



*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 20.09.2023

Judgment delivered on: 12.12.2023

+ W.P.(C) 5250/2018

BINEET SINGH BISHT

..... Petitioner

versus

UNION OF INDIA AND ANR.

..... Respondents

Advocates who appeared in this case:

For the petitioners: Mr. Ashish Dixit, Advocate

For the Respondent: Mr. Rajesh Kumar, Senior Panel Counsel for UOI and
Ms. Ramneet Kaur, Advocate

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

1. Petitioner seeks quashing of order dated 02.03.2016 passed by respondents whereby his services have been terminated with immediate effect. He also challenges order dated 28.03.2018 whereby his representation, seeking reinstatement, has been dismissed.

2. Facts lie in a narrow compass.

3. Petitioner joined as sub-Inspector (GD) in Indo Tibetan Border Police (ITBP) on 28.07.2014.



4. Pursuant to such employment, the petitioner was to submit documents and to fill up forms including 'Verification Roll Form' and 'Form of Enrolment'. He was, *inter alia*, required to divulge whether he had ever been arrested or prosecuted or convicted for any offence or not. As per answers given in response thereto, he claimed that he was never involved in any criminal case.

5. However, when the forms were sent for police verification, it came to fore that he was involved in one criminal case for commission of offences under sections 420/467/468/471 IPC which was *sub judice* in the Court of ACJM-II, Dehradun.

6. Petitioner was accordingly served with a show cause notice as to why his services be not terminated for concealment of material fact.

7. Petitioner though did not respond to the aforesaid show cause notice, he did send one communication, subsequently, informing the respondents that matter was pending in the High Court of Judicature at Nainital and was likely to be finalized very soon as the matter had been compromised.

8. On 02.03.2016, the impugned order was issued by the respondents terminating the services of the petitioner with immediate effect under Rule 22 of the Indo-Tibetan Border Police Rules 1994 (ITBP Rules) read with Section 11 of Indo-Tibetan Border Police Force Act 1992 (ITBP Act).



9. Petitioner submitted representation and appealed for his reinstatement. He also revealed that that he had been acquitted in the said case as on account of compromise, the proceedings had been quashed by High Court on 05.10.2016. His such representations also did not find any favour and this is how he is before us.

10. The petitioner has contended as under: -

i) *At the time of the filing up of the requisite forms, he was not aware whether any case was still pending against him as he was never served with any summons and, therefore, he never appeared in any case.*

ii) *Said criminal case, registered in the year 2010, was false and he had been implicated in the same when he was hardly 19 years of age.*

iii) *The questions in the forms were confusing, technical and complex which he could not understand and which could be interpreted in more than one way and he gave reply in negative, to the best of his ability and after understanding the above complex questions.*

11. Learned counsel for the petitioner has relied on *Daya Shankar Yadav vs. UOI & Ors.*: (2010) 14 SCC 103; *Commissioner of Police & Ors. vs. Sandeep Kumar*: (2011) 4 SCC 644; *Kuldeep Kumar vs. UOI & Ors.*: 2011 SCC Online Del 800; *Kumar Gorav vs. UOI*: 2013 SCC Online Del 3491, *Avtar Singh vs. UOI & Ors.*: (2016) 8 SCC 471; *Davender Kumar vs. UOI & Ors.*: 2018 SCC



Online Del 7495, *Rahul Chaudhary vs. UOI & Ors.* 2018 SCC Online Del 8433 and *Akhilesh Kumar vs. UOI & Ors.*: 2018 SCC Online Del 7341.

12. The petition has been resisted and according to the respondents, the questions posed in the requisite forms were simple and straightforward and there was no complexity involved. It is contended that the intention of petitioner was malafide and despite the fact that he had even been arrested and remained behind the bars from 28.03.2010 to 13.04.2010 in said case, he gave answer in negative in order to secure employment. He was aware about said criminal case when the said forms were filled up. It is also submitted that the subsequent quashing of proceedings cannot absolve his act of suppression and concealment. It is also contended that the questions in the relevant Forms were bilingual and the petitioner, being a Commerce Graduate, would have certainly understood the same without any difficulty and despite that he deliberately suppressed the fact about his criminal antecedents. It is argued that the disciplinary action was in consonance with the Rules and Regulations of ITBP and there is no legal infirmity in the impugned order and, therefore, the petition is liable to be dismissed.

13. Respondents have also relied on *Avtar Singh vs. UOI & Ors.*: (2016) 8 SCC 471 and on *Kendriya Vidyalaya Sangathan & Ors vs. Ram Ratan Yadav* : (2003) 3 SCC 437.



14. There is no denying the fact that a criminal case was registered against the petitioner in the year 2010 for committing offences under Section 419, 420, 467, 468 and 471 IPC. It is also admitted fact that when the relevant forms were filled up by him in the year 2014, such criminal case was pending.

