

Form No.J(2)

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

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 1999 of 2011

**Sk. Kabir Mahammad
Versus
The Union of India & Ors.**

For the petitioner : Ms. Sutapa Sanyal
Mr. Debrup Bhattacharjee

For the respondents : Ms. Chandreyi Alam

Heard on : 04.03.2024, 11.03.2024, 08.04.2024 &
14.06.2024.

Judgment on : 13th September, 2024.

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, *inter alia*, challenging the order of removal of the petitioner from service dated 10th May, 2010, the order passed by the appellate authority dated 24th August, 2010 and the order passed by the revisional authority dated 27th December, 2010 with a further prayer for a direction to reinstate the petitioner in service.
2. The petitioner claims to be from a rural background. In order to earn his livelihood, he had got himself enrolled in the Central Reserve Police Force (hereinafter referred to as the "CRPF") on 29th June, 2007 on the basis of a letter of appointment of even date. Despite the

petitioner having an unblemished record, while in service he was served with a memorandum of charge dated 16th December, 2009. The particulars of the Articles of charge leveled against the petitioner are extracted hereinbelow:

“ARTICLE-I

That No. 075106212 CT/GD Sk. Kabir Mohammad 41 Bn CRPF while functioning as such is found to have committed a grave misconduct/fraud on public in that when he was not eligible for appointment to Central Reserve Police Force, he managed to be recruited at CT/GD by concealing the facts about his involvement in civil case No. 332/05 u/s 147 Cr.P.C. in the court of S.D.J.M., Haldia, Distt. Purva Medinipur over the issue of land dispute during 2005. Thus, he was committed an offence which is punishable under section 11(1) of CRPF Act 1949 read with rule 27(a) of the C.R.P.F. Rule 1955 and relevant GOI/Department instructions.

ARTICLE-II

That No. 075106212 CT/GD Sk. Kabir Mohammad 41 Bn CRPF while functioning as such is found to have committed an act of misconduct in that while seeking entry into the force as a CT/GD, he gave false declaration in verification roll that “No case is pending against him in court of law” knowing that, furnishing of false information in the verification roll would be a disqualification and is likely to render him unfit for the employment under the Govt. He suppressed the fact till it was detected by the competent authority of the Force through verification from the D.M., Purva Medinipur and the S.P., DIB, Purva Medinipur, (West Bengal) which is punishable u/s 11(1) of

C.R.P.F. Act 1949 read with rule 27(a) of the C.R.P.F. Rules 1955 and relevant GOI/Department instructions.”

3. The same was followed by a regular enquiry and upon completion of such enquiry, the enquiry report was forwarded to the petitioner on 22nd April, 2010.
4. According to the petitioner the enquiry officer after conducting the enquiry, without properly appreciating the statement of witnesses and other evidences available on record, had prepared the report. The enquiry ultimately culminated in awarding a punishment of removal from service, such fact would corroborate from the office order dated 10th May, 2010. Although, the petitioner had preferred an appeal, the appellate authority by its order dated 24th August, 2010 rejected the said appeal. The revisional application filed by the petitioner met with the same fate. The petitioner however, contends that the primary charge against the petitioner was with regard to alleged concealment about the factum of his involvement in a civil case bearing no. 332/05, under Section 147 of the Code of Criminal Procedure, 1973, in the Court of learned Sub-Divisional Judicial Magistrate, Haldia, Purba Medinipur, in connection with a land dispute. It is also the petitioner's contention that in order to verify the petitioner's character and antecedents, a verification roll was sent to the District Magistrate, Purba Medinipur, who had forwarded his report dated 25th June, 2008, and had informed that the

petitioner was involved in a civil case bearing no. 332/05 under Section 147 of the Code of Criminal Procedure, 1973.

5. Ms. Sanyal, learned advocate appearing on behalf of the petitioner, submits that the proceeding for which the petitioner was removed from service is a proceeding under Section 147 of the Code of Criminal Procedure, 1973. The same contemplates passing a preventive order, in the event there is any likelihood of breach of peace with regard to any dispute concerning right of use of land or water. The petitioner is alleged to have suppressed the pendency of this particular case. She submits, the petitioner was not the only accused, but had been arraigned as an accused along with other persons. Further by drawing attention to the order-sheet of the aforesaid proceeding, she would submit that the aforesaid proceeding was dropped on 11th March, 2008 even prior to the report prepared by District Magistrate on 25th June, 2008. According to her the petitioner had categorically stated in course of enquiry that the petitioner was not aware with regard to the institution of the aforesaid proceeding. The disciplinary authority, the appellate authority and the revisional authority, by ignoring such contention had passed their respective orders. By referring to the judgment delivered in the case of ***Avtar Singh v. Union of India & Ors.***, reported in **(2016) 8 SCC 471**, she would submit that the Hon'ble Supreme Court by taking note of diverse authorities, especially in relation to the impact of suppression or submission of false information

