

\$~15

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

+ **W.P.(C) 5675/2017**

SANDEEP SINGH

..... Petitioner

Through: Mr. Sachin Chauhan, Advocate.

versus

GOVT. OF NCTD & ANR.

..... Respondents

Through: Mr. Anuj Aggarwal, ASC with
Mr. Ankit Monga, Advocate.

CORAM:

**JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH**

ORDER

%

10.12.2019

Dr. S. Muralidhar, J.:

1. The Petitioner has in this petition challenged an order dated 21st May, 2015 passed by the CAT dismissing O.A. No. 1882/2013 and the subsequent order dated 15th February, 2016 dismissing his R.A. No. 209/2015.

2. The Respondents, Government of NCT of Delhi and the Deputy Commissioner of Police, Police Headquarters, Delhi had issued an advertisement in 2009 for filling up 676 vacancies of Constable (Driver) in the Delhi Police. According to the Petitioner, he had disclosed the full particulars of his implication in a criminal case in which he stood acquitted, and wherein his statement under Section 313 of the Code of Criminal

Procedure, 1973 ('Cr PC') had been dispensed with by way of a judgment dated 14th March, 2001.

3. On 9th December, 2011 the Screening Committee found the Petitioner not suitable for the post of Constable (Driver). He was issued a Show Cause Notice ('SCN') on that date as to why his candidature should not be cancelled. The Petitioner replied to the SCN on 19th December, 2011. However, by the impugned order dated 15th March, 2012, the Respondents cancelled his candidature.

4. Aggrieved by the above order, the Petitioner filed O.A. No. 1147/2012 in the CAT. By an order dated 8th March, 2013, the CAT disposed of the O.A. by quashing the SCN and remitting the matter to the Screening Committee to take a view in light of the guidelines laid down in its earlier order dated 17th May, 2012 in O.A. No. 1750/2011 (*Pappu Lal Meena v. The Commissioner of Police*).

5. Thereafter, when for a second time the Screening Committee reiterated its previous decision of cancellation, the Respondents filed O.A. No. 1882/2013 which was dismissed by the CAT by its impugned judgment dated 21st May, 2015. R.A. No. 209 of 2015 seeking review of the said judgment was dismissed by the second impugned order dated 15th February, 2016.

6. The legal position as regards non-disclosure of material facts concerning the involvement of the candidate in a criminal case in the past has been

explained by the Supreme Court in *Avtar Singh v. Union of India* (2016) 8 SCC 471. Paragraph 30 thereof summarises the legal position thus:

“30. 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.”

7. In the present case, the Trial Court delivered a judgment on 14th March, 2001 acquitting the Petitioner. This was duly disclosed by the Petitioner in his application form. The only question, therefore, whether his acquittal was not on technical grounds or by giving him the benefit of doubt?

8. This Court has carefully perused a copy of the judgment of the trial Court in Sessions Case No. 159/2000 arising out of Sessions Trial No. 119/2001. The charge against the Petitioner was for the commission of offences under Sections 307/324/34 of the IPC for which FIR No. 42/2000 was registered against him at PS, Kundli. The relevant portion of the said judgment, as far as the Petitioner is concerned, reads as under:

“So far as the allegations against the accused Sandeep are concerned there is no evidence on the file to connect the accused Sandeep with the alleged occurrence. So, the statement of the accused Sandeep under section 313 Cr PC is dispensed

with.”

9. Clearly, therefore, in the Petitioner’s case, the acquittal was not on account of any ‘benefit of doubt’; it was on the basis that there was no evidence. It was for this reason that even recording his statement under Section 313 Cr PC was dispensed with.

10. Consequently, applying the judgment in *Avtar Singh v. Union of India* (*supra*), this Court sets aside the impugned orders cancelling the candidature of the Petitioner as well as the order dated 21st May, 2015 passed by the CAT dismissing O.A. No. 1882/2013 and the subsequent order dated 15th February, 2016 dismissing his R.A. No. 209/2015. The Court directs the Respondents to issue orders appointing the Petitioner as Constable (Driver) in the Delhi Police not later than 4 weeks from today. While the Petitioner would not be entitled to any arrears of pay, for the purpose of seniority and notional pay fixation, the date on which his batch-mates were appointed as Constables would be reckoned. Needless to state, the Petitioner would be entitled to all other consequential benefits as well.

11. The petition is disposed of in the above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

DECEMBER 10, 2019

tr