

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE ARINDAM MUKHEREJEE.

W.P.A 4068 of 2016

With

CAN 1 of 2021

MITHU HOQUE.

VS.

UNION OF INDIA & OTHERS.

For the Petitioner : Mr. Md. Ahsanuzzaman
.....Advocate

For the Union of India : Mr. Amal Kumar Datta
.....Advocate

Last Heard on : 28.03.2025.

Judgment on : 11th April, 2025.

Arindam Mukherjee, J.:

1. The petitioner has sought for reinstatement in service to the post of Constable (Bugler) in Central Reserve Police Force (in short 'CRPF') after quashing the orders dated 3rd August, 2015 and 15th October, 2015 passed respectively by the Appellate Authority upholding the orders of striking off the name of the petitioner from the roster of the unit. The order of the Appellate Authority is at page 41 of the writ petition.
2. The petitioner had been provisionally selected for the post on the basis of recruitment held at Group Centre, CRPF, Siliguri, West Bengal. The petitioner as per the offer letter was directed to report to Group Centre, CRPF, Siliguri, West Bengal. If the petitioner accepted the conditions mentioned therein.
The petitioner duly reported at the venue prior to the last date fixed in the offer letter for reporting.
3. The writ petition was dismissed at the threshold on 14th March, 2016. The petitioner preferred an appeal therefrom which was allowed by a judgment and order dated 4th November, 2019 by setting aside the order dated 14th March, 2016.
4. In the instant case, the petitioner reported at the venue with the offer letter, thereby signifying his acceptance of the terms mentioned therein and was, thereafter, sent to RTC, NEEMUCH for basic training. It, therefor, appears to this Court that there may be further documents issued to the petitioner after he reported at the venue at Siliguri by dint of which he was sent for basic training at RTC, Neemuch. These four documents may elaborate the terms of appointment. No such document is on record.

A. Petitioner's Case in brief:

1. The petitioner, a resident of Dinhata Police Station, District Coochbehar. On being successful in a selection process for recruitment of Constable (Bugler) in CRPF held in the year 2014 was offered appointment. By issuance of a letter dated 28th April, 2014 offering him appointment for the post of Constable (Bugler) in CRPF purely on temporary basis and subject to verification of the testimonials and identity of the petitioner. It was clearly stated in the said offer letter that the appointment is also subject to condition that there is no criminal or civil case pending against the petitioner or that the petitioner's name does not exists in wanted persons' list. The offer letter is at page 31 of the writ petition. The petitioner joined the services on 15th May, 2014 on having been provisionally selected. The petitioner was thereafter, sent for training at the Recruitment Training Centre (in short RTC), Neemuch.

2. Prior to the petitioner participating in the selection process, the petitioner was implicated in a Criminal Case being Dinhata Police Case No. 446 of 2011 dated 11.07.2011 under Sections 365/364/34 of Indian Penal Code, 1860 (in short 'IPC').

3. The petitioner says that his sister Nurshida Khatun was kidnapped by one Aminur Haque, son of Mokbul Hossain of village Piknidhara, Police Station Dinhata, District Coochbehar as a consequence whereof the petitioner's mother initiated a police case against the said Aminur Haque being the Dinhata Police Case No. 402 of 2011 dated 26.06.2011 under Sections 328/366(A)/376/109 of the IPC. As a counterblast and to save himself from arrest the said Aminur Haque filed an application under Section 156(3) of the Code of Criminal Procedure, 1973 (in short 'Crpc'). Pursuant to the orders

passed in the said proceedings, a criminal case was instituted against the petitioner. The criminal case as such according to the petitioner a false case.

4. The petitioner was, subsequently served with a notice of termination on 23rd June, 2015 under the provisions of Rule 5(1) of Central Civil Service (temporary service) Rule, 1965 (hereinafter referred to as 1965 Rules). The termination was with effect from the date of expiry of a period of one month from the date on which the said notice was served.

5. The petitioner on receipt of such notice made an appeal for reinstatement under the provisions of the 1965 Rules which was rejected by an order dated 15th October, 2015.

6. The petitioner's say that due to ignorance of law, the petitioner did not disclose or state about the criminal case against him prior to being terminated from service.

7. The petitioner says that he has been terminated without being afforded any opportunity to represent as a consequence whereof there has been violation of principles of natural justice. The Appellate Authority was informed about the entire fact as to the false criminal case initiated against the petitioner but did not consider the same in proper perspective. The petitioner was, therefore, dismissed from the services illegally and wrongfully without even a disciplinary proceedings initiated against him.

8. The petitioner has strongly relied upon the judgments reported in **2011(4) SCC 644 (Commissioner of Police & Ors. vs. Sandeep Kumar)** to contend that as a young aspirant, the petitioner was keen to get the job and as such non-declaration of the pendency of the criminal case should not be treated as deliberate suppression of fact to eliminate the petitioner from the zone of consideration when he was till then not convicted. The petitioner ought to have been given an opportunity to prove his character and conduct treating him to be innocent as accusation in a criminal case does not mean to be a convict. The allegations against the petitioner are also not that serious. The CRPF authorities instead of giving the petitioner a correctional authority has branded him as criminal although, he has been honourably acquitted. Subsequently, relying upon the judgment reported in **(2023)1 SCC 423 (Pramod Singh Kirar vs. The State of Madhya Pradesh & Ors.)** to contend that on having been honourably acquitted from the criminal case, the petitioner ought to have been reinstated in service.

