

\$~24.

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

+ **WRIT PETITION (CIVIL) No. 7694/2016**

Date of decision: 15th May, 2017

BALRAM MEENA

..... Petitioner

Through Mr. N.S. Dalal & Ms. Toral Banerjee,
Advocates.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through Mr. J.K. Singh, Standing Counsel for
Railways.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE PRATHIBA M. SINGH

SANJIV KHANNA, J. (ORAL):

This is second round of litigation.

2. The petitioner-Balram Meena was selected and appointed as Constable in Railway Protection Force vide letter dated 1st October, 2014.

3. While on training, the petitioner was discharged vide order dated 15th June, 2015. Cancellation of selection was for suppression of material facts in the application form for the petitioner has failed to disclose that he was prosecuted and charge sheeted in Crime Case No. 162/2004, registered at Police Station Rajgarh, Rajasthan under Section 147/323/341/149 of the Indian Penal Code, 1860.

4. The petitioner was acquitted in the said case vide judgment dated 24th January, 2012.

5. Writ Petition (C) No. 6648/2015 filed by the petitioner challenging the order of discharge dated 15th June, 2015 was disposed of vide order dated 10th March, 2016 directing the respondents to issue notice to show

cause and opportunity to respond. The petitioner was given liberty to explain his case and furnish relevant documents. The operative portion of the aforesaid order dated 10th March, 2016 reads:-

“4. In such circumstances, we are of the opinion that the impugned Memorandum cannot withstand judicial scrutiny. The respondents ought to have issued a notice to show cause to the petitioner and granted him an opportunity to respond before passing any orders discharging him from training. Accordingly, the impugned Memorandum is quashed and set aside with liberty granted to the respondents to issue a notice to show cause to the petitioner based on the police verification report received by them. The notice to show cause shall be issued by the respondents within six weeks from today. Upon receiving the said notice, the petitioner shall be at liberty to explain his case and furnish the relevant documents that he proposes to rely upon, which shall be duly considered by the respondents and only thereafter shall an order be passed in accordance with law, under written intimation to him.”

6. The respondents had thereafter issued show cause notice dated 16th April, 2016, to which the petitioner responded vide communication dated 18th May, 2016.

7. By the impugned order dated 17th June, 2016, the respondents have terminated the services of the petitioner recording that he had concealed and suppressed his involvement in the aforesaid criminal case.

8. The petitioner's contention that the “misstatement” was due to “mistake” or error was rejected. This order also makes reference to the Railway Board's letter No. 88/Sec (E)/RC-3/6(IR) (Trg) dated 16th November, 2005 and paragraph 9(f) of the advertisement published vide Employment Notice No. 01/2011.

9. Having heard learned counsel for the parties, we feel that the petitioner should succeed as the matter requires a fresh decision. The

reason is that the issue in question has now been settled by the three-Judge Bench of the Supreme Court in *Avtar Singh versus Union of India and Others*, (2016) 8 SCC 471. After elucidating upon divergent case laws on the subject, the Supreme Court has summarised 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 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.

38.7. 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.”

10. In the present case, paragraph 38.4 would be applicable and the authorities would have to examine the case in the light of the aforesaid paragraph alongwith other paragraphs of the judgment. The precept and principles have to be kept in view and applied by the authorities.

11. The impugned order dated 17th June, 2016 is accordingly set aside, with an order of remand for a fresh decision.

12. The aforesaid exercise on remand would be undertaken within a period of twelve weeks from the date a copy of this order is received by the respondents. The petitioner would be also sent a letter and given personal hearing before any order is passed.

13. The writ petition is disposed of in the aforesaid terms, without any order as to costs.

Dasti to both the parties.

SANJIV KHANNA, J.

PRATHIBA M. SINGH, J.

MAY 15, 2017
VKR