

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.189 of 2018

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Om Kumar, Son of Girja Mandal, Resident of Village-Motichak Naya Tola,
P.S.- Akberpur, District -Bhagalpur.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna
2. D.G. of Police, Bihar, Patna.
3. D.I.G. Rail, Bihar, Patna.
4. S.P. Rail, Muzaffarpur.
5. S.S.P., Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ebrahim Kabir, Advocate Ms. Shruti Sinha, Advocate
For the Respondent/s	:	Mr. P.K. Verma, AAG-3

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 01-08-2022

The petitioner after his appointment in the Police Force was subjected to verification. Verification revealed that the petitioner had suppressed three criminal cases, viz., (i) Akbarnagar P.S. Case No.82/09 for the offences under Section 147/148/149/326/307/386/379 I.P.C. and 27 Arms Act, (ii), Akbarnagar P.S. Case No.68/12 for the offences under Section 147/151/152/186/283/341/342/327/353/504 I.P.C. and Akbarnagar P.S. Case No.17/13 for the offences under Section 147/148/149/341/323/386/387 I.P.C. and 27 Arms Act, in which he was named accused by an alias, namely, Vikas Kumar.



2. Statement of the petitioner at the time of obtaining appointment regarding there being no implication in any case was thus found to be false during verification roll and as such, the petitioner has been removed from the Force.

3. The two communications issued by the Superintendent of Police, Rail, Muzaffarpur and the Senior Superintendent of Police, Muzaffarpur, dated 21.04.2014 and 29.04.2014, respectively, have been assailed in the instant writ proceedings.

4. The petitioner has thereafter preferred an appeal against the decision of his removal from the Force. The appeal preferred by the petitioner has been rejected by the Deputy Inspector General, Railway, by order dated 05.10.2015, bearing Memo No.1100, which has also been assailed in the instant writ proceedings.

5. The petitioner's counsel submits that the orders removing the petitioner from service are unsustainable, for the reason that the order of removal is not preceded by any enquiry or proceedings.

6. The second ground that has been urged is that in view of the decision of the Apex Court in the case of *Avtar Singh Vs. Union of India & Ors.*, reported in (2016) 8 SCC 471 and



(2018) 1 SCC 268, the authorities were required to consider the effect of suppression of the three criminal cases pending against the petitioner against various parameters set forth in the decision of *Avtar Singh* (supra) by the Apex Court.

7. The last submission is that the petitioner has been exonerated in two, out of three cases. The third case, however, is still pending. These cases have been lodged against the petitioner on extraneous considerations, based on village politics and property dispute between his agnates.

8. It is thus submitted that the impugned orders removing the petitioner from service during preparation of verification roll are unsustainable and fit to be quashed. The petitioner is entitled to be reinstated in service along with all consequential benefits.

9. The submission on behalf of the State is that the petitioner is not only guilty of suppression of the facts regarding pendency of criminal proceedings against the petitioner, but also guilty of wilful and deliberate misrepresentation inasmuch as in the verification roll prepared by him on Form no.101, he has given a false declaration in clause 7 and clause 8. Clause 7 and Cause 8 of Form 101; and the petitioner's declaration read as follows :

7. क्या आवेदक कभी दांडिक (फौजदारी) या सिविल (नहीं)



(दीवानी) मामले में अभियुक्त रहा हैं अथवा कभी कारावास भुगत चुका है? विवरण दें ।

8. क्या आवेदक ऋण ग्रस्त हैं और उसके विरुद्ध कोई (नहीं) दांडिक (फौजदारी) या सिविल (दीवानी) मामला विचाराधीन हैं? विवरण दें ।

10. The consequence of submission of false information, as per Rule 673 of the Bihar Police Manual, Volume I, (for short, “the Manual”) therefore must follow. Rule 673(c) of the Manual clearly provides that if the character of the man is reported to be bad or his statement false, he shall be removed from the Force at the time of verification roll. After the petitioner’s enlistment, service book was prepared and verification roll filled in by the petitioner was sent to the Superintendent of the District in which petitioner's home is situated, Samastipur District.

11. During verification at his village, the fact of pendency of the three criminal cases, noted above, was discovered. The petitioner therefore has rightly been removed from service in compliance with Rule 673(c) of the Manual, which reads as follows :

“673(c) *Enlistment orders*.—The order for enlistments shall then be entered in the order book, the service book shall be prepared and the verification roll despatched to the Superintendent of the district in which the recruits home is situated. The number and date of despatch shall be noted in the proper place in the



service-book, and on the return of the roll with a report that the man bears a good character and has made a truthful statement as to his antecedents, the Superintendent shall initial this entry, have the necessary entry made in the service-book and order the verification roll to be filed. If the character of the man is reported to be bad or his statement false, he shall be removed from the force.”

