

**(2016) 03 RAJ CK 0128**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 817 of 2016**

Tara Chand Meena

APPELLANT

Vs

State of Rajasthan

RESPONDENT

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**Date of Decision :** 08-03-2016

**Acts Referred:**

**Citation :** (2016) 3 WLC 657

**Hon'ble Judges :** Mr. M.N. Bhandari, J.

**Bench :** Single Bench

**Advocate :** Mr. Nawal Singh Sikarwar, Advocate, for the Petitioner

**Final Decision :** Dismissed

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## Judgement

Mr. M.N. Bhandari, J.—By this writ petition, a challenge is made to the order dated 27th August, 2013, by which, the petitioner has been denied appointment on the post of Constable (Driver). It was on account of suppression of fact about criminal case and conviction therein.

2. Learned counsel for the petitioner submits that an advertisement was issued by the respondents on 14th July, 2013 to invite applications for the various posts, which includes, the post of Constable (Driver). The petitioner applied for the post and remained successful in the written examination. He was called for the physical test and remained successful therein also. The petitioner was thereupon called for the running test followed by the select list where name of the petitioner appear at item No. 6. In view of the higher merit position of the petitioner against 812 posts of the Constable (Driver), he was sure to get appointment but was shocked on denial of appointment. The impugned order dated 27th August, 2015 gives reasons for rejection of the candidature. The petitioner has suppressed the fact about pendency of the criminal case and conviction therein.

3. Learned counsel submits that petitioner was acquitted in the criminal case vide order dated 20th March, 2015 and against the said order, appeal was also

dismissed. The FIR bearing No. 75/2011 was lodged on 07th April, 2011. The Prosecution conducted investigation and did not find petitioner's involvement therein, thus charge sheet against the petitioner was not filed. The cognizance of offence against the petitioner was taken on an application under Section 319 Cr.P.C. The case was then tried against the petitioner and finally, he was given benefit of Section 4 & 12 of Probation of Offenders Act, 1958 (for short "Act of 1958"). In the background aforesaid, conviction of the petitioner should not have been taken adverse for denial of the appointment. The prayer is set aside the impugned order with a direction for appointment of the petitioner on the post of Constable (Driver).

4. The reference of various judgments has been given where suppression/concealment of the fact was ignored by the Court below and direction was given for appointment.

5. I have considered the submissions made by learned counsel for the petitioner and scanned the matter carefully.

6. The documents available on record shows that petitioner remained successful in the selection test but has been denied appointment on suppressing/concealing of information about criminal case and conviction therein.

7. The question for my consideration is as to whether suppression/concealment about criminal case can be a ground to deny appointment.

8. The issue aforesaid has been considered by the Apex Court in number of cases. In the case of *Kendriya Vidhyalaya Sangathan v. Ram Ratan Yadav* reported in 2003(3) SCC 437 the question has been answered. The issue aforesaid was earlier answered by the Apex Court in the case of *Union of India v. Bhaskaran* reported in 1995 Suppl. (4) SCC 100 and *Delhi Administration v. Sushil Kumar* reported in 1996(11) SCC 605. In those cases, denial of appointment on suppression/concealment about criminal case has not been interfered.

9. The same view was taken by the Apex Court in the case of *Bank of Baroda v. Central Government Tribunal* reported in 1999(2) SCC 427, *R. Radhakrishnan v. Director General of Police* reported in 2008(1) SCC 660, *Union of India and ors. v. Bipad Bhanjan Gayen* reported in 2008(11) SCC 314 and also in the case of *Daya Shankar Yadav v. Union of India and ors.* reported in 2010(14) SCC 103 and lastly, in the case of *State of West Bengal and ors. v. S.K. Nazrul Islam* reported in 2011(10) SCC 184. In these cases, the Apex Court held that suppression of fact about criminal case is fatal, thus denial of appointment is justified. Those judgments are not only of disciplined forces but even other services like the services in *Kendriya Vidyalaya Sangathan*.

10. In the instant case, the petitioner has suppressed the fact about pendency of criminal case and conviction therein. It was at the stage when not only he had received the summon after cognizance of offence against him but was later on

convicted also. No doubt, it is true that benefit under Section 4 & 12 of the Act of 1958 has been given and thereby, conviction may not incur disability but here suppression of fact has become a ground to deny appointment and not the conviction. In the light of the aforesaid and the authoritative pronouncement of the Apex Court in the judgments, referred above, I do not find any illegality in the action of the respondents.

