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

+ **W.P.(C) 3775/2017**

Date of decision: 5th September, 2017

SUMIT KUMAR Petitioner
Through Ms.Neelima Rathore proxy counsel
for Mr.U.Srivastava, Adv.

versus

UNION OF INDIA & ORS Respondents
Through Ms.Monika Arora, CGSC with
Mr.Harsh Ahuja, Adv. along with
Mr.Karamjit Singh, AC-CISF.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (Oral)

Having heard the learned counsel for the parties, we feel that writ petition is to be partly allowed in view of the judgment of Supreme Court in *Avtar Singh v. Union of India & Ors.*(2016) 8 SCC 471.

2. The Petitioner, Sumit Kumar was appointed as a Constable (Driver) in the Central Industrial Security Force (CISF) on 28.12.2013. The petitioner on completion of basic training and was posted at CISF Unit, DAP at Durgapur.

3. The petitioner was served with charge-sheet on 21.03.2016. The allegation was that the petitioner has concealed his involvement in Police Case No.259/2009 registered at PS Chirawa under Sections 147/149/323/336/341 IPC. The petitioner in the criminal case was given benefit under Section 4 of Probation of Offenders Act, 1958 on furnishing personal bond of Rs.2,000/- vide judgment/order dated 07.01.2011.

4. The Disciplinary Authority in view of the alleged concealment and failure to mention and give details of the aforesaid criminal case, imposed penalty of removal from service vide order dated 07.08.2016. Appeal and the Revision filed by the petitioner was also dismissed by the Appellate and Revisional Authority i.e. Deputy Inspector General and Inspector General on 05.10.2016 and 29.03.2017 respectively.

5. Supreme Court in *Avtar Singh (supra)* has considered the question of suppression of information or submitting false information regarding criminal case in the verification form. After examining the entire case law on the subject, the Supreme Court in paragraph 30 has expounded and clarified the legal position as under:

“30) 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:

(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.”

6. It is imperative that respondents while considering the case of the petitioner keep in mind the aforesaid parameters and precepts.

7. In view of the aforesaid position, we would set aside the order dated 29.03.2017 passed the Revisionary Authority i.e. Inspector General, CISF and remand the matter to the said authority to re-examine the issue and pass an appropriate order keeping in view of the ratio and parameters elucidated by the Supreme Court in *Avtar Singh (supra)*. The said exercise would be completed within three months after receipt of the order. It is open to the petitioner to make representation pointing out why he is covered and entitled to benefit under the parameters fixed and laid

down by the Supreme Court and order of removal would not be justified. The said representation would be made within three weeks from today.

8. We clarify that in case an adverse order is passed, it would be open to the petitioner to challenge the same. We further clarify that we are not commenting or making any observation on the merit of the case. We have not remanded the matter to the Disciplinary Authority as we find that earlier the matter has already been dealt by the Revisionary Authority, and remit to the Disciplinary Authority would delay decision in a case in which facts are not in dispute and application of the legal dictum on the fact is required.

9. The writ petition is accordingly disposed of, with no order as to costs.

SANJIV KHANNA, J

NAVIN CHAWLA, J

SEPTEMBER 05, 2017/vp