15. In order to appreciate the contentions raised before us, let us first see the relevant forms. Interestingly, these were never placed on record by the petitioner. Fortunately, the copies thereof were submitted by respondents, alongwith the counter affidavit.

16. The relevant forms are 'Verification Roll Form' and 'Form of Enrolment.' Admittedly, these were filled up by petitioner himself on 16.09.2014.

17. Verification Roll Form contains the following warning at the top:-

"1. The furnishing of false information or suppression of any factual information in the Verification Roll would be a disqualification, and is likely to render him 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 authority to whom the Verification Roll has been sent earlier, as the case may be, failing which it



will be deemed to be a suppression of actual information.

3. *If the fact that false information has been furnished or that there has been suppression of any factual information in the Verification Roll comes to notice at any time during the service of a person, his services would be liable to be terminated."*

18. Question No.12(a) and 12(b) of such Verification Roll Form reads as under:-

"12. (क) क्या आप कभी किसी अपराध के लिये गिरफ्तार हुए हैं , या आप पर मुकद्दमा चलाया गया है या आपको हिरासत में रखा गया है या आपको जमानत पर छोड़ा गया है या किसी अदालत द्वारा आप पर जुर्माना किया गया है या दोष सिद्ध किया गया है या आपको किसी लोक सेवा आयोग द्वारा उसे किसी प्रकार परीक्षा में वंचित/अपात्र ठहराया गया है या क्या किसी विश्वविद्यालय या शिक्षा प्राधिकार संस्था द्वारा किसी परीक्षा से वंचित किया गया / निकाला गया है ?

(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 as its examination/selections or debarred from taking any examination/rusticated by any University or any other educational authority/Institution?

(ख) इस सत्यापन चिट्ठे को भरते समय क्या आपके विरुद्ध किसी अदालत में या विश्वविद्यालय में या किसी प्राधिकार/संस्था में कोई केस चल रहा है ? यदि (क) या (ख) का उत्तर हाँ हो तो मुकद्दमा, गिरफ्तारी, हिरासत, जुर्माना, दोष सिद्धि दण्ड आदि का ब्योरा दें और बताएँ कि यह फार्म भरते समय अदालत / विश्वविद्यालय/ शिक्षा प्राधिकार के पास किस प्रकार का केस चल रहा है ।



(b) Is any case pending against you in any court of law, University or any other educational authority/Institution at the time of filling up this Verification Roll? If the answer to (a) or (b) is 'Yes', full particulars of the case, arrest detention, fine, conviction, sentence etc., and the nature of the case pending in the Court/University/Educational Authority, etc., at the time of filling up this form should be given.

सत्यापन चिट्ठा
Verification Roll

नोट :- कृपया सत्यापन चिट्ठे के आरम्भ में लिखे चेतावनी 'भी देखें ।

Note: Please also see the 'warning' at the top of this Verification Roll.

19. The answer, by the petitioner, to both the aforesaid questions was in "no".

20. The other form i.e. Form of Enrolment also contains warning as under:-

"You are warned that if after enrolment it is found that you have given a willfully false answer to any of the first twelve of the following questions you will be liable to punished as provided in Indo-Tibetan Border Police Force Act, 1992."

21. Question No.12 of the Form of Enrolment, which again is bilingual in nature, reads as under:-

"12. (क) क्या आप कभी गिरफ्तार हुए हैं?
(a) Have you ever been arrested?"



(ख) क्या आप कभी अभियोजित किए गए हैं?

(b) *Have you ever been prosecuted?*

(ग) क्या आप कभी निरोध में रखे गए या कारावास में रखे गए हैं?

(c) *Have you ever been kept under detention or imprisoned?*

(घ) क्या आप किसी न्यायालय द्वारा किसी अपराध के लिए सिद्धदोष ठहराये गए हैं?

(d) *Have you ever been convicted by Court for any offence?*

(ङ) क्या आप कभी आबद्ध किए गए हैं?

(e) *Have you ever been bound down?*

(च) क्या आप पर कभी किसी न्यायालय द्वारा जुर्माना किया गया है?

(f) *Have you ever been fined by a Court of Law?*

(छ) क्या आप कभी भारत या भारत के बाहर प्रवृत्त किसी विधि के अधीन नजरबन्द निष्कासित या अन्यथा रहे हैं ? यदि हाँ, तो विशिष्टियाँ बताएं /

(g) *Have you ever been internal, external or otherwise dealt with under any law in force in India or outside? If so, state particulars.*

(ज) क्या आपके विरुद्ध भारत या विदेश के किसी न्यायालय में कोई अभियोजन है?

(h) *Are you facing any prosecution in any court in India or abroad?*

(झ) क्या आपको किसी विश्वविद्यालय या अन्य किसी शैक्षणिक प्राधिकरण/संस्था द्वारा परीक्षा से वर्जित या निष्कासित किया गया है?