while obtaining employment had been, *inter alia*, pleased to observe that while cancelling candidatures or for terminating the services of the employee on the ground of suppression, though the person who had suppressed the material information cannot claim unfettered right for appointment or continuity in service, the case is to be dealt with in a reasonable manner objectively, having due regard to the facts. By further placing reliance on paragraph 38.4.1, of the above judgment she submits that this is a case where the employer ought to have ignored the suppression / false information, even if the information furnished by the petitioner is accepted to be false and was within the knowledge of the petitioner.

6. In support of her aforesaid contention, she has placed reliance on the following judgments:

- i. ***Mohammad Imran v. State of Maharashtra***, reported in **(2019) 17 SCC 696**,
- ii. ***Satish Chandra Yadav v. Union of India & Ors.***, reported in **(2023) 7 SCC 536**,
- iii. ***Ravindra Kumar v. State of U.P. & Ors.***, reported in **2024 SCC OnLine 180**.

She also placed reliance on the judgment delivered by this Court in the case of ***Sujit Tikader v. Union of India & Ors.***, reported in **2024 SCC OnLine Cal 1280** and ***Sankar Mandal v. Union of India & Ors.***, reported in **2024 SCC OnLine Cal 1270**.

7. Having regard to the above she would pray for reinstatement of the petitioner in service consequent upon setting aside of the order of punishment which had been irregularly affirmed by the appellate authority as well as by the revisional authority.
8. *Per contra*, Ms. Alam, learned advocate appearing on behalf of the respondents would submit that in the verification role itself, the petitioner was put on notice that the furnishing of false information or suppression of any factual information would be a disqualification and would likely to render the candidate unfit for employment. Admittedly, in this case the petitioner had furnished false information or in the alternative, suppressed information as regards pendency of the proceeding. By placing reliance on Rule 14(b) of the Central Reserve Police Force Rules (hereinafter referred to as the “said Rules”) she would submit that the Rule required every newly recruited employee, to furnish factual information about himself. By referring to the judgment delivered in the case of ***Daya Shankar Yadav v. Union of India & Ors.***, reported in **(2010) 14 SCC 103**, she would submit that the Hon’ble Supreme Court had observed that a candidate would be required to answer to questions truthfully and fully, and any misrepresentation or suppression or false statement would by itself demonstrate a conduct or character unbefitting for *uniformed* security service. She would submit that there is no irregularity on the part of the respondents in expecting the minimum standard from a person who would be enrolled in the *uniformed*

service. In answer to question no. 12(a) and 12(b) of the verification roll, since the petitioner had furnished false information and had suppressed information, he was show-caused. Although, the petitioner had pleaded guilty of the charges, regular enquiry was held and on being proved guilty of the charges, he was removed from service under Section 11(1) of the Central Reserve Police Force Act, (hereinafter referred to as the "said Act"). There is no irregularity on the part of the respondents in dismissing the petitioner from the service. No interference in this case is called for.

9. Heard the learned advocates appearing for the respective parties and considered the materials on record.
10. As would appear from the sequence of events stated hereinabove, the petitioner was dismissed from service upon holding a regular enquiry on account of the petitioner concealing his involvement in the civil case no. 332/05, under Section 147 of the Code of Criminal Procedure. The appeal filed by the petitioner did not find favour with the appellate authority. The revisional authority also did not interfere. A perusal of the M.P. Case No. 332/05 which was filed before the Court of the learned Sub-Divisional Judicial Magistrate, Haldia, Purba Medinipur under Section 147 of the Code of Criminal Procedure would demonstrate that the same was filed by one Sk. Akmam, against one Sk. Giasuddin and seven others wherein the petitioner was also arrayed as an opposite party no.6.

