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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 7623/2016

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Judgment dated 29th August, 2016

ANJU DEVI JATAV

..... Petitioner

Through : Mr.Vaibhav Sharma and Mr.Sudeep
Singh, Advs.

versus

ADDL. DEPUTY COMMISSIONER OF POLICE Respondent

Through : Mr.Sanjoy Ghose and
Mr.Vikramaditya, Advs.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (ORAL)

CM APPL. 31431/2016

1. Exemption allowed subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 7623/2016

3. Mr.Sanjoy Ghose, Advocate, enters appearance on behalf of the respondent on an advance copy and submits that it is not necessary for him to file any reply to this writ petition.
4. With the consent of the counsel for the parties, we set down the present petition for final hearing and disposal.
5. Challenge in this writ petition is to the order dated 29.4.2016 passed by Central Administrative Tribunal (hereinafter referred to as '*the Tribunal*') in OA No.3486/2015 by which the OA filed by the petitioner stands dismissed on the ground of non-disclosure of an FIR

registered against her.

6. The brief facts of the case are that the respondent had published an advertisement in a leading newspaper dated 17.1.2013 and in the Employment Newspaper dated 2.2.2013 inviting applications for filling up 522 posts of Women Constable (Executive) in Delhi Police. Pursuant to the said advertisement, the petitioner had applied for the aforestated post vide her application dated 20.2.2013. As per the petitioner, till the submission of the application, there were no criminal antecedents against her. However, on 31.3.2013, the name of the petitioner figured in FIR No.203/2013 registered under Sections 147/323/341 of the Indian Penal Code (in short '*IPC*') at Police Station Sadar, Alwar.
7. It is the case of the petitioner that aforestated FIR was registered on a trivial issue between the families/neighbours, the petitioner was not involved in the said dispute and her name was roped in only on account of family enmity. Further, according to the petitioner, the Sections invoked in the FIR do not fall within the purview of 'moral turpitude' and, thus, was not a ground *per se* for her disqualification.
8. As per the petitioner, the said dispute was resolved before the Lok Adalat on 19.11.2013 in Case No.23/93/2013 (FIR No.203/2013) and the petitioner was released on probation. However, vide the said order dated 19.11.2013 the learned Additional Civil Judge convicted the petitioner under Sections 147, 323 and 341 of IPC. A benefit under Section 3 of the Probation of Offenders Act was given to the petitioner and she was released on probation. The bail bond and personal bonds of the petitioner were also cancelled and it was also directed that she would be entitled to take the benefit of Section 12 of Probation of Offenders Act.

9. On 8.3.2014, the petitioner appeared for the Physical Ability Test and qualified the same. The petitioner thereafter appeared in the written test on 13.7.2014 and qualified the same. The petitioner was thereafter called upon by the Department to fill up the Attestation Form. In the said Attestation Form, in Column No.11(b), the petitioner was required to submit details with regard to criminal proceedings, if any. The petitioner filled up her Attestation Form on 27.8.2014. Since benefit of Section 12 of the Probation of Offenders Act was granted to the petitioner, whereby the FIR was not to be treated as a disqualification, the petitioner under a *bona fide* impression did not disclose the details of FIR registered against her. The petitioner, being qualified in physical test and written test, underwent medical examination on 18.9.2014, wherein she was declared successful. Thereafter the petitioner was provisionally selected subject to her verification of character and criminal antecedents.
10. The respondent, vide its letter dated 5.1.2014 (*sic.* 5.1.2015), issued a Show Cause Notice to the petitioner thereby calling upon her to show cause as to why her candidature for the post of Constable (Executive) Female in Delhi Police-2013 should not be cancelled for non-disclosure of registration of FIR in the application form dated 20.2.2012 and Attestation Form dated 27.8.2014. On 15.1.2015, the petitioner submitted her reply to the Show Cause Notice stating that she had filled up her application form on 20.2.2013 by which time no criminal case was pending against her. As far as the non-disclosure of criminal case in the Attestation Form is concerned, the petitioner explained that she was under a *bona fide* impression that the FIR was not to be counted as a disqualification. The respondent did not find favour with the reply submitted by the petitioner and vide order dated 30.1.2015 the

