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

+ **W.P.(C) 7966/2016**

% ***Judgment dated 9th September, 2016***

MANVIR SINGH YADAV Petitioner

Through : **Ms.Sweta Rani, Adv.**

versus

DELHI JAL BOARD Respondent

Through : **Ms.Biji Rajesh, Ms.Eshita Baruah,
Mr.Rahul Singhal, Adv. for
Mr.Gaurang Kanth, Adv.**

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (ORAL)

CM.APPL. 33059/2016

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. Learned counsel for the petitioner, at the outset, submits that on account of a typographical error three grounds, being Grounds A to C, urged in the present petition may be deleted.
4. At the oral request of the counsel for the petitioner, she is permitted to strike off the Grounds A to C of the writ petition in the Court itself and initial the same.
5. Challenge in this petition is to the order dated 26.8.2010 passed by Central Administrative Tribunal (in short '*the Tribunal*') by which OA

No.2615/2009 filed by the petitioner was dismissed.

6. The brief facts of the case are that on 1.8.2007, the petitioner was implicated in a criminal case, registered vide FIR No.58/2005 wherein he was kept in custody from 29.5.2005 to 3.6.2005, however, he was acquitted by the trial court vide order dated 1.8.2007 in Criminal Case No.1530/2005.
7. As per the petition, on 7.7.2008, the petitioner was appointed as Peon-cum-AMR on Muster Roll on compassionate grounds in place of his father. On 23.4.2009, the petitioner received a Memorandum alleging that he has concealed material facts and furnished false information to the Department while submitting Acceptance Form that he was neither arrested nor kept in Police custody. On 4.5.2009, the petitioner submitted his detailed reply stated that he was falsely implicated in the said case on account of village enmity, besides other facts such as he is semi-illiterate and not aware of the Rules. Thereafter an in-house inquiry was initiated against him. On 24.6.2009, the Inquiry Officer held that since the Charged Officer admitted his mistake, there was no need to continue the case further. On 28.7.2009, the respondent issued an order whereby a penalty was imposed upon the petitioner of disengagement from muster roll employment in the respondent. Aggrieved by the action of the respondent, the petitioner filed OA No.2615/2009 before the Tribunal.
8. Ms.Biji Rajesh, Advocate, enters appearance on behalf of the respondent on an advance copy and has raised a preliminary objection with regard to delay and laches in filing the present writ petition.
9. Learned counsel for the petitioner has explained that the petitioner belongs to the weaker section of the society; his father was suffering from schizophrenia, which is one of the grounds on which he was given

compassionate employment; he has no source of livelihood; and he is the only person, who is looking after his ailing father and other members of the family. The counsel for the petitioner has produced in Court medical documents of the father of the petitioner. In support of this submission so made, counsel contends that the delay in filing the present petition has occurred on account of the aforesaid reasons and acute financial hardship faced by the petitioner. The medical documents have been produced in Court, which are seen and returned.

10. Having regard to the submissions made, we are satisfied that there are cogent reasons which prevented the petitioner from filing the present writ petition.
11. On the merits of the matter, learned counsel for the petitioner submits that the petitioner was granted appointment on compassionate grounds vide order dated 7.7.2008. Upon verification of his character and past antecedents by the Police, led to the disclosure that the petitioner was involved in a criminal case. It is further submitted by the counsel that the petitioner did not disclose the factum of his false implication in the criminal case in the attestation form as at that time there was no case pending against him and being practically, illiterate he was of the *bona fide* belief that scoring out the word 'Yes' in Column 12(i) of the Attestation Form would not be incorrect. Counsel further submits that in fact the said case pertains to the year 2005, which was much prior to the filing of the Application Form i.e. in the year 2007, in the respondent Department. Counsel also submits that in the said case, the petitioner stands acquitted. In support of this contention, counsel has drawn the attention of the Court a copy of the said judgment, which has been placed on record. Additionally, it is also contended that petitioner is only Class IX pass and cannot read and write English and in fact the

Attestation form of the petitioner was filled up by an acquaintance.