11. Learned counsel for the petitioner has referred few judgments of this High Court where suppression of fact has not been taken to be fatal and rejection of the candidature was set aside by the Courts.

12. First judgment referred by the learned counsel is in the case of Rajesh Suman v. State of Rajasthan and anr. in SB Civil Writ Petition No. 8937/2015 decided vide order dated 21st August, 2015.

13. The perusal of the aforesaid judgment reveals that suppression was not taken to be fatal not only for the reason that necessary disclosure was made in Clause 5 of the verification role while on the other part of role, it was not declared, thus was not a case of total suppression of fact. The Court further came to the conclusion that petitioner therein was not to be employed in the disciplined forces, thus judgment of the Apex Court in the case of Kendriya Vidyalaya Sangathan (supra) and other judgments referred in the previous paras were not applied. The judgment of this Court in the case of Rajesh Suman (supra) is distinguishable on its own facts because the case in hand is for the appointment in the uniformed service where suppression of fact is fatal.

14. The other judgment is in the case of Sukhlal Kalasna v. State of Rajasthan and ors. reported in 2012(2) DNJ 905. Therein, the suppression of criminal case was not found material as the petitioner was acquitted therein earlier. This Court considered the judgment of Apex Court in the case of Commissioner of Police and ors. v. Sandeep Kumar reported in 2011(4) SCC 644. It seems that learned counsel appeared for the respondents did not refer series of the judgments of the Apex Court where suppression/concealment of criminal case is held to be fatal. If there is difference of view, which is to be relied. If the subsequent judgment has not made reference of the earlier judgments then what is to be applied is the earlier judgments of the Apex Court.

15. The judgment of the Apex Court in the case of Ram Kumar v. State of U.P. and ors. reported in 2011(14) SCC 709 has also been relied by the petitioner. Therein also, suppression was not taken adverse by the Apex Court finding acquittal of the candidate. Therein, the judgment of Kendriya Vidyalaya Sangathan (supra) was referred, however, it was not applied for the reason that the candidate had been acquitted prior to submission of verification role whereas in the case of Kendriya Vidyalaya Sangathan (supra), the case was pending.

16. The last judgment is in the case of State of Haryana and ors. v. Dinesh Kumar reported in AIR 2008 SC 1083. Therein, considering the nature of information sought and given, it was not taken to be a case of suppression, thus

again the judgment aforesaid has been given on its own facts.

17. The Apex Court, however, in the case of Jainendra Singh v. State of U.P. reported in 2012(8) SCC 748 referred the issue to the larger Bench for an authoritative pronouncement. Therein, reference of all the earlier judgments has been given holding that suppression/concealment can be a ground to deny appointment or for cancellation of appointment. The Division Bench of this Court had also considered the issue aforesaid in the case of Sunil Kumar v. UOI and ors. in DB Civil Special Appeal (W) No. 2593/2011 decided on 03.01.2012 along with connected matter and held that suppression would be fatal to seek appointment.

18. In the instant case, the criminal case was not only tried against the petitioner after acceptance of the application under Section 319 of Cr.P.C. but the petitioner was convicted therein. It is not a case of acquittal long before declaration made by the candidate or is not a case of concealment. The benefit under the Act of 1958 is given only when the accused is convicted, though the conviction may not incur disability but denial of appointment is not due to conviction but due to suppression of criminal case. In the light of the aforesaid, the judgments cited by the learned counsel for the petitioner cannot be applied.

19. It is also necessary to refer the judgment of the Apex Court in the case of Commissioner of Police, New Delhi and anr. v. Mehar Singh reported in 2013(7) SCC 685. Therein, it has been held that appointment is disciplined forces can be denied even on acquittal in the criminal case. It was also held that acquittal by itself would not make a candidate entitled for appointment in the disciplined forces. In a case where a candidate has been convicted and has suppressed the fact, it can be taken as a ground to deny appointment.

20. In the light of the aforesaid, I do not find any illegality in the impugned order, hence, this writ petition is dismissed so as the stay application.