candidature of the petitioner was cancelled. On 24.3.2015, the petitioner submitted an appeal/representation before the Joint Commissioner of Police, Recruitment Cell, NPL, Delhi, against the order dated 30.1.2015. The said appeal was dismissed by the Additional Deputy Commissioner of Police, Recruitment, on 21.4.2015. The petitioner thereafter filed OA No.3486/2015 before the Tribunal seeking to set aside the order dated 30.1.2015 whereby her candidature for the post of Women Constable (Executive) in Delhi Police was cancelled, and the order dated 21.4.2015 whereby the appeal/representation of the petitioner was dismissed. The petitioner also sought direction to the respondent to appoint her to the post of Women Constable (Executive). The Tribunal, vide impugned order dated 29.4.2016, dismissed OA No.3486/2015 being devoid of merit. Aggrieved by the impugned order dated 29.4.2016, the petitioner filed the present writ petition seeking to set aside the orders dated 31.1.2015, 21.4.2015 and 29.4.2016.

11. Learned counsel for the petitioner submits that the Tribunal has failed to consider that the petitioner was roped in FIR No.203/2013 registered under Sections 147/323/34 on account of a trivial dispute between the families/neighbours. Counsel further submits that at the time of filling up of the application form for the post of Women Constable (Executive) there were no criminal case pending against the petitioner and, thus, she could not have given the said information in the application form. Counsel further submits that the said dispute between the families/neighbours was resolved before the Lok Adalat on 19.11.2013 and the petitioner was also given benefit of Section 12 of Probation of Offenders Act. It is further submitted by the counsel that as far as disclosure of criminal antecedents in the Attestation Form is

concerned, the petitioner was under a *bona fide* belief that providing of details with regard to FIR was not required to be mentioned on account of the fact that benefit of Section 12 of Probation of Offenders Act was given to her whereby her conviction should not be treated as disqualification. It is, thus, contended that the concealment was neither deliberate nor *mala fide*.

12. Learned counsel for the petitioner further submits that the respondent has not applied the settled position of law to the facts of the present case and failed to appreciate that even if the petitioner would have mentioned about the FIR in the Attestation Form, the same would not have incurred a disqualification for appointment to the aforesaid post for the reason that offence, for which the FIR was lodged, did not pertain to the offence relating to moral turpitude. In support of this contention, counsel has relied upon *Avtar Singh v. Union of India*, reported at 2016 SCC OnLine SC 726.
13. Counsel for the petitioner has further drawn the attention of the Court to the case of *Avtar Singh* (supra) in support of his contention that suppression of fact or false information should be condoned by the employer in a case, which is 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 the post in question.
14. Learned counsel for the petitioner further submits that as per the Delhi Police Rules, in case a candidate had faced trial in any criminal case which does not fall in the category of moral turpitude and in case such a candidate is discharged by extending the benefit of Probation of Offenders Act, 1958, it would also not be viewed adversely by the Department for his/her suitability for Government service. Reliance is

also placed on the Standing Order No.398/2010. In support of this contention, counsel has also placed reliance on a decision rendered in the case of *Commissioner of Police, New Delhi & Anr. v. Mehar Singh*, Civil Appeal No.4842/2013 and other connected appeals. Counsel further submits that para 17 of *Commissioner of Police, New Delhi & Anr.* (supra) would clearly show that under the Delhi Police Rules, past involvement of a person in a criminal case of a trivial nature is not a disqualification for appointment. Further Standing Order no.398/2010, which deals with Policy for deciding cases of candidates provisionally selected in Delhi Police involved in criminal cases (facing trial or acquitted), would show that if a candidate is discharged by extending the benefit of Probation of Offenders Act, 1958, it was not to be viewed adversely by the Department for his/her suitability for Government service.

