

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA No. 9727 of 2016

**Sujit Tikader
Versus
The Union of India & Ors.**

For the petitioner : Mr. Achin Kr. Majumder

For the respondents : Mr. Sanajit Kr. Ghosh

Heard on : 20th November, 2023.

Judgment on : 5th February, 2024.

Raja Basu Chowdhury, J:

1. The present writ petition has been filed challenging the order dated 5th April, 2016, whereby the appointment of the petitioner for the post of Constable in the Railway Protection Force/ Eastern Railway had been forfeited, *inter alia*, on the ground of non-disclosure of a pending police case in the attestation form dated 11th June, 2014 submitted during the *viva voce*. The petitioner had participated in a recruitment process vide Employment Notice No. 01/2011, issued by the Railway Protection Force/ Eastern Railway for the post of Constable. Having become successful, the petitioner was called for *viva-voce* on 13th June, 2014 and in terms of the call letter issued

by the Railway Protection Force of even date the petitioner had duly appeared before the authorities. Having succeeded in the *viva voce*, the petitioner was called for training of Constable Recruits in Railway Protection Force vide notice dated 15th October, 2014 and was required to report to the Railway Protection Force Training Centre, Domohani, Mainagudi, New Jalpaiguri, West Bengal along with other successful candidates. It is the petitioner's case that he had successfully completed the training and was waiting for his posting orders when he received a discharge letter dated 5th April, 2016, thereby, discharging the him from enlistment for the post of Constable in Railway Protection Force/ Eastern Railway, *inter alia*, on the ground of providing false declaration in the attestation form dated 11th June, 2014. After receipt of the aforesaid notice, the petitioner had made a representation on 25th April, 2016 which was not adhered to. Thereafter, the present writ petition has been filed on 20th May, 2016.

2. Mr. Majumder, learned advocate representing the petitioner submits that the respondents had mechanically dismissed the petitioner from service without taking note of the order of acquittal passed in the criminal case.
3. By drawing attention of this Court to the judgment and order dated 29th September, 2015, passed by the Assistant Sessions Judge, Ranaghat, submits that since, the prosecution had failed to prove that the accused persons had committed any offence, the learned

Assistant Sessions Judge was, *inter alia*, pleased to conclude that the accused persons are not guilty of the charges levelled against them. The petitioner was only a co-accused and in connection with a false complaint lodged against the petitioner regarding a dispute with his neighbor and on the basis of the aforesaid a criminal case was proceeded with.

4. By referring to the charges it is submitted that save and except the charge under Section 308 of the Indian Penal Code, other charges are of trivial nature. Admittedly, none of the charges, *inter alia*, including the charge under Section 308 of the Indian Penal Code could be proved. The said charge under section 308 also turned out to be a false charge. The petitioner had, in effect, been honorably acquitted. The dismissal of service of the petitioner amounts to violation of Articles 14, 19(1)(g) and 21 of the Constitution of India. The suppression/misrepresentation complained of against the petitioner should be treated to be a mere omission and nothing more. In support of the aforesaid contention, he has relied on the following judgments: -

- (i) An unreported judgment delivered by a Coordinate Bench of this Court in the case of ***Sri Sukdeb Mandal v. Union of India & Ors.*** in **WPA No. 28149 of 2015**;
- (ii) The unreported judgment delivered by a Division Bench of this Court in **FMA No. 1434 of 2022** arising out of WPA

No. 28149 of 2015 in the case of ***Union of India & Ors. v.***

Sri Sukdeb Mandal;

(iii) ***Avtar Singh v. Union of India & Ors.***, reported in **(2016)**

8 SCC 471;

(iv) ***Mohammed Imran v. State of Maharashtra & Ors.***,

reported in **AIR 2018 SC 4895;**

(v) ***Pawan Kumar v. Union of India & Anr.***, reported in

2022 SCC OnLine SC 532,

(vi) ***State of West Bengal & Ors. v. Mitul Kumar Jana,***

reported in **2023 SCC OnLine SC 1070.**

5. In the facts noted above it is submitted that the present writ petition should be allowed and the respondents should be directed to reinstate the petitioner in service by setting aside the order of discharge.

6. *Per contra*, Mr. Ghosh, learned advocate appearing for the respondents, by placing before this Court the records of this case, submits that this is a case of deliberate and willful suppression of fact. The petitioner as on the date of filling up the Attestation Form was conscious and aware that a criminal proceeding was pending. Notwithstanding knowledge of such criminal proceeding, the petitioner had deliberately suppressed the same in the attestation form. The very act of suppression of the criminal case pending against the petitioner while filling up the attestation form amounts to furnishing false declaration and misrepresentation. The attestation

form specifically provided for giving a declaration as to criminal antecedents of the candidate. The petitioner deliberately suppressed and misrepresented information by not declaring the criminal case pending against him. He submits that dishonesty should not be permitted to bear the fruit and benefit to those persons who have misrepresented themselves. In support of his afford contention, he has placed reliance on the case of ***Devendra Kumar v. state of Uttaranchal***, reported in **(2013) 9 SCC 363**.

