

2013 (1) GLR 147

*Before the Hon'ble MR D H WAGHELA, JUSTICE and the Hon'ble MR G B SHAH, JUSTICE***KANAKSINH SOMABHAI THAKOR V. SECRETARY, MINISTRY OF RAILWAYS, NEW DELHI AND
ORS****SPECIAL CIVIL APPLICATION No : 2209 of Year : 2012, Decided on : 6/7/2012**

(A) SERVICE LAW - Termination - Constitution of India, 1950 - Arts. 311 & 226 - Railway Service (Conduct) Rules, 1967 - Rule 153 - Railway Service (Discipline & Appeal) Rules, 1968 - Rule 148 - R.P.F. Constable selected after following due procedure, discharged from service during training on ground of suppression of factual information relating to suitability - Held, show-cause notice required to be given before discharge - Further, considering that offence involved in criminal case registered against recruit not a serious offence, respondents require to take a reasonable view - Termination of service, quashed.

We have considered the rival submissions made by the learned Counsel for the parties. The question to be decided is, would the pendency of a criminal proceeding or a conviction or for that matter a criminal proceeding which has already terminated in an acquittal, be a justified ground to dismiss a Government servant from service or deny entry into Government service? In the case on hand, the petitioner was appointed to the post of constable after following the required procedure i.e. written examination, physical efficiency test and written test followed by medical examination. It is an admitted position that furnishing of false information or suppression of any factual information in the attestation form would be disqualification and is likely to render a candidate unfit for employment under the Government. However, the respondent authority has failed in not following the established procedure of issuing show-cause notice, thereby, not affording the opportunity of being heard. Nothing has come on record to show that the respondent authority has replied to the representations made by the petitioner. The submission of the learned Counsel for the respondents that since the petitioner was only a trainee there was no need to issue show-cause notice or opportunity of hearing, cannot be accepted. In fact, it was only after the petitioner applied under the R.T.I. Act, that the letter dated 28-5-2009 was made available to him. The petitioner was only given an intimation dated 1-6-2009 stating that his training was terminated. (Para 7)

In the criminal case registered under Sec. 498A read with Secs. 323 and 506(2) of I.P.C. and Secs. 3 and 7 of Dowry Prohibition Act, the petitioner was acquitted of the charges. The Apex Court has observed in the case of Preeti Gupta v. State of Jharkhand, 2010 (7) SCC 667 that it is a matter of common experience that most of the complaints under Sec. 498A of I.P.C. are filed in the heat of moment over trivial issues without proper deliberations. It is seen that a large number of such complaints are not even bona fide and are filed with oblique motive. In the case on hand also for the trivial offence of what the petitioner was charged with, in which he has been acquitted, cannot make him a criminal of a kind where public interest requires his non-induction in the police force and that too as a Constable. As referred above, the Apex Court has also taken view in number of matters referred above that every wrong information may not necessarily partake the character of deception. A person may be wrong, but under

Cases Referred to :

- Page 2 of 8

wherein vague allegations were made against the petitioner. The wife of Rameshbhai Somabhai Chauhan namely, Jasodaben had filed the complaint against her father-in-law, mother-in-law and against one Bhartiben Mohanbhai and her husband who is the real brother of the present petitioner. The present petitioner was shown as accused No. 3 in the said complaint. For the concealment in the attestation form, under Rule 67.2 of R.P.F. Rules, respondent No. 3 terminated the training of the petitioner.

