

(2025) 03 OHC CK 1361

In the Orissa High Court

Case No : Writ Appeal No. 1627 Of 2023 (I.A. No.4325 Of 2023)

Giridhari Bag

APPELLANT

Vs

Commandant, Orissa State Armed Police (OSAP), Koraput
And Others Vs

RESPONDENT

Date of Decision : 06-03-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 235(1)
Indian Penal Code, 1860 — Section 294, 307

Citation : (2025) 03 OHC CK 1361

Hon'ble Judges : Arindam Sinha, ACJ; M.S. Sahoo, J

Bench : Division Bench

Advocate : Suraj Mohanty, K.C. Kar

Final Decision : Dismissed

Judgement

Arindam Sinha, ACJ.

1. Mr. Mohanty, learned advocate appears on behalf of appellant. He submits, the appeal be admitted on condoning reported delay of 142 days. In the application his client has stated, at the material time he was suffering from typhoid and thus unable to contact his learned advocate for preparing and filing the appeal. Mr. Kar, learned advocate, Government Advocate appears on behalf of State.

2. We accept cause shown in the application. The delay is condoned and the appeal admitted. The application is disposed of.

3. Mr. Mohanty submits, by impugned judgment dismissal from service directed by the disciplinary authority and appeal rejected, were upheld. This was in spite of the learned single Judge having found that his client had not even been issued the show cause notice, for having suppressed four criminal cases pending against him at the time when he made declaration for being appointed. He was not given opportunity of hearing in the disciplinary proceeding on absence of show cause notice. On query made he submits, after the dismissal order but before his

client's appeal stood rejected, the acquittals happened.

4. He relies on view taken by another learned single Judge of this Court in WPC (OAC) no.1058 of 2016 on judgment dated 6th September, 2022 (S. Naresh Rao v. Principal Secretary to Government of Odisha and Others). He submits, in similar circumstances, the learned single Judge had set aside the dismissal on allegation of suppression, where no show cause notice had been issued. He submits, impugned judgment reveals that the learned single Judge failed to appreciate the facts and erred in law. The judgment be reversed.

5. Mr. Kar submits, there be adjournment for him to respond.

6. A question of law has been raised, regarding a person who had suppressed pendency of criminal cases against him, obtained appointment and was subsequently acquitted, whether can continue in service, particularly in the uniformed force.

7. In S. Naresh Rao (supra) two judgments of the Supreme Court were relied upon in similar facts, where petitioner therein had been acquitted after the discharge order but before the appeal order. First is the case of Avtar Singh v. Union of India, reported in (2016) 8 SCC 471. We reproduce below a passage from paragraph 29 and paragraph 35 of the report.

"29. Similarly in case of suppression also, if in the process of verification of information, certain information comes to notice then also employer is required to take a decision considering various aspects before holding incumbent as unfit. If on verification of antecedents a person is found fit at the same time authority has to consider effect of suppression of a fact that he was tried for trivial offence which does not render him unfit, what importance to be attached to such non-disclosure. Can there be single yardstick to deal with all kinds of cases?

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 dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases."

(emphasis supplied)

The other judgment of said Court is in Joginder Singh v. Union Territory of Chandigarh, reported in 2015 AIR SCW 483. There the Supreme Court was considering honourable acquittal as a mitigating fact for the authorities to deal with on the case of suppression.

8. We have been shown appellant having had been acquitted in four cases. One

of them was Sessions Case no.3/4 of 2002, in which the Court of Assistant Sessions Judge-cum-Chief Judicial Magistrate, Kalahandi rendered judgment dated 21st May, 2002. Charge offences under sections 294/307 of Indian Penal Code, 1860. We reproduce below paragraph-11 from the judgment.

"11. In the circumstances, the accused is found not guilty U/s. 294/307 of the I.P.C. and is acquitted thereunder U/s. 235(1) of the Cr.P.C. under benefit of doubt. He be set at liberty forthwith."

(emphasis supplied)

9. Another of the four cases was G.R. case no.234 of 2001/T.R. no.309/2003 dealt with on judgment dated 11th November, 2003 by the Judicial Magistrate First Class, Bhawanipatna. It was a case filed by the police against appellant. Charge was, when they went nab him in a marriage party he obstructed them from doing their duty and ran away. The Magistrate held that there was lack of corroboration in the evidence. There was also disbelief regarding the charge on evidence laid by prosecution witnesses that they did not know appellant yet went to nab him. Hence we must presume the police had at least a photograph to identify the accused they were out to nab.

10. The other two cases we accept as were of honourable discharge following Avtar Singh (supra). However, above two cases, especially the first one discussed, is not of honourable acquittal.

11. Appellant also complains he was not given opportunity of hearing. He did make representation to the appellate authority, dealt with on order dated 10th November, 2004, as submitted by Mr. Mohanty. Text of the order is reproduced below.

"Perused the representation of Sri Giridhari Bag, Ex-Sepoy 518 of OSAP, 3rd Bn. Koraput together with the connected records, documents and correspondence. He has represented to consider the order of his removal from service and to reinstate him explaining that some criminal cases were registered against him and in the meantime he has been acquitted of the charges. Records show that the representationist was involved as an accused in four heinous crimes during the period from 1999 to 2001. Local verification has revealed that he was a criminal and an antisocial for which he was considered unfit for rendering Police service. Verification of his character and antecedents having been found not satisfactory, he was removed from service. In this connection it is material to mention that even in the Verification Roll prescribed by PMR-673, at sl. 7 & 8 the applicant had declared that he had never been accused in any criminal case though at that point of time he was involved in 4 criminal cases of grave nature. As per provisions laid down in PMR-668(a), PMR- 673 (c) and Rule-13 of Orissa Military Police Manual, 1953 the Commandant, OSAP, 3rd Bn. is in order and the representation does not call for any consideration.

Accordingly, the representation is rejected. The person concerned should be

informed accordingly. ”

(emphasis supplied)

12. We see that the appellate authority described appellant as a criminal and an antisocial though the revelation from the record, of him being such, was at a time when the criminal cases were pending. Subsequently the criminal cases resulted in acquittal as aforesaid. The question is whether the representation was considered in accordance with law. The Supreme Court in the cases relied upon by appellant had said that there should not be arbitrary treatment, even in a case of suppression when the case was of trivial nature and where there had been honourable acquittal. This fact appellant has not been able to establish, neither that the cases were of trivial nature nor of him having had been honourably acquitted in all the cases.

13. So far as appellant not having had opportunity of being heard is concerned, he did make representation, disposed of by appellate order dated 10th November, 2004. Initially not having been heard did cause him prejudice but after that he was heard. Furthermore, he mounted substantial challenge by the writ petition and the learned single Judge has extensively discussed the facts to come to finding that in spite of no show cause notice issued, appellant was guilty of suppression and therefore had obtained the appointment thereby, to refuse to interfere. Having gone through impugned judgment and view taken in S. Naresh Rao (supra) we do not have reason to interfere with impugned judgment.

14. The appeal is dismissed..

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