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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 8586/2016

Date of decision: 20th September, 2017

BALJIT

..... Petitioner

Through: Mr.Gulab Singh, Ms.Saroj Nahar,
Ms.Monika Nahar, Advs.

versus

UNION OF INDIA AND ORS

..... Respondents

Through Mr.Rajesh Kumar, Ms.Santwana,
Advs.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (Oral)

Baljit, the writ petitioner, upon selection, was issued offer of appointment letter dated 10th October, 2013 and appointed as Constable (GD) in the Central Industrial Security Force.

2. At the time of appointment, the petitioner was required and asked to fill up the Attestation Form. One of the columns of this form had required the petitioner to finish the following information;

(i) whether he had been arrested?;

(ii) whether he had been prosecuted?;

- (iii) whether he had been kept under detention?;
- (iv) whether he had been bound down?;
- (v) whether he had been fined by Court of law?;
- (vi) whether he had been convicted by a Court of law for any offence? etc.

3. The petitioner had answered the questions in negative by marking the word 'NO'.

4. Subsequently, on police verification it was learnt that the petitioner with others was prosecuted in FIR no.142/2004 registered under Sections 323/324/34 of the Indian Penal Code, at P.S. Salhawas, District Jhajjar, Haryana, vide charge sheet filed in the Sessions Court at Jhajjar. However, the petitioner and others were acquitted vide judgment dated 7th November, 2005, as the witnesses had turned hostile. In fact statements under Section 313 of the Code of Criminal Procedure, 1973 were not required to be recorded.

5. The respondents vide letter dated 22nd November, 2013 asked the petitioner to respond as he had a criminal background. He was asked to submit relevant papers. The relevant portion of the said letter reads as under:-

“Reference offer of appointment letter No.E-32023/CISF/5RB/Rectt/CT/GD-2011-12/2013/440 dt. 10.10.2013 issued by the office of Sr.Comdt. CISF 5th Res. Bn. Ghaziabad.

02. Since you are having criminal background in the past and your case for appointment to the post of Constable/GD in CISF is required to be examined by the Standing Screening Committee. Hence, you are directed to send copy of FIR, FR (Charge Sheet) and court judgment etc. to this office at following address immediately, failing which, it shall be presumed that you are not interested for your case.

The Dy. Inspector General,
CISF RTC Deoli,
PO : Deoli, distt. Tonk
(Rajasthan)-304 804”

6. The petitioner responded by submitting a copy of the charge sheet and the judgment of acquittal passed by the Session Court.
7. These papers were placed before the Departmental Standing Screening Committee for assessing petitioner's suitability.
8. By the impugned order dated 31st May, 2014, the petitioner was informed as under:-

“02. Since, you are having criminal background in the past, your case for appointment to the post of Constable/GD in CISF has been examined by the 9th Standing Screening Committee assembled at IG/NES Hqrs. Kolkata on 05.02.2014 and decided that Roll No.2201023468 Baljit S/o Sh. Bhim Singh is **“Not suitable for appointment in CISF.**”

03. Hence, provisional offer of appointment issued upon you by the Sr. Comdt. CISF 5th Res. Bn. Ghaziabad under his letter No.E-32023/CISF/5RB/Rectt/CT/GD-2011-12/2013/440 dated 10.10.2013 is hereby **cancelled.**”

9. In the counter affidavit filed by the respondents, it is asserted that the petitioner had given false information in the attestation form. The Standing Screening Committee had examined the petitioner's case, in terms of the guidelines of the Ministry of Home Affairs dated 1st February, 2012, a copy of which has been enclosed, and has held that the petitioner was unsuitable to be appointed as Constable (GD). Thus, the cancellation letter dated 31st May, 2014 was issued.

10. The petitioner's assertion is that he was falsely implicated and, therefore, the witnesses had turned hostile. The petitioner was acquitted in 2005.

11. We would notice that the date of birth of the petitioner as per the application form is 12th January, 1993. The petitioner was about 11 years of age on the date of occurrence, for which the charge sheet was filed.

12. Further, the issue raised is covered by the decision of the Supreme Court in **Avtar Singh v. Union of India & Ors. (2016) 8 SCC 471**, wherein earlier judgments were considered and thereafter, the following principles were summarized:

“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:

(i) 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.

(ii) 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.

(iii) The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

(iv) 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 or 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."*

13. In view of the aforesaid discussion, the impugned order dated 31st May, 2014 cannot be sustained and has to be set aside for fresh examination and decision by the Standing Screening Committee.

14. The other question relates to the delay and laches. The present writ petition was filed on or about 5th September, 2016. Thus, there is delay of more than 2 years in approaching the Court. The petitioner comes from a rural background being a resident of Village Ruoriwas in Distt. Jhajjar, Haryana. He had approached an Advocate, who had issued legal notice to the respondents dated 17th July, 2015. The respondents had responded vide communication dated 28th August, 2015, rejecting the petitioner's prayer, observing that his case had been considered as per Rules and policy. The petitioner was found to be unsuitable.

15. On the question of delay and laches, we would only observe that in case the petitioner is re-appointed, the respondents' shall pass appropriate order with regard to the period from 31st May, 2014 till reinstatement.

16. We clarify that the Standing Screening Committee will apply principles elucidated in *Avtar Singh* (supra) and also keep in mind the age petitioner on the date of occurrence. The aforesaid exercise would be completed by the Standing Screening Committee within a period of 3 months from the date a copy of this order is received.

17. In case of any adverse order, it would be open to the petitioner to question and challenge the same in accordance with law.

18. The writ petition is disposed of without any order as to costs.

Dasti to both the parties.

SANJIV KHANNA, J

NAVIN CHAWLA, J

SEPTEMBER 20, 2017

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