

12.04.2021.
Item no. 63.
Court No.13
pk

**W.P.A. No. 4683 of 2021
(Through Video Conference)**

**Sri Bibrata Biswas
Versus
Union of India & Ors.**

Mr. Achin Kumar Majumder,
Mr. Pratik Majumder

... for the petitioner .

Mr. Sourav Mondal

...for the respondents.

The writ petitioner participated in the selection process to the post of constable in the Railway Protection Force pursuant to an advertisement issued in the year 2011. The result was published in the year 2013 where the petitioner was successful. The petitioner was in probation and training until the year 2015.

In the year 2015, it was found that the petitioner was prosecuted in criminal proceedings under Sections 447/448/379/411/427/323/325/307/506/120B/34 of the IPC. The petitioner was one of several accused. The incident occurred in the year 2007. After one year a charge sheet was filed. The petitioner was therefore immediately discharged from service, for violation of Clause-9f of the employment notice. It was found that the petitioner had suppressed material facts about his prosecution in the aforesaid criminal

case, that was T.R. Case No. 307 of 2008 arising out of G.R. Case No. 1333 of 2007.

The petitioner was acquitted in the said criminal case in the year 2015.

The petitioner, thereupon, approached this Hon'ble Court by way of WP 3226 (W) of 2016 praying for reinstatement. The said writ petition was disposed of by judgement and order dated August 30, 2016. The order of discharge was not interfered with. Lacunae were, however, found in the order of discharge. The Court made detailed observations in the light of the decision of the Hon'ble Supreme Court in the case of ***Avtar Singh vs. Union of India*** reported in **2016 (8) SCC 471**. The matter was remanded to the Superintendent, Chief Security Commissioner of RPF for reconsideration. The Chief Security Commissioner effected consideration and once again rejected the representation of the petitioner for reinstatement vide order dated October 6, 2016.

The petitioner approached this Court for the second time challenging the order dated October 6, 2016 by filing WP 26379 (W) of 2016. The said writ petition was disposed of by judgement and order dated December 11, 2019 by a Co-ordinate Bench.

It was observed in the said decision as follows.

““To err is human”. The petitioner admitted that he made a mistake by not disclosing the relevant information, but can the mistake committed by the petitioner not be condoned considering the trivial nature of allegation

levelled against him? The Hon'ble Supreme Court in the matter of Avtar Singh (supra) held that in case offence is petty in nature, committed at young age and has been acquitted the employer may ignore lapse of suppression on due consideration of various aspects. The Court clarified that if the 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. In Mohammed Imran (supra) the court was of the opinion that the rejection of the candidature was afflicted by myopic vision, blurred by the spectacle of what has been described as moral turpitude, reflecting inadequate appreciation and application of facts, as justice may demand. The Court in the earlier writ petition filed by the petitioner directed the Chief Security Commissioner to consider the claim of the petitioner giving due regard to the decision in Avtar Singh (supra). The said respondent at the time of consideration of the case of the petitioner applied the negative test to reject the case of the petitioner without appreciating the positive approach laid down by the Supreme Court in the said case. The respondent failed to consider the trivial nature of the case, the age of the petitioner on the date of the alleged incident, the fact that a civil case was pending in between the warring parties with regard to the ownership of the disputed land, that the criminal case was filed against the entire family of the petitioner, no direct allegation against the petitioner, none of the accused were called upon to depose, the complainant failed to prove the charge and most importantly the dismissal of the criminal case and acquittal of the petitioner therefrom. All the above factors are extremely vital for the purpose of assessing the claim of the petitioner. Each case has to be decided upon its own facts and adjudicated on merits. The impugned order recorded that the petitioner never communicated his acquittal from the criminal case without appreciating the fact that the petitioner was discharged from service on 11th August 2015 whereas he was acquitted on 2nd December 2015, i.e. the petitioner never had the opportunity to rely upon the judgment of his acquittal as the same was passed after he was discharged from service. The said judgment of acquittal however was on record in the earlier writ

petition filed by the petitioner. The fact that the petitioner was selected following a regular selection process and that he is otherwise eligible to be appointed in the post of constable cannot be ignored. Snatching away the job from him on account of non-disclosure of his involvement in the criminal case amounting to false declaration even though he was not directly involved and thereafter subsequently acquitted therefrom, in my opinion, will be a bit too harsh. Antecedents of recruits are verified not with a view to dig out past involvements and rejecting the claim of successful candidates but to check the character and suitability of a candidate, whether the candidate is a habitual offender or whether the candidate would be a liability rather than an asset of the employer. Now that the details of the criminal case are on record the employer is liable to take a call whether to recruit the petitioner or to brand him as a criminal and dishonest person and stand by the decision to discharge him from service. The case of the petitioner requires a positive consideration, but at the same time, not to give the message that this type of lapse deserves to be ignored”

