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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 1167/2018

SATISH CHANDRA YADAV

..... Petitioner

Through

Mr. Himanshu Gautam &

Ms. Aishwarya Rao, Advocates

versus

UNION OF INDIA AND ORS.

..... Respondents

Through

Ms. Suman Chauhan, Advocate

Mr. Vivek Kumar Singh, DC Law &

Mr. Deepak, SI, CRPF.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

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15.04.2019

1. The Petitioner was a Constable General Duty with the CRPF is aggrieved by the impugned order dated 11th March, 2016 terminating his services.
2. The admitted facts were that the Petitioner was recruited as a temporary employee of the post of Constable (GD) in the CRPF on 28th July, 2014. After undergoing basic training he reported at the 179th Battalion on 17th December, 2015.
3. While filling up the requisite Verification Form-25 at the time of his recruitment in the CRPF in Column 12 in response to the question whether has any case pending against him, the Petitioner answered in the negative.

4. Thereafter under Rule 14 of the CRPF Rules the character and antecedents verification form of the Petitioner was sent to the Collector District, Sant Kabir Nagar, Uttar Pradesh. Vide letter dated 25th February, 2015 the Collector District, Sant Kabir Nagar, Uttar Pradesh informed the Deputy Inspector General of Police (DIGP), Group Centre, CRPF Rampur, at Criminal Case No. 1015/2008 under Sections 147/323/324/504/506 IPC had been registered against the Petitioner at Police Station, P.S. Khalilabad Sant Kabir Nagar, on the ground that he had concealed this information while filling up Form-25. In exercise of the powers conferred under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965 an impugned order dated 11th March, 2016 was passed terminating his services.

5. The further appeal addressed to the IG was also dismissed.

6. Counsel for the Petitioner placed heavy reliance on an order passed by this Court in an earlier round. That was Writ Petition (C) No.10558/2016 which was disposed of by the Division Bench of this Court on 25th September, 2017 and which order reads as under:-

“Satish Chandra Yadav, upon selection by the Staff Selection Commission, was recruited as a temporary employee on the post of Constable (General Duty) in the Central Reserve Police Force (CRPF) on 28th July, 2014. After basic training, he was asked to report for duty in 179th Battalion in the CRPF.

2. During the course of selection process, the petitioner was asked to fill up form CRP-25 for the purpose of verification of his character and antecedents.

3. On 5th February, 2016, the Commandant of the 179th

Battalion issued show cause notice to the petitioner alleging suppression of information as the petitioner had earlier been named and prosecuted in FIR No.1015/2008, Police Station Khalilabad, District Sant Kabir Nagar, Uttar Pradesh under Sections 147/148/323/324/504 and 506 of the Indian Penal Code, 1860.

4. A number of defences were raised by the petitioner but the disciplinary authority did not agree and passed termination order dated 11th March, 2016 with effect from 18th March, 2016.

5. The petitioner filed an appeal and thereafter a revision, but they were dismissed by the Inspector General, Western Sector, CRPF vide order dated 13th July, 2016 and by the Director General of Police, CRPF, New Delhi vide order dated 27th September, 2016.

6. Counsel for the petitioner has drawn our attention to form CRP25 and in particular to column 12 and different columns thereof. It is submitted that the petitioner had correctly answered the questions. The petitioner by judgment/order dated 13th January, 2016 was acquitted in the said criminal case and it is highlighted that the charges were framed on 11th January, 2016.

7. We have considered the said contention of the petitioner and find that the order of termination cannot be sustained and an order of remand is required to be passed in view of the decision of the Supreme Court in *Avtar Singh versus Union of India* (2016) 8SCC 471. This decision by the Bench of three Judges refers to the case law on the subject and in paragraph 30 had 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.”

8. The impugned order passed by the respondents i.e. the order

of termination dated 11th March, 2016, appellate order dated 13th July, 2016 and the revisionary order dated 27th September, 2016 do not take into consideration the dictums and principles laid down by the Supreme Court in *Avtar Singh* (supra). We would, however, not remand the matter to the disciplinary authority and would ask the revisionary authority to examine the case of the petitioner in the light of the principles laid down in the case of *Avtar Singh* (supra). This would cut short delay. The petitioner would be also entitled to make a written representation, which may be filed within a period of two weeks from today with the revisionary authority setting out and pointing out the factors which would matter in terms of the decision and the principles laid by the Supreme Court.

9. The revisionary authority would pass an appropriate order in accordance with law within six weeks from the date the representation is made. In case the petitioner succeeds, appropriate orders would be also passed by the authorities with regard to treatment of the period between 11/18th March, 2016 and the date of reinstatement.

10. The writ petition is accordingly disposed of in the aforesaid terms without any order as to costs. If aggrieved, it will be open to the petitioner to challenge the impugned order in accordance with law.

We clarify that we have not expressed any opinion on merits.”

7. The Court has carefully perused the decision of the Supreme Court in *Avtar Singh* (supra). Learned counsel for the Petitioner relied on the summary in para 30 (vi) of the said decision which referred to the pending case itself which was so trivial that it would not affect the appointment as such. It was further submitted that this is not the only factor that had to be taken into account. It had to be the other antecedents and factors that also had to be considered. It is for this reason that this Court had remitted the

matter to the Revisional Authority for a fresh decision on the basis of the decision in *Avtar Singh* (*supra*).

8. Following the above order dated 25th September, 2017 the Respondents passed a fresh order reiterating the termination of the Petitioner services.

9. The fact remains that FIR No. 1015/2018 was registered at P.S. Khalilabad against the Petitioner and placed under Sections 147/323/324/504/506 IPC. Admittedly, the Petitioner got bail in the above Criminal case which was for cognizable offences. It is not therefore the case where at the time of filing up of the verification Form-25 the Petitioner was not aware of the pendency of the Criminal case against him.

10. This fact situation is entirely different from the one in *Ex Constable Ram Narayan Yadav v. Union of India* (decision dated 13th November, 2018 in Writ Petition (C) No. 9516/2016). There the fact situation has been in capsulated in paras 16 and 17 of the decision which reads as under:

“16. It has been the Petitioners 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.”

11. In the present case, on the date of filling up of the verification form the criminal case against the Petitioner was very much pending. The fact that the charge sheet had been filed after the filling up the form will not make any difference to the fact that the Petitioner deliberately gave a wrong answer to the question whether any case was pending against the Petitioner. This could not be termed as innocent. The Petitioner is applying for the post of Constable in a para military organisation and is expected to be truthful in all responses to the columns in the verification form. At the time of filling up of that form the Petitioner was very much aware of the pendency of the criminal case. Therefore, there could be no excuse for not filling up the correct answer in response to the question under Column 12.

12. For the aforementioned reasons, the Court finds no reason to interfere with the impugned order of the DA which was confirmed by the AA.

13. The petition is accordingly dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 15, 2019

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