

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

FMA 982 of 2023
with
IA No. CAN 1 of 2023
Sri Partha Biswas
-Versus-
Union of India & Others

For the Appellant : *Mr. Pritam Chowdhury,*
Mr. Dipankar Saha.

For the Respondents : *Mr. Saikat Basu.*
Ms. Ananya Adhikary.

Hearing is concluded on : *18th January, 2024.*

Judgment On : **13th February, 2024.**

Tapabrata Chakraborty, J.

1. The present appeal has been preferred against a judgment dated 19th September, 2023 passed by the learned Single Judge in a writ petition, preferred by one Partha Biswas (in short, Partha), being WPA 10531 of 2021

challenging *inter alia* an order of discharge dated 26th February, 2021 passed by the respondent no.4.

2. Shorn of unnecessary details, the facts are that Partha participated in a selection process for appointment to the post of Constable (Band) under the Railway Protection Force (hereinafter referred to as RPF). He emerged to be successful and submitted the attestation form on 14th March, 2020. Thereafter, he was sent for basic training on 7th December, 2020 and upon successful completion of the same, while he was undergoing further professional training at Police Training Academy in Jaipur, he was abruptly released from such training *vide* memo dated 9th April, 2021. Subsequent thereto, he was served with an order of discharge dated 26th February, 2021 issued by the respondent no.4 alleging that he had suppressed factual information in the attestation form and in a self-declaration dated 31st December, 2020 and referring to a report dated 14th January, 2021 of the Deputy Inspector General of Police as sent by the District Magistrate *vide* memo dated 9th February, 2021. Challenging the discharge order a legal notice was sent to the respondent no.4 on 11th March, 2021 and Partha also submitted an application under the provisions of the Right to Information Act, 2005 on 21st April, 2021. In response thereto, he was supplied the documents, as sought for. Thereafter, Partha submitted a representation dated 22nd April, 2021 through his learned advocate to the respondent no.4 for reinstatement stating *inter alia* that due to a *bona fide* mistake the particulars of the pending criminal case were not furnished. The said criminal case being Kalna Police Station Case No.563/16 dated 3rd

December, 2016 under Section 498A/307/379/34 of IPC was registered on the basis of a complaint lodged by Partha's aunt, namely, Sujata Sarkar and upon completion of investigation, charge sheet dated 31st July, 2021 was submitted under Section 498A/323/34 of IPC.

3. Mr. Chowdhury, learned advocate appearing for appellant/Partha submits that there was a *bona fide* mistake on the part of the appellant in answering the question as to whether he had been ever prosecuted as 'No' in clause 15 (i) (c) of the attestation form and in not furnishing the number of the criminal case which he had stated to be pending under clause 15 (i) (d) though the nature of pending criminal case was disclosed by him under clause 15 (ii) of the attestation form stating that '*the troubles of my family have been falsified and I am innocent. Case pending*'. For such omission, the employer could not have arbitrarily discharged him from service. He was of a tender age on the date of the alleged incident. He along with his family members were illegally roped in. No specific overt act was attributed to him in the complaint and he also did not suffer incarceration. The order sheets of the said criminal case would reveal that not even a single witness has been examined and the matter is pending for more than five years. Without considering such facts, the respondent no. 4 in an arbitrary manner passed the order of discharge.

4. He argues that Partha had neither given any false information nor had he suppressed any material fact. The learned Judge erred in law in observing that '*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' without taking into consideration the fact that in clause 15 (ii) of the attestation form, he categorically disclosed the nature of the case stating that *'the troubles of my family have been falsified and I am innocent. Case pending'*.

5. He argues that the learned Judge ought to have appreciated that the respondent no. 4 in the order of discharge erroneously arrived at a finding that the appellant had suppressed the factual information of *'the registration of the criminal case against him'*. There was in fact no suppression of information or submission of false information since the appellant in clause 15 (i) (d) of the attestation form stated that a criminal case was pending against him. Non-disclosure of the number of the pending criminal case ought not to have been construed as a deliberate intent on the part of the appellant to mislead the respondents.

6. Drawing our attention to the declaration in the attestation form, he submits for arriving at any finding, the particulars declared by the incumbent in the said form are required to be taken into account and no reliance can be placed on any other document. While passing the order of discharge, the respondent no.4 placed reliance upon a declaration in vernacular purportedly signed by Partha on 31st December, 2020. Prior thereto, the attestation form was filled up on 14th March, 2020. Such contradiction cannot be construed to be fatal inasmuch as the fact of pendency of the criminal case was disclosed by the appellant coupled with the particulars that *'the troubles of my family have been falsified and I am*

innocent. Case pending'. Such issue, as urged, was glossed over by the learned Judge and no finding was returned on the same and such infirmity warrants interference in the present appeal. In support of the arguments, reliance has been placed upon the judgments delivered in the cases of *Avtar Singh –vs- Union of India and Others*, reported in (2016) 8 SCC 471 and *Pawan Kumar –vs- Union of India & Anr.*, reported in 2022 LiveLaw (SC) 441.

7. Referring to the object of the Railway Protection Force Act, 1957 (hereinafter referred to as the said Act) and Rules 53 and 57 of the Railway Protection Force Rules, 1987 (hereinafter referred to as the said Rules), Mr. Basu, learned advocate appearing for the respondents submits that in a discipline force, strict norms are needed to be applied. To avail appointment in police service, the candidate must be having an impeccable character, integrity and rectitude. Partha was involved in a criminal proceeding on the date he filled up the attestation form and though the criminal case was pending against him, he did not furnish the full particulars of the same in clause 15(ii) and wrongly answered the question as to whether he had ever been prosecuted in clause 15(i) (c) as 'Yes'. There had thus been a deliberate suppression of material fact and as such the competent authority rightly issued the order of discharge dated 26th February, 2021 and there is no infirmity in the same.