3. We have heard the learned Counsel for the parties. Learned Counsel for the petitioner has submitted that the petitioner was never asked whether any prosecution case was launched against him. It was while undergoing training that the petitioner was asked to fill attestation form on 2-5-2008. Before filling the said form, the petitioner was selected, enrolled and was sent for training. It is an admitted fact that there was a criminal case relating to offence under Sec. 498A which was registered mainly against the real brother of the petitioner and the said case was settled, and therefore, the petitioner was under the bona fide impression that the case was over, and it cannot be said that there was any suppression of facts. He further submitted that the petitioner was acquitted vide judgment dated 1-7-2009. In any case, the letter dated 28-5-2009 terminating the petitioner does not mention anything about the criminal case but simply states "C.S.C. has ordered to terminate the training and he should be put off from the roll". This order was issued without issuing any show-cause notice. It is pertinent to note that on 1-7-2009 i.e. within two months from the date of termination, the petitioner was acquitted of the charges by the Court concerned. It is also pertinent to note that the petitioner was not even served the order dated 28-5-2009 terminating his service, but such order was procured under the R.T.I. Act. The petitioner had only received an intimation dated 1-6-2009 stating that in view of the letter dated 28-5-2009, his training was terminated. In absence of order removing from the roll, the petitioner could not challenge the same in the Court of law nor could file appeal against the said order. It is submitted by the learned Counsel, that thereafter, though repeated representations to reconsider the issue were made, the same were simply rejected and no positive reply was received by him. It is stated by the learned Counsel that against several R.P. F. Constables criminal cases are filed and pending but they are neither suspended nor removed which shows that mere pendency of criminal case cannot bar appointment of suitable candidate. The learned Counsel further contended that rules do not provide for prohibiting appointment of a person against whom criminal case is pending. Looking to the charge-sheet, it is very clear that vague allegations were made against the petitioner and subsequent acquittal in criminal case calls for reconsideration by the respondent authorities. The order of Chief Security Officer does not show that non-disclosure/giving incorrect information was the reason for removing him from service. He has strenuously contended that the impugned order of termination of the petitioner without issuing any notice is clear violation of Art. 311 of the Constitution of India. If such trifle case was pending, the petitioner could be appointed under the relevant rules because there is no prohibition to appoint a citizen to the post of constable, and thus the selection is effected before filling of Attestation form. He has submitted that under Art. 311 of the Constitution of India, no person who is a member of civil service of the Union can be dismissed by an authority subordinate to that by which he was appointed and he cannot be dismissed or removed except after an inquiry and after giving a reasonable opportunity of being heard in respect of those charges. The learned Counsel has invited attention of this Court to Chapter V of the R.P.F. Rules which is regarding recruitment, training and career, and it provides for the direct recruitment at the level of constable. Under Rule 46 of R.P.F. Rules speaks about ineligibility for appointment as member of the force and there is no prohibition to appoint constable, if any criminal case is pending against him. Direct recruitment to the post of

constable is to be made under Rule 49, 49.1A to 49.5 after written examination, physical efficiency test and written test followed by medical examination. Rule 52 provides that before the recruit is formally appointed to the Force, his character and antecedents shall be verified and after the verification, if the recruit is not found suitable for the Force, he shall not be appointed as member of the Force. Rule 67.2 provides that till such time the direct recruit selected is not formally appointed to the Force, he is liable to be discharged at any stage if the C.S.C. for reasons to be recorded in writing, deems it fit so to do in the interest of the Force. He, therefore, submitted that the aforesaid conditions are not fulfilled in the case of the petitioner. Even under Rule 148 of Railway Service (Discipline and Appeal) Rules, 1968 and Railway Service (Conduct) Rules, 1967, major punishment of dismissal or removal can be imposed subject to the procedure to be followed under Rule 153 i.e. show-cause notice is required to be issued along with grounds and with proposed actions and reasonable opportunity of defending is to be given. The petitioner is not given any such opportunity. In view of the aforesaid grounds, the action of removal of the petitioner from the roll is illegal, irrational, arbitrary and against the provisions of the Act and Rules. Finally, it is submitted that unless a recruit is convicted in a criminal case by the Court, major penalty of removal from service cannot be imposed.

4. In support of his arguments, reliance is placed on the following decisions of the Apex Court :

(1) Commissioner of Police v. Sandeep Kumar, 2011 (4) SCC 644

(2) Ram Kumar v. State of U.P., 2011 (3) GLH 281 (SC) : 2011 (9) SCALE 75

(3) S.J.S. Business Enterprises (P) Ltd. v. State of Bihar, 2004 (7) SCC 166

Learned Counsel for the petitioner has finally submitted that looking to the aforesaid facts and circumstances, the petition may be allowed and even in any circumstances if this petition is partly allowed, then the petitioner will not ask for any back wages or continuity of service.

5. Learned Counsel for the respondents has controverted all the contentions raised by the learned Counsel for the petitioner. He has submitted that the petitioner has not approached the Court with clean hands and has made misleading and incorrect statements and only on this ground the petition deserves to be dismissed. He has submitted that the attestation form at item No. 11, in reply to the specific question "if you ever been arrested or convicted in a criminal case, the petitioner answered No. A declaration was made by the petitioner in his own handwriting that all the statements made in the application are true and correct and if they are found to be false or incorrect, his candidature is liable to be cancelled and even after appointment is liable to be terminated without information to him. Thus, it cannot be said that the petitioner was not aware of the declaration made or the filling up of the form or its contents. He has submitted that if suppression of any factual information in the attestation form comes to the notice at any time during the service of the person, his services would be liable to be terminated. It is pertinent to note that the petitioner was not appointed to the services but he was undergoing training and after completion of training he was required to be placed on probation for two years and during the probation period, any time, if it is found that the person is not fit for permanent appointment, the appointing authority may terminate the services of the direct recruit or revert the member to the post held by him prior to such appointment. On the contrary, on receipt of

