

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

MAT 835 of 2024

Ram Asheesh Yadav
versus
Union of India and Ors.

For the Appellant : *Mr. Achin Kumar Majumder,*
Ms. Ananya Adhikary.

For the Respondents : *Mr. Ram Chandra Agarwal.*

Hearing is concluded on : *16th December, 2024.*

Judgment On : **9th January, 2025.**

Tapabrata Chakraborty, J.

1. The present appeal has been preferred against a judgment dated 27.03.2024 delivered by the learned Single Judge in a writ petition being WPA 4419 of 2019 preferred by one Ram Asheesh Yadav (in short, Ram)

challenging *inter alia* an order of discharge dated 3.04.2018 passed by the respondent no.2.

2. Shorn of unnecessary details, the facts are that Ram participated in a selection process for appointment to the post of Constable under the Railway Protection Force (hereinafter referred to as RPF). He emerged to be successful and submitted the attestation form on 24.05.2014. Being provisionally selected, he was called for training *vide* memo dated 09.10.2014. As directed, Ram had to execute an affidavit on 21.10.2014. In connection with a Criminal Case No.1 of 2011 u/s 341, 504 and 506 of IPC initiated against him and his family members, Ram was instantly enlarged on bail on 27.01.2011. Thereafter, he had no knowledge about pendency of the case till he received summons on 28.05.2014 and he was acquitted by an order dated 29.05.2015. Subsequent thereto, by a memo dated 31.07.2015 his candidature was cancelled placing reliance upon a report of the Superintendent of Police, Gorakhpur dated 08.06.2015 forwarded by the Additional District Magistrate *vide* memo dated 07.07.2015. Challenging the same, Ram preferred a writ petition being A-49825 of 2015 before the Hon'ble High Court of Judicature at Allahabad in which being *prima facie* satisfied that there was no suppression of fact on Ram's part, an interim order was passed on 03.09.2015 directing the respondents to allow Ram to complete his training but observing that his appointment shall not be made without the leave of the Court. The said writ petition was finally disposed of by an order dated 08.01.2018 quashing the order of cancellation of candidature and granting liberty to reconsider the matter and to pass a

fresh appropriate order. Pursuant thereto, the respondent no. 2 passed an order on 13.04.2018 cancelling Ram's candidature. Aggrieved by the said order, Ram again preferred a writ petition being A-917 of 2019 before the Hon'ble High Court of Judicature at Allahabad but by an order dated 21.01.2019 the said writ petition was dismissed on the ground of lack of territorial jurisdiction. Thereafter Ram preferred a writ petition being WPA 4419 (W) of 2019 before this Court and the judgment dated 27.03.2024 delivered in the same has been impugned in the present appeal.

3. Mr. Majumder, learned advocate appearing for appellant/Ram 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 12 (i) (b) and in answering the question as to whether any case is pending against him in any other court of law at the time of filling up the attestation form as 'No' in clause 12 (i) (i) of the attestation form. 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. Finally, Ram had been honourably acquitted from the said criminal case by a judgment delivered by the competent Court on 29.05.2015. Without considering such facts, the respondent no. 2 in an arbitrary manner passed the order of discharge. Such argument, as advanced, was glossed over by the learned Single Judge and such infirmity warrants interference in appeal.

4. He argues that the allegation of having practised fraud levelled against Ram is absolutely unfounded. The criminal complaint was lodged in the year 2011 in which on 27.01.2011 he was enlarged on bail and thereafter he had no information as regards pendency of the case. He received summons on 28.05.2014 after he filled up the attestation form on 24.5.2014. Such non-furnishing of information for not being aware of the said information, cannot be construed as suppression of material information or false statement. The learned Single Judge ought to have appreciated that where the candidate is required to state as to whether he has been convicted by a criminal court, if the candidate answered in the negative, the fact that a criminal case was pending as on that date, would not amount to misrepresentation.

5. He argues that the learned Judge failed to assess the principle that in respect of offences trivial in nature the employer is under an obligation to consider as to whether the suppression or false information can be condoned. In the present case the nature of offences u/s 341, 504 and 506 of IPC cannot by any stretch of imagination be construed to be a serious crime.

