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

Date of decision: 8th April, 2019

+ W.P.(C) 11627/2018 & CM No. 44900/2018

KIRPAL SINGH Petitioner

Through: Mr. Sourabh Ahuja, Advocate.

versus

COMMISSIONER OF POLICE AND ORS. Respondents

Through: Ms. Mini Pushkarna, Advocate with
Ms. Swagata Bhuyan, Advocate for
respondent Nos.1 to 4.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

CHIEF JUSTICE (ORAL)

By this writ petition filed under Article 227 of the Constitution of India, the petitioner/Constable Kirpal Singh challenges the order passed by Central Administrative Tribunal, Principal Bench, New Delhi dated 30.7.2018 in O.A. No.2084/2015.

2. Facts of the case, in nutshell, show that the petitioner was selected and joined Delhi Police on 7.8.1991 as a Constable. However, due to his involvement in a criminal case arising out of FIR No.341/1990 under Sections 325/34 IPC registered by PS: Okhla Industrial Estate, departmental proceedings were initiated against him on the ground that the petitioner/Constable Kirpal Singh did not disclose facts about his arrest and his involvement in the criminal proceedings while filling up the verification

form at the time of appointment; and penalty of reduction to the lower stage for a period of one year was imposed upon him.

3. Vide order dated 18.12.2001, while the position was so existing, it seems that the Lieutenant Governor of Delhi issued certain circulars and guidelines wherein it was observed that in such cases lenient view should not be taken and the persons concerned should be dealt with sternly and their services should be terminated. Accordingly, the petitioner's case was reopened and he was removed from service.

4. Thereafter the petitioner filed a departmental appeal which was dismissed; and therefore he filed OA No.2661/1996 before the Tribunal which was also dismissed by the Tribunal on 28.4.2000.

5. It may be noted however that the petitioner was subsequently acquitted in the criminal case i.e FIR No.341/1990 by the Metropolitan Magistrate, New Delhi on 7.12.2000 and thereupon filed a writ petition before this Court, being CWP No.3084/2001; whereupon the writ court remanded the matter to the respondents for reconsideration. The petitioner was thereafter reinstated in service but when he was removed again, the matter travelled to the Tribunal and the Tribunal rejected his claim. Hence the present petition came to be filed.

6. The only question involved in this matter is as to whether the omission of the petitioner in suppressing the fact of his involvement in the criminal case entitles the respondent to impose punishment upon him.

7. This very issue has received the consideration of the Supreme Court in various cases and after references were made by various Benches of the Supreme Court, a larger Bench of the Supreme Court in case of ***Avtar Singh Vs. Union of India (2016) 8 SCC 471*** has decided the issue. In para 38 of

the judgment the larger Bench crystallized the law in this regard in the following manner:-

“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:

38.1 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.

38.2 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.

38.3 The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4 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: -

38.4.1 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.

38.4.2 Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3 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.

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.

38.7 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.

38.8 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.

38.9 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.

38.10 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.

38.11 Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.”

8. Normally, in view of the aforesaid circumstances and the law laid down by the Supreme Court, we would have remanded the matter back to the department concerned for reconsideration. However, we find that with regard to various employees identically situate and working in Delhi Police, benefit has been granted not only by the Coordinate Bench of this Court in W.P.(C) No.5935/2016 ***Jeetu Wede Vs. Union of India & Ors.*** decided on 3.2.2017 but also in more than 22 cases by the Central Administrative Tribunal itself by a common order passed in those cases on 21.5.2015 in OA No.546/2014 and other similar matters.

9. In all these cases, as decided by this Court in the case of ***Jeetu Wede (supra)*** and by the Central Administrative Tribunal, the employees, who were ex-Constables or officials in Delhi Police, were proceeded against and action was taken against them by imposing various punishments including dismissal from service; but all these punishment orders were later

recalled/reviewed in view of the circular issued by the Lieutenant Governor on 4.9.2002; and they were dismissed from service after recalling their earlier punishment orders.