7. By referring to Rule 52 of the Railway Protection Force Rules, 1987 (hereinafter referred to as the “said Rules”), he submits that on selection of a recruit the authorities are empowered to verify his candidature. It is while carrying out such verification that the respondents had been able to ascertain the deliberate suppression made by the petitioner. As such, on the basis of the aforesaid and in terms of the Railway Board’s letter dated 23rd April, 2005 which declares that a false declaration in the attestation form shall amount to unfitness of candidate for appointment in the Force, had discharged the petitioner in terms of Rule 67.2 of the said Rules. There is no irregularity on the part of the authorities.
8. While distinguishing the judgments relied on by Mr. Majumder, he submits that in none of the cases a person who is charged with a heinous or a serious offence has been let off. Admittedly, in the case of ***Avtar Singh*** (*supra*), the Hon’ble Supreme Court in no uncertain terms has recorded that even if a person is acquitted in a case

which involves moral turpitude or offence of heinous/serious nature it is open to the authorities to take appropriate decision as regards continuance of such employee.

9. Having regard to the aforesaid it was well within the domain of the employer to consider whether or not to take the petitioner in employment. The respondents cannot be faulted for having discharged the petitioner from service.
10. In any event, it is submitted that the judgments relied on by Mr. Majumder in case of **Sri Sukdeb Mandal** (*supra*) are otherwise distinguishable on facts. Not only the allegations in the criminal case were found to be trivial in nature but in the aforesaid case the respondents were primarily called upon to decide the suitability of the candidate in the light of the decision rendered in the case of **Avtar Singh** (*supra*). He submits that having regard to the aforesaid the case of the petitioner may also be remanded to the authorities for a decision in the matter, in the light of the judgment delivered in the case of **Avtar Singh** (*supra*).
11. Heard the learned advocates appearing for the respective parties and considered the materials on record, including the records of this case which have been produced by the respondents. As it is apparent from the sequence of events narrated hereinabove, the petitioner was discharged vide a letter dated 5th April, 2016 on account of non-disclosure of a pending police case in the attestation form dated 11th June, 2014 submitted during *viva voce*. Since,

according to the respondents the aforesaid amounted to a false declaration the competent authority in terms of Rule 67.2 of the said Rules had discharged the petitioner from enlistment for the post of constable in RPF/Eastern Railway, with immediate effect. Records, however, reveal that the writ petitioner was charged under Section 448, 308, 325, 427 and 34 of the Indian Penal Code in connection with Hasikhali P.S. Case No. 73 of 2010 dated 25th February, 2010 wherein, the writ petitioner was a co-accused. In connection with the aforesaid police case, a Sessions Trial No. 17 (9) of 2012 was conducted by the Court of the Assistant Sessions Judge, Ranaghat. By a judgment and order dated 29th September, 2015, by observing that it is difficult to put any credence upon the evidence produced by the prosecution and further in absence any injury report and the place of occurrence having not been established, and the time, date and the manner of incident not being explained including the delay in lodging the FIR, had concluded that the accused persons are not guilty of the charges leveled against them and accordingly, by acquitting the accused persons discharged them from bail bonds by setting them at liberty. Admittedly, as on the date the petitioner was discharged by an office order dated 5th April, 2016 the petitioner had been acquitted. Unfortunately, the factum of the acquittal of petitioner was not taken into consideration by the respondents while issuing the order of discharge. It is true, that an employer while passing an order of

discharge/termination from service or cancelling the candidature for giving false information may take into consideration the criminal antecedents and has a right to consider such candidate. The employer, however, cannot be compelled to appoint such a candidate with criminal antecedents. 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 proceedings at the time of verification, *inter alia*, including suppression of such information had been pleased to summarize the discussion 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** (*supra*), the Hon’ble Supreme Court in paragraph 13 thereof, had categorically come to a finding that mere suppression of material or false information in a given case does not authorize the employer to arbitrarily discharge/terminate the employee from service. Similar view has been taken in the case of **Mitul Kumar Jana** (*supra*). The Hon’ble Supreme court in the case of **Mohammed Imran** (*supra*) had reiterated had placing reliance on the case of **Avtar Singh** (*supra*) holding that although, empanelment creates no right to appointment there cannot be any arbitrary denial after empanelment as well. The unreported judgment delivered by the Coordinate Bench of this Court in the case of **Sri Sukdeb Mondal** (*supra*) had in a similar set of circumstances had interfered with the order of termination/discharge of the employee concern from service and although, an appeal was preferred, the Division Bench of this Court in the case of **Union of India & Ors. v. Sri Sukdeb Mondal** (*supra*) had in fact 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/discharge from his employer and had consequentially affirmed the said direction.

