

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1771 of 2020

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Dharmendra Kumar Nirala, S/o Baliram Prasad, Jamalpur Chharyri,
Jahanabad, Bihar-804422

... .. Petitioner/s

Versus

1. The Union of India through the Chairman of Railway Board, Govt. of Ministry of Railway, Rail Bhawan, New Delhi-110001
2. The General Manager, Western Railway, Mumbai Central, Pin-400008
3. The Divisional Railway Manager (Establishment) Western Railway, Mumbai Central-400008
4. The Chief Administrative Officer E.C. Railway, Barauni, Pin Code-851112

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Binodanand Mishra, Advocate Ms. Surya Nilambari, Advocate
For the Respondent/s	:	Mr. K.N.Singh, Addl.S.G. Mr. Ratnesh Kumar, CGC. Mr. Amarjeet, JC to ASG

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ARUN KUMAR JHA)

Date : 25-01-2023

Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. The present writ petition has been filed claiming the
following reliefs :-



“(i) For issuance of an appropriate order, direction or writ including writ in the nature of Certiorari quashing the order dated 20.5.2019 passed by the Central Administrative Tribunal Patna Bench Patna in OA / 050/00515/19 whereby the original application filed by the Petitioner has been dismissed.

(ii) For issuance of an order, direction or writ including writ in the nature of Certiorari quashing the letter dated 29.3.2019 issued by Respondent no 3 under the orders of Respondent no 2 by which the Petitioner’s appointment to the post of A.S.M. has been terminated and further he has been directed to deposit 77,329/- the cost of training along with interest at the rate of 12.5%.

(iii) For issuance of an order, direction or writ including writ in the nature of Mandamus commanding the respondents not to give effect to the order dated 29.3.2019 issued by Respondent no 3.

(iv) For issuance of an order, direction or writ including writ in the nature of Mandamus commanding the respondents to consider his case for



appointment to the post of A.S.M. And re instate him in service.

(v) For any other relief (s) to which the petitioner may be found entitled in the facts and circumstances of the present case.

3. Briefly stated, the facts, according to the petitioner, are that various posts were advertised by the Railway Recruitment Board vide Centralized Employment Notice No.3 of 2015 on 26.12.2015. The petitioner applied in terms of aforesaid advertisement and after completion of selection process, he was offered appointment to the post of Assistant Station Master by the Railway Recruitment Board vide letter dated 26.12.2017 and he was directed to report on 18.01.2018. Thereafter, the petitioner was sent for training at Zonal Railway Training, Udaipur vide letter dated 18.04.2018. The petitioner reported at the Training Institute and participated in the training on 25.03.2018 and relieved from there on 23.07.2018 after completing his training. Thereafter, the petitioner was deputed for line training where he worked till 28.08.2018. Some complains were made by one Sweta Kumari, claiming herself to be wife of the petitioner, against the petitioner regarding furnishing wrong information in the Attestation Form and



suppression of some information. Thereafter, a letter dated 03.10.2018 was issued to the petitioner to submit information with affidavit by 04.10.2018 with respect to the allegations mentioned in the allegation petition. The petitioner submitted his explanation on the affidavit denying the allegation made against him. The petitioner was directed to submit certain document regarding his marriage on or before 10.10.2018. Thereafter, the petitioner submitted the marriage certificate issued by the Marriage Registrar in support of his contention that his marriage was solemnized with one Sushma Kumari and Sweta Kumari is not his wife and he never married with Sweta Kumari. The petitioner further stated that he inadvertently wrote N.A. in Column 10 (a) of the Attestation Form. The respondent no.5 vide letter dated 25.01.2019 issued show cause for filing up Nil information in Attestation Form and suppressing the fact as per Para 11 of the Attestation Form. Thereafter, the petitioner submitted his show cause on 08.02.2019 explaining the entire circumstance. The petitioner submitted details about his previous employment and reasons for his un-authorised absence. Thereafter, vide order dated 29.03.2019, the appointment of the petitioner on the post of ASM/SM was terminated with immediate effect on the ground



that there was suppression of factual information in the Attestation Form. By another order dated 29.03.2019, the petitioner was directed to deposit a sum of Rs.77,329/- with interest at the rate of 12.5% as training cost paid to the petitioner by way of stipend. Being aggrieved by the aforesaid decision of the respondents, the petitioner filed OA/050/00515/19 before the CAT, Patna Bench, Patna, which was dismissed vide order dated 20.05.2019. Hence, the present Writ.

