

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Reserved on: 19th February, 2021**
Pronounced on: 2nd March, 2021

+ **W.P. (C) 2292/2021**
SANOJ KUMAR YADAV EX-CONSTABLEPetitioner
Through: Mr. J.K. Singh, Advocate
Versus
UNION OF INDIA & ORS.Respondents
Through: Ms. Shubhra Parashar, Mr. V.P.S.
Charak, Ms. Sunita Ojha and Mr. J.
Priyadarshi, Advocates for
UOI/CISF.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

ASHA MENON, J:

1. Aggrieved by the order dated 7th December, 2018 issued by the Inspector General, Central Industrial Security Force (CISF), whereby his representation against the order of termination of his services with the CISF was rejected and the termination order itself dated 30th September, 2018, the petitioner has filed the instant petition with the following prayers :

“I. Issue a writ of mandamus or any other appropriate writ(s), order(s) and direction(s) thereby quashing and setting aside the impugned order dated 07-12-2018/02-04-2019 and termination order dated 30-09-2018 issued by respondent department.

II. Issue a writ of certiorari or any other appropriate writ(s), order(s) and direction(s) thereby directing the respondents to reinstate the petitioner back into service with effect from his date of termination with all consequential benefits.”

2. The facts as set out in the petition are that the petitioner had been appointed as Constable on 4th April, 2017 in CISF Unit FGUTPP Unchahar after completion of his training. Respondent No.4 terminated his services on the ground of furnishing false or incorrect information in the enrolment/attestation form. The form required disclosure of facts of having undergone any criminal prosecution and the petitioner had responded in the negative. However, on verification, he was found to have been involved in F.I.R. No.64/2011 dated 24th August, 2011 registered with Police Station Itkhori, District Chatra and the chargesheet No.62/2011 dated 8th September, 2011 under Sections 341/323/448/504 and 34 IPC had been submitted in the court. As this fact was not disclosed by the petitioner when he was filling his application form and also at the time of furnishing his undertaking dated 4th April, 2017 he was found unfit to continue in service.

3. The petitioner submitted his representation against this termination, dated 5th October, 2018, claiming that he was unaware of the fact that a court case was pending against him which prevented him from making his disclosure in his undertaking dated 4th April, 2017 and further claimed that he had been “acquitted” by the court on 27th July, 2017 and had been “released” under the Probation of Offenders Act. Therefore, he sought that he be given a chance to correct his mistake and be taken back in service.

4. However the representation and the explanation did not find favour with the respondents. The empowered Standing Screening Committee of CISF found the petitioner not suitable for appointment in CISF. His representation against the termination order was also rejected vide the impugned order as the Inspector General found that the Competent Authority had followed all guidelines in this regard.

5. We have gone through the record as well as the submissions of Sh. J.K. Singh, learned counsel appearing for the petitioner.

6. Learned counsel for the petitioner has relied upon the judgment of the Supreme Court in ***Avtar Singh Vs. Union of India***, (2016) 8 SCC 471 and the judgments of this court in ***Mandeep Vs. Ministry of Railway, Govt. of India & others***, W.P. (C) 3906/2016 decided on 5th July, 2017 (2017 SCC OnLine Del 9027) and in ***Rahul Chaudhary Vs. Union of India***, W.P. (C) 6870/2017 decided on 12th April, 2018 (2018 SCC OnLine Del 8433) to contend that the alleged offences were petty in nature. Moreover, the certificate issued by the local police station had certified the good character of the petitioner and that the respondents ought to overlook the non-disclosure in the attestation form, particularly since the petitioner had been granted Probation and subsequently, the Appellate Court had acquitted him as the parties had entered into a compromise. He has also submitted that without proper disciplinary proceedings including show cause notice and departmental inquiry, the services of the petitioner could not have been terminated.

7. At first blush, the submissions of learned counsel for the petitioner do seem attractive that when the petitioner had been released under the

Probation of Offenders Act by the Trial Court and finally, before the Sessions Court, the parties had compromised the matter, therefore, the respondents ought not to have terminated the services of the petitioner. However the important fact is that the petitioner despite knowing that he was facing trial before the Criminal Court claimed that he was not “aware” of the F.I.R. against him which on the face of it is a blatant lie. He chose to respond with a ‘No’ to the details sought regarding involvement in criminal cases. When he was required to disclose honestly and firmly to the question “have you ever been prosecuted”, when giving his undertaking on 4th April, 2017, he should have stated unequivocally that he was involved in F.I.R. No.64/2011 dated 24th August, 2011 and had by then either faced the conviction and sentence (the date of that judgment has not been mentioned by the petitioner). The criminal appeal, copy of which, has been placed as Annexure P-3 at page 29 of the electronic file, records that the criminal appeal was filed by the complainant in respect of the conviction and sentence imposed upon the petitioner seeking enhancement of punishment and is numbered Criminal Appeal No.27/2017. It means that in the year 2017, the trial would have been almost coming to an end when the petitioner who willfully replied to the question of being prosecuted for a criminal offence, with an emphatic ‘No’.

8. Such willful misinformation does not behove the petitioner who was to be appointed in the CISF. A person who had suppressed facts to suit his convenience is certainly not one who would be fit for employment with a force which is required to provide security and

protection to industries, enterprises, institutions and the like, which are of the public importance. His reliance on the decision of this court in **Mandeep** (*supra*) is misplaced as in that case the petitioner had duly mentioned the F.I.R. in the attestation form. The slight similarity of the offences involved in that case and in the present case would therefore, not enure to the benefit of the petitioner in this case. Similarly, in the case of **Rahul Chaudhary** (*supra*) also the petitioner in that case had not been found guilty of suppression of facts regarding his involvement in criminal cases as the details had been disclosed by him in the attestation form. That fundamental fact of voluntary disclosure is absent in the present case.

9. Had the petitioner made his disclosure at the appropriate time, and therefore the question was of the exercise of the discretion vesting with the respondents to appoint him or to continue him in service, the guidelines as delineated by the Supreme Court in **Avtar Singh** (*supra*) would have come into play. In any case, though the learned counsel submitted that the case of the present petitioner was covered under paragraphs 38.2, 38.3, 38.4.1, we do not find it to be so applicable. These guidelines have been gleaned from various judgment of the Supreme Court referred to extensively in the judgments of the Supreme Court in **Avtar Singh** (*supra*) case and the conclusions have been summarized as below :

“38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise 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 recourses 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.”

10. No special circumstance exists justifying the petitioner making a false statement in his undertaking dated 4th April, 2017. The impugned orders have definitely been passed following government orders/instructions/rules and the sections or the offences for which the petitioner has been tried, are by no means trivial offences. These have not been committed by an unlawful assembly or a mob. These relate to wrongful restraint, voluntarily causing hurt, house-trespass, intentional insult with intent to provoke breach of the peace in furtherance of common intention with others and in which a court of law has recorded a finding of guilty against the petitioner and others. Thus, this is not a case where the petitioner was discharged or there was any acquittal. The complainant in that case rather, had filed an appeal to the Sessions Court for enhancement of punishment. Subsequently, as is borne from the record, the petitioner also seems to have filed an appeal bearing No.58/2019 and reached a compromise before the Appellate Court on 10th February, 2020. These events took place subsequent to the order of

termination dated 30th September, 2018 and the dismissal of the appeal dated 7th December, 2018. These could not have therefore, been ever considered as a special circumstance by the respondents at the time the impugned orders were passed.

11. We do not find any merit in the present petition. The same is accordingly dismissed.

ASHA MENON, J

MANMOHAN, J

MARCH 02, 2021/ck

