

(Through Video Conference)

S/L No. 07
13.12.2021
Ct-11
(PD)

FMA 888 of 2021
With
IA. No. CAN 1 of 2021

Union of India & Ors.
vs.
Bibrata Biswas

Mr. Sourav Mondal

... for the Appellants.

Mr. Achin Kumar Majumder

Mr. Pratik Majumder

... for the Respondent.

Party/parties are represented in the order of their name/names as printed above in the cause title.

The authorities have preferred the instant appeal against the order passed by the Hon'ble Single Judge in WPA No. 4683/2021 dt. 12.04.2021 wherein the Hon'ble Single Judge had set aside the impugned order of discharge of the writ petitioner/respondent passed by the Principal Chief Security Commissioner/ RPF, Eastern Railway/ Kolkata dt. 31.01.2020 and directed the appellants herein to reinstate the writ petitioner within a period of 15 days from date and the writ petitioner shall be allowed to complete his probation in accordance with the rules of RPF and upon successful completion of such probation, he shall be absorbed as constable by the RPF.

The respondent was selected for recruitment as a constable of Railway Protection Force (hereinafter

referred as RPF). After the selection, the writ petitioner was sent for training to Hyderabad and successful completion of training he was directed to report to the office of the Principal Chief Security Commissioner, RPF on 25.06.2015 by an order dt. 18.06.2015. On 11.08.2015 the Staff Officer of CSC/ Eastern Railway for IG-Cum-Chief Security Commissioner/RPF, Eastern Railway, Kolkata had issued an order vide no. SC.30/65/5-E (Const. Rectt.)/11-12 by discharging the writ petitioner from enlistment for the post of Constable in RPF/Eastern Railway on the ground of not disclosing pending police case in the attestation form dt. 24.06.2014 submitted by the writ petitioner during viva-voce, tantamounts to "False declaration".

Being aggrieved by the order of discharge dt. 11.08.2015, the writ petitioner had filed a writ petition before the Hon'ble Single Judge being WP No. 3226 (w) of 2016 and the said writ petition was disposed of on 30.08.2016 wherein the Hon'ble Single Judge had passed the following order:

"For the foregoing discussions, this Bench is minded to dispose of the writ petition with directions. The order of discharge is not set aside. However, the Chief Security Commissioner, respondent no. 3, shall put the petitioner on notice for a personal hearing in the former's office within 3 (three) weeks from date of receipt of a copy of this judgment and order. The petitioner shall be given a chance to explain the reason for non-disclosure of his prosecution in the criminal case which, ultimately, led to his acquittal. The respondent no. 3 shall then proceed to consider the claim of the petitioner for revocation of the order of discharge and enlistment for service

giving due regard to the decision in Avtar Singh (supra). Should the respondent no. 3 be of the opinion that the petitioner should be enlisted for service, he shall be at liberty to revoke the order of discharge, as referred to in the communication dated August 11, 2015, and pass further appropriate order. In case the respondent no. 3 is of the view that the petitioner's conduct does not deserve revocation of the order of discharge, he shall be entitled to maintain such order but assign reasons in support of his conclusions. The reasons must, however, be communicated to the petitioner immediately upon consideration in terms of this order. Accordingly, the writ petition stands disposed of. There shall be no order as to costs."

In compliance of the order passed by the Hon'ble Single Judge dt. 30.08.2016, the IG-Cum-Chief Security Commissioner/RPF, Eastern Railway/ Kolkata had passed the following order on 06.10.2016:

"In the instant case the conduct of the petitioner Sri Bibrata Biswas does not deserves any sympathetic consideration in view of the fact he himself admitted that he by mistake filled up the said column no 12(I)(i) of attestation form as "No" but he did not cure the said mistake at any point of time by making any kind of representation rather he straight way approached before the Hon'ble Court. Then first time he disclosed such alleged mistake. It is also to be considered that neither he communicated his wrong in respect of such filling up of attestation form nor he ever communicated his acquittal of criminal case to the authority and as such the said conduct does not call for any kind of consideration where such appointment for a Disciplined Force.

