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

+ **W.P.(C) 9086/2019 & CM Appl. No. 37524/2019 (stay)**

SHRI VINEET KUMAR SHARMA

..... Petitioner

Through

Mr. Madan Lal Sharma & Mr. Gaurav
Gogia, Advocates

versus

UNION OF INDIA AND ORS.

..... Respondents

Through

Mr. Vineet Kumar Sharma, Senior
panel counsel for Respondent/UOI
Mr. Sameer S.Sinha, GP &
Ms. Saumya Johari, Advocates

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

24.09.2019

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1. Does the mere fact of registration of an FIR disqualify a person from being appointed to the post of Sub-Inspector (SI) in the Central Reserve Police Force (CRPF)? That is the short question that arises for determination in the present petition.

2. A notice was issued on 22nd April, 2017 by the Staff Selection Commission (SSC) for recruitment of SIs in the Delhi Police, Central Armed Police Forces (CAPFs) etc. The Petitioner applied for the post of SI (General Duty) in the CRPF. He participated in the competitive examination held on 5th July, 2017. He was declared successful in the said examination. He also successfully completed the Physical Endurance Test (PET) and

Physical Standard Test (PST) and he was declared qualified on 21st October, 2017.

3. The Petitioner also qualified in the online examination of Paper-II for which results were published on 29th January, 2018. He completed successfully the medical examination for which the result was declared on 6th April, 2018. He was issued a call letter by the SSC on 5th October, 2018. His name appeared in the final list of selected candidates published on 31st October, 2018.

4. The Petitioner was issued an appointment letter to the post of SI, CRPF on 12th February, 2019. He was informed that in case he accepted the offer of appointment he should report to the DIG, Group Centre, CRPF in Pune on or before 13th March, 2019.

5. The Petitioner states that he joined the training for the post at Pune and submitted the documents and declaration in the prescribed format/attestation form. In this attestation form he specifically mentioned that his wife had lodged FIR No.852/2018 against him and his whole family on 19th November, 2018 at P.S. Kosai Guda, District Rachakonda, State of Telengana under Section 498A/506/34 IPC and under Section 4 of the Dowry Prohibition Act.

6. On 18th April, 2019 the Commandant, CRPF at Pune issued a letter that in terms of the notification dated 1st February, 2012 issued by the Ministry of Home Affairs, Police-II Division, Government of India, the Petitioner could

not be appointed in the CRPF on account of the pendency of the above FIR. The Petitioner then preferred representations against the said order which were rejected by the DIG (Recruitment) on 27th May, 2019 referring to the policy guidelines dated 1st February, 2012.

7. Thereafter the present petition was filed. When the petition was first heard on 22nd August, 2019, the following order was passed:-

“The submission of learned counsel for the petitioner is that the respondents have wrongly rejected the petitioner's candidature and not permitted him to join the post by placing reliance on the policy guideline, which provides that the candidate will not be considered for recruitment, if he is involved in a case mentioned in Annexure-A to the policy guideline dated 01.02.2012. He submits that the respondents have conveniently overlooked the proviso to the guideline which provides:

"Provided that the candidate shall not be barred in the above cases, if only an FIR has been registered/ the case is under investigation and no charges have been framed either on FIR or on the complaint in any Court of Law."

The submission of the petitioner is that only an FIR under Section 498A IPC and other Sections has been registered against the petitioner on account of estrangement of relationship with his wife. However, no charge sheet has been filed and no charge has been framed against the petitioner till date. Thus, the respondents could not have rejected the petitioner's candidature.

Issue notice. Learned counsel for the respondents accepts notice. He wishes to take instructions.

Since the issue is limited, adjourned to 24.09.2019.

In the meantime, one post shall be kept vacant to accommodate the petitioner, in case he succeeds in the writ petition.

Order dasti under the signatures of the Court Master.”

8. The reference in the above order is to the proviso to the same guidelines dated 1st February, 2012 issued by the MHA, the complete text of which reads thus:

“3. The candidate will not be considered for recruitment if:

.....

e) He/she has been convicted by a Court in any case whether or not an appeal is pending against such conviction.

Provided that the candidate shall not be barred in the above cases, If only an FIR has been registered/the case is under investigation and no charges have been framed either on FIR or on the complaint in any Court of Law.

Provided further that the candidate shall not be debarred if he/she has been finally acquitted/discharged by a Court, whether an appeal is pending or not against such-acquittal.

Provided further that the candidate shall not be debarred if the proceedings are withdrawn by the Central/State Government.

Provided further that the candidate shall not be debarred if he/she has been involved/convicted/concerned with minor offences mentioned in Annexure-B or those mentioned in Chapter VIII & X of Code of Criminal Procedure, 1973.”

9. Learned counsel for the Respondents on instructions does not dispute that only an FIR has been registered against the Petitioner and his family which is still at the stage of investigation. He referred to the decision of the Supreme Court in *Avtar Singh v. Union of India (2016) 8 SCC 471* wherein

the circumstances under which an employer can exercise discretion to terminate the services of an employee were set out. He referred to paras 38.5 and 38.6 which reads thus:

“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.”

10. In the present case the circumstance as set out in para 38.5 will not apply because the case is still at the stage of FIR. It is, therefore, not a ‘concluded’ criminal case. As regards para 38.6 it is seen that at the first available opportunity after the FIR was registered, the Petitioner made a disclosure of it in the attestation form that he filed as part of the terms and conditions of his appointment. Therefore, there was no suppression of any fact concerning the pendency of the FIR.

11. The proviso to the guideline contained in MHAs notification dated 1st February, 2012 makes it clear that the mere pendency of an FIR which is still at the stage of investigation, with no charge sheet having been filed and no charges having been framed by the Court, will not be a bar to the candidature of an Applicant. That being the case, the Respondents cannot possibly cancel the Petitioner’s candidature only on the ground that an FIR is still at the stage of investigation, and the matter is pending.

12. Consequently, the Court sets aside the impugned order dated 18th April, 2019 issued by Respondent No.4 cancelling the candidature of the Petitioner and the subsequent order dated 27th May, 2019 of the DIG rejecting the Petitioner's representation and affirming his termination. The Respondents will now issue the consequential orders within four weeks restoring the Petitioner as SI in the CRPF with effect from 18th April, 2019 with all consequential benefits. However, it will be open to the Respondents to clarify in such order that the appointment would be subject to the ultimate decision in FIR that has been registered against the Petitioner.

13. The petition is disposed of in the above terms. The pending application is disposed of.

14. A copy of this order be given *dasti* under the signatures of Court Master.

S. MURALIDHAR, J.

TALWANT SINGH, J.

SEPTEMBER 24, 2019

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