the report from the Addl. District Magistrate, Sabarkantha, the appointing authority has rightly taken a decision to terminate the recruitment of the petitioner on the basis of false information furnished in the application as well as in the attestation form. He has further contended that it is immaterial whether ultimately the petitioner was convicted or acquitted. The question is of integrity and honesty in serving the nation. He has pointed out the date of charge-sheet related to the criminal case filed against the petitioner was 14-1-2007 and the application was filled up by the petitioner on 27-6-2007, and therefore, there is clear suppression of vital and material facts and the petitioner has deliberately not disclosed the pendency of criminal case against him. On the question of non-reply to the representations of the petitioner, it is stated by the learned Counsel that those were rejected keeping in mind the applicable Rules and the statement made by the petitioner. He also made it clear that the cases of other R.P.F. Constables mentioned by the petitioner against whom various criminal cases were filed and were pending relate to those personnel while in employment. Regarding applicability of the Rules, he has submitted that those Rules are applicable to the appointees and not to the direct recruits more particularly when the petitioner was selected and was undergoing training. In view of the aforesaid, learned Counsel for the respondents submitted that the petition deserves to be dismissed in limine with costs.

6. Before we proceed with the discussion in light of the submissions made by the learned Advocates for the parties referred above, it is desirable to go through the decisions referred above by the learned Counsel for the petitioner and the view taken by the Apex Court in the identical situation in which the present petitioner is situated. In the case of Commissioner of Police v. Sandeep Kumar, 2011 (4) SCC 644, in Paragraphs 8, 9, 11 and 12, the Apex Court has observed as under :

"8. We respectfully agree with the Delhi High Court that the cancellation of his candidature was illegal, but we wish to give our own opinion in the matter. When the incident happened the respondent must have been about 20 years of age. At that age, young people often commit indiscretions, and such indiscretions can often be condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

9. In this connection, we may refer to the character "Jean Valjean" in Victor Hugos novel Les Miserables, in which for committing a minor offence of stealing of a bread for his hungry family Jean Valjean was branded as a thief for his whole life. The modern approach should be to reform a person instead of branding him as a criminal all his life.

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11. As already observed above, youth often commits indiscretions, which are often condoned.

12. It is true that in the application form the respondent did not mention that he was involved in a criminal case under Secs. 325/34 I.P.C. Probably, he did not mention this out of fear that if he did so he would automatically be disqualified. At any event, it was not such a serious offence like murder, dacoity or rape, hence a more lenient view should be taken in the matter."

In the case of Ram Kumar v. State of U.P., 2011 (3) GLH 281 (SC) : 2011 (9) SCALE 75, the

facts of the case narrated in Para 3 reads as under, which appears identical to the case on hand :

"3. The facts very briefly are that pursuant to an advertisement issued by the State Government of U.P. on 19-11-2006, the appellant applied for the post of constable and he submitted an affidavit dated 12-6-2006 to the recruiting authority in the proforma of verification roll. In the affidavit dated 12-6-2006, he made various statements required for the purpose of recruitment and in Para 4 of the affidavit he stated that no criminal case was registered against him. He was selected and appointed as a male constable and deputed for training. Thereafter, the Jaswant Nagar Police Station, District Etawah, submitted a report dated 15-1-2007 stating that Criminal Case No. 275 of 2001 under Secs. 324/323/504, I.P.C. was registered against the appellant, and thereafter, the criminal case was disposed of by the Additional Chief Judicial Magistrate, Etawah, on 18-7-2002 and the appellant was acquitted by the Court. Along with this report, a copy of the order dated 18-7-2002 of the Additional Chief Judicial Magistrate was also enclosed. The report dated 15-1-2007 of the Jaswant Nagar Police Station, District Etawah, was sent to the Senior Superintendent of Police, Ghaziabad. By order dated 8-8-2007, the Senior Superintendent of Police, Ghaziabad, cancelled the order of selection of the appellant on the ground that he had submitted an affidavit stating wrong facts and concealing correct facts and his selection was irregular and illegal.

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7. We have carefully read the Government Order dated 28-4-1958 on the subject Verification of the character and antecedents of Government servants before their first appointment and it is stated in the Government order that the Governor has been pleased to lay down the following instructions in suppression of all the previous orders :

"The rule regarding character of candidate for appointment under the State Government shall continue to be as follows : The character of a candidate for direct appointment must be such as to render him suitable in all respects for employment in the service or post to which he is to be appointed. It would be duty of the appointing authority to satisfy itself on this point."

