

18.03.2025
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**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

WPA 10203 of 2024

**Akshay Gorai
-Vs-
Union of India & Ors.**

Mr. Abhinaba Dan,
Ms. Sreemayee Datta

... for the petitioner

Mr. Sahasrangshu Bhattacharjee,
Mr. Loknath Chatterjee

... for the Union of India

The petitioner was implicated in a criminal case initiated from a police complaint made at Gangajalghati Police Station on 10th July, 2019 being Gangajalghati Police Station Case No.70/2019 under Sections 448/323/354/354B/379/503/34 of the Indian Penal Code (in short, IPC). Subsequently, a charge-sheet was filed being Charge-sheet No.76/2019 dated 31st July, 2019. During the pendency of the criminal case, petitioner participated in a selection process for appointment of Constable (General Duty) in CAPF, AR, NIA & SSF conducted by Staff Selection Commission in 2022. Petitioner emerged successful and was provisionally selected on 20th August, 2023 in Border Security Force (in short, BSF) vide Memo Dated 28th

August, 2023 issued by the Inspector General, FTR Headquarters, BSF (South Bengal). By a departmental circular dated 27th July, 2020 it was clarified on behalf of BSF that a candidate will not be considered for recruitment if such candidate is involved in a criminal case or had been arrested in connection therewith. On 6th December, 2023, a Memo was issued by the Commandant (Establishment), IG, BSF (South Bengal) FTR by which the recruitment of the petitioner as a Constable (General Duty) was considered and rejected as a criminal case was pending against him.

The petitioner was acquitted from the criminal case on 24th January, 2024, i.e., shortly from the issuance of the letter cancelling his appointment. Petitioner made a representation with the order of acquittal passed by the Judicial Magistrate, 3rd Court at Bankura. The petitioner's representation was rejected by a Memo Dated 21st February, 2024 principally on the following grounds:-

- (i) Whereas, on scrutiny of the Court order dated 24.01.2024 passed by the learned Judicial Magistrate, 3rd Court, Bankura there is no remarks regarding that the criminal case would not be a bar on appointment in Government services found.
- (ii) Keeping in view of the guidelines of MHA (Police-II Division) letter *ibid* and as

approved by the Competent Authority, you are not considered for appointment in BSF.

It is correct that the criminal Court while acquitting a person cannot certify that he is fit to be given an appointment. At the same time, it is to be ascertained whether the petitioner had disclosed the pendency of the criminal case while participating in the selection process as criminal case was pending at that time and the petitioner was acquitted only on 24th January, 2024. If the petitioner did not mention about the pendency in the application form, then there is a suppression of fact. On the other hand, if the provisional recommendation was made after knowing about the criminal case being pending against the petitioner then it may be construed that the selecting agency, i.e., SSC in the instant case had ignored the pendency of the criminal case despite specific knowledge and recommended the petitioner for appointment.

In this backdrop, by an order dated 8th July, 2024, this Court has directed the respondent no. 3 to file a report in the form of an affidavit providing the following particulars:

- (i) Whether the petitioner disclosed about the pendency of the criminal proceedings when he applied to participate in the concerned selection process;

- (ii) Whether the provisional selection of the petitioner took place when the recruiting agency and the employer, i.e. SSC in the instant case and the Board constituted for considering the recommended names by SSC upon having specific knowledge about the pendency of the criminal case;
- (iii) Whether there is at present any vacancy in BSF to give appointment to the petitioner if found otherwise fit.

The report was filed on 10th March, 2025. In the instant case, the petitioner had participated in the selection process for being appointed as a Constable in the Border Security Force which is a disciplined force. The employer even if the petitioner is acquitted may not choose to keep him in service, even after there is no suppression of fact.

It appears from the report that in the online mode of application, there is no column to provide for any pending criminal proceeding. The petitioner, therefore, cannot be held to have suppressed material fact at the first instance. However, on being selected, the petitioner failed to produce character certificate as directed in the provisional appointment letter. The petitioner, however, confessed that a criminal case is pending at that stage. The petitioner, therefore, cannot also be said to have suppressed material fact at the post-selection stage.

The petitioner says that he has been acquitted from the criminal case although the charges were serious.

After hearing the parties and considering the materials on record as also the following judgments cited at the Bar, **(2016) 8 SSC 471 (Avtar Singh Vs. Union of India, (2003) 3 SCC 437 (Kendriya Vidyalaya Sangathan Vs. Ram Ratan Yadav and (2023) 7 SCC 536 (Satish Chandra Yadav Vs. Union of India & Ors.)**, I find that the online form had no provision to state that the criminal case as it did not provide for a column to state about the pending criminal case against the petitioner and for the subsequent acts as recorded hereinabove, the petitioner may not have suppressed facts but cannot absolve his liability as to the criminal case, which was pending when he participated in the selection process, selected and given provisional appointment letter since the same an admitted facts. It is also an admitted position that shortly after termination of the services, the petitioner got acquitted. Even though the acquittal may have occurred after a full-fledged trial of the criminal case, the fact that the employer's confidence on the employee after knowing about the criminal case, its nature and acquittal of the employee is of paramount importance as has been held in the judgments reported in **(1997) 4 SCC 385, (2004) 8 SCC 200 and (2005) 5 SCC 100. Satish Chandra Yadav (supra)** has considered all the

previous judgments and has elaborately laid down the law which now holds the field. Although, the appeal being the subject matter of *Satich Chandra Yadav (supra)* was dismissed considering the facts of the said case, yet considering the facts of the instant case, I am inclined to remit the matter to the employer for fresh consideration of the petitioner's case in the light of his acquittal.

The respondent no. 4 is directed to take a decision as to whether the employer is inclined to reinstate and/or appoint the petitioner on his acquittal. It is made clear that the respondent no. 4 would be free to take a decision independently without being influenced by any observations made in this order, after considering the materials already on record. The respondent no. 4 may, if thinks fit, call the petitioner for a personal hearing.

It is also made clear that this order will not create any equity in favour of the petitioner to claim reinstatement and/or appointment in service.

Nothing further remains to be adjudicated in this writ petition. The same is accordingly disposed of.

(Arindam Mukherjee, J.)