner by filing Writ Petition No.52190/2015 before the High Court of Judicature at Allahabad. The said writ petition was disposed of as being covered by the decision of the High Court in W.P.(C)

No.52227/2015 entitled Mulayam Singh Yadav vs. Union of India & Ors., which was passed in terms of the guidelines issued by the Supreme Court in the Avtar Singh's case (supra). The respondents were given liberty to reconsider the matter and thereafter pass fresh appropriate orders after giving an opportunity of hearing to the petitioner, within three months from the date of production of a certified copy of the order. The reconsideration by the authority concerned was to be guided by the observations made by the Apex Court in the case of Avtar Singh (supra).

10. The subsequent discharge order dated 19.05.2017 passed by the IG-cum-CSC/RPSF/New Delhi rejecting the representation of the petitioner reads as under:-

“In compliance to Hon’ble High Court Allahabad’s judgment/order dated 16.12.2016 passed in WP No.52190/2015, the petitioner called for hearing on 21.02.2017 before the undersigned and his submissions were heard. He also submitted a written representation requesting to take him into Railway service i.e. for the post of Constable (executive) in RPSF. In his representation he stated that he had declared about his pending criminal cases in the attestation form.

After personal hearing of the petitioner and on careful examination of the representation as well as related documents pertaining to the case, I have found that Police Case No.560/2013 under Section 147, 323, 148, 504 & 506 IPC was registered in which he was acquitted by Court vide order dated 22.02.2015. Though he declared about the criminal cases in his attestation form but at the time of filling up of attestation form his character was not unblemished.

The purpose of calling for information regarding involvement in any criminal case or conviction is for the purpose of verification of the character/antecedents at the time of recruitment and has a clear bearing on the character and antecedents of the candidate in relation to his continuity in service and clearly speaks about the character and moral fiber of the candidate. Furthermore, the standard expected of a person intended to serve in uniformed service is quite distinct from other services and a member of a disciplined force is liable to be judged on a higher pedestal.

Hence, I have applied my mind and on evaluation of the facts on record, extant rules, and having accorded the opportunity of personal hearing and representation to the petitioner keeping with the principles of natural justice, and in light of directions of the Hon'ble Supreme Court judgment in Avtar Singh vs. Union of India & Ors., and in exercise of the power vested under Rule 52.2 and 67.2 of the RPF Rules, 1987, I hereby come to the considered conclusion as Appointing Authority that the above petition is not fit for Government Service and representation of the petitioner is rejected, and I hereby discharge Rahul Chaudhary and cancel his candidature for appointment into the Government Service as a Constable in RPF/RPSF with immediate effect. The petitioner may be informed accordingly."

11. Although in the first order of discharge dated 29.07.2015, the reason given was suppression of the pendency of the criminal case in the Attestation Form thereby violating the provisions contained in Para No.3 of the Attestation Form. In the second discharge order dated 19.05.2017, there is a clear narration of the fact that the petitioner had declared about the pendency of the criminal case in the Attestation Form. The reasons given this time for rejecting the

representation of the petitioner was that at the time of filling up of Attestation Form, his character was not unblemished. Though Avtar Singh's case (supra) has been cited in the said order, there is no examination of the facts of this case in the light of said decision. The orders of discharge have been passed by the respondents purportedly to be in exercise of Rules 52.2 and 67.2 of the Railway Protection Force Rules, 1987.

12. With a view to appreciate the submissions made on behalf of the respondents, we deem it necessary to extract the relevant Rules, which formed basis for issuance of the order of discharge of the petitioner and on which much emphasis has been laid by the counsel for the respondents.

13. Rule 52 of the Railway Protection Force Rules, 1987 prescribes for verification of the candidates on their selection in accordance with the procedure prescribed by the Central Government and reads as under:-

“52. Verification:

52.1 *As soon as a recruit is selected but before he is formally appointed to the Force, his character and antecedents shall be got verified in accordance with the procedure prescribed by the Central Government from time to time.*

52.2 *Where after verification, a recruit is not found suitable for the Force, he shall not be appointed as a member of the Force.”*

14. Rule 67 of the Railway Protection Force Rules, 1987 reads as under:-

“67. Disciplinary control :