B. Respondents' case in brief:

1. On behalf of the respondent, it is submitted that the petitioner had suppressed the fact that a criminal case with serious charges were pending much prior to the petitioner applied for his candidature being considered in the subject 'selection process'. The petitioner did not disclose such fact at the time of applying for his candidature to be considered in the said selection process. Subsequent to being selected previously, the petitioner did not disclose about the pendency of the criminal case when he had submitted his Character Verification Document which specifically provided for disclosing as to whether any criminal case is pending against the petitioner.

2. The appointment of the petitioner pursuant to his selection and completion of training was on provisional basis. The character and antecedents of the petitioner was in usual course sent for verification before the District Administration of the District to which the petitioner hails from. The District Administration had informed about the pendency of the criminal case which was not known to the department till such time. The petitioner, therefor, had suppressed the criminal case being pending against him at the time when he participated in the selection process as also at the time when he was inducted in the training and subsequently given provisional appointment and posting despite of having been made specifically aware to disclose any pending criminal proceedings. This is a gross suppression of material fact and as such, his services have been rightly terminated by giving one month's notice. The applicable rules provided for termination in case of provisional appointment when his character and antecedent on having been sent for verification is found to be adverse. There has been as such no violation of principle of natural justice or any illegality in the termination of the petitioner's serves. According to the respondents, it is neither the nature of charges nor subsequent acquittal are paramount, it is the credibility of the candidate in the eyes of the employer which is shaken by such suppression. It is also the case of the respondents that on this ground alone, the writ petition was dismissed on merits by a judgment and order dated 14th March, 2016. The petitioner carried the said order in appeal and the Appellate Court after setting aside the order of dismissal had remanded the matter back for consideration in the context of termination without initiating the disciplinary proceedings and whether there was any provision or column in the form of a declaration as to whether the criminal proceedings was pending against the petitioner. The Division Bench also opined that mere initiation of a criminal proceedings does not mean that the accused is guilty of accusation on the grounds on which such proceedings had been initiated. The question, therefor, is

to be answered with reference to the rules and conditions of service as the existence of a mere accusation does not disentitle the writ petitioner to employment with the respondent authority.

3. Referring to the first issue required to be considered as per the order of the Division Bench, the respondents contended that the form had an option. Assuming without admitting that the form did not contain any specific option or column to state the pendency of the criminal case then also the Character Verification Document which was submitted at the time of joining the training after having selected, clearly required the candidate to inform as to whether any criminal case was pending against him. Admittedly, the petitioner did not state such fact at the time of submitting the Character Verification Document which amounts to suppression of material facts. It is, according to the respondents, not a question of subsequent acquittal but the credibility of the candidate who has suppressed a material fact while entering the services. The petitioner had been selected for being appointed in a Discipline Force and as such credibility of the candidate is of utmost importance. The suppression by the petitioner as aforesaid, therefor, had an impact on the employer as also other members of the Force. The petitioner, therefor, was rightly terminated. Even honourable acquittal does not compel the employer to continue the services of an employee. The petitioner had been acquitted much after his services having been terminated. Even when the writ petition was dismissed on 14th March, 2016, the criminal case was pending. The judgment in the criminal case acquitting the petitioner was passed on 22nd January, 2017. While the termination of service took place in terms of the order dated 3rd August, 2015 which was confirmed by a judgment and order dated 15th October, 2015. Although, at the time when the appeal was disposed of on 4th November, 2019, the Appeal Court did not think it necessary to take into account the petitioner's acquittal. Five years had elapsed

between the petitioner's termination and the disposal of the appeal. The petitioner's age had also increased in the mean time and as such it is not possible as on date to reinstate the petitioner.

4. The respondents had relied upon the judgments reported in **(1996) 11 SCC 605 (DELHI ADMINISTRATION THROUGH ITS CHIEF SECRETARY & ORS. vs. Sushil Kumar)** to contend that antecedents of a candidate is an important criteria in the selection process. By relying upon the judgment reported in **1995 Sup 4 SCC 100 (Union of India & Ors. Vs. M. Bhaskaran** with **Union of India vs. G. Radhakrishnan)** the respondents contend that the petitioner having suppressed the pendency of the criminal case against at the time of applying to participate in the selection process and subsequently at the time of joining the training programme amounts to material suppression which should be construed as having perpetrated fraud on the employer. The petitioner has strongly relied upon the ratio laid down in the judgment reported in **2016 (8) SCC 471 (Avtar Singh Vs. Union of India & Ors.)** to contend that the petitioner should not be directed to be reinstated under any circumstances going by the facts of the instant case. The petitioner has also relied upon the judgment reported in **2023 (7) SCC 536 (Satish Chandra Yadav vs. Union of India & Ors.)** and **2023 (12) SCC 331 (Union of India & Ors vs. Dillip Kumar Mallick)** to submit that the ratio in **Avtar Singh** (supra) has been held in **Satish Chandra Yadav** (supra) and **Pramod Singh** (supra). Referring to the judgments (supra) it is submitted by the respondents that the ratio laid down therein is not applicable to the facts of the instant case for the simple reason that in the case considered by the Hon'ble Supreme Court in **Pramod Simgh Kirar** (supra) the employee had been acquitted at least 7 years prior to his candidature being considered for selection. In the instant case, admittedly, when his services were terminated the criminal case against the petitioner was pending. It is the case of the respondents

