

Court No. - 10

Case :- WRIT - A No. - 52939 of 2008

Petitioner :- Anil Kumar Singh

Respondent :- Union Of India And Others

Counsel for Petitioner :- U.K. Saxena, Abhishek Tiwari, Amit Saxena, O.P. Rai, P.K.S.Paliwal, V.K.Singh

Counsel for Respondent :- A.S.G.I., Ashok Singh

Hon'ble Kshitij Shailendra,J.

1. Heard Shri Abhishek Tiwari, learned counsel for the petitioner, Shri Ashok Singh, learned counsel representing all the respondents and perused the record.

2. This writ petition was earlier dismissed by a detailed order dated 15.11.2010, however, the same was set aside in Special Appeal No. 1538 of 2011 (Anil Kumar Singh vs Union of India and others) by order dated 03.05.2013 and the writ petition was revived with an observation that Co-ordinate Bench/learned Single Judge had not recorded any finding on the aspect that on 07.01.2006 i.e. the date of filling up of verification form, the petitioner-appellant was not aware about the pendency of criminal case.

3. The case of the petitioner is that at the time when the petitioner filled up the form for the post in question, he was juvenile and not aware of the pendency of the criminal case registered as Case No. 2925 of 1998 arising out of Case Crime No. 78 of 1998, under sections 323/34 and 324/34 IPC, police station Kotwali, district Azamgarh. Learned counsel for the petitioner submits that at that time the petitioner was aged about 11.5 years and, even if, he was granted bail in 1998, he did not go to the jail even for a day and, hence, his family members had

conducted pairvi of the case on his behalf. He submits that the petitioner has already been acquitted by order dated 04.01.2011 passed by Chief Judicial Magistrate, Azamgarh in Case No. 2925 of 1998 arising out of Case Crime No. 78 of 1998, under sections 323/34 and 324/34 IPC, police station Kotwali, district Azamgarh.

4. The dispute in the present case is that as to whether on the ground of concealment of pendency of the criminal case, services of the petitioner could be terminated.

5. I have perused the order impugned dated 13.09.2008, which reads as follows:

"In pursuance of Sub-Rule (1) for Rules 25 of the Central Civil Services (s) Rules, 1965 and para 16 (a) below Appendix "B" Note-(2) of C.R.P.F. Rules, 1955 I.P.P. Paule Commandant in my capacity of Commandant-190 Bn. C.R.P.F. Chatra (Jharkhand) hereby give notice to No. 055355404 CT/ Fitter Anil Kumar of this Unit that his service shall stand terminated on the expiry of one month period from 13/09/2008 to 12/10/2008."

6. The aforesaid order does not disclose any reason except applicability of service Rules.

7. However, Ashok Singh, learned counsel for the respondents submits that services have been terminated on account of non-disclosure of pendency of criminal case at the time of filling up of the form.

8. Learned counsel for the petitioner has placed reliance upon the following authorities and submits that under identical circumstances, the Apex Court has granted relief to the concerned petitioner/appellant:

(i) *Pawan Kumar vs Union of India and another*, AIR 2022 SC 2829.

(ii) *Umesh Chandra Yadav vs The Inspector General and Chief Security Commissioner, R.P.F. Northern Railway, New Delhi & others*, 2022 SCC Online (SC) 299.

9. On the other hand, Shri Ashok Singh, learned counsel for the respondents has placed reliance upon the decision of Apex Court in the case of *Avtar Singh vs Union of India and others*, reported in 2016 (8) SCC 471 and he submits that the Apex Court has dealt with even those circumstances under which concerned employee claims no knowledge of the proceedings of criminal case at the time of filling up of form. He has referred to paragraph No. 38 of the said judgment, which reads as follows:

“38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize 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 recourse 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.”

10. Having heard the learned counsel for the parties, I find that knowledge or no knowledge about pendency of criminal case

is a pure question of fact. Once the Division Bench while allowing the special appeal of the petitioner directed the learned Single Judge to deal with the said question and this Court in the light of decision of *Avtar Singh* (supra) and also in absence of any finding recorded in the order impugned regarding knowledge/no knowledge to the petitioner, who was juvenile at the time of incident and lodging of criminal case, the matter requires to be remitted back to respondent No. 2, Additional DIGP Group Central CRPF, Agartalla (State of Tripura).

11. The writ petition succeeds and is **allowed**.

12. The order dated 13.09.2008 is hereby **quashed**.

13. The matter is relegated to the respondent No. 2 Additional DIGP Group Central CRPF, Agartalla (State of Tripura) **to decide the factum of knowledge/no knowledge** to the petitioner regarding pendency of criminal case at the time of filling up of the concerned form in the light of conclusion drawn by the Apex Court in the judgment of *Avtar Singh* (supra) as reproduced herein-above.

14. Such a decision shall be taken on or before 28.02.2024, after providing opportunity of hearing to the petitioner and after verification of relevant records.

Order Date :- 18.10.2023

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