

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:-

Hon'ble Mr. Justice Aniruddha Roy

W.P.A. 28149 of 2015
With
IA No.CAN 01 of 2019
(Old No. CAN 12362 of 2019)

**Sri Sukdeb Mandal
Vs.
Union of India & Ors.**

For the petitioner: **Mr. Achin Kumar Majumder, Advocate.**

For the respondents: Mr. Sourav Mondal, Advocate.

Reserved on: 05.08.2022

Judgment on: 06.09.2022

ANIRUDDHA ROY, J.:-

Facts:-

1. On February 23, 2011 an employment notice was published by the third respondent inviting application from the public at large for both male and female candidates for filling up the Post of Constables in all the Zonal Railways all over the country.
2. Pursuant to and in terms of the employment notice the petitioner in March 2011 applied thereunder for the Post of Constable. On May 31, 2011 a charge-sheet was submitted by the Chakda Police Station before the Learned Magistrate, Kalyani, District- Nadia under Section 341, 323, 506 and 34 of the Indian Penal Code against the petitioner and his family members. The petitioner **on June 02, 2014** submitted his **Attestation Form**. On June 18, 2015 the petitioner was declared to be medically fit for the initial course of training at Railway Protection Force (for

short, R.P.F) Training Course, N.F. Railways, Domohani and became selected for regular absorption in the Post of Constable, R.P.F, Eastern Railway on June 26, 2015. On July 14, 2015 the petitioner was directed to appear at the Office of the third respondent. He appeared. **By an order dated January 20, 2015** passed by the Jurisdictional Magistrate the petitioner was **acquitted** under Section 320 of the Criminal Procedure Code and the relevant bail bond stood discharged, **Annexure P-2** to the writ petition.

3. On July 13, 2015 the petitioner was served notice of termination of his service, wherein it was alleged that the petitioner did not disclose the pending police case in the attestation form, which amounted to a false declaration and accordingly on such plea of furnishing false declaration and for suppression of material fact his service was terminated, **Annexure P-1** to the writ petition. The petitioner completed his initial training course for a period of nine months, qualified successfully and became eligible for regular appointment at the Post of Constable and accordingly the petitioner reported the R.P.F Headquarter, Eastern Railway on June 26, 2015 for receiving the said appointment.
4. Challenging the said order of termination dated July 13, 2015 the petitioner moved a previous writ petition being W.P. No. 23959 (W) of 2015. By an order dated September 16, 2015, a Coordinate Bench was pleased to dispose of the said previous writ petition by directing the second respondent to decide the case of the petitioner in accordance with law within a time framed.
5. Pursuant to the direction dated September 16, 2015 the second respondent disposed of the representation of the petitioner dated July 31, 2015 and rejected the contention of the petitioner by its impugned order dated October 14, 2015, **Annexure P-6** to the writ petition.
6. Assailing, inter alia, the said decision of the respondent no.2 dated October 14, 2015 instant writ petition was filed.

7. The parties had filed and exchanged their respective affidavits.

Submissions:-

8. Mr. Achin Kumar Majumder Learned Counsel appearing for the writ petitioner submitted that, out of a bona fide mistake the petitioner did not disclose the initiation and pendency of the criminal case in the attestation form which was merely an omission. He submitted that, a neighbour, namely, Ranjit Biswas of the petitioner, lodged a false complaint against all the family members of the petitioner, including the petitioner out of jealousy. The jurisdictional police authority did not entertain the same and as such the neighbour applied before the Jurisdictional Magistrate, at Kalyani and on the basis of a direction made by the Learned Jurisdictional Magistrate a criminal case was initiated by the jurisdictional police station under Section 341/232/506/34 of the Indian Penal Code.
9. Referring to **Annexure P-2** to the writ petition, which was an order dated January 20, 2015 passed by the Jurisdictional Magistrate, he submitted that, all the accused family members including the petitioner were acquitted at the time of examination of the de facto complainant and the alleged injured submitted that, they did not want to proceed with the case, as the disputes had been resolved amongst them and if all the accused would be acquitted they would have no objection. On the basis of an undertaking in writing submitted before the Learned Jurisdictional Magistrate for non-prosecution of the criminal case, the Jurisdictional Criminal Court was of the view that, the offense should be compounded and all the accused including the petitioner were acquitted under Section 320 of the Criminal Procedure Code. The relevant Bail Bond was also discharged.
10. Mr. Majumder submitted that, one Vijendar Singh Goutam a similarly placed Constable while undergoing training at RPSF Training Centre, Gorakhpur was discharged from the training due to suppression of facts that a criminal case was

pending not being disclosed at the time of filling up the attestation form and for suppressing the necessary information. Subsequently after acquittal from the criminal case he was allowed to complete the training course. In this regard he placed reliance on a document being **Annexure P-3** to the writ petition.

