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

+ **W.P.(C) 7694/2014**

DINESH YADAV

..... Petitioner

Through: Mr. Ankur Chhibber, Advocate.

Versus

UNION OF INDIA & ORS

..... Respondent

Through: Mr. Ajay Digpaul, CGSC with Mr.
Soumava Karmakar, Advocate.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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13.12.2019

Dr. S. Muralidhar, J.:

1. This petition seeks the quashing of an office order dated 26th July, 2007 terminating the services of the Petitioner as Sepoy/Tailor in the Central Reserve Police Force ('CRPF') and the further order dated 20th May, 2014 rejecting his appeal.

2. The background facts are that the Petitioner was enlisted in the CRPF as Sepoy/Tailor on 23rd November, 2006 and sent for basic training between March and May, 2007. In the meanwhile, the Respondents enquired about the previous history and character certification of the Petitioner from the District Magistrate, District Jhajhar, Haryana. They were informed by the

Superintendent of Police, District Jhajhar that Case No.21 dated 6th February, 2004 had been pending against the Petitioner and others under Sections 323, 324 and 325 IPC at Police Station Beri, District Jhajhar. On that basis, the services of the Petitioner were terminated by the impugned order dated 26th July, 2007.

3. By a judgment dated 26th November, 2013 of the Additional Chief Judicial Magistrate Judge, the Petitioner was acquitted in the aforementioned criminal case. Thereafter, the Petitioner filed an appeal before the Director General, CRPF seeking his reinstatement which was rejected by the order dated 20th May, 2014. While rejecting the said representation, it was noted that under columns 12(a) and (b) in the attestation form, the Petitioner had failed to mention about the pendency of the aforementioned criminal case. Consequently, the representation was rejected.

4. Learned counsel for the Petitioner has drawn the attention of this Court to the judgment of the Supreme Court in *Avtar Singh v. Union of India (2016) 8 SCC 471* where the legal position as regards the suppression of information in connection with having been criminally prosecuted, arrested or as to the pendency of a criminal case in a verification form has been summarized as under:

“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:

(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.”

5. Para 38.4 in **Avtar Singh** (*supra*) would apply to the facts of the present case.

6. The Court has perused the judgment dated 26th November, 2013 of the Trial Court in terms of which the acquittal of the present Petitioner was not on technical grounds but on merits. The relevant paras of the said judgment read as under:

“15. From the situation which is evident, it appears that the accused have acted in their defence wherein some injuries were caused by them upon the person of complainant and injured. PW1 complainant, in last part of the cross examination has admitted that the accused during the fight have pelted stones upon the complainant and injured party. From that part of version of the complainant Satbir Singh himself, the defence of the accused cannot be ruled out that they in their defence of their property and person, have only pelted stone by causing injuries upon the person of injured and complainant. In **Subramani and others** (*supra*) case the Hon’ble Apex Court held that once the accused party entertained a reasonable apprehension that death or grievous hurt may be the consequences, the act and omission on the part of accused was their right of private defence of the property and person. Similar view was taken by Hon’ble Apex Court in **Radhakrishnan** (*supra*) case and **Vajrpu Sambayya Naidu and Ors** (*supra*) case.

16. In case in hand, it stands proved that the complainant and injured themselves stopped the accused party from digging the foundation of their plot. It has also been proved that the injured

and complainant party inflicted various simple and approximate four grievous injuries upon the person of accused party, the act of the accused party in causing some of the injuries to the complainant and injured was certainly within their right of private defence of the property and person.

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18. PW3 at page no.3 of his cross examination also admitted that the accused party was digging the foundation of plot no.327 and that plot was never purchased by the complainant and injured party nor possession of the same was ever taken by from one Khem Chand, who has been alleged by the injured side as the vendor of the plot. From that part of version PW3, it again appears as probable that the accused by digging the foundation of their own plot were well within their right and the injured and complainant party being aggressor have illegally stopped the rightful owner from digging the foundation of the plot. In other words, from the version of PW3 also, action taken by the accused side appears as within their right of private defence of their property and person.

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22. Once, the injuries caused by the accused upon the persons of injured and complainant was the result of exercising the right of private defence of property and person by the accused, it constitute no offence for holding the accused as guilty. Resultantly, the accused stands acquitted from the charge framed against them. Their bail bonds and sureties bonds stands discharged. File after due compliance be consigned to the record room.”

7. It is thus seen that the Petitioner’s acquittal in the criminal case was on merits and not on technical grounds or by giving the Petitioner the “benefit of reasonable doubt”. The stand taken in the counter affidavit of the

Respondents that the Petitioner had concealed material facts in the relevant columns of the attestation forms is not in consonance with the legal position explained in *Avtar Singh* (*supra*).

8. The decision in *Avtar Singh* (*supra*) has been followed by this Court in two other decisions, i.e. *Jeetu Wede v. Union of India 2017 (238) DLT 22* and *Balram Meena v. Union of India 2017 SCC Online Del 8711*.

9. Accordingly, the Court sets aside the impugned orders dated 26th July, 2007 and 20th May, 2014 passed by the Respondents and directs that the Petitioner will be reinstated in service with all consequential benefits. The Petitioner will not be entitled to back wages, but the date of initial appointment will be reckoned for the purposes of notional fixation of pay and seniority. The period between the date of termination and the date of reinstatement will be treated as the Petitioner having been on duty for the purposes of pensionary benefits. The necessary orders be issued within 12 weeks from today.

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

S. MURALIDHAR, J.

TALWANT SINGH, J.

DECEMBER 13, 2019

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