12. Learned counsel for the petitioner has placed reliance on a recent decision rendered in the case of *Avtar Singh v. Union of India & Ors.*, reported at JT 2016 (7) SC 300.
13. Learned counsel for the respondent has further opposed this petition on the ground that the petitioner has not disclosed correct and true facts in the application form and, thus, the respondent did not find him fit for employment. It is further submitted that no grounds have been urged which would required interference in these proceedings.
14. We have heard learned counsel for the parties and considered their rival submissions. With the consent of the counsel for the parties, present writ petition is set down for final hearing and disposal at the admission stage itself. The facts of the case as stated above are not in dispute.
15. In this case, the petitioner was granted a job on compassionate grounds. The terms and conditions set up in the letter dated 7.7.2008 read as under:

“TERMS AND CONDITIONS

1. *That he/she will have to support the family of his/her deceased father/Husband failing which his/her services would be terminated without assigning any reason;*
2. *That his/her appointment is subject to verification of Educational Certificate by the concerned University/ School/College/Board/Institution, character and past antecedents by the police verification which will be got done by the DDO concerned.*
3. *The appointment may be terminated at any time by a months notice by either side viz. the appointee or the appointing authority without assigning any reason, unless that the tenure of the post against which he/she is appointed / posted expires in which case the appointment*

shall be deemed to have expired on the date of expiry of the post without any notice.

4. *The appointment carries with it the liability to serve in any part of the area under Delhi Jal Board.”*

16. It is not in dispute that the petitioner did not truthfully disclose Column no.12(1) of the attestation form, the relevant portion of which reads as under:

“(a) *Have you ever been arrested?* Yes/No
(b) *Have you ever been prosecuted?* Yes/No
(c) *Have you ever been under detention?* Yes/No”

17. Upon verification, it transpired that the petitioner was in Police custody from 29.5.2005 to 3.6.2005 and in judicial custody for one year.

18. The Supreme Court of India in the case of **Avtar Singh** (supra) after taking notice of the various decisions, has concluded as under:

“28. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by concerned authorities considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.

29. The ‘McCarthyism’ is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformatory theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.

30. 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.

(c) 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. We answer the reference accordingly. Let the matters be placed before an appropriate Bench for consideration on merits.”

19. The present writ petition is to be decided on the touchstone of the law laid down by the Supreme Court of India in the case of **Avtar Singh** (supra).
20. While analyzing various judgments, the Supreme Court of India has highlighted that higher post would involve more rigorous criteria for all services not only for uniformed service. It has also been observed that for lower posts, which are not sensitive, nature of duties, the impact of suppression on suitability has to be considered by the concerned authorities.
21. In this case, it is not in dispute that the petitioner had suppressed his involvement in a criminal case but the criminal case was initiated prior to the filling up of Attestation Form and he had even been acquitted prior to that date, although the allegations against the petitioner were grave and serious.
22. Having regard to the observations made by the Supreme Court in the case of **Avtar Singh** (supra), we dispose of this writ petition with the following directions:
 - i. The respondents would consider the case of the petitioner in the light of the observations made by the Supreme Court of India in the case of **Avtar Singh** (supra);
 - ii. In case, the case of the petitioner is considered favourably, the petitioner will not claim any backwages for the period

- from the date of order of termination till date as agreed;
- iii. The respondents would decide the matter within a period of six weeks from the date of receipt of this order.
 - iv. The respondent will also take into account the fact that the petitioner was appointed on compassionate ground and also his family conditions are not good;
 - v. The respondents would apply the law as laid down by the Supreme Court of India in *Avtar Singh* (supra) and pass a reasoned order, which will be served upon the petitioner at the address mentioned in the writ petition.
 - vi. We make it clear that we have not expressed any opinion on the merits of the matter;

G.S.SISTANI, J

I.S. MEHTA, J

SEPTEMBER 09, 2016

msr