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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 9456/2018**

PUSHPENDRA KUMAR YADAV

..... Petitioner

Through: Mr. Himanshu Gautam and Mr. Lokesh
Sharma, Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. K.K. Jha, Advocate.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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04.02.2020

1. This is a petition directed against the order dated 23rd September, 2016 passed by the Deputy Inspector General, Rampur Range, Central Reserve Police Force ('CRPF'). By the said order, the Petitioner has been removed from service for suppression of his involvement in criminal proceedings as on the date of his submitting a verification form to the Respondents as part of his application for the post of Sub-Inspector ('SI').

2. The Petitioner has also challenged the orders dated 17th March, 2017, 9th November, 2017 and 19th July, 2018 passed by the Inspector General, Lucknow, Special Director General and the Directorate General, CRPF respectively, affirming the order dated 23rd September, 2016 imposing the

punishment of removal from service on the Petitioner.

3. The brief facts are that in August 2011, the Petitioner applied for the post of SI in the CRPF pursuant to a call for applications by the Union Public Service Commission. As part of the said application, the Petitioner was required to fill a CRP-25 verification form. The Petitioner states that while filling up the form in August, 2011, in response to the question of whether criminal proceedings were pending against him in any court of law, he answered in the negative. Subsequently, the Petitioner came to be inducted in the CRPF as an SI.

4. The Petitioner received an order dated 19th November, 2015 from the Office of the Deputy Inspector General of Police ('DIGP'), Rampur, UP, whereby he was informed that an inquiry would commence on the Article of Charge ('AOC') under Section 11 of the CRPF Act read with Rule 27 of the CRPF Rules, 1955, that had been framed against him and annexed with the said order. The translated version of the statement of the AOC reads as under:

“That No. 115213628 SI/GD Pushpender Kumar Yadav, C/45 Battalion, CRPF, while working on the post of Sub Inspector/GD, being the member of force, has committed the misconduct and misbehaviour, in which at the time of recruitment, personnel gave false information in the Past Antecedents Verification Form (CRP Form - 25) at column No. 12 (a and b) that no case is pending against the personnel in any court, however before the recruitment of personnel, a case Crime No. 261/2002 under section 147, 149, 323, 325, 504, 506, 307 IPC was registered against him at Police Station Khajni, District Gorakhpur (UP). Personnel, during his recruitment, has concealed the information regarding criminal case

pending against him and misguided the department by giving wrong information, which is an offence punishable under section 11 (1) of CRPF Act, 1949 and Rule 27 of the Central Reserve Police Force Rules, 1955.”

5. By an order dated 23rd September, 2016, the office of the DIGP imposed a penalty of removal from service on the Petitioner with effect from the date of his receiving a copy of the instant order.

6. The aforesaid order also records the trajectory of the inquiry proceedings on the AOC that commenced with a preliminary hearing on 22nd January 2016, in which the Petitioner pleaded “not guilty”. Thereafter, an inquiry came to be conducted in which the Petitioner submitted his defence statement. The inquiry officer submitted his report to the Commandant, 45th Battalion, who in turn submitted it to the DIG.

7. Meanwhile, a copy of the inquiry report was supplied to the Petitioner and he was informed that he could submit a representation to the Disciplinary Authority (‘DA’) within a period of 15 days. Pursuant thereto, the Petitioner submitted his representation dated 4th August, 2016 to the Commandant, 45th Battalion, which then came to be forwarded to the DIGP, Rampur, the DA, who gave the Petitioner a personal hearing on his representation. The order dated 23rd September, 2016 of the DA removing the Petitioner from service records the Petitioner as having offered *inter alia* the following reasons in his defence:

(i) He was entirely unaware about the pendency of a case against him in

Rampur as he “was studying outside the village”.

(ii) When he met some of the co-accused, they “assured” him that a compromise had been reached in the criminal case.

(iii) He never received any summons nor appeared before any Court.

(iv) He could not understand the meaning of the contents of the 12 (a) and (b) of the verification form.

8. The order dated 23rd September, 2016 of the DIGP, Rampur, upon considering the aforesaid reasons put forth by the Petitioner and his response to the questions in column 12 (a) and (b) of the verification form, imposed the penalty of removal of service on the Petitioner.