12. Since the consequence of verification roll is specified in Rule 673 of the Manual and the fact of pendency of the three criminal cases is not in dispute by the petitioner, the submission regarding the same not being preceded by a charge memo or departmental proceedings is unsustainable. At the time of enlistment in a Police Force, the petitioner has resorted to suppression and wilful misrepresentation which cannot be countenanced in the matter of enlistment of a member to the Force.

13. In respect of last submission advanced on behalf of the petitioner regarding his exoneration in two, out of three cases, State Counsel would submit that even if the petitioner is subsequently exonerated in all three cases, that cannot be considered as a mitigating factor. The wilful suppression and misrepresentation at the time of his enlistment would still remain as it is. The consequences of false statement made by the petitioner in the verification roll under Rule 673 of the Manual, at the time of



his enlistment, cannot by any stretch of imagination be effected by petitioner's subsequent exoneration in the criminal cases pending against him, even if that be so.

14. Upon consideration of the rival submissions, this Court would find that the petitioner's plea regarding his removal not being preceded by charge memo or departmental proceedings, does not merit any consideration. The suppression of pendency of three criminal cases against the petitioner and wilful and deliberate misrepresentation made in the verification Form no.101 by the petitioner, during the process of his enlistment, and at the stage of verification roll, is provided in Rule 673 of the Manual, noted above. The authorities have acted in accordance with the procedure prescribed. This prescription of procedure contained in Rule 673 of the Manual is uniformly applied to all those enlisting in the Force. The petitioner has also not assailed or questioned the validity of this procedure prescription in Rule 673 of the Manual.

15. It is admitted by the petitioner that these three criminal cases were pending against him at the time of his enlistment. There is also no dispute that petitioner has filled up the Form No.101 wherein he has declared that he was never an accused in any criminal case and that no criminal case was



pending against him. Even if petitioner was to be afforded any opportunity by a show cause, the same would be a futile exercise since petitioner has not denied or disputed the factually incorrect declaration. The consequences of such false declaration/statement is specifically provided in Rule 673 of the Manual and the same mandates removal from the Force. Thus submissions based on non-compliance with the principles of natural justice are therefore devoid of substance. No real prejudice has been caused to the petitioner.

16. In view of the facts of the instant case, noted above, this Court would find that petitioner has not suffered any *de facto* prejudice by non-compliance with the principles of natural justice. Otherwise also, the impugned action is in accordance with Rule 673 of the Manual. By now it is settled legal position that to sustain the allegation of violation of principles of natural justice one must establish that prejudice has been caused to him by non-observance of the principles of natural justice. The action is required to be examined on the touchstone of doctrine of prejudice. These principles have been reiterated by the Hon'ble Apex Court in various judgments, including decision in the case of ***Union of India vs. Bishamber Das Dogra***, reported in **(2009) 13 SCC 102**.



17. In so far as the petitioner's reliance based on the decision in the case of *Avtar Singh* (supra) is concerned, this Court would consider it appropriate to observe that the Apex Court in the said case has held that the yardstick, which is to be applied in such matters, would depend upon the nature of post; and the power to take action for misrepresentation in the process of selection has to be exercised on due consideration of various aspects. Emphasizing the importance of verification of character and antecedents, the Apex Court has summarized the conclusion as to how the authorities are to consider the issue regarding fraudulently obtained appointment in paragraph 3, which reads as follows :

3. In *Avtar Singh v. Union of India* [*Avtar Singh v. Union of India*, (2016) 8 SCC 471 : (2016) 2 SCC (L&S) 425] this Court has considered in detail as to the circumstances under which the stringent action could be taken and to what extent the employer can exercise its discretion. Relevant portion reads as follows: (SCC pp. 507-08, para 38)

“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.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.

38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8. If 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.

38.9. In case the employee is confirmed in service, *holding* departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be



specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11. Before a person is held guilty of *suppressio veri* or *suggestio falsi*, knowledge of the fact must be attributable to him.”

(emphasis in original)

18. The petitioner’s case when viewed with decision of the Apex Court in the case of **Avtar Singh** (supra), in the background also does not deserve any favourable consideration. The petitioner has suppressed his implication in multiple criminal proceedings and therefore, he is not in a position to claim benefit of the decision of the Apex Court in the case of **Avtar Singh** (supra).

19. The petitioner has fraudulently obtained appointment, based on wilful misrepresentation to the effect that there was no criminal proceedings pending against him, although there were multiple/three criminal cases pending against him at the time of enlistment. In view of para 38.7 of the judgment in the case of **Avtar Singh** (supra), appointment of the petitioner may not be proper.

20. For the reasons, indicated herein above, this Court would observe that no grounds are made out for interfering with the orders removing the petitioner from the Police Force.



21. The writ petition is dismissed.

(Madhuresh Prasad, J)

PNM

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