It will be clear from the aforesaid instructions issued by the Governor that the object of the verification of the character and antecedents of Government servants before their first appointment is to ensure that the character of a Government servant for a direct recruitment is such as to render him suitable in all respects for employment in the service or post to which he is to be appointed and it would be a duty of the appointing authority to satisfy itself on this point.

8. In the facts of the present case, we find that though Criminal Case No. 275 of 2001 under Secs. 324/323/504, I.P.C. had been registered against the appellant at Jaswant Nagar Police Station, District Etawah, admittedly the appellant had been acquitted by order dated 18-7-2002 by the Additional Chief Judicial Magistrate, Etawah. On a reading of the order dated 18-7-2002 of the Additional Chief Judicial Magistrate would show that the sole witness examined before the Court, P.W. 1 Mr. Akhilesh Kumar, had deposed before the Court that on 2-12-2000 at 4-00

p.m. children were quarrelling and at that time the appellant, Shailendra and Ajay Kumar amongst other neighbours had reached there and someone from the crowd hurled abuses and in the scuffle Akhilesh Kumar got injured when he fell and his head hit a brick platform and that he was not beaten by the accused persons by any sharp weapon. In the absence of any other witness against the appellant, the Additional Chief Judicial Magistrate acquitted the appellant of the charges under Secs. 323/34/504, I.P.C. On these facts, it was not at all possible for the appointing authority to take a view that the appellant was not suitable for appointment to the post of a Police Constable."

In the case of *S.J.S. Business Enterprises (P) Ltd. v. State of Bihar*, 2004 (7) SCC 166, in Para 13, the Apex Court observed as under :

"13. As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the Courts to deter a litigant from abusing the process of Court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the Court, whatever view the Court may have taken....."

7. We have considered the rival submissions made by the learned Counsel for the parties. The question to be decided is, would the pendency of a criminal proceeding or a conviction or for that matter a criminal proceeding which has already terminated in an acquittal, be a justified ground to dismiss a Government servant from service or deny entry into Government service" In the case on hand, the petitioner was appointed to the post of constable after following the required procedure i.e. written examination, physical efficiency test and written test followed by medical examination. It is an admitted position that furnishing of false information or suppression of any factual information in the attestation form would be disqualification and is likely to render a candidate unfit for employment under the Government. However, the respondent authority has failed in not following the established procedure of issuing show-cause notice, thereby, not affording the opportunity of being heard. Nothing has come on record to show that the respondent authority has replied to the representations made by the petitioner. The submission of the learned Counsel for the respondents that since the petitioner was only a trainee there was no need to issue show-cause notice or opportunity of hearing, cannot be accepted. In fact, it was only after the petitioner applied under the R.T.I. Act, that the letter dated 28-5-2009 was made available to him. The petitioner was only given an intimation dated 1-6-2009 stating that his training was terminated.

8. In the criminal case registered under Sec. 498A read with Secs. 323 and 506(2) of I.P.C. and Secs. 3 and 7 of Dowry Prohibition Act, the petitioner was acquitted of the charges. The Apex Court has observed in the case of *Preeti Gupta v. State of Jharkhand*, 2010 (7) SCC 667 that it is a matter of common experience that most of the complaints under Sec. 498A of I.P.C. are filed in the heat of moment over trivial issues without proper deliberations. It is seen that a large number of such complaints are not even bona fide and are filed with oblique motive. In the case on hand also for the trivial offence of what the petitioner was charged with, in which he has been acquitted, cannot make him a criminal of a kind where public interest requires his non-induction in the police force and that too as a Constable. As referred above, the Apex Court has also taken view in number of matters referred above that every wrong information may not necessarily partake the character of deception. A person may be wrong, but under the

bona fide belief that he is right, he furnishes the information. This would not be deception. Moreover, the offence committed by the petitioner is not of the kind which would justify dismissal or removal from service. In this case, the respondents admitted that there are such officers against whom criminal cases are pending and they are continued in employment. The main charge against the petitioner is that he has suppressed the information that a criminal case was pending against him. Probably he did not mention this out of fear that if he did so he would be disqualified though he was told by his family members that the matter was settled. In any event, it was not such a serious offence like murder or rape, and hence, a reasonable view should have been taken by the respondents in the matter.

9. For the aforesaid reasons, we allow the petition by setting aside the order dated 28-5-2009 passed by respondent No. 2. The petitioner shall be taken back in service within a period of two months from today, but he will not be entitled to any back wages nor shall he ask for continuity of service for the period he has remained out of service. There shall be no order as to costs.

Petition allowed.