11. Mr. Majumder submitted that, the offenses for which the petitioner was charged were **trivial** in nature. The petitioner had no nexus with the charges. It was due to a neighbourhood enmity. The dismissal of service of the petitioner amounted to violation of Article 14 and 19(1)(g) of the Constitution of India. Such an Act of suppression or misrepresentation by the petitioner should be treated as a mere omission and nothing more than that. In support Mr. Majumder had relied upon the following decisions:-

- (a) *A decision of a Coordinate Bench of this Court, **In the matter of: WPA No. 4683 of 2021, Sri Bibrata Biswas vs. Union of India & Ors;***
- (b) *A decision of a Hon'ble Division Bench of this Court, **In the matter of: FMA 888 of 2021 with IA No. CAN 01 of 2021, Union of India & Ors. vs. Bibrata Biswas;***
- (c) *A judgment of Hon'ble Supreme Court, **In the matter of: Mohammed Imran vs. State of Maharastra & Ors., reported at AIR 2018 Supreme Court 4895;***
- (d) *A judgment of the Hon'ble Supreme Court, **In the matter of: Civil Appeal Nos. 3574 of 2022, Special Leave Petition (Civil) No. 6009 of 2016, Pawan Kumar vs. Union of India & Ors and;***
- (e) *A judgment of Hon'ble Supreme Court, **In the matter of: Avtar Singh vs. Union of India & Ors., reported at AIR 2016 Supreme Court 3598.***

12. Learned counsel submitted that, the termination of the petitioner's service should be set aside and the impugned decision/order dated October 08, 2015 passed by

the second respondent be also set aside and the petitioner should be reinstated to his service at the Post of Constable where he was appointed, free from any stigma.

13. Mr. Sourav Mondal appearing for the respondents submitted that, the petitioner had applied for and was absorbed in the employment at the Post of Railway Constable which is a strict disciplined force. The very suppression of the criminal case being pending against the petitioner while filling up the attestation form amounted to furnishing false declaration and misrepresentation. The attestation form specifically provided for giving a declaration as to the criminal antecedent of the candidate. The petitioner deliberately suppressed and misrepresented the informations by not declaring that the criminal case was pending against him. This relates to a moral turpitude of the petitioner, who was employed in a highly disciplined police force. He submitted that, the discharge decision dated July 13, 2015 clearly mentioned the reasons for dismissal of the petitioner. Since the candidate was found to have adverse report on his criminal antecedents and character, might not be appointed in RPF including RPSF. False declaration is an offense under law and would lead to disqualification of the applicant for appointment in a disciplinary force. He submitted that, the necessary instructions mentioned in the attestation form clearly specified that furnishing of false information or suppression of any factual information in the attestation form would be a disqualification and was likely to render the candidate unfit for employment under the government. It was also specified that, if the fact that false information had been in furnished or there had been in suppression of any factual information in the attestation form, comes to the notice of the employer at any time during the service of a person, his service would be liable to be terminated.
14. Referring to **Rule 52 of the Railway Protection Force Rules, 1987** (for short, the RPF Rules), he submitted that, provision had been made that as soon a recruit is selected but before he was formally appointed to the force, his character and

antecedents should be got verified in accordance with the procedure prescribed by the central government from time to time and where after such verification, a recruit was found not suitable for the force, he should not be appointed as a part of the force.