In consideration of the above fact and circumstances, no interference is applicable into the order of discharge vide No SC.30/65/5-E(Const. Rectt.) 11-12 dt. 11.08.2015 from enlistment in terms of Rule 67.2 of RPF Rules 1987 for the post of Constable in RPF/Eastern Railway vide Employment Notice No. 01/2011 against the petitioner (Bibrata Biswas)."

Being aggrieved with the order dt. 06.10.2016 the writ petitioner had preferred a writ petition before the Hon'ble Single Judge being WP No. 26379 (w) of 2016 and the Hon'ble Single Judge had disposed of the said writ application by passing the following order:

"In view of the discussions made herein above the impugned order dated 6th October 2016 is set aside. The instant writ petition is disposed of directing the Chief Security Commissioner to reconsider the case of the petitioner objectively upon proper application of mind as to whether the lapse on the part of the petitioner can be discounted on the facts and circumstances of the instant case. The said respondent shall pass a reasoned order in the matter within a period of eight weeks from the date of communication of this order and shall communicate the reasoned order to the petitioner within a fortnight thereafter. It is made clear, that in the event the respondent opines in favour of the petitioner, then he will not be entitled to any past service benefits, but will be entitled to benefits from prospective date, as penalty on account of the lapse of non-disclosure on his part."

In compliance of the order passed by the Hon'ble Single Judge in WP No. 26379 (w) of 2016 dt. 11.12.2019, the Principal Chief Security Commissioner/ RPF, Eastern Railway, Kolkata had passed the following order on 31.01.2020:

"However, in the light of above discussions, being the appointing authority, after considering all the relevant aspects and with due application of mind, I am of the considered opinion that stricter norms need to be adopted while appointing a candidate in a disciplinary Force like RPF because public interest is involved in it. The purpose of my scrutinization of character and antecedent is to keep the candidates having doubtful integrity or prosecuted in any heinous crime or grave cases of moral turpitude, out of the department, certainly the above principles should

be applied with more vigour at the point of entry of a person in the Force.

Keeping in view the sanctity and paramount interest of the Force as well as above fundamental principles in the backdrop of the instant cases by carefully perusing the relevant documents concerning to character and antecedent of the candidate, I have reached the conclusions to summarily reject the provisional candidature of Sri Bibrata Biswas, as he is found to be unsuitable for his induction in the Force (RPF)."

Being aggrieved with the order dt. 31.01.2020 the writ petitioner has filed WPA No. 4683 of 2021 which was disposed of by the Hon'ble Single Judge on 12.04.2021 which is impugned in the instant appeal.

The Counsel for the appellants submitted that the writ petitioner was selected for the post of Constable and for verification of his antecedents, the writ petitioner had to submit attestation form and accordingly the writ petitioner had submitted the same, wherein, the writ petitioner in Clause 12 of the attestation form has stated as follows:

(a) Have you ever been arrested?

Yes/No✓

(b) Have you ever been prosecuted?

Yes/No ✓

(c) Have you ever been kept under detention?

Yes/No✓

(d) Have you ever been bound down?

Yes/No✓

(e) Have you ever been fined by Court of Law?

Yes/No✓

(f) Have you ever been convicted by a Court of Law for any offence?

Yes/No✓

(g) Have you ever been debarred from any examination or rusticated by any University or any other Education Authority/Institution?

Yes/No✓

(h) Have you ever been debarred/disqualified by any Public Service Commission for any of its examinations/selections?

Yes/No✓

(i) Is any case pending against you in any Court of law at the time of filling up this Attestation Form?

Yes/No✓

(j) Is any case pending against you in any University or any other Educational Authority/Institution at the time of filling up this Attestation form?

Yes/No✓

(k) Whether discharged/expelled/withdrawn from any Training Institution under the Government or otherwise?