15. Learned counsel for the petitioner further submits that Annexure A, as mentioned in Clause 6, lays down the consequences involving moral turpitude. Counsel further submits that a perusal of Clause 6 would show that the offences, for which the petitioner was roped in and named in the aforestated FIR, do not fall under the category of moral turpitude.
16. It is contended by the learned counsel for the petitioner that the nature of offence in this case was trivial in nature and, thus, it would not have a bearing on her candidature had the Department correctly applied the law to the present case.
17. Mr.Ghose, learned counsel for the respondent, has opposed the present petition on the ground that the petitioner was seeking entry into a disciplined force by willful suppression of material facts. Mr.Ghose further contends that it was highly important for the petitioner to have

disclosed correct information. Mr.Ghose contends that the suppression/concealment by the petitioner was willful in nature and, thus, it would disentitle the petitioner to employment in the Delhi Police. Counsel further submits that any leniency with the petitioner would have far reaching consequences and a wrong message would be sent to the candidates and the society in general that persons can wilfully suppress vital information and then get away with the same.

18. At this stage, learned counsel for the petitioner submits that this Court may notice the law laid down by the Supreme Court of India in the case of *Avtar Singh* (supra) and *Commissioner of Police, New Delhi & Anr.* (supra) and give the petitioner one opportunity to make a representation and direct the respondent to decide the representation of the petitioner in accordance with law, which has been laid down by the Supreme Court of India.
19. We have heard learned counsel for the parties and considered their rival submissions. The basic facts of this case are not in dispute that pursuant to the advertisement published by the respondent for filling up the post of Women Constable (Executive) in the Delhi Police, the petitioner made an application on 20.2.2013. Thereafter the petitioner was named in FIR No.203/2013 registered under Sections 147/323/341 at Police Station Sadar, Alwar, however, the said case was settled before the Lok Adalat. The petitioner thereafter qualified the physical ability test and the written test. The petitioner was asked to fill up the Attestation Form. On 27.8.2014 the petitioner filled up her Attestation Form but she did not disclose about the registration of FIR. The respondent thereafter issued a Show Cause Notice to the petitioner on 5.1.2015. The petitioner submitted her reply stating that at the time of filling up the application form, no FIR was pending against her. With

regard to furnishing of criminal case in the attestation form, the petitioner had stated in her reply that she was under a *bona fide* impression that the FIR was not to be counted as a disqualification and, thus, she could not furnish the requisite details. Since the respondent did not find favour with the reply, the candidature of the petitioner was cancelled. The appeal filed by the petitioner was also dismissed by the Additional Commissioner of Police, Recruitment Cell, Delhi. Being aggrieved the petitioner filed OA before the Tribunal, which was also dismissed by the Tribunal.

20. The question, which now arises for consideration, is as to what was the effect of non-disclosure/suppression of criminal case, which had been registered against her, in the attestation form.
21. At this stage, it would be useful to refer to **Avtar Singh** (supra), paras 32, 33 and 41 of which read as under:

“32.The verification of antecedents is necessary to find out fitness of incumbent, in the process if a declarant is found to be of good moral character on due verification of antecedents, merely by suppression of involvement in trivial offence which was not pending on date of filling attestation form, whether he may be deprived of employment? There may be case of involving moral turpitude/serious offence in which employee has been acquitted but due to technical reasons or giving benefit of doubt. There may be situation when person has been convicted of an offence before filling verification form or case is pending and information regarding it has been suppressed, whether employer should wait till outcome of pending criminal case to take a decision or in case when action has been initiated there is already conclusion of criminal case resulting in conviction/acquittal as the case may be. The situation may arise for consideration of various aspects in a case where disclosure has been made truthfully of required information, then also authority is required to consider and verify fitness for appointment. 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 kind of cases?

33. The employer is given 'discretion' to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an incumbent for services in question. In case the employer come to the conclusion that suppression is immaterial and even if facts would have been disclosed would not have affected adversely fitness of an incumbent, for reasons to be recorded, it has power to condone the lapse. However, while doing so employer has to act prudently on due consideration of nature of post and duties to be rendered. For higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However same standard cannot be applied to each and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence etc. have to be considered. Even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or dubious character. In case employer comes to conclusion that conviction or ground of acquittal in criminal case would not affect the fitness for employment incumbent may be appointed or continued in service."