15. Referring to **Rule 67.2 of the said RPF Rules**, the learned counsel for the union submitted that, a direct recruit selected for being appointed as enrolled member till such time he was not formally appointed to the force, was liable to be discharged at any stage, if the Chief Security Commissioner for reasons to be recorded in writing, deemed it fit so to do in the interest of the force. He submitted that, the order for dismissal of the petitioner clearly recorded the reasons for which he was dismissed. The order was passed in compliance with **Rule 212.1 of the said RPF Rules** and there was no provision for appeal against the said order of discharge.
16. Learned counsel for the respondents submitted that, the offenses for which the charge was framed against the petitioner were serious in nature. It was the guiding factor for appointment of a constable in a disciplined Railway Police Force, that a candidate must have a clean character without any criminal antecedent. The petitioner deliberately misrepresented facts and suppressed the material fact and pendency of criminal case against him, while filling up the attestation form. The petitioner thereby furnished a deliberate false representation to the employer. Such an unethical conduct of a recruit in a disciplined Railway Police Force is not to be indulged and should be discharged. In support Mr. Mondal Learned Counsel for the respondents, had relied upon the following judgments:-

**(a) A judgment of a Coordinate Bench of this Court in the matter of:
W.P. No. 185552 (W) of 2004, Dinesh Paswan vs. Union of India &
Ors and;**

(b) Judgment of the Hon'ble Supreme Court In the matter of: Civil Appeal No. 6110 of 2008, SLP (C) No. 23875 of 2005, Union of India & Ors. vs. Sukhen Chandra Das.

17. He submitted that the writ petition was misconceived and frivolous and not tenable in law. The writ petition should be dismissed.

Decision:-

18. After considering the rival contentions of the parties and upon perusal the materials on record, it appeared to this Court that, the facts stated above are not disputed. The issue raised for consideration in this writ petition was that, ***whether by not disclosing the fact relating to the criminal antecedents and the suppression thereof while filling up the attestation form, the petitioner had committed an unpardonable wrong for which the employment of the petitioner could be taken away by way of dismissal from service or such an Act on the part of the petitioner, considering the facts and nature of criminal charges, to be considered as a mere omission on the part of the petitioner and the employment of the petitioner would be reinstated?***
19. Though the learned counsel for the respondent had placed and relied upon the relevant RPF Rules suggested for dismissal of service, more so when the petitioner was employed in a disciplined Railways Police Force in view of the suppression and misrepresentation caused by him by not disclosing his criminal antecedents while filling up the attestation form, but several precedential law had already been pronounced on the issue.
20. The division bench of this Court ***In the matter of: Bibrata Biswas (supra)*** had observed as under:-

“The Counsel for the writ petitioner/ respondent further stated that the Ld. Court of Judicial Magistrate had acquitted the writ petitioner/respondent Honorably 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.”

21. The Hon’ble Supreme Court ***In the matter of: Mohammed Imran (supra)*** had observed as under:-

“6. Employment opportunities is a scarce commodity in our country. Every advertisement invites a large number of aspirants for limited number of vacancies. But that may not suffice to invoke sympathy for grant of relief where the credentials of the candidate may raise serious questions regarding suitability, irrespective of eligibility. Undoubtedly, judicial service is very different from other services and the yardstick of suitability that may apply to other services, may not be the same for a judicial service. But there cannot be any mechanical or rhetorical incantation of moral turpitude, to deny appointment in judicial service simpliciter. Much will depend on the facts of a case. Every individual deserves an opportunity to improve, learn from the past and move ahead in life by self-improvement. To make past conduct, irrespective of all considerations, an albatross around the neck of the candidate, may not always constitute justice. Much will, however depend on the fact situation of a case.

7. That the expression “moral turpitude” is not capable of precise definition was considered in Pawan Kumar v. State of Haryana and another, (1996) 4 SCC 17: (AIR 1996 SC 3300), opining:

“12. “Moral turpitude” is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity.”

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”.

22. The Hon’ble Supreme Court ***In the matter of: Pawan Kumar (supra)*** had observed as under:-

“13. What emerges from the exposition as laid down by this Court is that by mere suppression of material/false information regardless of the fact whether there is a conviction or acquittal has been recorded, the employee/recruit is not to be discharged/terminated axiomatically from service just by a stroke of pen. At the same time, the effect of suppression of

material/false information involving in a criminal case, if any, is left for the employer to consider all the relevant facts and circumstances available as to antecedents and keeping in view the objective criteria and the relevant service rules into consideration, while taking appropriate decision regarding continuance/suitability of the employee into service. What being noticed by this Court is that mere suppression of material/false information in a given case does not mean that the employer can arbitrarily discharge/terminate the employee from service.

