

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.465 of 2019

In
Civil Writ Jurisdiction Case No.11982 of 2016

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Shivam Kumar Son of Sudhir Sharma R/o Village-Sikhiyama, P.S. Hulasganj,
District-Jehanabad

... .. Appellant/s

Versus

1. The Union of India through Secretary, Ministry of Home Affairs, New Delhi
2. The Director General Central Reserve Police Force, New Delhi
3. The Additional Director General South Zone, Central Reserve Police Force, Hyderabad
4. The Inspector General Southern Sector, Central Reserve Police Force, Hyderabad
5. The Deputy Inspector General Central Reserve Police Force Range, Taralu, Karnatka
6. The Deputy Inspector General Group Centre, Central Reserve Police Force, Taralu, Karnatka
7. The Inspector General Group Centre, Central Reserve Police Force, Rampur, Uttar Pradesh
8. The Commandant 198 Battalion, Group Centre, Central Reserve Police Force, Andhra Pradesh
9. The Commandant 227 Battalion, Central Reserve Police Force, Bhopal, Madhya Pradesh

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ramakant Sharma, Sr. Advocate Mr. Rajesh Kumar, Advocate Mr. Rakesh Kumar Sharma, Advocate Mr. Lakshmi Kant Sharma, Advocate
For the Respondent/s	:	Mr. Binay Kumar Pandey, CGC

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 08-09-2022



In the instant Letters Patent Appeal, the appellant has assailed the order of the learned Single Judge dated 03.12.2018 passed in CWJC No. 11982 of 2016.

02. The appellant, pursuant to the advertisement issued for the post of Constable (GD) in CRPF in the year 2012 was a candidate and he was selected and appointed in the month of February, 2013 and appointment letter was issued on 07.02.2013. He was directed to produce order of acquittal passed by the Juvenile Justice Board on 19.02.2014, thereafter, he has joined the post on 11.03.2014.

03. In this backdrop, the official respondent is stated to have examined the records of the appellant. Further, certain antecedents of the appellant was collected and it was found that appellant was involved in a criminal case in which he was acquitted by the Juvenile Justice Board. Taking into the aforesaid information the respondent proceeded to terminate the services of the petitioner on 13.09.2014. At this stage, it is noticed that prior to order of termination the official respondent had taken sympathetic view in warning the appellant thereafter abruptly his services were terminated. Further, it was subject matter of appeal before the Appellate Authority and Appellate Authority has confirmed the



order of termination dated 07.07.2015. Similarly, Revisional Authority has confirmed order of the Appellate Authority.

04. Feeling aggrieved by the order of termination, against the Appellate and Revisional Authorities order appellant has preferred writ petition before this Court. Learned Single Judge dismissed the appellant's petition, hence, the present appeal.

05. The learned Single Judge has taken note of decision of Hon'ble Apex Court in the case of **Avtar Singh vs. Union of India & Ors.** reported in **(2016) 8 SSC 471**, however, he has not appraised para 38.4.1 read with 38.4.3. Reading of the termination order it is crystal clear that there is no application of mind whether non-disclosure of acquittal of the appellant as Juvenile would be hurdle for continuation of his services or not, in the light of Hon'ble Apex Court decision cited (supra). Similarly, Appellate and Revisional Authorities have affirmed the order of termination.

06. Therefore, learned counsel for the appellant submitted that it is a case for reconsideration of termination in the light of Hon'ble Apex Court decision in the case of **Avtar Singh vs. Union of India** (supra) read with **Pawan Kumar vs. Union of India & Anr. (Civil Appeal No(s). 3574 of 2022)** decided on 02.05.2022.



07. *Per contra* learned counsel for the respondents resisted the aforesaid contention of learned counsel for the appellant and submitted that it is undisputed fact that appellant was involved in criminal case and he had been acquitted by the Juvenile Justice Board and the same was not disclosed to the appointing authority which was warranted at the time of joining service. Therefore, there is no infirmity in the order of the learned Single Judge.