8. Referring to the '*warning*' given in the attestation form, he submits that having made misleading and false statement, the appellant cannot claim any equity. It is not a case that upon tendering evidence and full-fledged hearing, Partha was honourably acquitted. The case is still pending.

He does not come within the parameters, as detailed in paragraph 38 of the judgment delivered by the Hon'ble Supreme Court in the case of *Avtar Singh (Supra)*, since in the attestation form he did not furnish the particulars of the criminal case and after stating that a criminal case is pending, he submitted a self-declaration dated 31st December, 2020 stating that no criminal case is pending against him. The judgment delivered in the case of *Pawan Kumar (Supra)* is also thus distinguishable on facts.

9. He contends that verification of criminal antecedent is one of the important criterions to test whether the selected candidate is suitable for the post and as to whether it was desirable to appoint such a person. In exercise of the authority conferred under Rule 67.2 of the said Rules, the respondent no.4 rightly passed the order of discharge detailing the reasons and the said order is neither arbitrary nor does it suffer from any procedural infirmity. In the said conspectus, the learned Single Judge rightly refused to exercise discretion in favour of Partha.

10. In reply, Mr. Chowdhury submits that the order of discharge issued in purported exercise of Rule 67.2 of the said Rules, does not reflect any application of mind whatsoever. By merely quoting some clauses of the attestation form and incorporating a purported declaration, Partha had been discharged. Such act, being *ex facie* arbitrary and unreasonable, is not sustainable in law.

11. We have heard the learned advocates appearing for the parties at length and we have given our anxious consideration to the facts and circumstances of the case.

12. The term '*serious crime*' connotes a crime beyond the ordinary, inviting a more serious major punishment than what may be given in the case of a minor omission. If the crime is grave, the punishment shall have to be major. An act which could be viewed as a '*serious crime*' may take within its comprehension acts of moral turpitude, corruption or misappropriation. The very nature of offence or misconduct alleged against Partha for which the proceeding has been initiated and was pending on the date he filled up the attestation form, thus, becomes relevant. The case pending against Partha is u/s 498A/323/34 of IPC. Thus, the nature of such offences cannot by any stretch of imagination be construed to be a '*serious crime*'. In the case of *Avtar Singh (supra)*, the Court had observed that in respect of offences trivial in nature, the employer is under an obligation to consider as to whether the suppression of fact or false information can be condoned. In the present case, however, there had been no such consideration and Partha's claim had been mechanically rejected.

13. The offences alleged are trivial in nature. No specific overt act has been attributed to Partha. The complaint was lodged by her aunt and Partha's name appears to have been mechanically inserted. The case though initially registered under Section 498A/307/379/34 of IPC, Sections 307 and 379 were deleted upon completion of investigation. The order sheets of the said case would reveal that not a single witness had been examined and

the matter is pending for more than five years. Save and except the Kalna Police Station Case No.563/16 dated 3rd December, 2016, Partha had no antecedents and there was nothing against him on record in I.B. West Bengal, as would be explicit from the memo dated 9th February, 2021 issued by the District Magistrate, Nadia.

14. The contents of a judgment need to be considered together and not in isolation. A particular clause cannot be taken up and highlighted. Considering the contents of paragraph 38, the Hon'ble Supreme Court in the case of *Pawan Kumar (supra)* observed *inter alia* that '*all matters cannot be put in a straitjacket and a degree of flexibility and discretion vests with the authorities, must be exercised with care and caution taking all the facts and circumstances into consideration, including the nature and type of lapse*'. In the said conspectus, the argument of Mr. Basu that the recourses detailed under paragraph 38 of the judgment of *Avtar Singh (supra)* are not applicable in the present case, is not acceptable to us.

15. In the attestation form, the appellant disclosed that a criminal case was pending against him but mistakenly answered clause 15 (i) as 'No' and omitted to disclose its registration number. However, in clause 15 (ii) as regards the nature of the case he stated that '*the troubles of my family have been falsified and I am innocent. Case pending*'.

16. Clause 15 (ii) of the attestation form runs as follows:

'If the answer to any of the above mentioned question is 'Yes' give full particulars of the case/ arrest/ detection/ 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: '

17. A scrutiny of the said clause would reveal that '*full particulars*' have been sought for in respect of separate and specific eventualities and all the said eventualities are separated by a slash mark. A mark '/' (slash) is used typically to denote 'or'. The requirement is thus to give the particulars of any one of the eventualities. Having stated the nature of the case pending, the appellant has given a complete answer to the question. Non-disclosure of the number of the criminal case can at best be an omission but cannot be construed to be an act of deliberate suppression of factual information or any false information. The appellant has not practised any fraud. The failure to furnish the registration number of the criminal case and an error in answering clause 15 (i) (c) were also not backed with any dishonest motive and as such the order of discharge suffers from the vice of arbitrariness and the refusal of the respondent no.4 in exercising discretion in favour of the appellant cannot be construed as reasonable. The learned Single Judge, in our opinion, erred in proceeding on the basis that the appellant is guilty of suppression of factual information.

18. For the reasons discussed above, the order of discharge dated 26th February, 2021 passed by the respondent no.4 and the judgment impugned in the present appeal are set aside.

19. The respondents are directed to reinstate the appellant in service in the post of Constable (Band), RPF at the stage from where he was discharged within a period of eight weeks from the date of communication of this judgment.

20. With the above observations and directions the appeal and the connected application are disposed of.

21. There shall, however, be no order as to costs.

22. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)