18. The criminal case indeed was of trivial nature and the nature of post and nature of duties to be discharged by the recruit has never been looked into by the competent authority while examining the overall suitability of the incumbent keeping in view Rule 52 of the Rules 1987 to become a member of the force. Taking into consideration the exposition expressed by this Court in **Avtar Singh** (supra), in our considered view the order of discharge passed by the competent authority dated 24th April, 2015 is not sustainable and in sequel thereto the judgment passed by the Division Bench of High Court of Delhi does not hold good and deserves to be set aside”.

23. The Hon’ble Supreme Court **In the matter of: Avtar Singh (supra)** had observed as under:-

“21. The verification of antecedents is necessary to find out fitness of incumbent, in the process if a declarant is found to be of good moral character on due verification of antecedents, merely by suppression of involvement in trivial offence which was not pending on date of filling attestation form, whether he may be deprived of employment? There may be case of involving moral turpitude/serious offence in which employee has been acquitted but due to technical reasons or giving benefit of doubt. There may be situation when person has been convicted of an offence before filling verification form or case is pending and information regarding it has been suppressed, whether employer should wait till outcome of pending criminal case to take a decision or in case when action has been initiated there is already conclusion of criminal case resulting in conviction/acquittal as the case may be. The situation may arise for consideration of various aspects in a case where disclosure has been made truthfully of required information, then also authority is required to consider and verify fitness for appointment. Similarly in case of suppression also, if in the process of verification of information, certain information comes to notice then also employer is required to take a decision considering various aspects before holding incumbent as unfit. If on verification of antecedents a person is found fit at the same time authority has to consider effect of suppression of a fact that he was tried for trivial offence which does not render him unfit, what importance to be attached to such non-disclosure. Can there be single yardstick to deal with all kinds of cases?

22. The employer is given “discretion” to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an

incumbent for services in question. In case the employer comes to the conclusion that suppression is immaterial and even if facts would have been disclosed it would not have adversely affected fitness of an incumbent, for reasons to be recorded, it has power to condone the lapse. However, while doing so employer has to act prudently on due consideration of nature of post and duties to be rendered. For higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However, same standard cannot be applied to each and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed, to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully, the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence, etc. have to be considered. Even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or of dubious character. In case employer comes to conclusion that conviction or ground of acquittal in criminal case would not affect the fitness for employment, incumbent may be appointed or continued in service.

23. Coming to the question whether an employee on probation can be discharged/refused appointment though he has been acquitted of the charge(s), if his case was not pending when form was filled, in such matters, employer is bound to consider grounds of acquittal and various other aspects, overall conduct of employee including the accusations which have been levelled. If on verification, the antecedents are otherwise also not found good, and in number of cases incumbent is involved then notwithstanding acquittals in a case/cases, it would be open to the employer to form opinion as to fitness on the basis of material on record. In case offence is petty in nature and committed at young age, such as stealing a bread, shouting of slogans or is such which does not involve moral turpitude, cheating, misappropriation, etc. or otherwise not a serious or heinous offence and accused has been acquitted in such a case when verification form is filled, employer may ignore lapse of suppression or submitting false information in appropriate cases on due consideration of various aspects.

24. No doubt about it that once verification form requires certain information to be furnished, declarant is duty-bound to furnish it correctly and any suppression of material facts or submitting false information, may by itself lead to termination of his services or cancellation of candidature in an appropriate case. However, in a criminal case incumbent has not been acquitted and case is pending trial, employer may well be justified in not appointing such an incumbent or in terminating the services as conviction ultimately may render him unsuitable for job and employer is not supposed to wait till outcome of criminal case. In such a case non-disclosure or submitting false information would assume significance and that by itself may be ground for employer to cancel candidature or to terminate services.

25. The fraud and misrepresentation vitiates a transaction and in case employment has been obtained on the basis of forged documents, as observed in M. Bhaskaran case [Union of India v. M. Bhaskaran, 1995 Supp (4) SCC 100 : 1996 SCC (L&S) 162 : (1996) 32 ATC 94], it has also been observed in the reference order that if an appointment was procured fraudulently, the incumbent may be terminated without holding any inquiry, however, we add a rider that in case employee is confirmed, holding a civil

post and has protection of Article 311(2), due inquiry has to be held before terminating the services. The case of obtaining appointment on the basis of forged documents has the effect on very eligibility of incumbent for the job in question, however, verification of antecedents is different aspect as to his fitness otherwise for the post in question. The fraudulently obtained appointment orders are voidable at the option of employer, however, question has to be determined in the light of the discussion made in this order on impact of suppression or submission of false information.

26. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.

27. Suppression of "material" information presupposes that what is suppressed that "matters" not every technical or trivial matter. The employer has to act on due consideration of rules/instructions, if any, in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.

28. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by authorities concerned considering post/nature of duties/services and power has to be exercised on due consideration of various aspects".

24. To consider the issue raised in this writ petition, it is necessary to assess the charges inflicted upon the petitioner who was an accused in the criminal case. The provisions of the Indian Penal Code, 1860 (for short, IPC) under which the petitioner was accused were available from the order of acquittal dated January 20, 2015 passed by the Jurisdictional Magistrate. The charges were under Sections 341, 323, 506 and 34 of the IPC. The provisions are quoted herein below:-

"34. Acts done by several persons in furtherance of common intention.- When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

323. Punishment for voluntarily causing hurt.- whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Classification of Offense.- The offense under this section is non-cognizable, bailable, compoundable and triable by any Magistrate.

341. Punishment for wrongful restraint.- Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Classification of Offense.- The offense under this section is cognizable, bailable, compoundable and triable by any Magistrate.

506. Punishment for criminal intimidation.- Whoever commits, the offense of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.- and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offense punishable with death or [imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Classification of Offense.- The offense under this section for criminal intimidation is non-cognizable, bailable, compoundable and triable by any Magistrate. If threat be to cause death or grievous hurt, etc., it is triable by Magistrate of the first class”.

25. On a meaningful reading of the said provisions under the IPC, it appears that the offence and punishment for wrongful restraint, the punishment for voluntarily causing hurt are trivial in nature. The resultant effect of the said charges ultimately culminate into a punishment for criminal intimidation, at best threat be to cause, inter alia, grievous hurt. Since all the family members along with the petitioner were inflicted with these charges, the charge was also leveled for acts done by several persons in furtherance of common intention. On a meaningful reading and harmonious construction of the relevant provisions referred to above of the IPC, this Court is of the considered opinion that the principle charges were under Sections 341 and 323 of IPC which were of **trivial** in nature without having any effect on the moral turpitude. By the said order dated January 20, 2015 passed by the Jurisdictional Magistrate, the petitioner along with other family members

was acquitted under Section 320 of the Criminal Procedure Code, 1973. The relevant observations from the order of acquittal passed by the Jurisdictional Magistrate are quoted below:-

*"Id. A.P.P is present.
De-facto complainant is present and file a compromise petition praying for compounding of offences u/S320 against all accused persons.
Learned advocate for the de-facto complainants is present
Learned advocate for the accused persons are also present
De-facto complainant and the injured are examined on dock
Perused the materials on record and petitions
Heard both sides
Considered
On perusal of the materials on record it transpires that charge has been framed submitted u/s 341/323/506/34 of INDIAN PENAL CODE and all the section is compoundable u/s 320 of Cr.p.c. At the time of examination the de-facto complainant and the injured said that they do not want to proceed with the case as all the alleged matters have been resolve between them and if all the accused are acquitted they have no objection.
So this court is of the view that, the offense should be compounded on the above mentioned grounds.
HENCE, it is*

ORDER

*That all the accused persons NAROTTAM MONDAL, KALIPADA MONDAL, SUJIT BISWAS, SISIR BISWAS, NEMAI MON DEAL, SUKDEB MONDAL, BISWAJIT MONDAL are acquitted u/s 320 of Cr.P.C. and then are also discharge from their respective bail bonds.
The case is disposed of on withdrawal
Note in this register".*

26. From the observations made by the Jurisdictional Magistrate while acquitting the petitioner, it was evident that, the de facto complainant withdrew the criminal case and specific submission was made that if the accused were to be acquitted there would be no objection on their part. The petitioner was accordingly acquitted on January 20, 2015 after about six months from submission of his Attestation Form without disclosing his criminal antecedents and/or denial thereof. In the facts of this case, it was true that when the Attestation Form was filled up and submitted by the petitioner on June 02, 2014 the charge sheet was submitted prior thereto on May 31, 2011 and the acquittal of the petitioner took place on January 20, 2015

subsequent to the said Attestation Form was filled up by the petitioner. It was also a fact that the de facto complainant withdrew its criminal case and charges against the petitioner as would be evident from the said order of acquittal. Upon assessment of the nature of charges leveled against the petitioner, it appeared to this Court that they were **trivial** in nature and without any effect on the moral turpitude of the petitioner. The offense alleged to have been committed by the petitioner were petty in nature at a young age and not a serious or heinous one. Moreover, the de facto complainant since had withdrawn the criminal case against the petitioner, the acquittal resulted. The nature of the charges being petty and trivial and after withdrawal of the same by the de facto complainant, the moral turpitude of the petitioner could not be questioned in the facts of this case. Such fact should have been considered by the employer in using its discretion while dismissing the petitioner from his employment.

