

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

LPA-775-2020 (O&M)

Date of decision : 29.09.2022

Union of India and others

..... Appellants

Versus

Ajit Singh

..... Respondent

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present:- Mr. Arun Gosain, Advocate
for the appellants.

Mr. Rajeev Anand, Advocate
for the respondent.

JAGMOHAN BANSAL, J.

1. Through instant appeal under clause X of Letters Patent of this Court, the Appellant-Union of India is seeking reconsideration of judgment dated 13.09.2019 passed by learned Single Judge of this Court in CWP No.7688 of 2016 whereby learned Single Judge had set aside termination order dated 24.02.2012 (Annexure P-2) and 10.04.2019 (Annexure P-4) and directed appellants to reinstate the respondent-writ petitioner in service with consequential benefits.

2. The brief facts emerging from record and which are necessary for the adjudication of present appeal are that the respondent was enlisted in Central Reserve Police Force (CRPF) as

a Constable/Bugler in the year 2010 and he was deputed for training at Recruit Training Centre of CRPF at Neemuch. The respondent was allocated to Group Centre, CRPF, Jalandhar (Punjab) under 127 Battalion CRPF. The respondent in verification roll (CRPF 25) dated 04.05.2011 stated that he has never been arrested, prosecuted, kept under detention by the Court of law for any offence. It is apt to mention here that in CRPF 25 there is a specific column i.e. serial No.12 wherein a candidate is required to disclose about his criminal antecedents. Column No. 12 along with reply of the respondent is reproduced as below :-

12. (a) Have you ever been arrested, prosecuted, kept under detention or bound down/fined, convicted, by a court of law for any offence or debarred/disqualified by any Public Service Commission from appearing at its examination/selections, or debarred from taking any examination/rusticated by any university or any other education authority/ Institutions ?

NIL Ajit Singh

(b) Is any case pending against you in any court of law, University or any other education authority/ institution at the time of filing up this Verification Roll? If answer to (a) or (b) is "Yes", then give details of prosecution, arrest, detention, fine, conviction and punishment etc. and state about the case pending with the court/University/education authority at the time of filling in this form.

NIL Ajit Singh

The appellant from report dated 24.08.2011 of District Magistrate, Mehendergarh and report dated 06.02.2011 of Superintendent of Police, Mahendergarh came across that a trial is pending against respondent and he was arrested and thereafter released on bail.

3. The appellant in terms of Rule 5(1) of Central Civil Services (Temporary Services) Rules, 1965 (for short '1965 Rules') under the signature of Commandant, issued to respondent a notice of termination dated 24.02.2012 (Annexure P-2). The respondent vide representation dated 16.03.2012 submitted his stand wherein he contended that he belongs to a very poor family and after long struggle and hard work has got the present employment which is very precious to him and a mean of resources for the basic needs of the family. He has falsely been implicated in FIR No. 142 dated 14.08.2010 under Sections 148/147/323/324/325/326/452/506 of IPC. The FIR was registered on the basis of false allegations and there is no evidence to connect him with the alleged offence and it was registered with malafide intention and just to involve him in a criminal case. No explanation whatsoever has been sought from him regarding the circumstances in which he has given declaration that there was no criminal case against him. The termination without granting opportunity of hearing is in violation of principles of natural justice. Rule 5 (1) of 1965 Rules for the ready reference reads as under :-

5. Termination of temporary service.

(1) (a) The services of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant;

(b) the period of such notice shall be one month.

Provided that the services of any such Government servant may be terminated forthwith and on such termination, the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or as the case may be, for the period by which such notice falls short of one month.

NOTE:- The following procedure shall be adopted by the appointing authority while serving notice on such Government servant under clause (a).

(i) The notice shall be delivered or tendered to the Government servant in person.

(ii) Where personal service is not practicable, the notice shall be served on such Government servant by registered post, acknowledgement due at the address of the Government servant available with the appointing authority.

(iii) If the notice sent by registered post is returned unserved it shall be published in the

Official Gazette and upon such publication, it shall be deemed to have been personally served on such Government servant on the date it was published in the Official Gazette.

4. The appellant vide office order dated 10.04.2012 (Annexure P-4) informed the respondent that he was given one month notice for termination of his service and accordingly his services are terminated. The respondent assailing order dated 10.04.2012 passed by Commandant Group Centre, CRPF, Pinjore preferred an appeal before Appellate Authority which came to be dismissed by Inspector General of Police vide order dated 07.01.2013.