10. The dismissal order so passed by the respondent was considered by the Coordinate Bench of this Court in the case of **Jeetu Wede (supra)** and after taking note of the law laid down in the case of **Avtar Singh (supra)**, the Coordinate Bench in para 13 of its order passed on 3.2.2017 has dealt with the issue in the following manner:-

*“13. One of the options available is to remand the case and leave it open to the Lieutenant Governor to pass a fresh order after considering the said aspects. If an order under Rule 25-C is passed, the petitioner can then challenge the said order including the validity of the said Rule. However, in the facts of the present case, we are not inclined to issue the said direction for the reason that the petitioner vide order dated 24th August, 1998 was reinstated in service and had worked and performed duties for over 14 years till the impugned order 22nd February, 2013 was passed. Apparently, the petitioner has performed his duty diligently and properly during this period. It may not be just and fair to revert to an occurrence which had taken place in 1992 and had resulted in an order of acquittal vide the decision dated 19th April, 1995. Another reason why we have taken the said view is that the Tribunal has accepted and adopted the same reasoning in several other cases. The petitioner has filed a copy of the judgment of the Tribunal dated 21st May, 2015 passed in OA No.546/2014, **Rakesh Kumar Meena Vs. Govt. of NCT Delhi & Ors** and other connected matters. The said decision has also disposed of somewhat identical issues in OA Nos.2456/2013, 2950/2013, 2463/2013, 2928/2013, 3474/2013 and 2562/2013. The decision refers to*

the direction given by the Lieutenant Governor that similarly situated Constables, including the present petitioner, should be re-examined.”

11. That apart, as already stated hereinabove, in more than 22 cases of identically situate employees, the Central Administrative Tribunal has considered the issue and has directed for reinstatement of the employees. The said order passed by the Central Administrative Tribunal is on record.

12. Keeping in view the fact that case of the petitioner is identical to all those employees, namely to the case of Sh. Jeetu Wede as decided by the Coordinate Bench of this Court and to the case in OA No.546/2014 and 22 other cases as decided by the Central Administrative Tribunal, we see no reason to deviate from the said orders and take a different view. Accordingly, the petitioner is entitled to identical treatment as has been meted-out to other similarly situate employees.

13. Keeping in view the aforesaid and for sake of convenience we may take note of the order passed by the Central Administrative Tribunal in OA No.2456/2013 and other similar cases and the observations made by the Tribunal made therein which reads as under:-

“OA 2456/2013

In the case of Anand Kumar, ex-Constable on a complaint made by the resident of village Goth, PS-Damini, District Muraina (MP) regarding adoption of deceitful means by the applicant for getting employment in Delhi Police, the facts were verified and when it was revealed that a case FIR No.100/92 under Sections 325/323/504/34 IPC, PS Damini was registered on 28.2.1992 and there was no disclosure about the said case in the relevant forms, a department inquiry was ordered against him. On completion of inquiry, the

disciplinary authority, after considering all the facts and record available on file, inflicted upon him the penalty of reduction of pay by two stages for a period of two years with immediate effect and it was also ordered that he would not earn his increment of pay during the period of reduction and on the expiry of the period, the reduction will have the effect of postponing his future increments of pay. Nevertheless, the appellate authority did not agree with the order of the disciplinary authority and after serving upon the applicant a show cause notice and taking his reply removed him from service vide order No.3352-407/P. Cell (Vig.)(P.II) dated 15.2.2000. However, the said order was withdrawn by Joint C.P./N.R., Delhi vide order No.3078-94/P.Cell (Vig.) P-I dated 9.3.2011.”

14. Keeping in view the aforesaid and seeing no reason why the petitioner should be denied parity with others who were similarly situate, we allow this petition. We set aside the order passed by the Tribunal dated 30.7.2018 and also quash the orders passed by the disciplinary authority and the appellate authority; and direct for reinstatement of the petitioner with all consequential benefits.

15. The order be implemented within a period of two months from the date of receipt of the copy of this order.

THE CHIEF JUSTICE

ANUP JAIRAM BHAMBHANI, J.

APRIL 08, 2019/Ne