4. The learned counsel for the petitioner has submitted that the respondents have not taken into consideration the show cause reply filed by the petitioner. The order dated 29.03.2019 has been passed mechanically without considering the case of the petitioner in its proper perspective. The learned counsel further submitted that no prejudice has been caused to anyone due to the inadvertent omission on the part of the petitioner and the mistake committed by the petitioner could be rectified by allowing him to fill up the concerned column which has been left blank by the petitioner. The learned counsel further submitted that the petitioner is the sole bread earner of his family and termination of service has the effect of depriving the petitioner from his source of livelihood. The learned counsel



also submitted that in the facts and circumstances of the case, it is expedient in the interest of justice to direct the respondents to reinstate the petitioner into service by setting aside the order of termination dated 29.03.2019 and the order of learned CAT dated 20.05.2019. In this regard, learned counsel for the petitioner relied on two decisions of the Hon'ble Apex Court in the case of *Pawan Kumar Vs. Union of India, reported in 2022 (3) PLJR 330* and in the case of *Umesh Chandra Yadav vs. Inspector General and Chief Security Commissioner, RPF Northern Railway, New Delhi & Ors, reported in 2022 SCC Online SC 299*.

5. On the other hand, learned counsel for the respondents has opposed the contention of the petitioner. He has submitted that the petitioner has suppressed material information in respect of his previous employment with the Railway department and his removal from service after opportunity and in compliance of natural justice, the department has rightly terminated the service of the petitioner.

6. Having considered the material available on record and rival submissions, we will examine the advertisement and the Attestation Form regarding non-disclosure/suppression/furnishing of wrong information of the facts.



It would be necessary to quote relevant clauses mentioned in the advertisement :

“12. SERVING EMPLOYEES :

Candidates serving in any Central/State Government Department including Railways or Public Sector Undertakings may apply directly to the RRBs, duly informing their Administration. The last date for submission of ONLINE application will not be extended on any account. The shortlisted candidates shall be required to produce NO OBJECTION CERTIFICATE (NOC) from the employer during Document Verification without fail. Otherwise their candidature will be cancelled.

NOTE: *Candidates should note that in case a communication is received from their employer by the RRB concerned withholding permission to the candidates applying for/appearing at the examination, their application/candidature will liable to be rejected/cancelled.*

13. IMPERSONATION/SUPPRESSION OF FACTS WARNING:

13.01 XXXXX

13.02 XXXXX

13.03 *Furnishing of any false information to the RRB or deliberate suppression of any information at any stage will render the candidate disqualified and debarred from appearing at any selection or examination for appointment on the Railways or to any other Government service and if appointed, the*



service of such candidature is liable to be terminated.

***13.04** Any material suppression of facts or submitting of forged certificate/caste certificate by a candidate for securing eligibility and/or obtaining privileges, including free travel for appearing in the examination shall lead to rejection of his/her candidature for the particular recruitment for which he/she has applied. Further, he/she will also be debarred from all examinations conducted by all RRBs all over the country for a period of **TWO** years and legal action can be initiated, if warranted”.*

Further, on the top of the first page of the Attestation Form, three warning clauses have been mentioned, which are as follows :

“(1) The furnishing of false information or suppression of any factual information in the Attestation Form would be a disqualification and is likely to render the candidate unfit for employment under the Government.

(2) If detained, convicted, debarred, etc., subsequent to the completion and submission of this form, the details should be communicated immediately to the Union Public Service Commission or the Railway Recruitment Board or the Authority to whom to Attestation Form has been sent earlier as the



case may be, failing which it will be deemed to be a suppression of factual information.

