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

+ W.P.(C) 2916/2017

DAVENDER KUMAR Petitioner

Through: Mr.H.S.Dahiya, Advocate.

versus

UNION OF INDIA & ORS Respondents

Through: Mr.A.P.Sahay, CGSC with
Ms.J.Priyadarshini, Advocate
for UOI.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

19.02.2018

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1. The petitioner lays a challenge to the order dated 11.10.2014, passed by the Appointing Authority i.e. the Commandant, CISF Unit, NLC Neyveli whereby his services have been terminated on account of suppression of facts in the Attestation Form about the registration of a criminal case against him. Challenge has also been laid to the order dated 02.01.2015, whereby the representation filed by the petitioner, assailing the order of the Appointing Authority, has been rejected by the Competent Authority i.e. Inspector General, CISF South Sector HQrs., ChPT Campus, Chennai.

2. In brief, the case of the petitioner is that in the year 2013, after participating in the recruitment process and qualifying the written,

physical and medical examination, he was appointed as a Constable/Driver in CISF on 28.12.2013. After successfully completing the training at RTC Bhilai, he was posted at the CISF Unit, NLC Neyveli.

3. Vide order No.V-15014/CISF/NLC/Disc/DK/2014 9991 dated 11.10.2014, the Appointing Authority, in pursuance to the Proviso of Sub-Rule (2) of Rule 25 of the Central Industrial Security Force Rules, 2001, terminated the services of the petitioner, in terms of the following order:-

"02. The above said Show Cause has been acknowledged by No.130720010 Const/Dvr. Devendra Kumar on 26.09.2014 and submitted his representation dated 08.10.2014. In reply, he stated that during the time of recruitment, he was filing more forms and did not know about any Police case was lodged against him. After receiving of the above Show Cause Notice, he enquired from his home and came to know that a case was lodged by the Police in the year 2006 due to quarrel between his family members and his name was also included in the case. At the time of incident, he was in his childhood and not known about the police procedure. Hence, he did not show the same at the time of recruitment. Finally he is apologizing his act due to his lack of knowledge.

03. I have gone through the relevant documents and his representation dated 08.10.2014 No.130720010 Const/Dvr. Devendra Kumar was appointed in CISF as Constable/Dvr. On 28.12.2013 vide RTC Bhilai Service Order Part-I No.17/2014 dated 07.05.2014 and he had attended the basic training at CISF RTC Bhilai from 30.12.2013 to 14.06.2014. He had reported at CISF Unit,

NLC Neyveli on 18.06.2014 after his Basic Training of Constable/Dvr. On his appointment, he had submitted an Attestation Form duly filled up all the columns and the same was sent to District Magistrate Bharatpur, Rajasthan for verification by the DIG, CISF RTC Bhilai. The District Authority has reported vide their letter No. Court/VR/2013/529 dt 2.7.10 and received from DIG CISF RTC Bhilai vide letter No. E-37013/RTC(B)/23rd batch/CT(Dvr)/BT/14/5878 dt 04.08.2014 that a Police Case No.119 under Section 323, 341/325, 447 & 34 IPC was registered against him at Khoh Police Station on 10.03.2006 and finalized on 31.03.2006 by the ACJM, Deeg. But the individual did not disclose the facts of his being involved in criminal case in the Attestation Form submitted to the Department while joining CISF. On the said Attestation Form has been clearly warned the individual concerned that “the furnishing of false information or suppression of any factual information on the Attestation Form would be a disqualification and is likely to render the candidate unfit for employment under the Government and if detained, convicted, debarred etc., subsequent to the completion and submission of this form the details should be communicated immediately to the authority to whom the Attestation Form has been sent earlier failing which it will be deemed to be a suppression of factual information. Further it is mentioned that if the Act that false information has been furnished or that there has been suppression of any factual information in the Attestation Form comes to notice at any time during the service of a person, his services would be liable to be terminated”. Constable/Dvr. Devendra Kumar despite of having the knowledge of these warning, suppressed the facts of his being involved in the aforesaid criminal case.

Hence, the plea of the individual that he did not know about this at the time of appointment in CISF cannot be accepted. I, therefore, considered his reply to show cause notice as not satisfactory.

04. In view of the above, in pursuance of the Proviso of Sub-Rule (2) of Rule 25 of the Central Industrial Security Force Rules, 2001, I, Anand Saxena, Commandant, CISF Unit, NLC Neyveli hereby terminate forthwith the services of Shri Devendra Kumar, Constable/Dvr., CISF No.130720010 and direct that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of one month notice at the same rate at which he was drawing them immediately before the termination of his service."

4. The petitioner submitted a representation against the above order, which was also dismissed by the Inspector General, CISF South Sector HQrs., ChPT Campus, Chennai on 02.01.2015.

5. Mr.H.S.Dahiya, learned counsel for the petitioner submits that the grievance of the petitioner would be redressed if the impugned orders dated 11.01.2014 and 02.01.2015 are set aside/quashed and the petitioner is allowed to make a representation to be decided by the respondents in view of the guidelines laid down by the Supreme Court in Avtar Singh vs. Union of India & Ors., reported as **2016 8 SCC 471**. He also relied on the decision of a Division Bench of this Court in W.P.(C) No.3775/2017 entitled 'Sumit Kumar vs. Union of India & Ors.' in support of his above submission.

