

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) NO.2337 of 2013**

Kailash Kumar Sinha, S/o Manbodh Ram, aged about 36 years, R/o Village Khartuli, Post Patiyadih, Civil and Revenue District Dhamtari (CG)

-----Petitioner

Versus

1. The State of Chhattisgarh, through the Secretary, Home Department, Mahanadi Bhawan, Naya Raipur, District Raipur (CG)
2. Director General of Police, Police Headquarters, Chhattisgarh, Raipur (CG)
3. The Assistant Inspector General of Police (Telecommunication), Police Headquarters, Telecommunication, Chhattisgarh, Bhilai (CG)

----- Respondents

For Petitioner : Mr.A.K.Prasad, Advocate

For Respondents : Mr.Sunil Otwani, Additional Advocate

General with Mr.Sanjay Pathak, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

27/9/2021

1. The petitioner herein calls in question legality, validity and correctness of the order dated 27.5.2011 (Annexure P-12) by which respondent No.2 has held the petitioner to be unsuitable for the post of Constable (Telecommunication).
2. The petitioner applied for the post of Constable (Telecommunication), for which final select list was issued on 12.7.2010 and he was selected also, but in attestation form submitted on 12.8.2010 he disclosed the pendency of Criminal Case No.3/2011 for offences under Sections 294 and 506 read with Section 34 of the IPC pending in the Court of

Chief Judicial Magistrate, Dhamtari, therefore, he was not appointed, but later on, he was acquitted on 14.3.2011 (Annexure P-7) by the Court of Judicial Magistrate First Class, Dhamtari in Criminal Case No.03/2011. The petitioner made an application / representation for issuance of appointment letter in his favour on 17.3.2011 on the ground of acquittal, which was considered by the appointing authority and by the impugned order dated 27.5.2011 (Annexure P-12), it has been held that though the petitioner has been acquitted from criminal case, but considering his antecedents and character, he is unsuitable / unfit for government job and accordingly, his candidature was rejected, which has been called by way of this writ petition.

3. Return has been filed by the respondents/State opposing the writ petition stating inter-alia that even the petitioner did not disclose in his application form submitted before the authorities about the pendency of above-stated criminal case. Even otherwise, the decision taken by the appointing authority not to appoint the petitioner on the post of Constable (Telecommunication) is in accordance with law as the petitioner is found unsuitable looking to his criminal antecedents.
4. Mr.A.K.Prasad, learned counsel for the petitioner, would submit that though on the date of filing the application the petitioner's criminal case was pending before the competent criminal Court, but later on, he has been

acquitted on 14.3.2011, therefore, he is entitled for appointment on the said post and as such, the impugned order deserves to be set aside.

5. On the other hand, Mr. Sunil Otwani, learned Additional Advocate General with Mr. Sanjay Pathak, learned Panel Lawyer for the respondents/State, would submit that subsequent acquittal from criminal case would not entitle the petitioner for appointment as the appointing authority has considered the entire facts and circumstances of the case and merely because he has acquitted, he cannot be held to be suitable for the post of Constable (Telecommunication).
6. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
7. True it is that while applying for the post of Constable (Telecommunication) the petitioner did not disclose his pending criminal case before the jurisdictional criminal Court for offences under Sections 294 and 506 read with Section 34 of the IPC and he came to be selected, but while submitting attestation form he disclosed his pendency of criminal case, therefore, he was not appointed, but later on, upon acquittal from criminal case on 14.3.2011, he applied for appointment on the post of Constable (Telecommunication), which was rejected by order dated 27.5.2011 (Annexure P-12) finding him unsuitable for the said post as he has been acquitted from criminal case only

on the basis of extending benefit of doubt.

