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

+ **W.P.(C) 9516/2016**

EX CT RAM NARAYAN YADAV

..... Petitioner

Through: Mr. U. Srivastava, Advocate with Ms.
Neelima Rathore, Advocate.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Hasmat Nabi, Advocate with Mr.
Rizwan Ahmed, Advocate for
Railways.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

13.11.2018

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Dr. S. Muralidhar, J.:

1. This is a writ petition challenging the order dated 17th June 2016 enclosed with cover letter dated 22nd June 2016 issued by the Director General, RPF, Rail Bhawan, New Delhi, rejecting the Petitioner's appeal made by a letter dated 21st August 2015 against an order of the Staff Officer, RPF dated 3rd June 2015 cancelling his candidature to the post of Constable.

2. It must be mentioned at the outset that this is the second round of litigation. The petitioner had previously approached this Court by preferring W.P.(C) 624/2016 questioning the order dated 3rd June 2015 passed by the Staff Officer, RPF cancelling his candidature to the post of Constable. A Division Bench of this Court disposed of the said petition by its order dated

29th January 2016, directing the Respondents to consider and decide the Petitioner's appeal dated 21st August 2015 within a period of six weeks. Pursuant thereto, the order impugned herein has been issued by Respondent No.2 on 17th June 2016.

3. The admitted facts are that the Petitioner qualified in the examination for recruitment as Constable in the Railways Protection Force ('RPF'). As part of the completion of mandatory formalities, he filled up the Attestation Form on 19th May 2014. In Column 12 (a) to (f) of the Form, in response to the question of whether he had been arrested, prosecuted, kept under detention, bound down, or fined by a court of law or convicted by a court of law for any offence, he answered in the negative. In Column 12 (i) as well, in response to the question as to whether "any case is pending against you in any court of law at the time of filling up this application form?", he answered in the negative.

4. According to the Petitioner, at the time that he filled up the above Attestation Form, he was not aware that on 30th August 2013, a First Information Report ('FIR') had been registered at PS Pipi Ganj, District Gorakhpur, Uttar Pradesh against him under Sections 326, 504, and 506 IPC. He was also not aware that pursuant to the investigation undertaken by the police in the said FIR, a closure report had been filed in the Court of the Magistrate on 4th October 2013. Unaware of these facts, he proceeded to fill up the Attestation Form in the manner indicated and was deputed for basic training with effect from 1st November 2014 at the Training Centre, RPF, Bandikui, Dausa, Rajasthan.

5. While under training, he was served with a show cause notice dated 11th May 2015 stating *inter alia* that when the Attestation Form was sent to the District Magistrate, District Gorakhpur for police verification, a reply was received in respect of the registration of the aforementioned FIR at PS Papi Ganj. A copy of the closure report was enclosed with the show cause notice.

6. It was stated that the Petitioner had violated the conditions stipulated in the original recruitment notification by failing to mention the case pending against him. Thereafter, on 28th May 2015, the Judicial Magistrate at Gorakhpur passed a judicial order accepting the closure report and ordering the case to be closed. A copy of that order was enclosed with the representation dated 29th May 2015 made by the younger brother of the Petitioner to the Inspector General, Deputy Chief Security Commissioner, RPF Headquarters, Jabalpur.

7. Nevertheless, on 3rd June 2015, an order was passed by the Commandant (Gazette), RPF in Rajasthan cancelling the candidature of the Petitioner for violating the terms and conditions of selection as per Rule 67.2 of the Railway Protection Force Rules 1987 ('RPF Rules'). It was against this order that the aforementioned W.P.(C) 624/2016 was filed in this Court which came to be disposed of by a Division Bench of this Court on 29th January 2016 in the manner noticed hereinbefore.

8. In the order impugned herein, the Competent Authority, i.e. the Director General, RPF, while rejecting the Petitioner's appeal, has noticed that with a case having been registered against the Petitioner on 30th August 2013 and

since he was “under prosecution till his acquittal on 28.05.2015”, the declaration made by him in the Attestation Form was false.

9. This Court has heard the submissions of the learned counsels for the parties. A preliminary objection was raised by the learned counsel for the Respondent as to the maintainability of the present petition. He pointed out that even in the order dated 29th January 2016, this Court made a note of a similar objection raised by the Respondent at the very first instance to the maintainability of the writ petition on the ground that this Court did not have territorial jurisdiction in the matter. Attention of this Court is drawn to paras 4 and 5 of the order dated 29th January 2016, which reads as under:

“4. Learned counsel for the respondent states that he has no objection to the said request, but the petitioner may not assume that disposal of his appeal by the respondent No. 2, who is based in Delhi would amount to vesting a jurisdiction on this Court, for any future litigation to which the other side is agreeable.