that considering the ratio laid down by the Hon'ble Supreme Court in the judgments cited by the respondents, the petitioner should be directed to be reinstated.

C. Analysis and Conclusion:

1. Before discussing the case elaborated the admitted facts which are set out hereinbelow are to be noted.
 - i) The criminal case being Dinhata Police Case No. 446/2011 dated 11th July, 2011 under Sections 365/364/34 of Indian Penal Code had been initiated against the petitioner.
 - ii) The petitioner applied for his candidature being considered against an advertisement issued in the year 2014, when the criminal case was pending against the petitioner. The petitioner was issued the letter offering appointment on 20th April, 2014 when the criminal case was pending against the petitioner. A notice of termination was served on the petitioner on 23rd January, 2015 under the provisions of Rule 5(1) of the 1965 Rules when the criminal case pending. The service of the petitioner stood terminated on 3rd August, 2015 on completion of 1 month's notice period for which termination when admittedly the criminal case was pending. The order of the Appellate Authority was passed on 15th October, 2015 when the criminal case was admittedly pending against the petitioner.
 - iii) The Writ petition was filed on 3rd March, 2016 when the criminal case was pending against the petitioner. The writ petition was dismissed by a Judgment and order dated 14th

March, 2016 when admittedly, the criminal case was pending. The judgment in the criminal case acquitting the petitioner was passed on 27th January, 2017. The Division Bench has set aside the Judgment and order dated 14th March, 2016 by an order dated 4th November, 2019 at the time of the appeal being disposed of the petitioner stood acquitted from the criminal case. However, more than 5 years had elapsed during his termination and the passing of the order of the Division Bench.

- iv) The petitioner as is evident did not provide the details of the criminal case or divulge the pendency of the same while he participated in the selection process even if for the sake of argument it is assumed that the application form did not provide for disclosing the pendency of the criminal case then also, it was obligatory on the part of the petitioner to disclose about the pendency of the criminal case with necessary details at the time when he submitted the Character Verification Form with supporting documents on having been offered the appointment.

The non-disclosure of such fact clearly amounts to suppression of material fact. The disclosure of the pendency of the criminal proceedings amounts to a material fact as the employer after considering the same could have rejected the petitioner's candidature as the law was clear in 2014 to the extent that non-disclosure of the pendency of the criminal proceedings was a ground for rejecting the candidature of a candidate. The issue of non-disclosure of the criminal case has been dealt with in details by the Larger Bench in **Avtar Singh** (supra). The ratio laid down in **Avtar Singh** (supra) has been accepted and upheld in **Satish Chandra Jadav** (supra) and **Dillip Kumar Mallick**

(supra) dealt with the services in CRPF being the subject matter of the instant writ petition. In **Dillip Kumar Mallick** (supra) after taking into account the facts before the Hon'ble Supreme Court in the said case that the employee entered into the employment of CRPF without disclosing the fact of pendency of the criminal case against him. On that ground the writ petition was dismissed wherein the employee had challenged his termination. The facts of the case in **Dillip Kumar Mallick** (supra) and that in the instant case to the extent it relates to the pendency of the criminal case at the time when the employee entered into the services are identical. In **Dillip Kumar Mallick** (supra) the employee on having been appointed in 2003 continued to work till 2008 when the pendency of the criminal case came to be known to the department. Since the employee in that case had worked for about 5 (five) years he may not have been at the time of being removed from services was in provisional appointment. The petitioner had been provisionally appointed on the condition that his service may be terminated, inter alia, on the grounds one of which includes adverse report relating to character and antecedents that may be found on subsequent verification. Thus, in the case of the petitioner, there is no question of initiating a disciplinary proceedings as the relevant rules provides for termination on adverse report regarding character and antecedents having been received by the employer on subsequent verification. I have also considered the judgment reported in **2024(5) SCC 258 (William Stephen vs. State of Tamil Nadu and Anr.)**. In the said case, on the date of making the application, there was no criminal case pending against the employee. Thus, there has been also no violation of principles of natural justice in the case of the petitioner as he was given one month's notice prior to termination and had availed the appeal provision challenging the order of termination.

- v) In the aforesaid facts and circumstances I do not find any merit in the petitioner's case, thus, the writ petition is accordingly, dismissed.
- vi) Since the main writ petition is finally heard and dismissed, the connected application also stand disposed of without any further order. Interim order if any, stands vacated.

Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on priority basis after compliance with all necessary formalities.

(ARINDAM MUKHERJEE, J.)