(3) If the fact that false information has been furnished or that there has been suppression of any factual information in the Attestation Form comes to notice at any time during the service of a person, his services would be liable to be terminated”.

In column no. 11 (a), it has been mentioned as follows :

“Are you holding or have any time held an appointment under the Central or State Government or a semi- Government or a quasi-Government body or an autonomous body or a public undertaking or a private firm or institution? If so, give full particulars with dates of employment, up-to-date”.

In column no. 11 (b), it has been mentioned as follows :

“If the previous employment was under the Government of India/ a State Government/ an under-taking owned or controlled by the Government of India or a State Government/an autonomous body/University/local body. If you had left service on giving a month’s notice under rule 5 of the Civil Service (Temporary Service) Rules, 1965, a notice for the prescribed period under Rule 149 of the Indian Railways Establishment Code, Volume-I or any similar



corresponding rules were any disciplinary proceeding framed against you or had you been called upon to explain your conduct in any matter the time you gave notice of termination of service or at a subsequent date before your services actually terminated?”

In column 11 at page 7, just before signature of candidate, of the Attestation Form, it has been mentioned as follows :

“I certify that the forgoing information is correct and complete to the best of my knowledge and belief. I am not aware to any circumstance which might impair my fitness for employment under Government”.

7. From the combined reading of the aforesaid clauses of the advertisement and the attestation form, it leaves no doubt that the applicant and successful candidate was required to furnish the material information at the relevant places and it was prescribed in no uncertain terms. Still the petitioner chose not to furnish the information for the reasons best known to him.

8. From the aforesaid clauses of the advertisement and the Attestation Form, it appears that in spite of aforesaid warning clauses, admittedly, the petitioner has suppressed vital material information in respect of his previous employment with



the Railway department and his removal from service due to unauthorised absence. Thus, he has violated the specific clause of the Attestation Form. It is also clear from the records that the petitioner worked under the Railway Department as Track Maintainer at GHZ in EC Railway, but he was removed vide order dated 20.06.2016 from his job on the ground of unauthorized absence since 11.06.2014.

9. The petitioner has admitted the fact of non-mentioning/suppression of the information regarding the previous employment with the railways and his subsequent removal when the same has been specifically asked for in the Attestation Form and even at the time of filling up of the online form for examination for getting the employment which clearly mentioned about the candidates serving in any Central/State Government Department including Railways or Public Sector Undertaking.

10. The advertisement itself made it clear that furnishing of any false information or deliberate suppression of any information at any stage would render the candidate disqualified and debarred for appointment on the Railways or to any other Government service and if appointed, the service of such candidate was liable to be terminated.



11. In the present case, the petitioner suppressed the material information regarding his previous employment from which he was removed after enquiry and as it appears from the records, the petitioner did not bother to respond even when second show cause notice before his termination was served to him and, thereafter, he was visited with major penalty of removal from service with effect from 20.06.2016 due to unauthorised absence.

12. The facts and circumstances of the cases relied on by the learned counsel for the petitioner are completely different from the facts and circumstances of the present case and for this reason, are not applicable in this case.

13. In the case of **Pawan Kumar (supra)**, the issue was subsequent intimation about criminal case which ultimately resulted in acquittal of the appellant. The said criminal complaint/FIR was registered post submission of application form and it was also held that the matter was of a trivial nature not involving moral turpitude and the proceeding ended in the clean acquittal.

14. Similarly in the case of **Umesh Chandra Yadav (supra)**, the appellant was a juvenile aged about 12 years when the criminal case was instituted against him and he was



discharged from the alleged offences. Almost a decade after his discharge, advertisement came to be published for holding recruitment and selection of constables in Railway Protection Force and on the ground of suppression of criminal antecedent, the appointment of the appellant was cancelled. Taking into account the special circumstances, about juvenility of the appellant and the seriatim of fact cumulatively indicate that the nature of information which was not disclosed by the appellant, in any manner, could be considered to be a suppression of material information, was held to be unsustainable. Again, the facts of this case are completely different from the facts of the present case and reliance on the aforesaid decisions is of no help to the petitioner.