11. From the order-sheet of the case no. 332/05, it would transpire that on 21st August, 2007 upon perusal of the report of the Officer-in-Charge of the local police and the BL & LRO, it appears that from 6th November, 2007 the complainant had lost interest in the matter and remained absent ultimately, the proceeding was dropped on 11th March, 2008. From the nature of proceeding, it would appear that the same was a dispute concerning right of use of land or water wherein the petitioner was only a co-accused along with other persons. Admittedly, on the date when the petitioner had been removed from service, the proceeding had already been dropped. Unfortunately, the factum of the proceeding being dropped by the learned Executive Magistrate was not taken into consideration appropriately either by the disciplinary authority, the appellate authority or by the revisional authority. It is true that the employer while removing an employee from service for giving false information may take into consideration his criminal antecedents and has a right to consider continuance of such candidate. It would, however, appear from the judgment delivered by the Hon'ble Supreme Court in the case of **Avtar Singh** (supra) that their lordships by analyzing various decisions on the subject as to whether the employer is bound to consider the factum of acquittal, notwithstanding pendency of a criminal proceeding at the time of verification, *inter alia*, including the suppression of such information, had been pleased to summarize their conclusions in paragraph 38 of such judgment, which is extracted hereinbelow:

“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.”

12. I have also noticed that in the case of **Pawan Kumar v. Union of India**, reported in **2022 SCC OnLine SC 523**, the Hon’ble Supreme Court in paragraph 13 thereof, had categorically come to a finding that mere suppression of material or giving false information in a given case does not authorise the employer to arbitrarily discharge/terminate the employee from service. Similar view has been taken in the case of **State of West Bengal v. Mitul Kumar Jana**, reported in **2023 SCC OnLine SC 1070**. The Hon’ble Supreme Court in the case of **Mohammad Imran** (supra) had reiterated the same by placing reliance on the case of **Avtar Singh** (supra). In somewhat similar set of facts, a Coordinate Bench of this Court in the case of **Sri Sukdeb Mandal v. Union**

of India, in WPA No. 28149 of 2015, had interfered with the order of termination about discharge of the concerned employee from service and although, an appeal was preferred, the Division Bench of this Court in the case of **Union of India v. Sukdeb Mandal** in FMA 1434 of 2022, had held that the learned Single Judge had rightly directed reinstatement of the employee in service in the post of constable at the stage from where he was dismissed/discharged and had consequentially affirmed the said direction.

13. In the present case, having regard to the aforesaid I find that the order of removal from service to be arbitrary, and disproportionate to the misconduct especially since, the same does not take note of the gravity of charge in case no. 332/05. It may, however, be noticed that the order of removal from service was passed by the authority not being aware of the judgment delivered in the case of **Avtar Singh** (supra). It would appear that the Hon'ble Supreme Court in the case of **Avtar Singh** (supra) taking into consideration all eventualities, including the constitutional goal and the chance of reformation afforded to young offenders in suitable cases, the objective determination for continuation of employment to suitable candidates and the yardstick applicable, considering the nature of offence and the sensitivity of the post, had summarised its conclusion in paragraph 38 of the judgment.

14. Taking note of the aforesaid and further having noticed that apart from the failure of the petitioner to disclose the relevant information in its verification roll as regards pendency of the case no. 332/05, there is no other conduct for which the petitioner was removed. In my view, the aforesaid non-disclosure of information cannot form the sole ground for the competent authority to remove the petitioner from service. The petitioner was not charged with any heinous crime. The allegations leveled against the petitioner was trivial. This apart the entire proceeding which was preventive in nature, had been dropped much prior to removal of the petitioner from service. In view thereof, I have no doubt in my mind that the order of removal from service cannot be sustained. However, since, the ultimate consideration vests with the employer though, such decision requires to be taken judiciously, I direct the respondent no.3 to review its aforesaid decision in the light of the observation made herein and to reinstate the petitioner in service. Upon review and reinstatement, his absence from duty shall be regularized as extraordinary leave without break in service. However, the question of backwages shall be considered by the respondents in accordance with law subject to the petitioner furnishing an affidavit that he had remained unemployed during the aforesaid period. If the petitioner affirms and submits an affidavit claiming he was not gainfully employed or was not receiving adequate remuneration during the above period, the

respondents shall pay 75 percent of the back wages along with all incidental benefits as payable to the petitioner by passing a reasoned order. The aforesaid decision must be taken by the respondent no.3 within four weeks from the date of communication of this order and the same must be communicated to the petitioner by passing a reasoned order.

15. With above observation and direction, the writ petition stands disposed of.

16. There shall be no order as to costs.

17. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance with the necessary formalities.

(Raja Basu Chowdhury, J.)