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

+ **W.P.(C) 7313/2016**

Date of decision: 02 August, 2017

SUNIL KUMAR BIJARNIYA Petitioner
Through: Mr.R.K.Shukla, Adv.

versus

UNION OF INDIA AND ORS Respondents
Through: Dr.Ashwani Bhardwaj, Adv.

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

SANJIV KHANNA, J. (Oral)

Upon selection, the petitioner was appointed as Constable in the Railway Protection Special Force. He was called for training and asked to submit the prescribed attestation form for police verification.

2. The petitioner's candidature was subjected to satisfactory police report.

3. On the basis of the police report, it was learnt that the petitioner was involved in an FIR no.338/2013, P.S. Neem Ka Thana under Sections 143/341/323/379 of the Indian Penal Code.
4. The petitioner had suppressed this fact and vital information in the attestation form in spite of warning. The petitioner was discharged vide order dated 29th July, 2015.
5. The contention of the petitioner is that he was not aware of the aforesaid FIR when he filled the attestation form. In the attestation form, the petitioner had referred to other FIRs 119/2013, 120/2013 and 22/2013.
6. The respondents have not terminated or discharged the petitioner on account of the aforesaid three FIRs. They have not opined on whether in view of the said cases, the petitioner was unfit to be retained in service. The reason and ground for termination/discharge was the petitioner's failure to disclose FIR No.338/2013.
7. Be that as it may, the issue in our opinion would require re-examination by the respondents in view of the decision of Supreme Court in *Avtar Singh vs. Union of India & Ors.* (2016) 8 SCC 471. Paragraph 38 of the said judgment lays down the following principles:-

“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 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.”

8. In view of the aforesaid, we direct the respondents to re-examine the case of the petitioner with reference to the aforesaid principles after examining the allegations made against the petitioner in the said FIR and other FIRs; and whether he has been convicted/acquitted and the effect in the present context. The aforesaid exercise would be completed within a period of 3 months from the date a copy of this order is received.

9. It is also open to the petitioner to make representation within one month from today setting out his version with regard to the aforesaid cases. The petitioner has stated that FIR 338/2013 was compromised. The petitioner would be at liberty to file a copy of the said judgment before the Authorities along with his representation.

10. We clarify, in case Authorities come to a conclusion that the petitioner should be allowed to continue or reinstated in service, appropriate orders would be passed. However, in case the Authorities affirm the order of discharge, it will be open to the petitioner to challenge the same in accordance with law.

11. Writ petition is disposed of with the aforesaid observations,
with no order as to costs.

SANJIV KHANNA, J

NAVIN CHAWLA, J

AUGUST 02, 2017
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