

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.787 of 2014  
IN  
Civil Writ Jurisdiction Case No. 12851 of 2013**

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1. The Union of India through Secretary, Home Ministry, Government of India, New Delhi  
2. The Director General, Central Reserve Police Force, New Delhi  
3. The Inspector General of Police, Central Reserve Police Force, Patna  
4. The Deputy Inspector General of Police, Central Reserve Police Force, Patna  
5. The Commandant, 159 Battalion, Central Reserve Police Force, Gaya  
..... Appellants

Versus

1. Naulesh Prasad Son of Shri Ramashish Prasad resident of Village + P.O. Maksudpur, Police Station - Tekari, District - Gaya  
2. The State of Bihar through Home Secretary, Government of Bihar, Patna  
3. The District Magistrate, Gaya  
4. The Superintendent of Police, Gaya  
..... Respondents

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**Appearance :**

For the Appellants : Mr. S.D. Sanjay, Addl. S.G.  
Mr. Rajesh Kumar Verma, C.G.C.  
For the Respondent No.1: Mr. Amaresh Kumar Sinha, Advocate  
Ms. Megha Sinha, Advocate  
For the Respondent State: Mr. Mahtab Alam, AC to SC-20

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI  
and  
HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 22-03-2017

Heard learned Additional Solicitor General for the appellants Union of India and learned counsel representing the private respondent as well as the State.

2. The Union of India has filed the present appeal under Letters Patent because a learned single Judge vide his order dated 10.01.2014 has set aside the order of termination of the private respondent and ordered his reinstatement forthwith.

3. The reason why the private respondent was



terminated while exercising power under Rule 5(2) of the Central Civil Service (Temporary Service) Rules, 1965 (hereinafter referred to as 'the Rules of 1965'), was because the private respondent did not disclose in his verification form that there was a criminal case pending against him. This was treated by the C.R.P.F. authorities as serious omission or suppression on the part of the private respondent and, therefore, action was initiated, an order of termination, since he was still under training, was passed.

4. So far as the proposition of law is concerned, this Court does not find any dispute as to the law as it stands, even in a very recent decision in the case of *Avtar Singh vs. Union of India* and others, reported in (2016) 8 SCC 471. Furnishing wrong or incorrect information or suppressing material information have not been appreciated or approved by the Courts of law. However, in the latest case of *Avtar Singh* (supra), Hon'ble Mr. Justice Arun Mishra, after a detailed consideration of the various judgments which have been rendered from time to time as well as the statutory provisions which have an interplay with such facts, has laid down the law by explaining it and crystallizing it in paragraph 38 of the said decision. Since law has been very precisely and aptly crystallized, this Court is tempted to reproduce paragraph 38 and 38.1 to 38.11 :

“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.”

5. Coming to the facts of this case, a complaint case was initiated between the neighbours who are said to be *gotias*. The complaint case was referred by the Magistrate to the Police, a First Information Report was thereafter instituted in the year 2009 in which the private respondent was also said to be an accused. Subsequently, after filing the charge sheet the parties decided to sort



out the issue amongst themselves, the matter went to a Lok Adalat and the case compounded in the year 2012.

6. The C.R.P.F. authorities have referred the verification form of the private respondent to the Superintendent of Police, Gaya, for verification of his antecedents. Initially, an information came which lacked some clarity, then a second round of information was sent by the Senior Superintendent of Police, but when that information was sent it was again not correct in entirety because by that time the case was compromised and it had come to an end. Therefore, the information that a case was pending against the private respondent furnished by the Senior Superintendent of Police was not correct. However, based on that input, the appellants, i.e. the Union of India, decided to invoke the power under Rule 5(2) of the Rules of 1965 and terminate the private respondent from service.

7. Learned Additional Solicitor General has also placed reliance on the latest decision of the Hon'ble Apex Court, which is the case of *Avtar Singh* (supra). A reading of the said decision and the categorization, which has been quoted hereinabove, leads this Court to come to a conclusion that in the given facts and looking at the triviality of the litigation and in the manner it was pursued, it is one of those cases which comes within the exception category, in the category of 38.4.1. This is a case where the private respondent was charged, but he was not convicted and the nature of charge was petty



and, therefore, the order of the learned single Judge setting aside the termination on the ground of suppression on the so-called vital fact may not be required to be interfered with. This is an occasion when an opportunity should be given to the private respondent because anxiety on his part not to disclose the details of the complaint case which led to institution of a First Information Report with the object of missing out on the employment seems to be the primary reason and not the desire to suppress more so when he was not involved in any serious offence as such.

**8.** The order, therefore, of termination for the allegation of suppression is required to be set aside, which the learned single Judge has done. An opportunity ought to be given to the private respondent now especially since he has come clean and such a situation has been envisaged even by the Hon'ble Supreme Court.

**9.** The learned Additional Solicitor General submits with regard to the opportunity of hearing being given because of the nature of the so-called allegation of suppression even in Rule 5(2) of the Rules of 1965 is not required to be answered in the present case. Though, in principle, the Court does not dispute the submission that there may not be an occasion to provide an opportunity of hearing keeping in mind the scheme of things which emerges from the said Rules of 1965.

**10.** The Court further cannot be unmindful of the fact



that the order of termination was passed on 30<sup>th</sup> April, 2013, the appellate authority affirmed that order on 30<sup>th</sup> May, 2013, and within months, on 10<sup>th</sup> January, 2014, the writ was allowed in favour of the private respondent. If that be so, merely because the appeal was pending before the High Court, the benefit of the judgment and the relief which accrued in favour of the private respondent cannot be defeated or taken away on the ground that some couple of years have passed by in the meantime and his reinstatement may not be in the order of the day.

**11.** Such submission is required to be rejected for the reason that the benefit of the decision and the judgment in favour of the private respondent cannot be taken away merely because there was a delay in adjudication of dispute at the appeal level.

**12.** Appeal is dismissed being devoid of merit.

**(Ajay Kumar Tripathi, J)**

**(Nilu Agrawal, J)**

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