27. As observed by the Hon'ble Supreme Court ***In the matter of: Md. Imran (supra)***, that no reasonable person on the basis of materials produced before this Court, in the facts of this case also, can come to a conclusion that antecedents and character of the petitioner was such that he could be declared unfit to be appointed as a Constable in the Railway Police Force.
28. Employment Opportunity is a scarce commodity nowadays being circumscribed within a limited vacancies. It is true that this may not suffice to invoke sympathy for grant of relief where the credential of a candidate raises any question regarding its suitability, irrespective of eligibility. But there could not be any mechanically or Rhetorical incantation of morale turpitude, to deny appointment in a government service simplicitor which

would depend on the facts of a case. Every individual deserves an opportunity to improve itself, learn from the past and move ahead in life for self improvement. To make past conduct, irrespective of all considerations, an albatross around the neck of the candidate, may not always constitute justice. Much will depend on the fact situation of a case.

29. The provisions under Rule 52 and Rule 67.2 of the RPF Rules as were referred to by the Learned Counsel for the respondents, this Court is of the considered opinion that those Rules were brought into existence for fixing a complete guideline of the selection process including the dismissal of a recruit. The judicial precedence by virtue whereof the law on the subject had now been well settled, had also duly considered the said RPF Rules. There cannot be a quarrel with such Rules but upon due consideration, they were interpreted in several judicial precedents and the law had become settled thereupon as discussed above.
30. The judgment of the Hon'ble Supreme Court ***In the matter of: Sukhen Chandra Das (supra)*** was delivered on October 15, 2008. The Hon'ble Supreme Court thereafter in 2016 rendered its judgment ***In the matter of: Avtar Singh (supra)***. The law laid down ***In the matter of: Avtar Singh (supra)*** is the law governing the field on the subject. In view of the said subsequent judicial pronouncement ***In the matter of: Avtar Singh (supra)*** which was rendered by a bench comprising of three Hon'ble Judges prevails over the judgment rendered ***In the matter of: Sukhen Chandra Das***. In view of the said subsequent larger bench judgment ***In the matter of: Avtar Singh (supra)*** the law laid down ***In the matter of: Sukhen Chandra Das*** no more governs the field. Similarly the judgment of the Coordinate Bench of

this Court ***In the matter of: Dinesh Paswan*** shall not govern the field in view of the judgment of the larger bench of the Hon'ble Supreme Court ***In the matter of Avtar Singh (supra)***.

31. In view of the fore going reasons and discussions and on an overall assessment of the facts of this case, this Court is of the considered view that, the order of termination/discharge from service dated July 13, 2015 and the consequential order passed by the Respondent No.2 dated October 14, 2015 being **Annexure P-1 and P-6** respectively to the writ petition should be and are liable to be set aside and/or quashed and **accordingly the said order of termination dated July 13, 2015 being Annexure P-1 to the writ petition and the order dated October 14, 2015 passed by the Respondent No.2 being Annexure P-6 to the writ petition, stand set aside and quashed.**
32. The respondents are directed to reinstate the writ petitioner in service on the Post for Constable at the stage from where he was dismissed/discharged from his employment forthwith and positively within a period of four weeks from the date of communication of this judgment and order, strictly in accordance with law.
33. It is further made clear that the petitioner shall be entitled for the arrears of salary and/or the monetary benefit for the period during which he had not served the force due to his impugned discharge/dismissal and he shall be entitled for all benefits, including pay, seniority and all other consequential benefits etc. taking into account, as if the petitioner had not suffered any discharge/dismissal from his employment.

34. In view of the above, this writ petition **WPA 28149 of 2015** stands allowed.
35. Consequently, **CAN 12362 of 2019** stands disposed of.
36. There shall, however, be no order as to costs.

(Aniruddha Roy, J.)