8. The question as to whether a person who was suffering from criminal case on the date of selection and thereafter he has been acquitted subsequently is entitled to be appointed is no longer res-integra and stands authoritatively decided by the Supreme Court in catena of decisions. Few of them may be noticed profitably.
9. The Supreme Court in the matter of **Avtar Singh v. Union of India and others**¹ has held in para 38.5 that even in cases where a truthful disclosure about a concluded case was made, the employer would still have a right to consider antecedents of the candidate and could not be compelled to appoint such candidate.
10. The aforesaid para 38.5 of **Avtar Singh's** case (supra) was followed with approval by their Lordships of the Supreme Court in the matter of **State of Madhya Pradesh and others v. Abhijit Singh Pawar**² and it has been held as under:-

“13. In Avtar Singh (supra), though this Court was principally concerned with the question as to non-disclosure or wrong disclosure of information, it was observed in para 38.5 that even in cases where a truthful disclosure about a concluded case was made, the employer would still have a right to consider antecedents of the candidate and could not be compelled to appoint such candidate.

14. In the present case, as on the date when the respondent had applied, a criminal case was pending against him. Compromise was entered into only after an affidavit disclosing such pendency was filed. On the issue of compounding of offences and the effect of acquittal under Section 320(8) CrPC, the law declared by this Court in Mehar Singh³, specially in

1 (2016) 8 SCC 471

2 (2018) 18 SCC 733

3 Commr. of Police v. Mehar Singh, (2013) 7 SCC 685

paras 34 and 35 completely concludes the issue. Even after the disclosure is made by a candidate, the employer would be well within his rights to consider the antecedents and the suitability of the candidate. While so considering, the employer can certainly take into account the job profile for which the selection is undertaken, the severity of the charges levelled against the candidate and whether the acquittal in question was an honourable acquittal or was merely the ground of benefit of doubt or as a result of composition."

- 11.** The principle of law laid down in Avtar Singh (supra) was further followed with approval by the Supreme Court recently in the matter of Rajasthan Rajya Vidyut Prasaran Nigam Limited and another v. Anil Kanwariya⁴ in which it has been held as under:-

"12. The issue/question may be considered from another angle, from the employer's point of view. The question is not about whether an employee was involved in a dispute of trivial nature and whether he has been subsequently acquitted or not. The question is about the credibility and/or trustworthiness of such an employee who at the initial stage of the employment, i.e., while submitting the declaration/verification and/or applying for a post made false declaration and/or not disclosing and/or suppressing material fact of having involved in a criminal case. If the correct facts would have been disclosed, the employer might not have appointed him. Then the question is of TRUST. Therefore, in such a situation, where the employer feels that an employee who at the initial stage itself has made a false statement and/or not disclosed the material facts and/or suppressed the material facts and therefore he cannot be continued in service because such an employee cannot be relied upon even in future, the employer cannot be forced to continue such an employee. The choice/option whether to continue or not to continue such an employee always must be given to the employer. At the cost of repetition, it is observed and as observed hereinabove in catena of decision such an employee cannot claim the appointment and/or continue to be in service as a matter of right."

- 12.** Reverting to the facts of the present case in the

⁴ 2021 SCC OnLine (SC) 739

light of principle of law laid down by the Supreme Court in the above-stated judgments (supra), it is quite vivid that though the petitioner in his attestation form has disclosed about pendency of criminal case and he has been subsequently acquitted from criminal charge, yet the respondent / employer had right and authority to consider antecedents of the candidate and employer cannot be compelled to appoint the petitioner on the said post. The petitioner cannot claim appointment as a matter of right particularly in the instant case it is not clean and honourable acquittal, but the petitioner has been acquitted on the ground of benefit of doubt and as such, the decision of the respondent-authority not to appoint the petitioner considering his antecedents and record finding him unsuitable / unfit for government job as Constable in police service cannot be branded as arbitrary or illegal. In my considered opinion, no case is made out for interference in the impugned order of respondent No.2 while rejecting the candidature of the petitioner on the ground of finding unsuitable for the post of Constable (Telecommunication), which is strictly in accordance with law. I do not find any merit in this writ petition.

13. Accordingly, the writ petition deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge