

Pawan Kumar vs Union Of India on 2 May, 2022

Author: Ajay Rastogi

Bench: Sanjiv Khanna, Ajay Rastogi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(s). 3574 OF 2022
(Arising out of Special Leave Petition (Civil) No.6009 of 2016)

PAWAN KUMAR

APPELLANT(S)

VERSUS

UNION OF INDIA & ANR.

RESPONDENT(S)

JUDGMENT

Rastogi, J.

1. Leave granted.

2. The instant appeal is directed against the judgment and order passed by the Division Bench of the High Court of Delhi dated 17 th November, 2015, whereby the High Court upheld the order of discharge dated 24th April, 2015, taking recourse to clause 9(f) of the employment notice no.1/2011 dated 27th February, 2011 read with Rule 67.2 of Railway Protection Force Rules, 1987 (hereinafter referred to as “the RPF Rules 1987”).

19:05:10 IST Reason:

3. The brief facts of the case culled out from the record are that the employment notice for appointment to the post of Constable in the Railway Protection Force (RPF), including Railway Police Special Force (RPSF) came to be published on 27th February, 2011. The appellant being eligible submitted application form and participated in the selection process and after qualifying the written examination held on 23rd June, 2013 followed with physical efficiency test held on 12th June, 2014 and after his final selection was sent for training. While the appellant was undergoing training, he came to be discharged by an order dated 24 th April, 2015 invoking clause 9(f) of the employment notice no.1/2011 dated 27 th February, 2011 and Rule 67.2 of the RPF Rules 1987.

4. That became the subject matter of challenge at the instance of the appellant by filing a writ petition before the High Court of Delhi. It came on record that at one stage FIR no.75 under Sections 148/149/323/506/356 IPC was registered against him on 4 th April, 2011 and after charge sheet

came to be filed on 13 th April, 2011, charge was framed on 7th July, 2011. As it was a false case registered against him, the appellant was honourably acquitted by the competent Court of jurisdiction by the judgment dated 12 th August, 2011 and this fact, according to the respondent, was not disclosed by him when he filled the attestation form on 27 th May, 2014 that he was prosecuted at one stage and this being a case of suppression of information/false declaration in the verification form, the High Court dismissed the writ petition under judgment impugned dated 17th November, 2015 and that became the subject matter of challenge in appeal before this Court.

5. We have heard learned counsel for the parties and with their assistance perused the material available on record.

6. The process of selection was initiated by the respondents pursuant to the employment notice no.1/2011 dated 27 th February, 2011 for filling up the post of Constable in RPF/RPSF. Clause 9(f) of the RPF Rules 1987, which is relevant for the present purpose is reproduced hereunder:

“9(f) Candidates found to be having adverse report on their antecedents and character may not be appointed in RPF including RPSF. False declaration is an offence under the law and will lead to disqualification of the applicant, institution of criminal case and also dismissal from service, if appointed. Hence, applicants are advised to be careful while filling in the application.”

7. Indisputedly, on the date when the application form was filled by the appellant pursuant to employment notice no.1/2011, no such criminal case was either instituted or pending against him and what was disclosed by him at the time of filling his application form pursuant to employment notice no.1/2011, there was no suppression of relevant information or submission of false declaration at that stage. It was unfortunate that a false criminal case of trivial nature came to be registered against him on 4 th April, 2011 and since it has no legs to stand as much before the charge sheet could be filed, the de facto complainant submitted his affidavit on 19th April, 2011 that no such alleged incident on 4 th April, 2011 had taken place and the bag was found beneath the driver seat itself and under misconception, a complaint was lodged by him. The prosecution witness has not supported case of the prosecution during the course of trial and for that reason the appellant was honourably acquitted by the trial Court by judgment dated 12 th August, 2011.

8. Unfortunately, when the appellant filled the attestation form at a later stage on 27th May, 2014, certain formation were desired to be disclosed by him and in clause 12(a) and 12(b) of the verification form, according to the respondent, as the appellant mentioned “No”, when he was asked to disclose as to whether he has ever been arrested or has been prosecuted, in answer to clauses 12(a) and (b), which was considered to be a suppression of relevant information/submission of false declaration in the verification form as regards to his criminal antecedents. Proceeding on the said premise, the order of discharge came to be passed on 24th April, 2015. It will be relevant to quote the extract of the information relevant for the purpose :

“Attestation Form NOTE : THIS ATTESTATION FORM WILL BE UTILISED ONLY UPON FINAL CONSIDERATION AND ACCEPTANCE OF THE CANDIDATURE

AFTER VIVA VOCE AS SELECTED CANDIDATE SUBJECT TO FULFILMENT OF OTHER PRE CONDITIONS.

WARNING: THE FURNISHING OF FALSE INFORMATION OR SUPPRESSION OF ANY FACTUAL INFORMATION IN THE ATTESTATION FORM WOULD BE A DISQUALIFICATION, AND IS LIKELY TO RENDER THE CANDIDATE UNFIT FOR EMPLOYMENT UNDER THE GOVT.

.....

12 (a) Have you ever been arrested? Yes/No _/

(b) Have you ever been prosecuted? Yes/No _/

..... ”

9. Under the Railway Protection Force Rules, 1987, at the time of entry into service a verification of character and antecedents of the incumbent has to take place according to the procedure prescribed by the Central Government from time to time. Rule 52 of the Rules 1987 is reproduced herein below:

“Rule 52/VERIFICATION :

52.1 As soon as a recruit is selected but before he is formally appointed to the Force, his character and antecedents shall be got verified in accordance with the procedure prescribed by the Central Government from time to time.

52.2 Where after verification, a recruit is not found suitable for the Force, he shall not be appointed as a member of the Force.”

10. It may be noticed that while a recruit is selected and before he is formally appointed, his character/antecedents have to be verified and after due verification if the recruit is found suitable for the post, may be considered for appointment as a member of the force. What is required that after the verification of character/antecedents of the recruit has taken place, it presupposes and casts an obligation on the appointing/competent authority to take into consideration as to whether the kind of suppression of alleged information/false declaration holds him suitable for appointment to the force, in terms of Rule 52 of the Rules 1987.

11. This cannot be disputed that the candidate who intends to participate in the selection process is always required to furnish correct information relating to his character and antecedents in the verification/attestation form before and after induction into service.

It is also equally true that the person who has suppressed the material information or has made false declaration indeed has no unfettered right of seeking appointment or continuity in service, but at least has a right not to be dealt with arbitrarily and power has to be judiciously exercised by the competent authority in a reasonable manner with objectivity having due regard to the facts of the case on hand. It goes without saying that the yardstick/standard which has to be applied with regard to adjudging suitability of the incumbent always depends upon the nature of post, nature of duties, effect of suppression over suitability to be considered by the authority on due diligence of various aspects but no hard and fast rule of thumb can be laid down in this regard.

12. Earlier, there has been a conflict of opinion in the various decisions of Division Benches of this Court and at the stage when the Division Bench of the High Court dismissed the writ petition under the impugned order dated 17 th November, 2015, there were divergent views of this Court and that came to be later settled by a three Judge Bench of this Court in Avtar Singh v. Union of India and others.¹ While summarizing the conclusion, this Court has laid down broad guidelines which has to be taken note of by the appointing/competent authority in dealing with the matters where there is a suppression of material information or disclosure of false information and after reconciling the earlier judgments succinctly summarized the conclusions as under:

“34. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.

35. Suppression of “material” information presupposes that what is suppressed that “matters” not every technical or trivial matter. The employer has to act on due consideration of rules/instructions, if any, in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be 1 (2016) 8 SCC 471 dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.

36. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by authorities concerned considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.

37. The “McCarthyism” is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformatory theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.

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.”

13. What emerges from the exposition as laid down by this Court is that by mere suppression of material/false information regardless of the fact whether there is a conviction or acquittal has been recorded, the employee/recruit is not to be discharged/terminated axiomatically from service just by a stroke of pen. At the same time, the effect of suppression of material/false information involving in a criminal case, if any, is left for the employer to consider all the relevant facts and circumstances available as to antecedents and keeping in view the objective criteria and the relevant service rules into consideration, while taking appropriate decision regarding continuance/suitability of the employee into service. What being noticed by this Court is that mere suppression of material/false information in a given case does not mean that the employer can arbitrarily discharge/terminate the employee from service.