67.1 *The staff and trainees at any training institution of the Force, shall, so long as they are at such institution or undergoing practical training at some other place, be under the disciplinary control of the Principal of that training institution.*

67.2 *A direct recruit selected for being appointed as enrolled member, till such time he is not formally appointed to the Force, is liable to be discharged at any stage if the Chief Security Commissioner for reasons to be recorded in writing, deems it fit so to do in the interest of the Force.”*

15. The powers vested in the respondents under Rules 52.2 and 67.2 of the Railway Protection Force Rules, 1987 are not being questioned by the petitioner. However, it is an admitted fact that the petitioner was issued the letter of appointment and was enrolled as a member of the RPSF. He was undergoing training when a discharge order was issued recording that he had suppressed the fact about the registration of a criminal case against him, which is factually incorrect

16. The second discharge order dated 19.05.2017, mentions correctly that the petitioner had disclosed in the Attestation Form about the registration of a criminal case under Sections 147/323/148/504/506 IPC. By issuing an offer of appointment with full knowledge that disclosure has been made by the petitioner in the Attestation Form about the registration of a criminal case against him, we are of the opinion that the respondents cannot take recourse to Rule 52.2 and 67.2 of the Railway Protection Force Rules, 1987 as both these Rules deal with the stage before the candidate is formally

appointed, which is not the case here.

17. A bare reading of Rules 52.2 and 67.2 of the Railway Protection Force Rules, 1987 makes it amply clear that the same are applicable at pre-appointment stage. Here, the petitioner was not only issued an appointment letter, but he had also successfully completed his training.

18. Learned counsel for the respondents has placed reliance on paras 21 and 22 of the decision of the Supreme Court in Avtar Singh's case (supra), which are extracted hereunder:-

“21. The verification of antecedents is necessary to find out fitness of incumbent, in the process if a declarant is found to be of good moral character on due verification of antecedents, merely by suppression of involvement in trivial offence which was not pending on date of filling attestation form, whether he may be deprived of employment? There may be case of involving moral turpitude/serious offence in which employee has been acquitted but due to technical reasons or giving benefit of doubt. There may be situation when person has been convicted of an offence before filling verification form or case is pending and information regarding it has been suppressed, whether employer should wait till outcome of pending criminal case to take a decision or in case when action has been initiated there is already conclusion of criminal case resulting in conviction/acquittal as the case may be. The situation may arise for consideration of various aspects in a case where disclosure has been made truthfully of required information, then also authority is required to consider and verify fitness for appointment. Similarly in case of suppression also, if in the process of verification of information, certain information comes to notice then also employer is required to take a decision considering various aspects before holding incumbent as unfit. If on verification of antecedents a person is found fit at the same time authority has to

consider effect of suppression of a fact that he was tried for trivial offence which does not render him unfit, what importance to be attached to such non-disclosure. Can there be single yardstick to deal with all kind of cases?

22. The employer is given 'discretion' to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an incumbent for services in question. In case the employer come to the conclusion that suppression is immaterial and even if facts would have been disclosed would not have affected adversely fitness of an incumbent, for reasons to be recorded, it has power to condone the lapse. However, while doing so employer has to act prudently on due consideration of nature of post and duties to be rendered. For higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However same standard cannot be applied to each and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence etc. have to be considered. Even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or dubious character. In case employer comes to conclusion that conviction or ground of acquittal in

criminal case would not affect the fitness for employment incumbent may be appointed or continued in service.”

19. The position contemplated in paras 21 and 22 of Avtar Singh's case (supra) has no application to the facts of the present case as neither is it a case of suppression of material facts regarding registration of a criminal case, nor was the nature of the offence for which case FIR No.560/2013 was registered against the petitioner, of a serious nature. Rather, the offences were compounded and the trial had resulted into his acquittal.

20. In the light of foregoing discussion, we are of the considered opinion that the discharge order dated 19.05.2017 whereby the representation filed by the petitioner has been rejected by the respondents, is unsustainable in the eyes of law and is hereby quashed and set aside. The respondent/RPSF is directed to reinstate the petitioner within 8 weeks from the date of passing of this order, with all the consequential benefits, except for payment of back wages.

21. The writ petition is disposed of on the above terms.

22. No costs.

PRATIBHA RANI
(JUDGE)

HIMA KOHLI
(JUDGE)

APRIL 12, 2018

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