IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7799 OF 2017

Rajkumar Ratilal Nikam,
Age – 23, Occu. : Constable (sweeper),
R/o – Borkheda (Bk.), Post : Mehunbare,
Taluka : Chalisgaon, District : Jalgaon .. **Petitioner**

Versus

1. Union of India,
Through its Secretary,
Ministry of Home Affairs,
New Delhi

2. The Director General,
Central Industrial Security Force,
New Delhi

3. The Inspector General,
Central Industrial Security Force,
NISA, CISF Unit, Hakimpeth – 78,
Andhra Pradesh

4. The Deputy Inspector General,
Central Industrial Security Force,
KRTC Mundali, District : Cuttack,
Orissa

5. The Commandant,
Central Industrial Security Force Unit,
KRTC Mundali, Dist. : Cuttack,
Orissa .. **Respondents**

Shri Naseem R. Shaikh, Advocate for the Petitioner.
Shri D. G. Nagode, Advocate for Respondents.

CORAM : S. V. GANGAPURWALA &
A. M. DHAVALE, JJ.

DATE : 8th February, 2018

ORAL JUDGMENT *(Per S. V. Gangapurwala, J.)* **:**

1. Rule. Rule returnable forthwith. With the consent of learned counsel for respective parties matter is taken up for final hearing.

2. The petitioner was appointed by the respondent on the post of Constable / Tradesman under appointment order dated 12th August, 2015. Under order dated 25th October, 2016, the petitioner was terminated. The petitioner assailed the termination before the appellate authority. The appellate authority dismissed the appeal. Aggrieved thereby, the present petition.

3. Mr. Shaikh, learned advocate for the petitioner submits that the petitioner is terminated on the ground that the petitioner has suppressed the criminal case filed against him. The learned counsel submits that the petitioner was acquitted in the criminal case on 27.8.2015. Just 15 days after the issuance

of appointment order. According to the learned advocate, the criminal case was filed against the petitioner when the petitioner was 19 years of age. The petitioner was unconcerned with the criminal case, however, as the other family members were roped in, the petitioner was also roped in the said offence. It is the case of a clear acquittal. The court also observed that the offence was trifle in nature. The learned counsel submits that the suppression as alleged by the respondent was not willful or intentional. The petitioner was not aware of the consequences of not mentioning the pendency of the criminal case. The learned advocate submits that, even the principles of natural justice are not followed. The order of termination is stigmatic. According to the learned advocate, while terminating the services it was incumbent upon the authority to follow the principles of the natural justice. The learned advocate relies on the Judgment of the Apex Court in a case of ***Nehru Yuva Kendra Sangathan Vs. Mehbub Alam Laskar*** reported in ***A.I.R. 2008 SC (Suppl.) 1459***. Learned advocate further submits that the appellate authority while dismissing the appeal had observed that the acquittal was not honourable and the criminal case was

examined by CISF Standing Screening Committee and was found to be not suitable.

4. Mr. Nagode, learned advocate for the respondents submits that the petitioner was appointed on probation. The petitioner was not a permanent employee. In view of that as per Rule 25 of the Central Industrial Security Force Rules, 2001 the services of the petitioner can be terminated after issuance of notice of one month or after giving one month pay in lieu of such notice. The petitioner's services are terminated by giving him one month pay in lieu of one month notice. The same is perfectly in accordance with Rule 25 of the Central Industrial Security Force Rules, 2001.

5. Learned advocate for the respondents further submits that the petitioner has deliberately and willfully suppressed the pendency of the criminal case against him in his application and also in the declaration form. The petitioner was prosecuted for offence under Section 324 and 323 of the Indian Penal Code, 1860. The authorities have rightly taken the action. The learned advocate relies on the Judgment of the Apex Court in a

case of ***Avtar Singh Vs. Union of India and others*** reported in ***(2016) 8 SCC 471***.

6. We have considered the submissions.

7. It is a matter of record that the petitioner was appointed on 12th August, 2015, as a Constable / Tradesman (Sweeper) on probation for two years and he is terminated under order dated 25.10.2016. Though the order of the termination is not stigmatic, however, in appeal filed by the petitioner the appellate authority has observed and held that the petitioner got employment in a distrustful manner by suppressing the fact of his involvement in a serious criminal offence and the acquittal in the criminal charges of the Trial Court was due to witnesses turning hostile.

8. If the termination was on such count, it was appropriate for the authorities to at least give the petitioner a notice and adhere to the principles of natural justice. The guidelines for considering cases of candidates for appointment in CAPFs – pending criminal case against the candidates - the effect of, are framed by the Government of India, Ministry of Home Affairs

dated February 1st, 2012, is brought to our notice. Clause 2 of the said guidelines reads thus-

> ***".....***
> ***2. Accordingly, the matter has been considered in this Ministry in consultation with CAPFs, and it has been decided as follows:-***
> ***I. A candidate is required to declare in the application form, whether he has been arrested, prosecuted or convicted by a court for any criminal offence. If a candidate does not disclose the fact of his/her involvement and/or arrest in criminal case(s), complaint cases(s), preventive proceedings etc. under IPC or any other Act of the Central or State Government in the application form, during medical examination as well as in the attestation/verification form and the fact subsequently comes to the notice of recruiting authorities/ is found out from the verification report received from the District authorities or otherwise, his candidature/appointment will be cancelled. However, in case the candidate has already been appointed, while cancelling/terminating the appointment, the principle of natural justice shall be followed and opportunity of being heard would be accorded to the candidate.***
> ***II....."***

9. Reading the aforesaid guidelines / instructions it is manifest that if the appointment is already made and is sought to be cancelled, then in such a case while cancelling / terminating

the appointment the principle of natural justice has to be followed and opportunity of being heard is required to be accorded to the candidate.

10. The Apex Court in a case of ***Avtar Singh Vs. Union of India and others*** *(referred to supra),* has laid down the guidelines for the employer to act in case of a candidate not disclosing the pendency of the criminal case against him. Para 38 of the Judgment in ***Avtar Singh Vs. Union of India and others*** *(referred to supra)* would be relevant.

> ***".....***
> ***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.

38.6. 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."

11. The aforesaid directions of the Apex Court, manifestly lays down that the employer shall take into consideration the Government Orders / Instructions / Rules applicable to the

employee at the time of taking the decision. It is not disputed that the guidelines as referred to supra dated February 1st , 2012, are applicable and the said guidelines mandate the employer to follow the principles of natural justice while cancelling / terminating services of the employee.

12. If the opportunity of hearing would have been given to the petitioner, the petitioner would have been in a position to bring to the notice of the employer the nature of the offence, the circumstances and all other aspects which are required to be considered by the employer as held by the Apex Court in a case of ***Avtar Singh Vs. Union of India and others*** *(referred to supra)*.

13. The appellate order specifically speaks about the reason for terminating the services of the petitioner viz. suppression of the fact of involvement in a criminal case. It was incumbent upon the employer to adhere to the principles of natural justice.

14. In the light of above, the impugned order terminating the services of the petitioner and the appellate order are quashed

and set aside. We have quashed and set aside, the impugned order only on technical ground i.e. non-adherence to principles of natural justice.

15. It will be open for the respondents, if they so desire, to take future course of action by adhering to the principles of natural justice.

16. Rule is accordingly made absolute in above terms. No costs.

[A. M. DHAVALE, J.] **[S. V. GANGAPURWALA, J.]**

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