5. Accordingly, the present petition is disposed of with directions issued to the respondents to consider and decide the petitioner’s appeal dated 21st August, 2015 in accordance with the law within eight weeks. The decision taken shall be duly communicated to the petitioner. If the petitioner is aggrieved by the said decision, he shall be at liberty to seek his remedies before the court of competent territorial jurisdiction.”

10. The Court find that the appellate order has been passed in Delhi by the Director General, RPF and, therefore, a part of the cause of action, as regards the present petition questioning that order, has arisen within the territorial jurisdiction of this Court.

11. The Court also notes that under Article 226 (2) of the Constitution of India, the present writ petition would be maintainable. Reference may be made to an order of the Supreme Court dated 21st August 2012 in *Abrar Ali v. CISF* (Civil Appeal No. 6020/2012). The Court, therefore, negatives the preliminary objection of the Respondent.

12. As far as the merits of the case are concerned, the learned counsel for the Respondent placed reliance upon the decisions of the Supreme Court in *Avtar Singh v. Union of India (2016) 8 SCC 471*, where the legal position with regard to suppression of material facts in the verification forms was considered. The important observations in the said judgment are contained in paras 35 to 37 thereof, which read as under:

“35. Suppression of 'material' information presupposes that what is suppressed that 'matters' not every technical or trivial matter. The employer has to act on due consideration of rules/instructions if any in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.

36. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by concerned authorities considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.

37. The 'McCarthyism' is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable

cases, interplay of reformatory theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.”

13. The Supreme Court, after discussing extensively the relevant case law, summarised the legal position thus:

“38. 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:

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 recourse 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.”

14. It is, therefore, clear that not every so-called suppression of facts or false information would result in a candidature being cancelled. The Court will have to take into account the nature of the offence alleged in the criminal case and whether in fact it resulted in any prosecution. In other words, the mere fact that the candidate did not mention the pendency of a criminal case would not automatically result in the cancellation of his candidature.

15. In the present case, it was incumbent upon both the authority who originally cancelled the candidature of the Petitioner as well as the Appellate Authority to consider the specific facts pertaining to the suppression of information by the Petitioner.

16. It has been the Petitioner's case throughout that although the FIR was registered on 30th August 2013, he was not aware of the registration of the said FIR. Indeed, it appears that no summons was ever issued to the

Petitioner to join the investigation and within a period of a month, i.e. on 4th October 2013, a closure report was filed by the police.

17. There is no disputing the assertion of the Petitioner that he was, far from being arrested not even issued summons to join investigation. Therefore his assertion that he was not aware of the said FIR is entirely plausible. Moreover, if there was a closure report already filed in the competent Court by the police way back on 4th October 2013, i.e. even before the petitioner filled up the Attestation Form on 19th May 2014, the de facto position was that there was no criminal case actually pending against the Petitioner as of that date.

18. It is another matter that it took the concerned Court more than a year thereafter to actually accept the closure report. Such judicial delay should not prejudice a candidate against whom in fact the police did not find any incriminating material in the FIR in question. All that the CJM did on 28th May 2015 was to simply accept the closure report.

19. For all practical purposes, therefore, even before he filled up the Attestation Form, the case arising out of the FIR naming the Petitioner stood closed. Therefore, he cannot be said to have deliberately suppressed material information regarding the pendency of a criminal case against him.

20. None of the above facts appear to have been taken note of either by the Authority who cancelled the Petitioner's candidature or the Appellate Authority who dismissed his appeal.

21. The Court is satisfied that the Petitioner was not aware of registration of the FIR against him at the time he filled up the Attestation Form and, therefore, he could not be said to have deliberately suppressed the information about its pendency. Following the decision in *Avtar Singh (supra)*, the Court is of the view that this was the case where the authorities ought to have ignored the suppression of the fact and condoned the lapse on the part of the Petitioner.

22. Consequently, the impugned order dated 3rd June 2015 issued by the Commandant (Gazette), RPF in Rajasthan cancelling the candidature of the Petitioner and the subsequent order dated 17th June 2016 issued by the Appellate Authority rejecting the Petitioner's appeal are hereby set aside.

23. With the Petitioner's candidature being restored, the consequential orders will now be issued by the Respondent within a period of four weeks from today.

24. The petition is allowed in the above terms with no order as to costs. Order *dasti* under the signatures of the Court Master.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

NOVEMBER 13, 2018

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