5. The police after investigation in afore-stated FIR submitted its report under Section 173 Cr.P.C. The respondent under different Sections of IPC was charge-sheeted vide order dated 14.03.2013 passed by learned Judicial Magistrate Ist Class, Narnaul. However, learned Chief Judicial Magistrate, Narnaul vide order dated 11.03.2016 acquitted the respondent. Learned Chief Judicial Magistrate held that there are several chinks in the armour of the prosecution which render a death blow to the entire case of the prosecution.

6. The respondent through his counsel served a legal notice upon present appellants whereby appellants were called upon to revoke and set aside termination orders and appellate order and reinstate respondent with all consequential benefits w.e.f. 10.04.2012. In the legal notice, it was pointed out that the respondent

has been terminated in gross violation of Article 311(2) of Constitution of India as well as principles of natural justice as respondent was never served upon charge-sheet and has been terminated without conducting enquiry and granting opportunity of personal hearing. The respondent at the time of alleged offence was just 20 years old and he was falsely implicated in aforesaid FIR and learned trial Court has acquitted the respondent. The respondent relied upon judgement of Hon'ble Supreme Court of India in ***Commissioner of police and others vs. Sandeep Kumar, (2011) 4 SCC 644*** wherein the Supreme Court has upheld the decision of Delhi High Court holding that the modern approach should be to reform a person instead of branding him as a criminal all his life.

7. The respondent feeling aggrieved from afore-stated termination orders and inaction of appellant qua aforementioned legal notice, preferred civil writ petition No.7688 of 2016 before this Court which came up for consideration before learned Single Judge who vide impugned order dated 13.09.2019 allowed the writ petition of the respondent. Learned Single Judge held that he is in agreement with observations of a Division Bench of Delhi High Court in ***Govt. of NCT of Delhi and another vs. Robin Singh, 2010(7) RCR (Criminal) 1007***. Learned Single Judge set aside termination orders dated 24.02.2012, 10.04.2012 and appellate order dated 07.01.2013 and directed appellants to reinstate the writ petitioner in service with consequential benefits.

8. The appellant-Union of India has preferred present appeal

under Clause X of Letters Patent of this Court, seeking setting aside of judgment dated 13.09.2019 passed by learned Single Judge of this Court.

9. Learned counsel for the appellants submitted that learned Single Judge has wrongly placed reliance upon the judgement of Division Bench of Delhi High Court in ***Robin Singh's case (supra)*** because issue stands settled by Hon'ble Supreme Court in ***Daya Shankar Yadav vs. Union of India and ors, (2010) 14 SCC 103*** and ***Union of India and ors. vs. Sukhen Chandra Das, (2008) 17 SCC 125***. Hon'ble Supreme Court in both the cases has clearly held that if a candidate fails to disclose pendency of any criminal case in the application form filed at the time of seeking recruitment he cannot continue in service and his services are liable to be terminated. A Division Bench of this Court in ***LPA No.1215 of 2020*** titled as "***Ex. Const. Raical vs. State of Haryana and others***" decided on ***27.07.2022*** involving identical issue has upheld judgment passed by learned Single Judge which was relied upon by the appellant. He further contended that respondent in his verification roll was required to disclose about pendency of FIR and arrest whereas he has concealed the fact of registration of afore-sated FIR and his arrest. As per judgments of Hon'ble Supreme Court, the respondent cannot be permitted to continue in service and learned Single Judge has wrongly relied upon a Division Bench of Hon'ble High Court and ignored the judgments of Hon'ble Supreme Court.

10. Per contra, learned counsel for the respondent submitted

that respondent was just 20 years old at the time of registration of afore-stated FIR and he was wrongly implicated which is evident from the fact that he has been acquitted by learned Chief Judicial Magistrate. He pointed out that Ministry of Home Affairs has formulated a policy dated 01.02.2012 whereby guidelines have been laid down for considering cases of candidates for appointment in Central Armed Police Forces against whom criminal cases are pending at the time of recruitment. The first proviso to para 2 of the policy dated 01.02.2012 provides that a candidate shall not be debarred if an FIR has been registered/the case is under investigation and no charges have been framed either on FIR or on the complaint in any Court of law. In the present case, the charges were framed even after termination of services, thus, respondent is secured by policy of Ministry of Home Affairs. The character verification report dated 07.04.2016 mentions that petitioner was falsely implicated in the afore-stated FIR and nothing was found against the petitioner during trial and he has been acquitted from all the charges. The authorities have passed termination order without compliance of mandate of Article 311(2) of Constitution of India. The respondent was never granted opportunity to vindicate his stand and point out the circumstances under which FIR was registered and why he failed to disclose this fact in the verification roll. The authorities have passed orders in gross violation of not only Article 311(2) of Constitution of India as well the principles of natural justice. Thus, termination of respondent was in gross violation of Article 311(2) of

Constitution of India and learned Single Judge has rightly set aside the termination orders.

