

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

FMA 1434 of 2022
with
IA No. CAN 1 of 2022
Union of India & Ors.
-Versus-
Sri Sukdeb Mondal

For the Appellants : *Mr. Partha Ghosh,*
Mr. Sourav Mondal,
Ms. Simran Sureka,
Mr. Debashis Das.

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

Hearing is concluded on : *13th September, 2023.*

Judgment On : **4th October, 2023.**

Tapabrata Chakraborty, J.

1. The railways and its functionaries have preferred the present appeal challenging a judgment dated 6th September, 2022 passed by the learned Single Judge in a writ petition, preferred by one Sukdeb Mondal (in

short, Sukdeb), being WPA 28149 of 2015 challenging *inter alia* an order of termination from service dated 13th July, 2015 and an order dated 14th October, 2015 passed by the Director General, Railway Protection Force (in short, RPF).

2. Shorn of unnecessary details, the facts are that Sukdeb, the respondent in the present appeal, applied for the post of Constable, RPF of Eastern Railway pursuant to an advertisement/ notification being employment notice no.1 of 2011. Sukdeb emerged to be successful and after police verification and medical test, he was sent for training. After successful completion of training on 18th June, 2015, he was directed to appear in the office of the appellant no.3 herein. On 14th July, 2015, when he attended the office, he was served a notice of termination from service dated 13th July, 2015. On the said date itself Sukdeb submitted a representation to the respondent no.2 for reinstatement as due to a *bona fide* mistake he did not disclose the initiation and pendency of a Chakdah Police Station Case No.103 of 2011 dated 16th March, 2011 under Section 341/323/506/34 of IPC in the attestation form. By an order dated 20th January, 2015 passed by the learned Magistrate the petitioner and others were acquitted u/s 320 of the Code of Criminal Procedure (in short, the Code) considering the compromise petition filed by the *defacto* complainant praying for compounding of the offences against all the accused persons. Challenging the termination order, Sukdeb preferred a writ petition being WP 23959 (W) of 2015 which was disposed of by an order dated 16th September, 2015 directing the appellant no.2 to decide the appeal against

the order of termination. Pursuant to such direction, the appellant no.2 passed an order on 8th October, 2015, communicated *vide* memo dated 14th October, 2015, rejecting Sukdeb's claim.

3. Mr. Ghosh, learned advocate appearing for the appellants submits that the appellant has been acquitted on the basis of a compromise arrived at between the parties. It is not a case that upon tendering evidence and full-fledged hearing, Sukdeb was honourably acquitted by the order dated 20th January, 2015. In a disciplined force, strict norms are needed to be applied. To avail appointment in police service, the candidate must be having an impeccable character, integrity and rectitude. Sukdeb was involved in a criminal proceeding on the date he filled up the attestation form and though the criminal case was pending against him in answer to the question '*Have you been prosecuted?*' he stated '*No*'. There had thus been a deliberate suppression of material fact by Sukdeb and as such the competent authority rightly issued the order of termination on 13th July, 2015 and there is no infirmity in the same.

4. He further argues that Sukdeb 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 -vs- Union of India and Others*, reported in (2016) 8 SCC 471, inasmuch as there was suppression of information as regards involvement in a criminal case and Sukdeb was acquitted subsequent to filling of the verification form.

5. According to Mr. Ghosh, the learned Single Judge exercised discretion in favour of Sukdeb observing that the offence was trivial in nature and not of moral turpitude but glossed over the fact that there had been a clear suppression of material fact by Sukdeb on the date he was filling up the attestation form. The learned Single Judge ought to have appreciated 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.

6. Drawing our attention to a memo dated 10th March, 2015, issued by the District Intelligence Officer, Chakdah, Mr. Ghosh submits that in course of verification it was found that a criminal case was pending against Sukdeb. He violated the provisions of clause 9(f) of the employment notification and was discharged rightly applying the provisions of Rule 67.2 of the Railway Protection Force Rules, 1987 (in short, the 1987 Rules).

7. *Per contra*, Mr. Majumder, learned advocate appearing for Sukdeb submits that there was a *bona fide* mistake on the part of the petitioner to disclose the pendency of the criminal case in the attestation form. For such omission the employer could not have arbitrarily discharged/terminated Sukdeb from service. In the present case, Sukdeb was of a tender age on the date of the alleged incident. He along with all his family members were illegally roped in. No specific overt act was attributed to Sukdeb in the complaint. Sukdeb also did not suffer incarceration. The complainant consciously filed the compromise petition for compounding the offences against all the accused persons. Without considering such facts the

appellants in an arbitrary manner discharged Sukdeb from enlistment for the post of Constable.