With the aforesaid observation, the matter was remanded back to the authority for reconsideration. By an order dated January 31, 2020, the authority for the second time rejected the petitioner’s prayer for reinstatement. It was observed, inter alia, by the IG, Principal Chief Security Commissioner that the negative answer given by the petitioner in the attestation form which asked as to whether there are any criminal proceedings pending against the petitioner would amount to dishonesty. It was further observed that RPF who was entrusted with the responsibility to protect and safeguard railway property, passenger maintains higher level of integrity and honesty. Any suppression of material facts in an

attestation form reflects absence of character and integrity and discipline.

Counsel for the petitioner challenges the said order in this writ petition, inter alia, by reference to an unreported decision of the Bombay High Court dated April 11, 2016 passed in **WP 9862 (W) of 2015 (Dnyaneshwar vs. Union of India and others)**.

There are certain undisputed facts. That the petitioner made a false declaration in the attested affidavit as regards pending criminal proceedings charges against him is undisputed. It is equally undisputed that the petitioner qualified at all stages of selection and was found fit for service and employment as a constable under the RPF. It is equally undisputed that the petitioner was on the verge of a successful completion of training period. It is equally undisputed that the petitioner was acquitted of each of the charges in the aforesaid G.R. Case No. 133 of 2007 by the concerned Magistrate.

The question that comes for consideration is as to whether by application of the dicta of the Hon'ble Supreme Court in Avtar Singh case, the misstatement by the petitioner in the attestation would tantamounts to a serious suppression or a casual omission.

In ***Avtar Singh v. Union of India***, reported in **(2016) 8 SCC 471**, it was held as follows:

“3. It cannot be disputed that the whole idea of verification of character and antecedents is that the person suitable for the post in question is

appointed. It is one of the important criteria which is necessary to be fulfilled before appointment is made. An incumbent should not have antecedents of such a nature which may adjudge him unsuitable for the post. Mere involvement in some petty kind of case would not render a person unsuitable for the job. Way back in the year 1983, in *State of M.P. v. Ramashanker Raghuvanshi* [State of M.P. v. Ramashanker Raghuvanshi, (1983) 2 SCC 145 : 1983 SCC (Cri) 371 : 1983 SCC (L&S) 263], where a teacher was employed in a municipal school which was taken over by the Government and who was absorbed in government service in 1972 subject to verification of antecedents and medical fitness. The termination order was passed on the basis of a report made by the Superintendent of Police to the effect that the respondent was not a fit person to be entertained in government service, as he had taken part in "RSS and Jan Sangh activities". There was no allegation of involvement in subversive activities. It was held that such activities were not likely to affect the integrity of individual's service. To hold otherwise would be to introduce "McCarthyism" into India which is not healthy to the philosophy of our Constitution. It was observed by this Court that most students and most young men who take part in political activities and if they do get involved in some form of agitation or the other, is it to be to their ever lasting discredit? Sometimes they feel strongly on injustice and resist. They are sometimes pushed into the forefront by elderly persons who lead and mislead them. Should all these young men be debarred from public employment? Is government service such a heaven that only angels should seek entry into it? This Court has laid down that the whole business of seeking police report about the political belief and association of the past political activities of a candidate for public employment is repugnant to the basic rights guaranteed by the Constitution.

37. The "McCarthyism" is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformatory theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.

38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise 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.”

It is further necessary to consider as to whether any omission or suppression would have any further consequences of the petitioner as on 2015 when he was acquitted by the Magistrate. The observations of the Co-ordinate Bench set out hereinabove in order dated 11.12.2019 are indeed relevant and cannot be ignored. It is common place that people in this country are entangled in criminal proceedings over petty disputes. It is equally common place that people without much legal information or education tend to believe that they have been acquitted merely by grant of bail.