11. We have perused the record and heard arguments of both sides.

12. The conceded position emerging from record is that the respondent-writ petitioner was appointed as Constable in Armed Police Force i.e. CRPF. The respondent prior to appointment was required to fill verification roll (CRPF-25) which is a statutory in nature and in the said verification roll, there is particular column which requires a candidate to disclose his criminal antecedents. The respondent in reply to column No. 12 of verification roll disclosed that he was never arrested or prosecuted and no case is pending against him in any Court of law whereas FIR dated 14.08.2010 was pending against the respondent and he was arrested in the said FIR. A report was received from District Magistrate, Mahendergarh and Superintendent of Police, Mahendergarh who vide their letters dated 24.08.2011 and 06.02.2011 respectively intimated that FIR No.142 dated 14.08.2010 was registered against the respondent and trial is pending since 26.02.2011. It was also informed that respondent was arrested on 08.09.2010 and released on bail on 18.09.2010. The respondent was served termination order in terms of Rule 5(1) of Central Civil Services (Temporary Service) Rule 1965 which was followed by final termination order dated 10.04.2012. The respondent filed an appeal before Appellate Authority which came to be dismissed vide order dated 16.03.2012. Learned trial Court framed

charges against respondent, however, respondent was acquitted from all the charges. The writ petitioner-respondent filed CWP No.7688 of 2016 before this Court on 10.04.2016 which came to be allowed vide impugned judgment dated 13.09.2019. The respondent was acquitted vide order dated 11.03.2016 and writ petition was filed after acquittal from all the charges.

13. In a more recent judgement in ***Satish Chandra Yadav vs. Union of India and ors, 2022 SCC Online SC 1300***, a two judge bench of Hon'ble Supreme Court, after considering its earlier judgments on this issue, has upheld the termination of appellant on the ground that he had withheld relevant information while filling the verification form, thus, subsequent acquittal is irrelevant. The Court has further held that an employee who is under probation and on verification of facts given in the verification roll, it is found that facts given were wrong, the Government is at liberty to dispense with the services of the employee as the question of stigma and penal consequences at this stage does not arise. It is apt to notice that in ***Satish Chandra Yadav's case (supra)***, the Hon'ble Court has dealt with identical post, allegations and facts. The relevant paragraphs of the judgment read as :-

5. The facts giving rise to this appeal may be summarised as under:

5.1 The appellant herein was serving as a Constable (General Duty) with the CRPF. He was recruited as a temporary employee of the post of Constable (GD) in the CRPF on 28.07.2014. After undergoing the basic

training, he reported at the 179th Battalion on 17.12.2015.

5.2 While filling up the requisite verification Form–25 at the time of his recruitment in the CRPF in Column 12 in response to the question whether any case was pending against him, the appellant answered in the negative.

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*48. This Court in the case of **Daya Shankar Yadav v. Union of India and Others**, (2010) 14 SCC 103 was faced with a similar issue wherein a CRPF officer upon suppression of material facts was terminated from the service. This Court while referring to its previous decisions, summarised the position as follows:*

“14. ... The purpose of seeking the said information is to ascertain the character and antecedents of the candidate so as to assess his suitability for the post. Therefore, the candidate will have to answer the questions in these columns truthfully and fully and any misrepresentation or suppression or false statement therein, by itself would demonstrate a conduct or character unbefitting for a uniformed security service.”

15. When an employee or a prospective employee declares in a verification form, answers to the queries relating to character and antecedents, the verification thereof can therefore lead to

any of the following consequences:

(a) If the declarant has answered the questions in the affirmative and furnished the details of any criminal case (wherein he was convicted or acquitted by giving benefit of doubt for want of evidence), the employer may refuse to offer him employment (or if already employed on probation, discharge him from service), if he is found to be unfit having regard to the nature and gravity of the offence/crime in which he was involved.

(b) On the other hand, if the employer finds that the criminal case disclosed by the declarant related to offences which were technical, or of a nature that would not affect the declarant's fitness for employment, or where the declarant had been honourably acquitted and exonerated, the employer may ignore the fact that the declarant had been prosecuted in a criminal case and proceed to appoint him or continue him in employment.

(c) Where the declarant has answered the questions in the negative and on verification it is found that the answers were false, the employer may refuse to employ the declarant (or discharge him, if already employed), even if the declarant had been cleared of the charges or is acquitted. This is because when there is suppression or non-disclosure of material information bearing on his character, that itself becomes a reason for not employing the declarant.