08. Heard learned counsel for the respective parties.

09. Crux of the matter in the present appeal is whether learned Single Judge has erred in not noticing the contents of termination order to the extent whether is it a speaking order with reference to nature of the offence in which appellant was involved and his acquittal. Further, non-disclosure of acquittal would be hurdle with reference to serious alleged offences. That apart, the concerned authority was also required to examine that appellant was involved in criminal case when he was a juvenile and he had been acquitted. These things were required to be taken note of in the light of **Avtar Singh's** read with **Pawan Kumar's** case cited (supra). It is necessary to reproduce order of termination dated 13.09.2014 passed by the Commandant, 227 Battalion, CRPF, Bangrasia, Bhopal (M.P.):-



“ Office of the commandant -227 BN CRPF,
BANGRASIA, BHOPAL (M.P.)
NOTICE OF TERMINATION FROM SERVICE

In pursuance of Sub-Rule (1) of Rule 5 of the Central Civil Service (Temporary Service) Rules, 1965, I, Sanjay Sharma, Commandant-227 BN, CRPF, Bhopal hereby give notice with effect from the date of expiry of a period of one month from the date on which this notice is served on, or as the same may be tendered to him.

Station: Bhopal (MP) (SANJAY SHARMA)
COMMANDANT-227 BN, CRPF
NO. T-VI/2014-227-EC-II

Copy forwarded for information and necessary action to:-

- 1. The IGP(Trg) Dte. General, CRPF, New Delhi.*
- 2. The IGP S/Sector, CRPF, Hyderabad.*
- 3. The DIGP, Range, CRPF, Taralu. w.r.t. his office sig. No. P-VII 114-R/T-EC-III Dated-26/08/14 and 10/09/14.*
- 4. The DIGP, GC, CRPF Taralu (Banglore) w.r.t. his letter No. C.II.3/2014-SRC-3 dated 07/06/14 in triplicate with the request to draw his one month pay and allowances in lieu of one month notice equivalent to the amount at the same rates at which were drawing by him immediately before the termination of his service.*
- 5. The DIGP, GC CRPF, Rampur.*
- 6. The Commandant-151 Bn, CRPF, at location. w.r.t. his office letter no. P-VIII-1/2014-EC-II Dated-06/01/14.*

(Regd. Post with A.D.)

7. No. 135260569 RT/GD Shivam Kumar S/O Shri, Sudheer Sharma, Vill- Sukiyawa, Post- Narma, P/S- Hulasganj, Distt- Jahanabad, State- BIHAR, Pin-804407, One copy of this notice duly signed may please be returned to this office for records.

(SANJAY SHARMA)
COMMANDANT-227 BN, CRPF”



10. Perusal of the aforesaid termination order, it is crystal clear that there is non-application of mind for the reasons that judicial pronouncements in the decision of **Avtar Singh & Pawan Kumar** case cited (supra) have not been taken note off. It was mandatory requirement of the competent authority before terminating services of an employee who has failed to disclose pendency/acquittal in a criminal case would be really a hurdle and to what extent.

11. In the light of these facts and circumstances, the learned Single Judge has not appreciated para 38.4.1 and 38.4.3 of Avtar Singh decision read with Pawan Kumar decision. Therefore, we set aside order of learned Single Judge dated 03.12.2018 passed in CWJC No. 11982 of 2016 and order of termination dated 13.09.2014 and consequential orders passed by higher authorities. We remand the matter to the Commandant, 227-Battalion, CRPF, Bangasia, Bhopal (M.P.) to pass a speaking order in the light of the fact that appellant was involved in a criminal case and he was acquitted by the Juvenile Justice Board in the year 2011 read with judicial pronouncements namely **Avatar Singh** and **Pawan Kumar** cited (supra) on due examination of each of the issue and proceed to pass order. He is also hereby directed to appreciate that Appellant as a Juvenile he is alleged to have involved in a criminal



case and it would be hurdle for his continuation in service. In the event of any adverse order to be passed against the appellant in such an event he may be given an opportunity of issuing show cause notice and, thereafter, pass a final order whether appellant is entitled to reinstatement or his services were to be dispensed. The aforesaid decision shall be taken by the Commandant within a period of three months from the date of receipt of this order.

12. Accordingly, the Letters Patent appeal is allowed in part.

13. Leaving open all other contentions like service and monetary benefits to be urged before the Commandant-Respondent.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