(i) *Have you ever been debarred from any examination or rusticated by any University or any other educational authority/Institution?*



(ग) क्या आपको किसी लोक सेवा आयोग द्वारा उसकी परीक्षा में बैठने/चयन किए जाने से वर्जित/निरर्हित गया है ?

(j) *Have you ever been debarred/disqualified by any Public Service Commission from appearing at its examination/selection?*

(घ) क्या इस अभ्यावेदन प्रारूप के भरते समय आपके विरुद्ध किसी विश्वविद्यालय या अन्य किसी शैक्षणिक प्राधिकरण/संस्थान में कोई मामला लंबित है ?

(k) *Is any case pending against you in the any University or other educational authority/Institution at the time of filling up this enrolment form?*

(ङ) क्या आपको सरकार के अधीन या अन्यथा किसी प्रशिक्षण संस्था से उन्मोचित/निष्कासित किया गया है/वापस बुलाया गया है ?

(l) *Whether discharged /expelled /withdrawn from any training institution under the Government or otherwise?"*

22. To all the aforesaid clauses of question No.12, petitioner, again, answered in "no".

23. Just to remind ourselves, the claim of the petitioner is that such questions, asking about criminal antecedents, were complex which he could not understand and, therefore, he replied the same in negative.

24. His such contention is liable to be rejected for multiple reasons.

25. If we see the questions given in the aforesaid 'Form of Enrolment', a bare reading would indicate that there is nothing technical or complex in nature. The questions are found to be very simple, specific and separately framed. It was categorically asked whether the concerned applicant had ever been arrested. It was asked



whether he had ever been prosecuted. It was asked whether he had been kept under detention or imprisonment. Despite the fact that the petitioner had been booked in a criminal case and remained in custody from 28.03.2010 till 13.04.2010, he suppressed the aforesaid fact of his involvement in a criminal case.

26. Of course, question 12(a) of Verification Roll Form, in English language, was a blended one. Ideally, these should have also been separated as had been done in the other form. However, we cannot hear from a commerce graduate that he was not able to understand the same, particularly when the opening line was about the fact whether he had ever been arrested or not and also when the Hindi version was amply clear. Thus, the contention of the petitioner that the tenor of the question was confusing and technical is too fanciful to be accepted. As noted, even when the questions were put separately in the other form, he showed the audacity of answering those in negative. It is not believable that he would not be aware about the pendency of the case in which he even remained behind the bars.

27. More importantly, the plea of question being confusing is nothing but an afterthought.

28. We have seen the correspondence between him and the respondents. He, nowhere, claimed that he was unable to understand any question. Rather, in his one letter dated 27.01.2018, he claimed that such reply was on account of his 'bonafide mistake' and that he



did not realize that such non-disclosure would invite termination. Moreover, when the respondents pointed out in affidavit that he had even remained behind the bars in said case, he did not controvert the same as he, for reasons best known to him, did not even choose to file any rejoinder. Thus, his only endeavour was to suppress the facts so that he could secure employment.

29. When the petitioner was issued provisional appointment letter on 28.07.2014, it was mentioned therein as well that his appointment was provisional and in case in the Verification Roll any of his claim/information was found to be false, his services would be terminated forthwith. The petitioner, however, took these warnings nonchalantly.

30. We have carefully gone through the precedents cited at the bar and keeping in mind the distinct facts of the case in hand, we are of the firm view that petitioner cannot drive home any advantage from said precedents.

31. In *Daya Shankar Yadav* (supra), when the petitioner had filled up the form, admittedly, no case was pending against him as he had already been discharged in criminal case three years back. Interestingly, the similar sets of queries were contained in the 'Verification Roll Form' as are found to be contained in the case in hand. Fact, however, remains that in that case, the petitioner understood Hindi and replied in Hindi and, therefore, the order of his



termination was upheld. Undoubtedly, with respect to the query/question in English in said form, Supreme Court did observe that English version of the questions could have been used with a little more clarity. However, as noted already, in the case in hand, the questions were separately put in the other form and, therefore, there was no element of any vagueness or ambiguity. Moreover, the criminal matter was *sub judice* when the forms were filled up by the petitioner herein.

32. In *Commissioner of Police & Ors.* (supra) also, when the petitioner had filled up the form, no case was pending against him and, therefore, said precedent does not stand attracted.

33. In *Kuldeep Kumar* (supra), the offence was committed in the year 2001 and the petitioner was acquitted in the year 2003. He filled up the form in the year 2009 and it was in that context that the Coordinate Bench of this Court had observed that when he filled up the form after 8 years of the incident and 6 years of the acquittal, the petitioner therein had mere haze memories. Moreover, petitioner therein was only 16 years of age when he was booked.