(d) Where the attestation form or verification

form does not contain proper or adequate queries requiring the declarant to disclose his involvement in any criminal proceedings, or where the candidate was unaware of initiation of criminal proceedings when he gave the declarations in the verification roll/attestation form, then the candidate cannot be found fault with, for not furnishing the relevant information. But if the employer by other means (say police verification or complaints etc.) learns about the involvement of the declarant, the employer can have recourse to courses (a) or (b) above.

16. Thus an employee on probation can be discharged from service or a prospective employee may be refused employment:

(i) on the ground of unsatisfactory antecedents and character, disclosed from his conviction in a criminal case, or his involvement in a criminal offence (even if he was acquitted on technical grounds or by giving benefit of doubt) or other conduct (like copying in examination) or rustication or suspension or debarment from college etc.; and

(ii) on the ground of suppression of material information or making false statement in reply to queries relating to prosecution or conviction for a criminal offence (even if he was ultimately acquitted in the criminal case).

This ground is distinct from the ground of previous antecedents and character, as it shows a current dubious conduct and

absence of character at the time of making the declaration, thereby making him unsuitable for the post.”

49. This Court in the aforesaid case while deliberating on the very same questions as were asked in the verification Form from the appellant in the present case, held that:

“24. We are satisfied that the appellant had knowingly made a false statement that he was not prosecuted in any criminal case. Therefore, the employer (CRPF) was justified in dispensing with his services for not being truthful in giving material information regarding his antecedents which were relevant for employment in a uniformed service, and that itself justified his discharge from service. Consequently, we dismiss this appeal as having no merit.”

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77. Indisputably, Satish Chandra Yadav was still under probation at the time, his services had been terminated. It is also apparent from the record that Satish Chandra Yadav had been given appointment on probation subject to the verification of facts given in the verification Form. To our mind, therefore, if an enquiry revealed that the facts given were wrong, the respondent herein was at liberty to dispense with the services of the appellant Satish Chandra Yadav as the question of any stigma and penal consequences at this stage would not arise. It bears repetition that what

has led to the termination of the services of the appellant Satish Chandra Yadav is not his involvement in the criminal case which was then pending, and in which he had been acquitted subsequently but the fact that he had withheld relevant information while filling in the verification Form. He could be said to have exhibited or displayed such a tendency which shook the confidence of the respondent.

14. In the case in hand, the respondent was appointed in Armed Police Force. The respondent as per Rules was required to file verification roll wherein he was bound to disclose his criminal antecedents. The verification roll is in English as well as in Hindi language (Devanagari script). Thus, nobody can claim lack of knowledge of language. In the present case, the respondent has ticked against Column No.12 in Hindi which indicates that he cannot claim that by mistake or because of ignorance, he has not disclosed the fact of registration of FIR. The respondent was arrested on 08.09.2010 and thereafter released on bail on 18.09.2010 whereas verification roll was filled on 04.05.2011. It is not a case where FIR was registered at the back of a candidate, who was unaware about FIR at the time of filing application form. On account of arrest and thereafter release on bail, the respondent was very much aware about pendency of trial against him. The respondent was seeking job in a disciplined Armed Police Force, thus, he was duty bound to disclose about pendency of criminal case against him. The contents of FIR, the allegations therein against respondent and his

involvement was irrelevant. The issue involved is not that whether respondent was involved in a serious or a trivial criminal case whereas the issue involved is disclosure/non-disclosure of mandatory requirement. The respondent admittedly had failed to disclose pendency of criminal trial against him as well as his arrest. Para 2 of the Ministry of Home Affairs's Policy dated 01.02.2012 reads as :

2 Accordingly, the matter has been considered in this Ministry in consultation with CAPFs, and it has been decided as follows :

1. A candidate is required to declare in the application form, whether he has been arrested, prosecuted or convicted by a court for any criminal offence. If a candidate does not disclose the fact of his/her involvement and/or arrest in criminal case(s), complaint case (s), preventive proceedings etc. under IPC or any other Act of the Central or State Government in the application form, during medical examination as well as in the application form, during medical examination as well as in the attestation/verification form and the fact subsequently comes to the notice of recruiting authorities/ is found out from the verification report received from the District authorities or otherwise, his candidature/ appointment will be cancelled. However, in case the candidate has already been appointed while cancelling/terminating the appointment, the principle of natural justice shall be followed and opportunity of being

heard would be accorded to the candidate.