“41. 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:

(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.

(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.

(3) The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

(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 : -

(a) 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.

(b) Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

(4) 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.

(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.

(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.

(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.

(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.

(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.

(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.

(11) Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.”

22. It would also be useful to reproduce para 17 of ***Commissioner of Police, New Delhi & Anr.*** (supra):

“17. We must first deal with the submission that under the Delhi Police Rules, past involvement of a person in a criminal case is not a disqualification for appointment. It is true that Rule 6 thereof which provides for grounds for ineligibility, criminal antecedents of a person is not mentioned as a ground for ineligibility. But, to conclude from this that instances of moral turpitude, however grave, could be overlooked because they do not find mention in Rule 6, would be absurd. In any case, Standing Order No. 398/2010 issued by the Delhi Police to which our attention is drawn empowers the police to take appropriate decision in such cases. Pertinently the respondents have not challenged the Standing Order. This Standing Order incorporates policy for deciding cases of candidates provisionally selected in Delhi Police involved in criminal cases (facing trial or acquitted). It would be appropriate to re-produce the relevant portions of the said Standing Order:

“STANDING ORDER NO. 398/2010

*POLICY FOR DECIDING CASES OF CANDIDATES
PROVISIONALLY SELECTED IN DELHI POLICE
INVOLVED IN CRIMINAL CASES (FACING TRIAL OR
ACQUITTED).*

During the recruitments made in Delhi Police, several cases come to light where candidates conceal the fact of their involvement in criminal cases in the application Form/Attestation Form in the hope that it may not come to light and disclosure by them at the beginning of the recruitment process itself may debar them from participating in the various recruitment tests. Also the

appointment if he/she has been acquitted but not honourably.

In order to formulate a comprehensive policy, the following rules shall be applicable for all the recruitments conducted by Delhi Police:-

- 1). xxx xxx xxx*
- 2). xxx xxx xxx*

3). If a candidate had disclosed his/her involvement and/or arrest in criminal cases, complaint case, preventive proceedings etc. and the case is pending investigation or pending trial, the candidature will be kept in abeyance till the final decision of the case. After the court's judgment, if the candidate is acquitted or discharged, the case will be referred to the Screening Committee of the PHQ comprising of Special Commissioner of Police/Administration, Joint Commissioner of Police/Headquarters and Joint Commissioner of Police/Vigilance to assess his/her suitability for appointment in Delhi Police.

4) If a candidate had disclosed his/her involvement in criminal case, complaint case, preventive proceedings etc. both in the application form as well as in the attestation form but was acquitted or discharged by the court, his/her case will be referred to the Screening Committee of PHQ to assess his/her suitability for appointment in Delhi Police.

- 5). xxx xxx xxx*

6). Such candidates against whom charge-sheet in any criminal case has been filed in the court and the charges fall in the category of serious offences or moral turpitude, though later acquitted or acquitted by extending benefit of doubt or the witnesses have turned hostile due to fear of reprisal by the accused person, he/she will generally not be considered suitable for government service. However, all such cases will be judged by the Screening Committee of PHQ to assess their suitability for the government job.

The details of criminal cases which involve moral turpitude may kindly be perused at Annexure 'A'.

7) Such cases in which a candidate had faced trial in any criminal case which does not fall in the category of moral turpitude and is subsequently acquitted by the court and he/she discloses about the same in both application form as well as attestation form will be judged by the Screening Committee to decide about his/her suitability for the government job.

8) xxx xxx xxx

9). If any candidate is discharged by extending the benefit of Probation of Offenders Act, 1958 this will also not be viewed adversely by the department for his/her suitability for government service.

10). If a candidate was involved in a criminal case which was withdrawn by the State Government, he/she will generally be considered fit for government service, unless there are other extenuating circumstances.