34. Petitioner cannot take any advantage from the observations contained in *Kumar Gorav* (supra) as in that case the query in the relevant form was in English only, in which the petitioner was not proficient.



35. The situation in *Davender Kumar* (supra) was totally dissimilar as in that case the petitioner had made a limited prayer that he may be permitted to present his case before the competent authority so that his case is examined in light of the guidelines laid down by Supreme Court in *Avtar Singh's case* (supra) and such request was acceded to and direction was accordingly issued to the concerned authorities to consider and dispose of any such representation.

36. Though the petitioner has relied upon *Rahul Chaudhary* (supra), fact remains that in said case there was no suppression of facts at all. Petitioner therein had candidly admitted about the pendency of criminal case against him.

37. The fact situation of *Akhilesh Kumar* (supra) is also different as in that case, the concerned petitioner was found to be a juvenile and keeping in mind the objective and provisions of Juvenile Justice (Care and Protection) Act, 2000, it was observed that any such juvenile was required to be given an opportunity to lead a life with no stigma and to wipe out the circumstances of his inglorious past and, therefore, the previous prosecution could not have invited any disqualification. Here, the petitioner was not juvenile at the time of the alleged incident.

38. The legal position is no longer res integra. Reference be made to *Avtar Singh* (supra), a landmark judgment governing the aforesaid issue. Interestingly, both the sides have relied upon said judgment



which continues to hold the field with respect to the issue in hand. Earlier, there was some conflict of opinion on the question of suppression of information or submitting false information in the verification form and, therefore, the matter was referred to a larger Bench to have an authoritative pronouncement. After considering various judgments, Supreme Court summarized the legal position. It will be worthwhile to extract the relevant observations which read as under:-

“34. 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.

35. 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.

36. 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.

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 consideration while exercising the power for 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 filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given,



the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

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

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

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

38.8. *If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.*

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

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

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



39. *We answer the reference accordingly. Let the matters be placed before an appropriate Bench for consideration on merits.*”

39. Thus, the picture which emerges out is very clear.

40. There is deliberate suppression of material fact with respect to a criminal case which was pending at the time when the forms were filled up by the petitioner. Respondents were thus justified in terminating the petitioner.

41. As already noticed above, the petitioner cannot plead ignorance about such previous case in which he was arrested and even remained behind the bars. Even if for a moment, it is assumed that the query contained in 12(a) of Verification Roll Form in English version was complex as several questions had been interwoven, fact remains that same form also contained the same query in Hindi which conveyed everything very appropriately. Moreover, in Enrolment Form, the questions had been bifurcated which removed possibility of any uncertainty or ambiguity.

42. Petitioner cannot claim that the offences were trivial and that since he was only 19 years of age when the incident had happened, the approach should be to condone such indiscretion rather than to brand him as criminal, particularly, when the offence was not serious. His such argument is based on observations appearing in *Commissioner of Police & Ors.* (supra). However, the offences herein were not trivial



as the allegation against the petitioner was that of forgery and impersonation in class XII examination.

43. Right here, it would be appropriate to make reference to one judgment of Supreme Court i.e., *Rajasthan Rajya Vidyut Prasaran vs. Anil Kanwariya*: (2021) 10 SCC 136. Therein, the petitioner was terminated on account of his failure to disclose about his criminal antecedents. While justifying such termination, it was observed that the key issue in such type of matters was neither the triviality of the matter or subsequent acquittal but was of credibility and trustworthiness of such employee. Supreme Court, in para 14 of the judgment, observed as under:-

“14. The issue/question may be considered from another angle, from the employer's point of view. The question is not about whether an employee was involved in a dispute of trivial nature and whether he has been subsequently acquitted or not. The question is about the credibility and/or trustworthiness of such an employee who at the initial stage of the employment i.e. while submitting the declaration/verification and/or applying for a post made false declaration and/or not disclosing and/or suppressing material fact of having involved in a criminal case. If the correct facts would have been disclosed, the employer might not have appointed him. Then the question is of TRUST. Therefore, in such a situation, where the employer feels that an employee who at the initial stage itself has made a false statement and/or not disclosed the material facts and/or suppressed the material facts and therefore he cannot be continued in service because such an employee cannot be relied upon even in future, the employer cannot be forced to continue such an employee. The choice/option whether to



continue or not to continue such an employee always must be given to the employer. At the cost of repetition, it is observed and as observed hereinabove in catena of decision such an employee cannot claim the appointment and/or continue to be in service as a matter of right.”

44. Before parting, we may add that there has to be strict obedience towards such type of disclosure by anyone seeking employment in disciplined forces and, invariably, there is no room for the one who endeavours to seek employment by concealing material fact about his criminal antecedents.

45. Resultantly, the petition stands dismissed.

MANOJ JAIN, J

SANJEEV SACHDEVA, J

DECEMBER 12, 2023/st

भारतमेव जयते