6. Drawing our attention to the declaration in the attestation form, he submits that 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.2 placed reliance upon an affidavit signed by Ram on 21.10.2014. Prior thereto, the attestation form was filled up on

25.05.2014. The statement in the affidavit was '*there is no case pending against me in any court of law*'. Such declaration was not contrary to what Ram had already stated earlier in the attestation form on 24.05.2014. Such consistency in declaration supports the argument that there was a *bona fide* mistake on the part of Ram in stating that no case was pending against him since he had no knowledge about such pendency on the date he filled up the attestation form and such mistake ought not to have been construed by the authorities to be fatal. In support of the arguments, reliance has been placed upon the judgments delivered by the Hon'ble Supreme Court in the cases of *Avtar Singh –vs- Union of India and Others*, reported in (2016) 8 SCC 471, *Pawan Kumar –vs- Union of India & Anr.*, reported in 2022 LiveLaw (SC) 441, *Ravindra Kumar versus State of Uttar Pradesh and others*, reported in (2024) 5 SCC 264 and *Mohammed Imran versus State of Maharashtra and others*, reported in AIR 2018 Supreme Court 4895 and an unreported judgment delivered by a coordinate Bench of this Court in the case of *Union of India and others versus Bibrata Biswas*.

7. Referring to the object of the Railway Protection Force Act, 1957 (hereinafter referred to as the said Act) and the Railway Protection Rules, 1987 (hereinafter referred to as the said Rules), Mr. Agarwal, learned advocate appearing for the respondents submits that in a discipline force, strict norms are needed to be applied. To avail appointment in RPF, the candidate must be having an impeccable character, integrity and rectitude. Though Ram has been acquitted, the respondents are not under any obligation to appoint him. The charges against Ram cannot be construed to

be trivial in nature. Ram 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 wrongly answered the question as to whether he had ever been prosecuted in clause 12(i) (b) as 'No' and the question as to whether any case was pending against him in any court of law at the time of filling up the attestation form in clause 12 (i) (i) as 'No'. There had thus been a deliberate suppression of material fact and as such the competent authority rightly issued the order of discharge dated 13.04.2018 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, Ram cannot claim any equity. 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 neither in the attestation form nor in the self-declaration affidavit did he disclose that the criminal case was pending.

9. He contends that verification of criminal antecedent is one of the important criteria 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.2 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 Ram.

10. In reply, Mr. Majumder 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, Ram had been discharged. The legal principles enunciated in *Avtar Singh (supra)* had not been applied to the facts of the case in spite of a specific direction to that effect passed by the Court in the earlier round of litigation and the order dated 13.04.2018 was passed reiterating the findings arrived at in the earlier order of discharge dated 31.07.2015 which was quashed in the earlier writ petition.

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 Ram 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 Ram was u/s 341, 504 and 506 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 Ram's claim had been mechanically rejected.

13. The offences alleged are trivial in nature. No specific overt act has been attributed to Ram. The complaint was lodged alleging that the accused persons hurled abuses when the complainant protested against construction of a wall on a public road. A perusal of the judgment delivered in the said criminal case would reveal that the prosecution witness himself deposed that he did not find any wall when he visited the spot and he also did not hear any abuses or any threat. Save and except the said case, Ram had no antecedents.

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 of the judgment delivered in *Avtar Singh (supra)*, 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. Agarwal 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. The first paragraph of the affidavit executed by Ram on 21.10.24 runs as follows:

‘That I have never been arrested and/or prosecuted, kept under detention or fined/convicted by any court of law for any offence, or debarred or disqualified by any Railway recruitment Board/Commission of the Govt. of India or any State of India’.

16. A scrutiny of the said clause would reveal that information had 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. It is a fact that Ram was not kept under detention and he obtained bail on 27.01.2011. Having thus answered one specific eventuality, failure to state as to whether the case was pending at that juncture, i.e., about three years after initiation of the 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 or fraud. The failure to furnish the status of the case at the time of execution of the affidavit was 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.2 in exercising discretion in favour of the appellant cannot be construed as reasonable. The learned Single Judge was of the view that as Ram had obtained bail on 27.01.2011, he could not have stated on 24.05.2014 and 21.10.2014 that no case was pending against him without granting any weightage to Ram’s

categoric contention that he received the summons of the case on 28.05.2014, i.e., about three years after he obtained bail on 27.01.2011.

17. Law is equally settled that mere wrong statement in the application cannot disentitle a person from getting proper remedy if such wrong statement is immaterial for the purpose of determination of his conduct. After having obtained bail three years earlier in a criminal case, failure to intimate the status/pendency of the same cannot be construed as a malpractice tarnishing his conduct and fitness for the job. As such, in the case of *Ravindra Kumar (supra)*, the Hon'ble Supreme Court has observed that '*to make past conduct, irrespective of all considerations, an albatross around the neck of the candidate, may not always constitute justice*'. The learned Single Judge, in our opinion, erred in proceeding on the basis that the appellant is guilty of fraud and suppression of factual information and his conduct was unbecoming for appointment in RPF.

18. For the reasons discussed above, the order dated 13.04.2018 passed by the respondent no.2 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, 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 is, 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.)