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Annexure 'A' as mentioned in Clause 6 above lays down the following offences involving moral turpitude:

1. Criminal Conspiracy (Section 120-B, IPC)

2. Offences against the State (Sections 121 – 130, IPC)

3. Offences relating to Army, Navy and Air Force (Sections 131-134, IPC)

4. Offence against Public Tranquility (Section 153–A & B, IPC).

5. False evidence and offences against Public Justice (Sections 193-216A, IPC)

6. *Offences relating to coin and government stamps (Section 231-263A, IPC).*

7. *Offences relating to Religion (Section 295- 297, IPC)*

8. *Offences affecting Human Body (Sections 302-304, 304B, 305-308, 311-317, 325-333, 335, 347, 348, 354, 363-373, 376-376-A, 376- B, 376-C, 376-D, 377, IPC)*

9. *Offences against Property (Section 379-462, IPC)*

10. *Offences relating to Documents and Property Marks (Section 465-489, IPC)*

11. *Offences relating to Marriage and Dowry Prohibition Act (Section 498-A, IPC).”*

23. In para 41 of **Avtar Singh** (supra), the Supreme Court has summarised and explained the result of various decisions on the subject. The Supreme Court has outlined that there should be no suppression or false mention of required information by the employee to the employer with regard to conviction, acquittal or arrest, or pendency of a criminal case either before or after entering into service. However, while passing an order of termination of service or cancellation of candidature for giving false information, the employer must take note of special circumstances including the Government orders/instructions/rules. The Supreme Court has also observed that in case there is suppression or false information of involvement in a criminal case, where conviction or acquittal has already been recorded before filing of the application/verification form and which fact later comes to the knowledge of the employer, the employer must take into consideration whether the case was serious in nature which would render an incumbent unfit and in case it is trivial in nature the employer in his

discretion may ignore such suppression of fact or false information by condoning the lapse.

24. In the case of *Commissioner of Police, New Delhi & Anr.* (supra) the Supreme Court has taken note of the Standing Order 398/2010, which has been reproduced hereinabove. It is not in dispute that the Standing Order 398/2010 is applicable to the present case as well. Clause 9 of the said Standing Order clearly stipulates that if any candidate is discharged by extending the benefit of Probation of Offenders Act, 1958, this will not be viewed adversely by the Department for his/her suitability for Government Service. Further the Supreme Court in the case of *Commissioner of Police, New Delhi & Anr.* (supra) has taken note of Annexure A, as mentioned in Clause 6, which lays down the offences involving moral turpitude, which have been reproduced hereinabove.
25. In this case, although the petitioner had made an application for recruitment to the post of Women Constable (Executive) on 20.2.2013 and the FIR was registered on 31.3.2013, the petitioner cannot be faulted in not disclosing the information in the application form, but certainly the petitioner was duty bound to furnish the particulars with regard to registration of FIR and resolution of dispute before the Lok Adalat on 19.11.2013 in the Attestation Form, which she did not do.
26. It is not in dispute that the petitioner was named in the FIR registered under Sections 147/323/341 of the Indian Penal Code. The Sections in the said FIR do not find mention in Annexure A as extracted above and, thus, it can safely be said that the FIR was not registered on the allegation of 'moral turpitude'. Further, it may be noticed that the petitioner was granted benefit of Section 12 of the Probation of Offenders Act by the Lok Adalat which, as per Standing Order

398/2010, is not a disqualification for Government service.

27. Having regard to the facts involved of the present case and also taking into consideration that the matter was settled before the Lok Adalat and also that the Sections invoked in the FIR do not fall within the purview of 'moral turpitude', *prima facie*, it is clear that the dispute was trivial in nature between the neighbours and family members of the petitioner.
28. Accordingly, present writ petition stands disposed of in the following terms:

- (i) The petitioner will make a fresh representation to the respondent;
- (ii) The respondent will consider the representation of the petitioner in the light of the observations made in this order and the law laid down by the Supreme Court of India and discussed in the judgment and thereafter pass a speaking order within six weeks from today;
- (iii) A copy of the speaking order shall be served upon the petitioner at the address mentioned in the writ petition.

29. DASTI.

G.S.SISTANI, J

I.S. MEHTA, J

AUGUST 29, 2016

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