Yes/No✓

On receipt of the attestation form, the same was duly forwarded to the police authority for verification and on receipt of police verification report from DIO Dhantala, DIB/Nadia through DM/Nadia it was found that one police case is still subjudice vide Dhantala P.S Case No. 282/07 dt. 23.09.2007 under Section 447/

448/ 379/ 411/ 427/ 323/ 325/ 307/ 506/ 120B/ 34
IPC and charge-sheet No. 292/2007 dt. 27.10.2007
under Section 447/448/323/325/506/120B/34 IPC.

When the authorities came to know about the pendency of a criminal case against the writ petitioner and the writ petitioner has not disclosed the same to the authorities while submitting the attestation form in other words in the attestation form the writ petitioner had stated that no criminal case is pending and the writ petitioner was never prosecuted and accordingly the appellants have issued an order of discharge against the writ petitioner from his service on the ground of "False Declaration".

Per contra, the Counsel for the writ petitioner/respondent had submitted that due to a civil dispute between the parties a criminal case was initiated against the writ petitioner and other three (3) persons by one Prakash Chandra Biswas before the Ld. Court of ACJM Ranaghat, Nadia on 11.09.2007 by filling an application under Section 156 (3) of Cr.PC and as per the direction of the Ld. Magistrate the police initiated FIR which culminated to charge-sheet. The writ petitioner/respondent had faced trial before the Ld. Court of Judicial Magistrate 1st Class, 3rd Court Ranaghat, Nadia vide GR Case No. 1333/2007 along with other accused persons and subsequently the Ld. Magistrate passed judgment on 02.12.2015 wherein the

Ld. Magistrate had acquitted all the accused persons from the said case including the writ petitioner/respondent and while passing the judgment, the Ld. Magistrate had held the following:-

“I have thoroughly and meticulously scrutinized the evidence on record and found that except the P.W.1 and P.W.5, neither of the witnesses have stated anything from which the active participation of the accused in the alleged offences have been proved. The P.W.5, also put allegation against the accused regarding cut down of paddy from their field, though, it was not proved by them who was the actual owner of the disputed land and none of the witnesses had seen the accused to cut down paddy from the field of the complainant. They also put stress on the fact that the stolen paddy was kept in the house of Sadananda Goldar by police, but this evidence of said Sadananda Goldar is not at all believable. Moreover, he did not state a single word regarding the allegation of assault upon P.W.5 by the accused and the previous dispute among the parties. It is a great defect/fault on the part of the prosecution that no report regarding the injury or treatment of the P.W.5 had been produced before me during trial and the complainant also failed to say how and by whom the injured was assaulted on the date of incident. Most astonishing matter is that the other injured i.d. the parents of the complainant did not appear to depose before the Court and the complaint failed to say the nature of their injury.

In view of the above discussion, I am of opinion that the prosecution in the instant case has been totally failed to bring home the above mentioned charges, against the accused persons beyond all reasonable doubts and disputes. Consequently, the accused persons are entitled to get an order of acquittal from this case.”

The Counsel for the writ petitioner/ respondent further stated that the Ld. Court of Judicial Magistrate had acquitted the writ petitioner/respondent Honourably and as such there is no case in the eye-of-

law. The Counsel for the respondent further stated that the case of the writ petitioner is covered in the four corners of the judgment passed by the Hon'ble Supreme Court in the case of Avtar Singh versus Union of India reported in 2016 Vol. 8 SCC 471 in which 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 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 involve 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? It government service such a heaven that only angles 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 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 filing 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.”

The Counsel for the writ petitioner/respondent has further submitted that the writ 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.

The Counsel for the writ petitioner/respondent has further relied the judgment passed in the case of Mohammed Imran v. State of Maharashtra and Ors. Reported in AIR 2018 Supreme Court 4895 wherein the Hon’ble Supreme Court held as follows:-

“10. In the present proceedings, on 23.03.2018, this Court had called for a confidential report of the character verification as also the antecedents of the appellant as on this date. The report received reveals that except for the criminal case under reference, in which he has been acquitted, the appellant has a clean record and there is no adverse material against him to deny him the fruits of his academic labour in a competitive selection for the post of a judicial officer. In our opinion, no reasonable person on the basis of the materials placed before us can come to the conclusion that the antecedents and character of the appellant are such that he is unfit to be appointed as a judicial officer. An alleged single misadventure or misdemeanour of the present nature, if it can be considered to be so, cannot be sufficient to deny appointment to the appellant when he has on all other aspects and parameters been found to be fit for appointment. The Law is well-settled in this regard in Avtar Singh v. Union of India and others, (2016) 8 SCC 471: (AIR 2016 SC 3598). If empanelment creates no right to appointment, equally there can be no arbitrary denial of appointment after empanelment.