13. In the present case having regard to the aforesaid, I find that the order of discharge was passed by the competent authority by overlooking the order of acquittal of the petitioner. It may however, be noticed that when the order of discharge was passed the authority was not aware of the judgments delivered in the case of **Avtar Singh** (*supra*), the case of **Pawan Kumar** (*supra*) and the other judgments delivered by this Court. In so far as the judgement delivered in the case of **Devendra Kumar** (*supra*) is concerned, factually, the said judgement is distinguishable. Further, the judgement delivered in the case of **Avtar Singh** (*supra*) takes into consideration all eventualities, including the constitutional goal and the chance of reformation afforded to young offenders in suitable cases and 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.
14. In view thereof, I was prompted to simply refer the matter back to the authority, however, from the records of this case that have been produced, I find that by communication in writing dated 8th November, 2023 a note had been prepared by the Staff Officer to IG cum PSCS/RPF Eastern Railway wherein, *inter alia*, the authority had observed as follows:

“it is to apprise that Sri Sujit Tikader S/O Sri Nimai Tikader was provisionally selected for the post of constable in RPF vide Emp. Notice No. 01/2011 and sent to RPF Training Centre, Domohoni, Mangudi, New Jalpaiguri, West Bengal for training on 01.11.2014 pending verification of his antecedents and character. He filled up attestation form for verification of antecedents and character at the time of viva-voce on 11.06.2014 wherein he did not mention registration of any case in column No. 12. The attestation form was verified through DM/Nadia who forwarded the report of Hanskhali Police Station wherein it was mentioned that a Police Case No. 73/2010 dated 25.02.2010 U/S 448/325/427/34 IPC has been registered against the above named recruit and Police has submitted charge sheet against him vide No. 388/10 dated 29.10.2010 in the Ld. Court of Addl. Chief Judicial Magistrate/Ranaghat U/S 448/325/308/427/34 IPC. The case was subjudice in the Ld. Court of Asstt. Session Judge/Ranaghat.

Based on the above report of DM/Nadia, Sri Sujit Tikader was discharged vide No. SC.30/65/5-E(Const. Rectt.)/11-12 dated 05.04.2016 from enlistment for the post of Constable in RPF/Eastern Railway in terms of Rule 67.2 of RPF Rules 1987 for “False Declaration”.

Being aggrieved with the said discharge order, Sri Sujit Tikader filed Writ Petition No. 9727 of 2016 before Hon’ble High Court, Kolkata.

Sri Sujit Tikader in his representation dated 25.04.2016 has stated that it was not clear that a legal proceeding was going against him in the Court of

Assistant Session Judge, Ranaghat, Nadia vide Sessions Case No. 58(4) of 2011.

The information regarding criminal pending against Sri Sujit Tikader came to notice on verification of the character and antecedent verification. The seriousness of the crime in the Sessions Case No. 58(4)/2011 u/s 448,308, 325, 427 & 34 IPC have been examined and it is seen that the sections except 308 IPC are not grievous/serious in nature.

The Court of Assistant Sessions Judge, Ranaghat, Nadia in its judgment order dated 29.09.2015 has mentioned that the accused persons are not found guilty of the charges u/s 448/308/325/427/34 of the IPC. They are acquitted of the said charges u/s 235(1) of Cr.P.C.

The records available at this office are forwarded herewith for further submission at Hon'ble High Court Calcutta through engaged Counsel, pleas."

15. Taking note of the observation made in the aforesaid communication and further having noticed that apart from the failure of the petitioner to disclose the relevant information in its verification form as regards pendency of a criminal case wherein he was later acquitted, there is no other conduct for which the petitioner was discharged. In my view the aforesaid non-disclosure of information cannot form the sole ground for the competent authority of the respondents by citing Rule 67.2 of the said Rules, to discharge the petitioner by the stroke of a pen. It may be noted

that the petitioner was not charged with any heinous crime. All the charges excepting the charge under Section 308 of the Indian Penal Code appears to be trivial. Although, a charge under Section 308 of Indian Penal Code has been included in the charges, from the judgment delivered in the criminal trial on 29th September, 2015 it would appear that the learned Assistant Sessions Judge, had specifically concluded that there was no credible evidence produced by the prosecution. No injury report was produced. There was no alamat in the scenario. This apart the place of occurrence also could not be established. The date, time and manner of the incident also could not be explained. Further there was no explanation as to why the FIR was lodged after a considerable delay. As such it clear from the above that while acquitting the petitioner there was nothing on record to indicate anything against the petitioner insofar as the charge under Section 308 of the IPC is concerned. In view thereof, I have no doubt in my mind that the order of discharge 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. 2, to review the aforesaid decision of discharge in the light of the observations made herein and to reinstate the petitioner. Upon the reinstatement the absence of the petitioner from duty shall be regularized as extraordinary leave without break in service, however, the question of back wages, if any, shall considered by the respondents in accordance with law,

subject to the petitioner furnishing an affidavit that he had remained unemployed during the above period. The aforesaid decision must be taken by the respondent no. 2, within a period of four weeks from the date of communication of this order and the same must be communicated to the petitioner by passing a reasoned order.

16. With above observation/direction, the writ petition stands **disposed** of.

17. There shall be no order as to costs.

18. Office is directed to return the original records to the learned Advocate representing the respondents against a proper receipt to be retained in the file.

19. Urgent Photostat certified copy of this order, if applied for, be made available to the parties on priority basis upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)