9. The Petitioner submitted an appeal to the Office of the Inspector General of Police, Lucknow, (‘IGP’) who by an order dated 17th March, 2017 i.e. the Appellate Authority (‘AA’) after revisiting the Petitioner’s grounds in his representation as well as the DIGP’s reasons for rejecting the same, concluded that there could be no doubt that the Petitioner “despite being literate” and despite there being a clear warning in the verification form, gave false information, “thus misleading the department”.

10. The Petitioner then sent a revision petition to the SDG, the Revisionary Authority (‘RA’), who considered *inter alia* whether the inquiry proceedings and the decisions of the DIGP, Rampur and IG, Lucknow were marked by an procedural irregularities and concluded by an order dated 9th November, 2017

that there were no cogent reasons to interfere with the orders of the DIGP, Rampur and the IGP, Lucknow.

11. On 30th December 2017, the Petitioner submitted a representation to the Directorate General, CRPF, New Delhi, who also by an order dated 19th July, 2018, declined to interfere, while setting out detailed “observations”. Thereafter, the present petition was filed.

12. The Petitioner contends that he could not be held guilty of having suppressed information regarding his antecedents because columns 12 (a) and (b) of the verification form he filled, a sample copy of which he has annexed to his petition, only required him to indicate if he had ever been “arrested” or “prosecuted” respectively. The Petitioner’s submission is that since at the time of his filling up the form in August, 2011, only an FIR registered against him lay pending in Gorakhpur, in which the charges came to be framed by the Additional Sessions Judge only on 23rd December, 2011, it could not be said that he had either been “arrested” or “prosecuted.” In the list of dates accompanying the petition, it is stated that FIR No. 261/2002 was filed on 28th June, 2002; charge sheet on 2nd August, 2011; the charges framed by the Court on 23rd December, 2011, and, the verification form to have been filled up in August 2011. The Petitioner is stated to have been acquitted on 28th July, 2015 by the Additional Sessions Judge, Gorakhpur. The Petitioner relies on ***Hardeep Singh v. State of Punjab (2014) 3 SCC 92*** to contend that a case could be said to be pending in a court of law only after charges had been framed therein.

13. The Petitioner further submits that despite the complaint against him, no determination of his overall suitability for the post of SI has been made in the present case, as has been mandated by the Supreme Court in *Avtar Singh v. Union of India (2016) 8 SCC 471*. In this regard, the Petitioner again stresses upon such factors as his being only 19 years of age at the time of the alleged commission of the offence; the alleged offences being “petty” and therefore not leading to disqualification for “lower rung posts”; the long pendency of the criminal proceedings having caused him prejudice; and the acquittal order of the Additional Sessions Judge having been passed even before the issuance of the SCN dated 14th February, 2016 to him. He has also referred to the decision in *Avtar Singh (supra)* to contend that the questions in the verification form needed to be specific in order for him to be held guilty of suppression.

14. The Petitioner’s case is that the summary rejection of his reply dated 1st December, 2015 to the office order dated 19th November, 2015 as being “devoid of merits” is untenable in law for not having considered such factors as his age at the time of the alleged commission of the offence and the nature of the alleged offences, and for being in violation of Rule 14 of the CRPF Rules, which requires that the verification of a recruit’s antecedents shall be completed “as soon as a man is enrolled.” Similarly, the Petitioner argues that the order dated 23rd September, 2016 imposing on him the “penalty of removal from service”, and the subsequent rejections of his challenges to the said order dated 23rd September, 2016 by the AA on 17th March, 2017, the RA on 9th

November, 2017, and the DG, CRPF on 19th July, 2018 have been passed without due considerations of relevant factors such as his age at the time of the alleged commission of the offence, the fact of his not being “aware of the pendency” of criminal proceedings against him, and the order of acquittal dated 28th July, 2015 of the Additional Sessions Judge, Gorakhpur. The Petitioner submits that the Respondents’ “non-application of mind” in passing the said orders is evidenced by their being couched in largely identical terms.

15. It must be noted at this stage, that the Petitioner had initially filed W.P.(C) 5664/2018 in this Court challenging the orders of the DIGP, Rampur, the IGP, Lucknow and the SDG, Salt Lake. This petition came to be disposed of on 25th May, 2018, granting liberty to the Petitioner to “approach the competent Court with territorial jurisdiction” to hear the petition. Thereafter, the present petition challenging the order of the DG, CRPF, New Delhi, alongside the orders of the DA, AA and the RA came to be filed.

16. When this petition was first listed for hearing on 10th September, 2018, this Court issued notice to the Respondents, in response to which the Respondents have filed a counter affidavit.