11. In the entirety of the facts and circumstances of the case, we are of the considered opinion that the consideration of the candidature of the

appellant and its rejection are afflicted by a myopic vision, blurred by the spectacle of what has been described as moral turpitude, reflecting inadequate appreciation and application of facts also, as justice may demand.”

We have considered rival submissions of the parties, documents available on record and the judgment relied by the parties. It is admitted that on 11.09.2007 Prakash Chandra Biswas had filed an application under Section 156 (3) of the Cr.PC before the Ld. Court of ACJM, Ranaghat against the writ petitioner/respondent along with others for registration of a case and as per the direction passed by the Ld. Court of ACJM, Ranaghat, Nadia, the police of P.S. Dhantala had registered a FIR No. 282/2007 dt. 23.09.2007 which was subsequently culminated to charge-sheet. The writ petitioner along with others have faced trial before the Ld. Judicial Magistrate 1st Class 3rd Court, Ranaghat, Nadia and on 02.12.2015 the Ld. Magistrate passed judgment wherein the writ petitioner/respondent along with others were acquitted.

In the said judgment the Ld. Magistrate has held that the said criminal case was initiated on a civil dispute between the parties and on meticulously scrutinization of the evidence on record it was found that none of the witnesses have stated anything with regard to active participation of the accused persons in the alleged offences. The Ld. Magistrate further noted that the allegation regarding cut-down of paddy from

filed was also not proved. There is no single word regarding the allegation of assault by the accused persons upon the victim. The complainant failed to say how and why the injured was assaulted on the date of incident. The injured that is the parents of the complainant did not appear before the Court and deposed before the court with regard to the nature of injury sustain by them. After going through all the evidences the Ld. Magistrate had acquitted all accused persons including the writ petitioner/respondent from the said case. It is admitted that neither the State nor the de-facto complainant have preferred any appeal against the order of acquittal passed by the Ld. Magistrate against the appellant and the order of acquittal reached its finality.

The case was initiated against the writ petitioner/respondent when he was minor and acquitted after he became major cannot be charged at all. In the said situation the writ petitioner cannot be guilty of suppression of material fact. The Hon'ble Supreme Court in the case of Avtar Singh v. Union of India has categorically held that it cannot be disputed that 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.

In the instant case on the basis of civil dispute between the parties a criminal case was initiated but subsequently the Ld. Magistrate has found that the case initiated against the writ petitioner/respondent and others was not proved and the Ld. Magistrate had Honourably acquitted the persons from the said case. The judgment passed in the case of Mohammed Imran v. State of Maharashtra & Ors. Reported in AIR 2018 (SC) 4895 the Hon'ble Supreme Court held that no reasonable person on the basis of materials produced before us can come to conclusion that antecedents and character of the appellant are such that he is unfit to be appointed as a Judicial Officer. The fact of the said case is squarely applicable in the instant case. The appellants only on the basis of report of police regarding pendency of criminal case which the writ petitioner has not disclosed, has discharged from service but the appellant failed to consider that from the said case the writ petitioner/respondent is acquitted by the competent Court of law.

For the above reasons we are of the view that the Hon'ble Single Judge has not committed any error by setting aside the impugned order dt. 31.01.2021. The order passed in WPA No. 4683 of 2021 dt. 12.04.2021

does not require any interference.

The appeal being **FMA 888 of 2021** and the application being **IA No. CAN 1 of 2021** filed by the appellants are **dismissed**.

There will be no order as to costs.

All parties to act on a server copy of this order downloaded from the official website of this Court.

Urgent Xerox certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Krishna Rao, J.)

(Subrata Talukdar, J)