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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 1585/2015**

Date of Decision : 31st January, 2017

SHRI BHAWANI Petitioner

Through: **Mr. Sachin Chauhan, Advocate**

versus

THE COMMISSIONER OF POLICE & ANOTHER..... Respondents

Through: **Mr. Sumit Aggarwal, Advocate for**
respondent Nos.1 and 2

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

1. We have gone through the impugned order of the Tribunal, dated 22.7.2014, whereby OA No.2367/2012 filed by the petitioner, Bhawani was dismissed.

2. The petitioner was selected and appointed as Constable (Executive) in the Delhi Police on 12.1.2010. On 8.4.2011, a show cause notice was issued that, as per the information submitted by the petitioner in the attestation form on 14.10.2009, he had been chargesheeted for involvement in a criminal case, FIR No.93 dated 22.6.2007, PS:Kosli, Rewari, under Sections 148/149/323/325/307/506/341 IPC. The petitioner's services were

terminated vide order dated 2.6.2011. The petitioner thereupon filed OA No.2367/2011, which was partly allowed vide order dated 23.3.2012, quashing the order of termination dated 2.6.2011 under Rule 5(1) of the CCS(Temporary Service) Rules, 1965. Liberty was granted to the respondents to proceed in accordance with law. The petitioner was reinstated vide order dated 31.5.2012, subject to outcome of the WP(C) No.3925/2012, which had been preferred by the respondent authorities in the competent court. WP(C) 3925/2012 filed by the respondent authorities was disposed of vide order dated 23.4.2013, quashing the order dated 23.2.2012 passed by the Tribunal and restoring OA No.2367/2011 to its original number. Direction was given that, while examining the case of the petitioner, the Tribunal will be guided by law as declared and applied by the Tribunal itself in OA No.178/2008. The impugned order dated 22.7.2014 passed by the Tribunal dismissed OA No.2367/2011. Consequent to the said order, the services of the petitioner were terminated vide order dated 11.8.2014.

3. The issue with regard to involvement of an applicant in a criminal case and whether such candidate should be appointed in a disciplined force like Delhi Police, had come up for consideration and has been decided by the Large Bench of Three-Judges of the Supreme Court in *Avtar Singh v.*

Union of India & Ors., (2016) 8 SCC 471. The issue was referred to the Larger Bench in view of the conflicting decisions. Para 30 of ***Avtar Singh***(supra) reads as under:

“30. 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 comes to the conclusion that suppression is immaterial and even if facts would have been disclosed it would not have adversely affected 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 of 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.”

4. Para 38 of the same decision holds as under:

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

5. Learned counsel for the petitioner has drawn our attention to orders passed by the Supreme Court in identical appeals arising out of the judgments of the Delhi High Court wherein, vide order dated 22.11.2016 passed in SLP(C) No.23192/2012 and other appeals, it was directed that the cases of the writ petitioners would be reconsidered by the State within a period of two months and they would pass a speaking order and in case the petitioners are still aggrieved, they can approach appropriate authorities in accordance with law. It was made clear that the said order would not be given effect to for a period of four weeks. The writ petitioners were given right to make representation to the State within one week.

6. It is obvious that the respondent authorities in the present case did not have the advantage of the ratio of the judgment of the Supreme Court in the case of *Avtar Singh*(supra). Learned counsel for the petitioner has drawn our attention to the FIR in question and submits that the petitioner was not named in the FIR, whereas others were specifically named. He has also referred to the statement of witnesses and the order of acquittal. Our attention was also drawn to the Minutes of the Meeting of the Screening Committee and the observations made therein. He states that aspects raised by the petitioner were not examined and considered by the Screening Committee. The reason being the Screening Committee did not have the benefit of any representation by the petitioner. As per the case of the respondents, the petitioner himself before appointment had furnished and given details with regard to FIR No.93 dated 22.6.2007, PS:Kosli, Rewari, under Sections 148/149/323/325/307/506/341 IPC. The said attestation form was filled-up by the petitioner before his appointment and before the involvement of the petitioner in the said case had come to the knowledge of the respondents.

7. Keeping in view the aforesaid factual position and also the orders passed by the Supreme Court in SLP(C) No.23192/2012, we would direct

the petitioner to make a representation within a period of 10 days from today. The representation will be placed before the Screening Committee, who will examine the issue afresh, and in case the Screening Committee recommends the appointment of the petitioner, appointment letter would be issued. The period of absence would be appropriately dealt with in accordance with the Service Rules and the law. In case an adverse order is passed by the Screening Committee, it will be open to the petitioner to take recourse to appropriate steps in accordance with law.

8. With the aforesaid discussion and directions, the writ petition is partly allowed. The impugned order of the Tribunal will be treated as set aside. However, we clarify that we are not expressing any opinion on the merits of the case, as the issue has to be examined by the Screening Committee.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

JANUARY 31, 2017
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