15. Coming back to the facts of the present case, it is clear that the petitioner suppressed the fact about his previous employment that too with the same employer. The reason for the same appears to be very much obvious since the petitioner went on an un-authorised leave and did not join the disciplinary proceeding started against him and did not explain his conduct. The contention that the conduct of the petitioner did not harm any person or was not of such significance that he should be terminated from his service would not cut much ice. Even in the



case of ***Pawan Kumar (supra)***, it has been held that the person who has suppressed the material information or has made false declaration has no unfettered right of seeking appointment or continuity in service. It is for the employer to consider all the relevant facts and circumstances keeping in view of objective criteria and the relevant service rules into consideration. However, it has also been held that power has to be judiciously exercised by the competent authority in a reasonable manner and objectivity having due regard to the facts of the case on hand.

16. In the case of ***Union of India Vs. Mahendra Singh***, reported in ***2022 SCC OnLine SC 909***, the issue was effect of violation of condition provided in the advertisement and the effect of using different language in the application form than the OMR sheet. The candidates were required to strictly adhere to the conditions mentioned in the advertisement. If there was any deviation, candidature was required to be cancelled. The Apex Court has held that since the writ petitioner has used different language for filling up of the application form and the OMR answer book, therefore, his candidature was rightly rejected by the appellants.

17. In the case of ***State of T.N. v. G. Hemalathaa***,



reported in **(2020) 19 SCC 430**, the condition was that usage of whitener, sketch pens, pencil, colour pencils, multi-colour pens would lead to invalidation of the answer book. In these circumstances, it was held that violation of such mandatory conditions by the candidate dis-entitles for declaration of her result for appointment to the post of Civil Judge. It would be pertinent to quote paragraphs 8, 9 & 10 of the said judgment :

“8. We have given our anxious consideration to the submissions made by the learned Senior Counsel for the respondent. The Instructions issued by the Commission are mandatory, having the force of law and they have to be strictly complied with. Strict adherence to the terms and conditions of the Instructions is of paramount importance. The High Court in exercise of powers under Article 226 of the Constitution cannot modify/relax the Instructions issued by the Commission [M. Vennila v. T.N. Public Service Commission, 2006 SCC OnLine Mad 465 : (2006) 3 Mad LJ 376].

9. The High Court after summoning and perusing the answer sheet of the respondent was convinced that there was infraction of the Instructions. However, the High Court granted the relief to the respondent on a sympathetic consideration on humanitarian ground. The judgments cited by the learned Senior Counsel for the respondent in Taherakhatoon v. Salambin Mohammad [Taherakhatoon v.



Salambin Mohammad, (1999) 2 SCC 635] and Chandra Singh v. State of Rajasthan [Chandra Singh v. State of Rajasthan, (2003) 6 SCC 545 : 2003 SCC (L&S) 951] in support of her arguments that we should not entertain this appeal in the absence of any substantial questions of law are not applicable to the facts of this case.

10. In spite of the finding that there was no adherence to the Instructions, the High Court granted the relief, ignoring the mandatory nature of the Instructions. It cannot be said that such exercise of discretion should be affirmed by us, especially when such direction is in the teeth of the Instructions which are binding on the candidates taking the examinations”.

The aforesaid Apex Court decisions are squarely applicable to the case in hand.

18. Thus, in the light of discussion made hereinabove and under the facts and circumstances of the case, we are of the view that the petitioner having suppressed material information and giving false information cannot claim any right for appointment or continuity in service and the employer having regard to the nature of employment as well as other aspects has the discretion to terminate his services and accordingly, the competent authority has exercised its power in a reasonable manner with objectivity having due regard to the facts and



circumstances of the case. We find no infirmity in the impugned order dated 20.05.2019 passed in OA/050/00515/19 by the learned Central Administrative Tribunal, Patna Bench, Patna as well as order dated 29.03.2019 passed by the respondents.

19. Accordingly, the present writ petition is dismissed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	02.02.2023
Transmission Date	N.A.

