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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WRIT PETITION (CIVIL) NO. 6534/2016**

Date of decision: 24th May, 2017

JAGVINDER SINGH Petitioner
Through Dr. Kanwal Sapra & Mr. Arun Kumar
Sapra, Advocates.

versus

THE SECRETARY MINISTRY OF HOME AFFAIRS AND ORS.
..... Respondents
Through Ms. Saroj Bidawat, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (ORAL):

The petitioner-Jagvinder Singh upon selection was appointed as Constable (Driver) in the Sashastra Seema Bal (SSB) on 12th August, 2013.

2. On 28th June, 2014, show cause notice was issued to the petitioner proposing termination of services for the reason that the petitioner had furnished wrong information in his verification form. Thereafter, another show cause notice was issued on 16th October, 2014.

3. The petitioner submitted written explanation to the show cause notices on 18th July, 2014 and 10th November, 2014.

4. By order dated 24th November, 2014, the service of the petitioner was terminated and he was released on 27th November, 2014.

5. The petitioner made representations seeking reinstatement. On 1st June, 2016, the petitioner received memorandum dated 5th April, 2016 stating that his representation for reinstatement has been rejected.

6. Aggrieved, the petitioner filed the present writ petition.

7. The petitioner, it is accepted, in the verification form had failed to record and furnish details of FIR No. 287/2013 dated 24th May, 2013 registered against him at Police Station Madhu Vihar, New Delhi under Section 341/323/34 of the Indian Penal Code, 1860.

8. The question is whether the petitioner's services have been validly terminated for the aforesaid reason.

9. Learned counsel for the petitioner has submitted that the aforesaid FIR was a result of a petty quarrel. The parties had thereafter compromised and settled. A copy of the settlement agreement, which was recorded in the Delhi Mediation Centre Karkardooma Courts, New Delhi has been produced. The criminal case was also disposed of, recording that the petitioner was charged with a compoundable offence and the complainant had compounded the same, which would have the effect of acquittal. The charge sheet was disposed of by the Metropolitan Magistrate recording as under:-

“ Complainant/injured namely Deepanshu Gupta has shown his Driving licence for identity. The same is taken on record.

At this stage complainant/injured Deepanshu Gupta submits that he has settled the present matter with the accused Jagminder Singh before Mediation Centre, KKD, Delhi today itself and want to compound the offence. His statement in this regard are recorded separately.

Heard. In view of the submissions of abovesaid complainant, on perusal of the case file, it reveals that the accused person is chargesheeted for the offence u/s 323/341/34 IPC which is a compoundable offence u/s 320 Cr.PC. and I permit the above said complainant/owner to compound the offence, which shall have the effect of acquittal of accused Jagminder Singh.

Bail bond (if any) stands cancelled. Surety stands discharged. Original documents of the parties (if any) be returned after due verification/acknowledgment. Superdarinama of the case property (if any) stands cancelled. Case property be released to the rightful claimant. Copy of this order be given dasti to the complainant.

File be consigned to record room after due compliance.”

10. In our opinion, the matter requires reconsideration by the respondent authorities in view of the recent decision of the Supreme Court in ***Avtar Singh versus Union of India and Others***, (2016) V SLT 743 in which after referring to the earlier case law, the following principles have been laid down:-

“27. Suppression of ‘material’ information presupposes that what is suppressed that ‘matters’ not every technical or trivial matter. The employer has to act on due consideration of rules/instructions if any in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.

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 reformative

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.

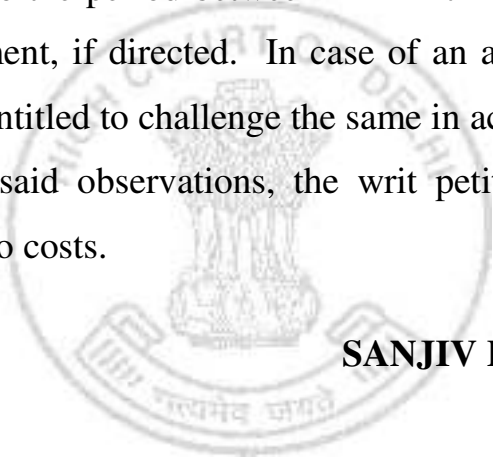
(10) For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to

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.”

11. The respondent authorities would re-examine the case of the petitioner in light of the aforesaid ratio. If the petitioner is found to be covered and entitled to the benefit of the said decision, the petitioner would be reinstated in service. Appropriate order would also be passed by the respondents relating to the period between 24th - 27th November, 2014 till the date of reinstatement, if directed. In case of an adverse decision, the petitioner, would be entitled to challenge the same in accordance with law.

12. With the aforesaid observations, the writ petition is disposed of, without any order as to costs.



SANJIV KHANNA, J.

NAVIN CHAWLA, J.

MAY 24, 2017
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