

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

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

W.P.A. 10531 of 2021

Sri Partha Biswas.

Vs.

Union of India & Ors.

For the Petitioner : Mr. Srijib Chakraborty
Mr. Pritam Chowdhury
Mr. Dipankar Saha
Mr. Subham Kr. Dasadvocates

For the Union of India : Mr. Saikat Basu ... advocate

Reserved on : 13.09.2023

Judgment on : 19.09.2023

Hiranmay Bhattacharyya, J.:-

1. The petitioner has prayed for setting aside and/or quashing the discharge order dated 26.02.2021 passed by the Principal Chief Security Commissioner, RPF, South Eastern Railway.
2. Petitioner, after completion of basic training (Phase I of Initial Training), was undergoing provisional training at Police Training Academy Jaipur with effect from 10.02.2021. The Principal, Chief Security Commissioner, RPF, South Eastern Railway being the fourth respondent issued a discharge order from the said training and cancelled the candidature of the petitioner for appointment as a Constable (Band) in RPF with immediate effect on the ground that he had suppressed the factual information in the Attestation Form.
3. Mr. Chakraborty, learned advocate appearing for the petitioner submitted that the petitioner in the attestation form disclosed that a criminal case was pending against him in a court of law. He, therefore, submitted that the allegation leveled against the petitioner that he had suppressed information regarding registration of criminal case is without any basis. Mr. Chakraborty submitted that for determining suppression the attestation form has to be specific. It is only such information which was required to be specifically mentioned has to be disclosed. In support of

such contention Mr. Chakraborty placed reliance upon a decision of the Hon'ble Supreme Court in the case of ***Avtar Singh vs. Union of India and ors.*** reported at **(2016) 8 SCC 471**. Mr. Chakraborty further submitted that the authorities ought to have considered the nature of the criminal case while examining the availability, suitability of the incumbent. In support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of ***Pawan Kumar vs. Union of India and ors.*** reported at **2022 SCC Online SC 532**.

4. Mr. Basu learned advocate representing the Union of India submitted that the petitioner has not disclosed the full particulars of the criminal case in the attestation form. He further stated that in the self declaration form the petitioner has stated that there is no criminal case pending against him before any court of law and also that he was not involved in any criminal activity or anti national activity. Mr. Basu submitted that such statement in his declaration form was also a false statement. He referred to Rule 67.2 of the Railway Protection Force Rules 1987 (for short "the 1987 Rules") and submitted that the authority was vested with the power to discharge a recruit for reasons to be recorded in writing and non disclosure of the particulars of the pending criminal case amounts to suppression of a material information.
5. Heard the learned advocates for the parties and perused the materials placed.
6. The attestation form was filled up and signed by the petitioner on 14.03.2020.
7. For the purpose of deciding as to whether the petitioner suppressed any material information it would be relevant to extract a portion of the attestation form which was duly filled in by the petitioner.

15(i)	(d)	Is any criminal case pending against you in any Court of Law at the time of filling up this Attestation Form	✓ Yes/no
	(ii)	If the answer to any of the above mentioned question is 'Yes' give full particulars of the case/arrest/detention/fine/conviction/sentence/punishment etc. and/or the nature of the case pending in the Court/University/Educational Authority etc. at the time of filling up this attestation form:	_____

8. After answering question no. 15(i)(d) in the affirmative, the petitioner was required to give full particulars of the case/ arrest/ detention/fine/conviction/sentence/punishment etc. and/or the nature of the case pending in Court/ University/Educational authority etc. at the time of filling up the attestation form. It is not in dispute that the petitioner did not furnish the particulars of the pending criminal case. In the 'Self Declaration' the petitioner stated that there is no criminal case pending against him. It is evident from the materials on record that on the subject of verification of the character antecedents of the petitioner, the Deputy Inspector General of Police Intelligence Branch, West Bengal by a letter under Memo no. 283 dated 14.01.2021 informed that the petitioner was involved in connection with Kalna PS case no. 563/16 dated 03.12.2016 under Section 498A/307/379/34 IPC and a chargesheet no. 123/17 dated 31.07.2017 has been filed. It was further reported that the said case was pending at the trial stage before the learned ACJM, Kalna, District-Burdwan. The pendency of the said criminal case has, however, not been disputed by the learned advocate for the petitioner in course of hearing of this writ petition. The learned advocate for the petitioner would contend that non-disclosure of the particulars of the criminal case was not deliberate but the same was a mistake on the part of the petitioner. He thus submitted that the petitioner should not be penalized for mere mistake on his part.
9. The attestation form contains three warnings. After going through the same this Court finds that the applicants were warned that in case of suppression of any factual information in the attestation form that would be a disqualification and the same is likely to render the candidate unfit for employment under the Government. Having been warned of the consequences of suppression of a factual information, it was incumbent upon the petitioner to disclose the factual information with regard to the pendency of the criminal case. Mere admission of pendency of a criminal case without disclosing the particulars thereof is nothing but a deliberate act on the part of the petitioner not to disclose the factual information about the pending criminal case for reasons best known to him. It is well settled that if the verification/ attestation form require certain information to be furnished, the declarant is duty bound to furnish it correctly and any suppression of material facts may by itself lead to cancellation of candidature in an appropriate case. Verification of character and antecedents is one of the important criteria to assess the suitability of an incumbent and it is the employer who has to adjudge the antecedents of the incumbent. The Hon'ble Supreme Court in the case of **Avtar Singh** (supra) held thus-

“32. 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.”

10. In the case on hand, the attestation form required the particulars of the criminal case to be correctly furnished. The criminal case against the petitioner is also pending trial. The petitioner was thus, obliged to disclose the full particulars of the pending criminal case correctly. Any lapse on the part of an incumbent in disclosing such particulars is to be viewed seriously particularly because of the nature of the job. Therefore, non-disclosure of the particulars of the pending criminal case may itself lead to cancellation of the candidature or termination of services as held in **Avtar Singh** (supra). The declaration made in the ‘Self Declaration’ that there is no criminal case pending against him is also false.
11. Rule 67.2 of the 1987 Rules empowers the Principal Chief Security Commissioner to discharge the recruit for reasons to be recorded in writing. The respondent no. 4 in the order dated 26.02.2021 arrived at a factual finding that the petitioner has suppressed the factual information of the registration of the criminal case against him and therefore, he has clearly violated the conditions while filling up the attestation form for character and antecedents verification. After arriving at the said finding the fourth respondent observed that the petitioner is not fit for appointment in the Railway Protection Force which is an Armed Force of the Union.
12. The order dated 26.02.2021 of the respondent no. 4 is a reasoned order. It is for the employer to assess the suitability of an incumbent after verifying his character and antecedents. This Court in exercise of its power of judicial review cannot sit in appeal over a reasoned decision of the authority which is based on appreciation of facts.
13. This Court is, therefore, of the considered view that the authority was justified in cancelling the candidature of the petitioner.

14. In the case of **Pawan Kumar** (supra) though a criminal case was registered but at the very threshold the complainant therein filed an affidavit stating that the complaint on which FIR came to be registered was due to misunderstanding and he did not want to pursue his case any further. The alleged victim who deposed as PW-1 did not support the case of the prosecution and an order of clean acquittal was passed. The appellant therein was honourably acquitted much before the date when he filled up the attestation form. The said decision being distinguishable on facts is of no assistance to the petitioner.
15. For all the reasons as aforesaid this Court is not inclined to interfere with the order of the 4th respondent dated 26.02.2021. The writ petition accordingly stands dismissed without, however, no order as to costs.
16. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)

(P.A.-Sanchita)