8. Drawing our attention to a memo dated 24th February, 2004, issued by the Under Secretary, Railway Board, Mr. Majumder submits that one Bijendar Singh Goutam, similarly situated with Sukdeb, was discharged for suppression of a fact in the attestation form that a criminal case was pending against him. Subsequently, in view of his acquittal in the said case the order of discharge was withdrawn. Such fact though categorically stated in the representation dated 31st July, 2015 was not taken into consideration while issuing the impugned order dated 8th October, 2015.

9. He further argues that one Sri Pawan Kumar, similarly situated with Sukdeb, was also discharged as he suppressed information in the verification form. The said dispute went up to the Hon'ble Supreme Court and finally by the judgment delivered in the case of *Pawan Kumar –vs- Union of India & Anr.*, reported in *2022 LiveLaw (SC) 441*, Pawan's order of discharge was set aside. The principle of law enunciated in the case of *Pawan Kumar (supra)* is squarely applicable to the facts of the present case and that as such there is no error in the judgment impugned in the present appeal.

10. He argues that as Sukdeb was illegally discharged, the learned Single Judge had rightly directed reinstatement and payment of arrears of salary for the period during which he had not served the force due to the impugned discharge/dismissal together with all benefits including pay,

seniority and all other consequential benefits etc. taking into account as if Sukdeb had not suffered any discharge/dismissal from his employment.

11. Drawing our attention to the termination order dated 13th July, 2015, Mr. Majumder submits that the said order does not reflect any application of mind whatsoever. By a single stroke of pen, Sukdeb had been discharged. Such act being *ex facie* arbitrary and unreasonable is not sustainable in law. In support of such contention reliance has been placed upon an unreported judgment delivered in the case of *Union of India & Ors. – vs- Bibrata Biswas*. The said judgment had already been complied with by the RPF authorities and as such the said authorities cannot apply any different yardstick in case of Sukdeb, who is similarly situated with Bibrata Biswas.

12. In reply, Mr. Ghosh argues that the judgment delivered in the case of *Pawan Kumar (supra)* is distinguishable on facts inasmuch as no criminal case was either instituted or pending against Pawan on the date he filled up the attestation form. However, in the present case a criminal case was pending against Sukdeb on the date he filled up the attestation form. In view thereof, the recourses detailed under paragraph 38.4 of the judgment of *Avtar Singh (supra)* are not applicable in the present case.

13. Heard the learned advocates appearing for the respective parties and considered the materials on record.

14. 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, for example. The very nature of offence or misconduct alleged against the Sukdeb 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 Sukdeb was u/s 341/323/506/34 of IPC. 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 Sukdeb's claim had been mechanically rejected.

15. Compounding of an offence is a statutory expression contained under Section 320 of the Code. The learned Magistrate upon considering the facts and circumstances of the case has jurisdiction to allow or to refuse acquittal of the accused persons. In compounding, decision of the victim of the offence not to prosecute and not to continue with prosecution is most important. In Chakdah Police Station Case No.103 of 2011 dated 16th March, 2011, the dispute was compromised and the accused persons were acquitted by the learned Magistrate as the terms of such compromise were legal. The offences alleged against Sukdeb are trivial in nature. In view thereof and as the said offences are compoundable, it cannot be said that acquittal on the basis of such compromise does not pass the muster. In the

said conspectus, it cannot be argued by the appellants that there was no honourable acquittal of Sukdeb. Save and except the Chakdah Police Station Case No.103 of 2011 dated 16th March, 2011, Sukdeb had no antecedents and there was nothing against him on record in I.B. West Bengal, as would be explicit from the memo dated 7th July, 2015 issued by the District Magistrate, Nadia.

16. 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, 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. Ghosh that the recourses detailed under paragraph 38.4 of the judgment of *Avtar Singh (supra)* are not applicable in the present case since in Pawan's case conviction or acquittal had already been recorded before filling of the attestation form, is not acceptable to us.

17. In our considered opinion, the learned Single Judge has rightly directed reinstatement of Sukdeb in service in the post of Constable at the stage from where he was dismissed/discharged from his employment and such direction is affirmed.

18. However, we are unable to agree with the direction towards payment of full backwages with all consequential benefits to Sukdeb. It is well-settled that reinstatement and payment of backwages are two independent issues and an order of reinstatement does not mean that the person would automatically become entitled to backwages. In the facts and circumstances of the case such direction towards payment of full backwages with other consequential benefits to Sukdeb is not sustainable and is, accordingly, set aside. However, the appellants shall grant notional benefits, including pay fixation and seniority to Sukdeb for the period from when he was dismissed/discharged till the date of his reinstatement.

19. With the above observations and directions the appeal and the connected application are disposed of.

20. There shall, however, be no order as to costs.

21. 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.)