17. The Respondents, in rejecting the contentions of the Petitioner, first submit that all orders in the Petitioner’s case have been passed after due consideration of the relevant factual and legal position. The Respondents indicate that they were first made aware of the FIR against the Petitioner at the instance of one

Mr. Brajesh Yadav by way of his complaint dated 27th February, 2015. The DIG, CRPF, Rampur, in order to verify the aforesaid complaint, wrote to the SI, Gorakhpur, whose reply dated 6th May, 2015 confirmed that a Criminal Case No. 261/2002 had been registered against the Petitioner at PS Khajni in Gorakhpur, even as it was informed that no such person as Mr. Brajesh Yadav could be traced.

18. The Respondents further submit that at the time of filling of the form on 20th August, 2011, the Petitioner was on bail. The Respondents also submit that the Petitioner had deliberately concealed the date when the case was committed to trial, which preceded the said date of the filling up of the verification form. The Respondents argue that given that the verification form clearly indicated that suppression of material information would result in disqualification and could render the Petitioner unfit for employment, the Petitioner's removal from service was justifiable.

19. In the rejoinder filed on behalf of the Petitioner, apart from reiterating the case put forth by him in the petition, the Petitioner has also in reply to paragraph nos. 2 (iv) of the counter affidavit, *inter alia* pointed out that the complaint pursuant to which the AOC was framed and inquiry initiated, was pseudonymous and that, therefore, the Respondents were required to act in compliance with the guidelines contained in the Office Memorandum dated 8th October, 2018 of the Department of Personnel and Training ('DoPT'), which prescribe the procedure for acting on anonymous or pseudonymous complaints.

According to the Petitioner, as per the aforesaid DoPT OM, even if the complaint contained “verifiable facts”, it was necessary to seek the permission of the Central Vigilance Commission (‘CVC’), which the Respondents had failed to do in his case. A copy of the aforesaid OM, alongside other DoPT OMs that find mention in the instant OM, has been annexed as ‘Annexure R/1’ with the rejoinder.

20. The Court has heard Mr. Himanshu Gautam, learned counsel for the Petitioner and Mr. K.K. Jha, learned counsel for the Respondents.

21. To begin with, in order to assess whether the Petitioner’s response in the verification form constitutes suppression, the precise questions that were asked of him in the said form, as outlined in the impugned order dated 23rd September 2016, removing him from service, bear noting:

“a) Have you ever been arrested for any crime or case has been made against you or you were detained in custody or released on bail or fined by any court or convicted or have been debarred/declared ineligible for any examination by the Union Public Service Commission or debarred/rusticated by any University or Educational Board/Institute from any examination?

b) At the time of filling this verification form, whether any case is pending against you before any court or university or any Educational Board/Institute?

If the answer to (a) or (b) is Yes, then give the details of case, arrest, custody, fine, conviction, sentence etc. and inform the nature of case pending with Court/ University/Educational”

22. It is seen that the question in column 12 (a) required the Petitioner to furnish an accurate response on two aspects. First, whether he had “ever been arrested”? Second, whether “any case has been made against him”. The Court is of the view that the aforesaid second aspect of the question is broad enough to encompass within it the requirement to furnish details of any pending FIR against a candidate. Therefore, the Petitioner’s contention that the verification form did not warrant such disclosure is untenable. Admittedly, at the time of filling up the verification form, the Petitioner was aware that an FIR had been filed against him. His failure to disclose the same itself constitutes suppression.

23. In any event, by the time that he filled up the verification form, a charge sheet had already been filed on 9th July, 2002; cognizance taken by the Judicial Magistrate; and the case committed to trial. There was therefore no occasion for the Petitioner to aver that merely an FIR had been pending against him.

24. As regards the second aspect of the question in column 12 (a) as well, the Petitioner appears to have engaged in suppression. While he has simply denied being arrested in the petition, on his own showing in the rejoinder, he had appeared before the Magistrate for seeking bail in 2002.

25. Turning to the second question posed to the Petitioner, it is seen that there was no justification for the Petitioner to deny the pendency of case in a Court of law. As the judgment of acquittal, annexed to the petition as ‘Annexure P-6’,

indicates, cognizance was taken by the Judicial Magistrate way back in 2002 and on 2nd August, 2011 a copy of the charge sheet was supplied to the Petitioner and the case was committed to trial. Having filled the verification form subsequent thereto i.e. on 20th August 2011, there can be no manner of doubt as to the Petitioner's awareness of the pendency of a case against him in a Court of law. Therefore, the Petitioner's response of "no" to the question in column 12 (b) would also amount to suppression.