The petitioner was minor at the time of incident. The maturity level expected of a major cannot be expected from a minor. People may commit errors while they are minors and cannot be penalized for a life time. One is reminded of the age old phrase that every saint has a past and every sinner has a future. Even the Apex Court of our Land reiterates that the principle of “*Falsus In Uno, Falsus In Omnibus*” (that is false in one, false in everything) is not applicable in India. In the case of ***Mahendran v. State of T.N.***, reported in **(2019) 5 SCC 67**, it was held as follows:-

38. It is argued that the prosecution has put on trial twenty-four accused, but presence of A-11 and A-16 to A-24 was doubted by the learned trial court and they were acquitted on benefit of doubt. Five accused, A-10, A-12, A-13, A-14 and

A-15 have been granted benefit of doubt in appeal as well. The argument that the entire case set up is based on falsehood and thus is not reliable for conviction of the appellants, is not tenable. It is well settled that the maxim "*falsus in uno, falsus in omnibus*" has no application in India only for the reason that some part of the statement of the witness has not been accepted by the trial court or by the High Court. Such is the view taken by this Court in *Gangadhar Behera* case [*Gangadhar Behera v. State of Orissa*, (2002) 8 SCC 381 : 2003 SCC (Cri) 32] , wherein the Court held as under: (SCC pp. 392-93, para 15)

"15. To the same effect is the decision in *State of Punjab v. Jagir Singh* [*State of Punjab v. Jagir Singh*, (1974) 3 SCC 277 : 1973 SCC (Cri) 886] and *Lehna v. State of Haryana* [*Lehna v. State of Haryana*, (2002) 3 SCC 76 : 2002 SCC (Cri) 526] . Stress was laid by the appellant-accused on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out the entire prosecution case. In essence prayer is to apply the principle of "*falsus in uno, falsus in omnibus*" (false in one thing, false in everything). This plea is clearly untenable. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end. The maxim "*falsus in uno, falsus in omnibus*" has no application in India and the witnesses cannot be branded as liars. The maxim "*falsus in uno, falsus in omnibus*" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may

apply in a given set of circumstances, but it is not what may be called “a mandatory rule of evidence”. (See *Nisar Ali v. State of U.P.* [*Nisar Ali v. State of U.P.*, AIR 1957 SC 366 : 1957 Cri LJ 550]) Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a court to differentiate the accused who had been acquitted from those who were convicted. (See *Gurcharan Singh v. State of Punjab* [*Gurcharan Singh v. State of Punjab*, AIR 1956 SC 460 : 1956 Cri LJ 827] .) The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because a witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See *Sohrab v. State of M.P.* [*Sohrab v. State of M.P.*, (1972) 3 SCC 751 : 1972 SCC (Cri) 819] and *Ugar Ahir v. State of Bihar* [*Ugar Ahir v. State of Bihar*, AIR 1965 SC 277 : (1965) 1 Cri LJ 256] .) An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate the grain from the chaff, truth from falsehood. Where it is not feasible to separate the truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the

background against which they are made, the only available course to be made is to discard the evidence in toto. (See *Zwinglee Ariel v. State of M.P.* [*Zwinglee Ariel v. State of M.P.*, AIR 1954 SC 15 : 1954 Cri LJ 230] and *Balaka Singh v. State of Punjab* [*Balaka Singh v. State of Punjab*, (1975) 4 SCC 511 : 1975 SCC (Cri) 601] .) As observed by this Court in *State of Rajasthan v. Kalki* [*State of Rajasthan v. Kalki*, (1981) 2 SCC 752 : 1981 SCC (Cri) 593] normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorised. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in *Krishna Mochi v. State of Bihar* [*Krishna Mochi v. State of Bihar*, (2002) 6 SCC 81 : 2002 SCC (Cri) 1220] . Accusations have been clearly established against the appellant-accused in the case at hand. The courts below have categorically indicated the distinguishing features in evidence so far as the acquitted and the convicted accused are concerned.”
(emphasis in original)”

A charge that was imputed to the individual when he was a minor and acquitted after he became major cannot be a charge at all. In such a situation, the petitioner cannot be accused of suppression of material facts. The conduct of the petitioner can at the most be treated as an omission. An omission that can definitely be reconsidered. Since the petitioner has been acquitted in criminal proceedings, the omission

loses its seriousness and fatality. This Court does not for a moment support any false statement made in any application for employment that too for a disciplined force. However, to consider every case of omission with a single sweep and by applying a common disdain would be equally fallacious.

The decision of the Division Bench of the Bombay High Court indeed would be relevant while considering as to whether the IG cum Chief Security Commissioner in the impugned order dated 31.01.2020 has been objective or not. No element of subjectivity can be permitted to enter a decision of this nature and a consideration that is required to be effected in such a situation must be objective.

In the backdrop of the aforesaid discussion, this Court is of the view that the discharge of the petitioner on the sole ground of suppression of facts of the pendency of the criminal proceedings against him cannot be supported or countenanced.

The impugned order shall stand set aside. The petitioner shall be reinstated within a period of 15 days from date. He shall be allowed to complete his probation in accordance with the Rules of the RPF and upon successful completion of such probation, he shall be absorbed as constable by the R. P. F.

With the aforesaid observations, the instant writ petition is disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(*Rajasekhar Mantha, J.*)