6. Mr.A.P.Sahay, learned counsel for the respondents has

questioned the maintainability of the petition contending that this Court lacks the territorial jurisdiction as the petitioner is a resident of Rajasthan; the termination order dated 11.10.2014 has been passed by the Appointing Authority based at Neyveli, Tamil Nadu i.e. Commandant, CISF Unit, NLC Neyveli and the order dated 02.01.2015 has been passed by Inspector General, CISF South Sector HQrs., ChPT Campus, Chennai. The present petition has also been opposed by the respondents on the ground that the petitioner had suppressed the fact of his involvement in a criminal case despite a warning in the Attestation Form of the consequences of suppression of vital information. Thus, a prayer for dismissal of the writ petition has been made.

7. The submission made on behalf of the respondents questioning the territorial jurisdiction of this Court has to be rejected as admittedly, the Headquarter of CISF is located in Delhi. In Civil Appeal No.6020/2012 entitled '*Abrar Ali vs. CISF & Ors.*', the Supreme Court has decided the issue of territorial jurisdiction observing as under:-

'3. The Writ Petition filed by the appellant has been dismissed by the Delhi High Court vide order dated May 03, 2011 by holding that no cause of action has accrued within the territorial jurisdiction of that Court. From the impugned order, it appears that the High Court considers the aspect of jurisdiction with reference to Article 226(1) of the Constitution of India. We are afraid, the impugned order cannot be sustained as the High Court overlooked Article 226(1) of the Constitution of India. The appellant approached Delhi High Court as the headquarters of

respondent no. 1 – Central Industrial Security Force – is located at Delhi. The jurisdiction of the Delhi High Court in this matter is, thus, clearly referable to Article 226(1).

4. We accordingly, allow the Appeal and set aside the impugned order and restore Writ Petition being Writ Petition (Civil) No. 1241 of 2011 titled “Abrar Ali v. C.I.S.F. & Ors.” to the Delhi High Court for consideration in accordance of law. No orders as to costs.'

8. In another decision reported as Charanjit Singh Aulakh vs. Director General, CISF Headquarter, **239 (2017) DLT 515 (DB)**, a Division Bench of this Court has reiterated that the Headquarters of the respondent being located within the jurisdiction of this Court, this Court has the jurisdiction to entertain and decide the writ petition.

9. The limited prayer made by the petitioner before this Court is to permit him to make a representation and for directions to the Competent Authority to examine his case in the light of the guidelines laid down by the Supreme Court in Avtar Singh's case (supra).

10. The petitioner is only praying for an opportunity to present his case before the Competent Authority requiring the respondents to examine his case in the light of the guidelines laid down by the Supreme Court in Avtar Singh's case (supra).

11. In Avtar Singh's case (supra), the Apex Court has considered the question of suppression of information or submitting false information regarding a criminal case in the verification form. After examining the entire case law on the subject, in paragraph 30 of the

judgment, the Supreme Court 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.”

12. The petitioner herein was involved in a case registered on 10.03.2006 under Sections 323/341/325/447/34 IPC at PS Khoh, which was compounded with the permission of the Court and he was acquitted on 31.03.2006. On his failure to mention about his involvement in Police Case No.119/2006, the petitioner's services have been terminated for suppression of the fact of his involvement in a criminal case. As per the record, the date of birth of the petitioner is 01.01.1988 and on the date of registration of FIR i.e. on 10.03.2006, he was 18 years and two months old and the matter has been amicably settled soon thereafter, resulting in his acquittal on 31.03.2006. A

photocopy of the certified copy of the order passed in FIR No.119/2006 is on record, which discloses that the FIR, which was registered on 10.03.2006, was in respect of a quarrel within the family and the matter was compromised soon thereafter. The offence was permitted to be compounded by the learned ACJM, Deeg on 31.03.2006 resulting into acquittal of the accused persons including the petitioner herein.

13. In the light of above facts, while setting aside the impugned orders dated 11.10.2014 and 02.01.2015 passed by the Appointing Authority i.e. the Commandant, CISF Unit, NLC Neyveli and the Competent Authority i.e. Inspector General, CISF South Sector HQrs., ChPT Campus, Chennai., we remand the matter back to the Inspector General, CISF South Sector HQrs., ChPT Campus, Chennai to re-examine the issue in the light of decision of the Supreme Court in Avtar Singh's case (supra).

14. The petitioner is directed to submit his representation within three weeks from the date of this order, highlighting how his case falls within the parameters laid down in Avtar Singh's case (supra), and in the given facts and circumstances, why termination of his services was not justified.

15. The Inspector General, CISF South Sector HQrs., ChPT Campus, Chennai is directed to dispose of the representation of the petitioner within three months therefrom.

16. We may clarify that in case, an adverse order is passed on his representation, it would be open to the petitioner to challenge the same as per law.

17. The writ petition is accordingly disposed of.
18. No order as to costs.

DASTI.

PRATIBHA RANI, J.

HIMA KOHLI, J.

FEBRUARY 19, 2018

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