14. At one stage after the matter being heard, detailed order was passed by this Court on 21st October, 2021 and taking note of the judgment of Avtar Singh (supra) directed the employer to review its decision in the light of the decision of this Court. In compliance thereof, the review order has been passed on 23 rd December, 2021 confirming its earlier decision of discharge dated 24 th April, 2015. The bare perusal of the review order dated 23 rd December, 2021, itself indicates that the authority has not applied its mind and just after reproduction of facts, confirmed the order of discharge dated 24th April, 2015.

15. It may be further noticed that in para 5(c) of the order, a reference has been made of the affidavit submitted by the appellant at the time of filling his application form, but on the day when the application form was filled, the information which he disclosed in terms of clause 9(f) of employment notice indisputedly, no criminal case on that date was either instituted or pending against him. It is relevant to note that the employment notice is of 27 th February, 2011 and the alleged criminal case was instituted on 4 th April, 2011. At the same time, the authority has not even considered the scope and ambit of Rule 52 of the Rules 1987 that after verification of the character/antecedents of the incumbent, it will be an obligation upon the authority to examine as to whether the incumbent/recruit is suitable to become a member of the force and without appreciation in a mechanical manner confirmed the order of discharge dated 24th April, 2015.

16. The judgment relied upon by the respondent Rajasthan Rajya Vidyut Prasaran Nigam Limited and another v. Anil Kanwariya² may not be of any assistance for the reason that it was a case where the respondent employee before submitting application pursuant to the advertisement inviting applications was convicted by the competent Court of jurisdiction and this fact was not disclosed by him while filling his application form and that was the reason favoured upon the Court while upholding action of the authority in 2 (2021) 10 SCC 136 passing the order of termination which was impugned in the proceedings. We have already quoted paragraph 38 of the judgment by a three Judge Bench of this Court in Avtar Singh (supra) and in the context of the factual background of the present case applied the said principles. One distinguishing factor, as noticed above, is that the criminal complaint/FIR in the present case was registered post submission of the application form. We have also taken into account the nature of the allegations made in the criminal case and that the matter was of trivial nature not involving moral turpitude. Further, the proceedings had ended in a clean acquittal. As is clear from paragraph 38 in Avtar Singh (supra), 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.

17. Adverting to the facts of the instant case, at the time of attestation form filled by the appellant, the criminal case was already registered against him but it may be noticed that at the very threshold, the complainant filed his affidavit that the complaint on which FIR came to be registered was due to misunderstanding and he did not want to pursue his case any further, but still charge sheet came to be filed and on the first date of hearing, the alleged victim PW.1 did not support case of the prosecution and thus the order of clean acquittal came to be passed by the learned Judge of competent jurisdiction by judgment dated 12th August, 2011.

18. The criminal case indeed was of trivial nature and the nature of post and nature of duties to be discharged by the recruit has never been looked into by the competent authority while examining the overall suitability of the incumbent keeping in view Rule 52 of the Rules 1987 to become a member of the force. Taking into consideration the exposition expressed by this Court in Avtar Singh (supra), in our considered view the order of discharge passed by the competent authority dated 24th April, 2015 is not sustainable and in sequel thereto the judgment passed by the Division Bench of High Court of Delhi does not hold good and deserves to be set aside.

19. Consequently, the appeal succeeds and is allowed. The judgment of the Division Bench of the High Court dated 17 th November, 2015 and the order of discharge dated 24 th April, 2015 and dated 23rd December, 2021 are hereby quashed and set aside. The Respondents are directed to reinstate the appellant in service on the post of Constable on which he was selected pursuant to his participation in reference to employment notice no.1/2011 dated 27th February, 2011. We make it clear that the appellant will not be entitled for the arrears of salary for the period during which he has not served the force and at the same time he will be entitled for all notional benefits, including pay, seniority and other consequential benefits, etc. Necessary orders shall be passed within a period of one month from today. No costs.

20. All pending application(s) shall stand disposed of.

..... J.

(Ajay Rastogi) J.

(Sanjiv Khanna) New Delhi.

May 02, 2022.