II. If a candidate does not disclose his/her involvement and/or arrest in criminal case(s), complaint case(s), preventive proceedings etc. under IPC or any other Act of the Central or State Government in the application form but discloses the same during medical examination/PET and/or in the attestation/verification in writing, the candidature will not be cancelled on this ground alone.

III. The candidate will not be considered for recruitment if

a) Such involvement/case/arrest is concerned with an offence mentioned in Annexure-A.

b) Such arrest/ detention is made under any of the Acts which are concerned with security/and integrity of the country terrorist and disruptive activities, acts against the State, insurgency etc.

c) The candidate has been detained under the National Security Act/ Crime Control Act/ any similar legislation, and the same is confirmed by the Reviewing Authority.

d) Such involvement/ case/ arrest is concerned an offence involving moral turpitude.

e) He/ she has been convicted by a Court in any case whether or not an appeal is pending against such conviction.

Provided that the candidate shall not be

barred in the above cases, if only an FIR has been registered/ the case is under investigation and no charges have been framed either on FIR or on the complaint in any Court of Law.

Provided further that the candidate shall not be debarred if he/ she has been finally acquitted/discharged by a Court whether an appeal is pending or not against such acquittal.

Provided further that the candidate shall not be debarred if the proceedings are withdrawn by the Central/State Government.

Provided further that the candidate shall not be debarred if he/ she has been involved/convicted/concerned with minor offences mentioned in Annexure-B or those mentioned in Chapter VIII & X of Code of Criminal Procedure, 1973.

IV. Where a candidate has been convicted and awarded a jail-term of more than xxx (illegible) he/she will generally not be considered suitable for appointment in CAPF.

V. Notwithstanding the provisions of S(III) above, such candidates against whom charge sheet in a criminal case has been filed in the court and the charges fall in the category of serious offences or moral turpitude, though later on acquitted by extending, benefit of doubt or acquitted for the reasons that the witness have turned hostile due to fear of reprisal by the accused person(s), he/ she will generally not be

considered suitable for appointment in the CAPF. The details of crimes which are serious offences or involve moral turpitude are at Annexure 'A'. However, cases in which the criminal court while acquitted has categorically mentioned that the criminal case would not be a xxx (illegible) appointment in Government Service, the candidate shall be considered for appointment in the concerned CAPF.

VI. Involvement in minor offences traffic violations, juvenile in conflict with law (tried in open courts/ juvenile justice boards) and accident cases will not debar an individual for appointment in CAPFs & ARs, provided that appointments for the post of driver and those related to driving will not be offered to the individuals, punished for serious traffic offences.

VII. If a candidate is discharged by extending the benefit under the Probation of Offender Act, 1958, the name of such candidate shall be put up for consideration of the selection committee constituted by the DGs of CAPFs & ARs from time to time assessing his/ her suitability for appointment in the concerned department.

Thus non-compliance of Article 311(2) especially when respondent was under probation and concededly facing trial at the time of filing form which he failed to disclose, was not fatal to entire exercise carried out by Appellant.

The guidelines of Ministry of Home Affairs, relied upon by respondent does not come for his rescue because respondent was not terminated on account of contents or allegations of FIR or stage of trial i.e. pre or post framing of charges whereas he was terminated because he did not disclose pendency of trial as well as his arrest in the verification roll. The Appellant, as respondent was under probation, in view of afore-stated judgments of Hon'ble Supreme Court, was not bound to follow the procedure contemplated by Article 311(2) of the Constitution of India. The Respondent was extended opportunity to put forth his stand by way of one month notice as well opportunity to file appeal which respondent unsuccessfully availed. Notice of termination in terms of Rule 5(1) of 1965 Rules followed by proper opportunity to vindicate his stand, at appellate stage, was sufficient compliance of principles of natural justice. The termination orders in question are not stigmatic in nature, thus non-compliance of Article 311(2) especially when respondent was under probation and concededly facing trial at the time of filing form and having failed to disclose this crucial fact, was not fatal to the entire exercise carried out by Appellant.

15. In view of afore-stated recent judgement of Hon'ble Supreme Court in ***Satish Chandra Yadav's case (supra)*** which is squarely applicable to the facts of present case, we are left with no option except to set aside impugned judgment dated 13.09.2019 passed by learned Single Judge of this Court in CWP No.7688 of 2016. Accordingly, the impugned judgment dated 13.09.2019 passed

by learned Single Judge is set aside and appeal of appellant-Union of India is allowed.

(G.S.SANDHAWALIA)
JUDGE

(JAGMOHAN BANSAL)
JUDGE

29.09.2022
anju

Whether speaking/reasoned	Yes
<i>Whether Reportable</i>	<i>Yes</i>