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

+ W.P.(C) 1265/2017 & C.M. No. 5735/2017

THE COMMISSIONER OF POLICE AND ORS

..... Petitioner

Through: Mr. Rahul Sharma and Mr. C.K.
Bhatt, Adv.

versus

BRIJESH KUMAR SAHU

..... Respondent

Through: Mr. Tushar Sannu, Adv. for Mr. M.K.
Bhardwaj, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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20.09.2017

1. The petitioner has assailed the order dated 12.9.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (CAT/ Tribunal) in O.A. No. 207/2015. The tribunal allowed the said O.A. preferred by the respondent, wherein he had assailed the cancellation of his candidature by the petitioner. The respondent had applied for the post of SI (Executive) in Delhi Police against the advertisement issued by the SSC in the year 2013. Though the respondent was involved in two criminal cases registered as FIR 353/2005 dated 27.08.2005 under Section 294/ 323/325/ 506 read with section 34 IPC at PS Waidhan, and case FIR 726/2006 under

Section 294/ 506/427 read with section 34 IPC registered at PS Waidhan, the respondent made a disclosure of only one of the two cases in the form filled by him.

2. Of the aforesaid two cases, the first case i.e. FIR 353/2005 was disclosed by the respondent. When the petitioner learnt of the pendency of the other FIR, of which no disclosure was made by the respondent, he was issued a show cause notice dated 25.11.2014. In response to the said show cause notice, the stand taken by the respondent was that he was not aware of the pendency of the other FIR registered as FIR 726/2006. He also stated that if he could disclose the pendency of one case, there was no reason for him to hold back information in relation to the other.

3. We may observe that both the FIR aforesaid were quashed upon compromise recorded before the Court. The tribunal allowed the O.A. on believing the stand taken by the respondent that it was a bonafide mistake on his part since he was not aware of the pendency of the case FIR 726/2006. The same was passed off as a genuine mistake.

4. The petitioner is aggrieved by the said decision. It is pointed out by the petitioner that the respondent had also applied for the post of SI (Executive) in CISF again through SSC in respect of examination conducted in 2012. In that process, he was provisionally appointed to the post of SI (Executive) and was directed to report to the Director, National Industrial Security Academy, Hyderabad (NISA) on 09.08.2013 for training subject to the verification of his character and antecedents. At that stage, he produced a copy of the order/ judgment dated 15.06.2009 passed by the Judicial

Magistrate First Class in CrI Case 680/2005 whereby he was acquitted of the offence under Section 294/506/326 in case FIR 353/2005. He also produced another order passed by the court of the Judicial Magistrate First Class, Singhrauli, M.P. passed in CrI Case 1297/2006 arising out of case FIR 726/2006. The CISF had then issued a letter dated 28.08.2013 asking the respondent not to report for duty since the matter was pending consideration before the Standing Screening Committee. The respondent was asked to submit a legible copy of the FIR and the final report and other documents to the Academy, which he submitted. Consequently, vide order dated 23.11.2013, the provisional appointment of the respondent was withdrawn by the CISF on the ground of his not being suitable for appointment.

5. The respondent had assailed the said withdrawal of his appointment by preferring W.P. (C.) No. 1612/2015. A Division Bench of this court vide judgment dated 29.09.2015 dismissed the said writ petition. The Division Bench came to the conclusion that the acquittal of the respondent could not be termed as honourable acquittal or discharge, since he had been acquitted on account of compromise with the complainant in the said cases. The Division Bench took the view that the Screening Committee was entitled to cancel his appointment and there was nothing to show that their action was vitiated by malafides.

6. The submission of learned counsel for the petitioner is that the stand taken by the respondent in response to the show cause notice as well as before the tribunal was patently false when the respondent claimed that it was a bonafide and genuine mistake on his part in not disclosing the second FIR, namely, FIR 726/2006 on account of his not being aware of the same.

It is pointed out that the respondent had filled the attestation form in the recruitment process in question only on 24.02.2014, whereas he had himself produced the said FIR and the orders of the learned Magistrate before the Director, NISA on 09.08.2013 i.e. barely six months earlier. Thus, the respondent could not have claimed to have not been aware of the filing of the case FIR 726/2006 when he filled up the attestation form on 24.02.2014. It is also pointed out that the respondent did not disclose before the tribunal the decision of this court in W.P. (C.) No. 1612/2015 decided on 29.09.2015, even though the present O.A. was decided only on 12.09.2016. Learned counsel submits that in this background the order of the tribunal cannot be sustained, since it is premised on an incorrect factual basis.

7. He further submits that a candidate like the respondent is not fit for appointment in Delhi Police, firstly, for the reason that he was involved in two criminal cases, which have been quashed only on compromise and the same has been held by this court as not an honourable acquittal or discharge by the court. Secondly, the respondent has not only suppressed the registration of the second case against him but has also lied about his lack of knowledge of the said case when he was issued the show cause notice and when he approached the tribunal.

8. On the other hand, the submission of counsel for the respondent is that when the decision in W.P. (C.) No. 1612/2015 was rendered, the respondent had not relied upon the decision of the Supreme Court in **Avtar Singh v. Union of India**, (2016) 8 SCC 471. Learned counsel submits that in **Avtar Singh** (supra), the Supreme Court has held that the employer has to exercise its discretion in such like cases and should determine by examining

the nature of the offence whether a candidate would be fit for appointment or not. He submits that the offences in which the respondent was involved were petty offences arising out of disputes with the neighbours.

9. Having heard learned counsels, we are of the view that the impugned order cannot be sustained for the reason that the same proceeds on a completely wrong premise on facts. The tribunal swallowed the submission of the respondent that it was a genuine and bonafide mistake on his part in not disclosing the case FIR 726/2006. As it transpires, the said stand taken by the respondent was patently false. As we have taken note of herein above, the attestation form had been filed by the respondent in respect of the advertisement in question on 24.02.2014, whereas he had himself produced the two FIRs and the order passed by this court in those cases before the Director, NISA. In fact, based on the said disclosures, he had been issued a letter on 28.08.2013 asking him not to report for duty since the matter was pending consideration before the Screening Committee and vide order dated 23.11.2013, the provisional appointment granted to the respondent was withdrawn.

10. Thus, the respondent was very well aware of the fact that there were two cases registered against him including case FIR 726/2006 and it was a completely false stand taken by him that he was not aware of the said case when he had filled the attestation form on 24.02.2014 for the post in question advertised for Delhi Police.

11. The submission of learned counsel for the respondent premised on the decision in **Avtar Singh** (supra) is of no avail. Firstly, the suppression and

false statement made by the respondent as taken note of herein above are sufficient grounds to deny appointment to the respondent and to cancel his candidature. Secondly, the Division Bench in W.P. (C.) No. 1612/2015 has already ruled that the respondent was not given an honourable acquittal or discharge and that he has been acquitted only on account of compromise with the complainant. The Division Bench held that it could not be said that he had been exonerated of the charges or that the acquittal was honourable.

12. In view of the aforesaid, the impugned order is not sustainable and the same is, accordingly, set aside.

VIPIN SANGHI, J

REKHA PALLI, J

SEPTEMBER 20, 2017

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