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

+ **W.P.(C) 6717/2017**

AVINASH OJHA Petitioner

Through Mr.U. Srivastava, Adv.

versus

UNION OF INDIA & ORS. Respondents

Through Ms.Shiva Lakshmi, CGSC.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA

% **ORDER**
15.11.2018

1. The Petitioner challenges an order dated 13th July, 2013 passed by the Commandant, 62 Bn. Sashastra Seema Bal (SSB), Debendranagar debarring the Petitioner from appointment for the post of Constable/Cook of the SSB.

2. The background facts are that the Petitioner was by letter dated 22nd May 2013 offered the appointment to the above post and allocated to 20th Bn SSB Sitamarhi with a direction to report the Commandant 54th Bn at Debendranagar to join the above post.

3. On reporting at the ATC/Debendranagar, the Petitioner informed the Commandant for the first time that there is a pending criminal case No.4342/2006 against him under Sections 147/148/149/308/323/ 504/506 of

IPC read with section 3(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and it is subjudice in the court of the District & Sessions Court, Kushinagar (UP).

4. The admitted position is that at the time of applying for the post, the Petitioner did not disclose the above fact. Consequently, in terms of the circular dated 1st February 2012, Ministry of Home Affairs, since his non-disclosure involved a case pending against him which included an offence under Section 308 IPC, the impugned order was passed.

5. Learned counsel for the Petitioner first submitted that this is not a case of deliberate suppression and that it was the Petitioner himself who volunteered the information to the Respondents about the pending criminal case. As far as this submission is concerned, the crucial question is whether the Petitioner failed to disclose the pendency of the case at the time of his application because against Column 12 in the application he was required to make such disclosure about a pending case. Admittedly, he did not make any such disclosure in the application.

6. The Petitioner relied on the decision of the Supreme Court dated 17th March 2011 in Civil Appeal No.1430/2007 (***Commissioner of Police vs. Sandeep Kumar***).

7. A perusal of the said judgment reveals that the offence with which the candidate in that case i.e. Sandeep Kumar and his family members were charged was under Section 325/34 of the IPC. Further, even before he

applied for the post of Head Constable on 24th February 1999, the case was “admittedly compromised on 18.01.1998 and the respondent and his family members were acquitted on 18.01.1998.” These facts by themselves distinguish the applicability of the said decision of the Supreme Court to the facts of the present case.

8. It is then contended by learned counsel for the Petitioner that with his date of birth being 10th August 1993, he was a minor at the time of registration of the FIR in 2006. The fact of the matter is that the case is still pending and even if the Petitioner’s plea were to be accepted, it will involve the separation of his trial and placing his case before the Juvenile Justice Board concerned. It would not amount to a case not being pending against him. The offences involved in the case registered against the Petitioner are serious enough and there is no question of the Petitioner being excused for non-disclosure of such a case at the time of applying for the post.

9. The Court finds no error in the impugned order.

10. The petition is dismissed.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

NOVEMBER 15, 2018

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