26. The Court has perused all the impugned orders, which have taken note of the facts surrounding the Petitioner's case, as noted in the foregoing paragraphs, and arrived at the decision to remove the Petitioner from service. The Petitioner's contention that the Respondents in accordance with the decision in *Avtar Singh* (*supra*) were required to factor in the relevant facts as to his antecedents, is untenable. In order for the Petitioner to demand that the Respondents consider his antecedents before passing an order of termination from service, as per paragraph 34 (4) (c) of *Avtar Singh* (*supra*), the Petitioner's acquittal should have been before his appointment. Admittedly, the Petitioner's case is not one of acquittal before his appointment.

27. In any event, the order of the DA has set out detailed reasons for rejecting every contention raised by the Petitioner in his representation against the findings in the inquiry report. The orders of the AA, RA as well as the DG, CRPF also do not merely reiterate the findings of each lower authority, but offer their reasons for affirming the penalty of removal of service, while having

regard to the CRPF Act and Rules. The Court, therefore, is not convinced by the Petitioner's argument alleging "non-application of mind" on the part of the Respondents.

28. As regards the Petitioner's submission that the Respondents had not complied with the DoPT's instructions on the handling of anonymous/pseudonymous complaints as put forth in several OMs issued in this regard, it bears mentioning, firstly, that the OM dated 11th October, 2002 upon which the Petitioner relied, which stipulated that prior concurrence of the CVC was required to be taken to look into the verifiable facts contained in such anonymous/pseudonymous complaints, has since been withdrawn by an OM dated 26th November, 2014.

29. Turning to OM dated 18th October 2013, paragraph 3 (iii) thereof reads as under:

“(iii) If a complaint contains verifiable allegations, the administrative Ministry/Department may take cognizance of such complaint with the approval of the competent authority to be designated by the Ministry/Department as per their distribution of work. In such cases, the complaint will be first sent to the complainant for owning/disowning, as the case may be. If no response is received from the complainant within 15 days of sending the complaint, a reminder will be sent. After waiting for 15 days after sending the reminder, if still nothing is heard, the said complaint may be filed as pseudonymous by the Ministry/Department.”

30. It must be noticed, at this juncture, that it is not the Petitioner's case that the

paragraph reproduced hereinabove was not complied with by the Respondents. In any event, the aforesaid paragraph 3 (iii) makes provision for the method of ascertaining the identity of the complainant before such a complaint may be filed as “pseudonymous.” A bare perusal of the record of the case evinces that such an attempt was made by the Respondents by engaging in correspondence with the SP, Gorakhpur, through which the Petitioner’s involvement in criminal proceedings was incontrovertibly established. Indeed, nowhere has the Petitioner denied his involvement in the case thereafter. Hence, the Respondents cannot be faulted for relying solely on an unsubstantiated pseudonymous complaint in proceeding against the Petitioner.

31. Learned counsel for the Petitioner then referred to a letter dated 1st February 2012 issued by the Ministry of Home Affairs announcing ‘Policy Guidelines for considering cases of candidates for appointment in the CAPFs – pendency of criminal cases against candidates – the effect of:’. He referred in particular to par 2 (iii) of the said document which lists out instances where the candidate ‘will not be considered for recruitment’ and to the first proviso thereto which states “Provided further that the candidate shall not be debarred in the above cases, if only an FIR has been registered/the case is under investigation and no charges have been framed either or FIR or on the complaint in any court of law.” Learned counsel for the Petitioner submitted that in the instant case since at the time of his filling up the form in August 2011, only an FIR registered against him and charges were not yet framed, the above proviso would apply.

32. This Court is unable to accept the above submission. The said policy guidelines do not excuse the candidate from giving correct answers to the questions posed in the application/attestation form. In fact, it presupposes that the candidate has been truthful about the pending FIR. However, in the present case, it is not in dispute that the Petitioner did not give the correct answers to the critical questions about pendency of the criminal case against him. The proviso to para 2 (iii) above, therefore, does not help the Petitioner.

33. For all the aforementioned reasons, the Court finds no merit in the petition and dismisses it, as such.

S. MURALIDHAR, J.

TALWANT SINGH, J.

FEBRUARY 04, 2020

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