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

+ W.P. (C) 1873/2020, CM APPL. 6597/2020

PREM CHANDRA THAKURPetitioner

Through: Mr.Pavan Kumar, Advocate with
Ms. Neelam, Advocate

Versus

CENTRAL INDUSTRIAL SECURITY FORCE AND ORS.

.....Respondents

Through: Mr.Satya Ranjan Swain with
Mr.Sahaj Garg and Mr.Kautilya
Birat, Advocates for R-1 to 3.

% Date of Decision: 03rd March, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

1. The petition has been heard by way of video conferencing.
2. Present writ petition has been filed challenging the termination order dated 08th February 2019 and the order in appeal dated 09th July 2019 passed by the respondent nos.1 and 3 respectively. Petitioner also seeks directions to the respondent nos.1 and 3 to reinstate the petitioner in service to the post of Constable in CISF with all the consequential benefits.
3. Learned Counsel for the Petitioner states that the Petitioner was selected for appointment to the post of constable in CISF on 6th August 2015 and upon successfully completing the basic training, he was given posting at URI - 1, J&K as a Constable on permanent basis on 15th February, 2016.

4. He further states that on the basis of the report submitted by the learned District Magistrate, Khagaria regarding criminal antecedent of the Petitioner, the Respondent no.1 terminated the service of the Petitioner by way of the impugned order.

5. Learned Counsel for the Petitioner states that in the termination order dated 8th February 2019, Respondent no.1 alleged that while filling up the questionnaire and attestation form on 11th September, 2014, the Petitioner had suppressed his involvement in a criminal case that had been registered against him under Section 366A IPC.

6. He contends that the Respondents failed to appreciate that vide judgment dated 17th July 2014 in P.S CASE no. 186/2010 passed by the Sessions judge, the Petitioner had been acquitted of all the charges even prior to applying for the post of constable with the Respondents. He states that due to lack of legal knowledge, the Petitioner had inadvertently not disclosed about the criminal case filed against him in the past. He emphasises that on the date of filling the application, no case was pending against the Petitioner.

7. Per contra, learned counsel for the Respondents states that the Petitioner's services had been terminated not on account of criminal antecedent, but on account of suppression of facts in the questionnaire and attestation form.

8. He emphasises that both in the questionnaire as well as in attestation form, there were specific questions – as to whether the applicant had ever been prosecuted and whether any FIR had ever been lodged against him in the past. He contends that as the Petitioner had suppressed the information with regard to his involvement in the criminal case in both the questionnaire as well as in the attestation form, his services had been terminated on 08th February, 2019 based on the decision of the Standing Screening Committee taken in the light of

the Policy/Guidelines issued by the Govt. of India, Ministry of Home Affairs dated 01st February, 2012 and judgment/order dated 21st July, 2016 of the Supreme Court in the case of **Avtar Singh Vs. UOI & Ors; (2016) 8 SCC 471**.

9. Having heard learned counsel for the parties, this Court finds that the Three-Judge Bench of the Supreme Court in **Avtar Singh** (supra) considered the difference of opinion between various Benches of the Supreme Court and laid down guidelines as to when suppression of information or submitting false information in the verification form with regard to criminal prosecution, arrest or as to pendency of a criminal case would warrant termination of services. The conclusion of the Three-Judge Bench in **Avtar Singh** (supra) is reproduced hereinbelow:-

“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.

(emphasis supplied)

10. In the present case, though the Petitioner has suppressed the information with regard to his involvement in a past criminal case, yet this Court finds that the Petitioner had been acquitted prior to filling of the questionnaire and attestation form and the acquittal was not on any technical ground but was a clean acquittal. The relevant portion of the Trial Court judgement acquitting the Petitioner passed by the learned IIIrd, Adhoc, Additional Sessions Judge, Khagaria in Session Case No.429/2011 is reproduced hereinbelow:-

“8. Now I first take up the evidence of victim Khusbhoo Kumari she has stated in her examination in chief that the identified her signature over the statement recorded before the Court which has been marked as Ext.1. She did not identify any of the accused persons while accused Sanoj, Kumar, Manoj Kumar and Premchand Thakur was present in the dock. In her cross examination she has stated that the police had not recorded her statement. As per instruction of the police she gave her statement before the court. She was never kidnapped. After giving examination she went to the house of her FUA.

So, from her evidence it appears that she was not kidnapped by the accused persons.....

XXX

XXX

XXX

13. Under the facts and circumstances and after careful appraisal of the evidence, I find that even the victim Khushboo Kumari, informant Lochan Thakur and witness Binod Jha, have not supported the prosecution story.....So, accused Prem Thakur, Manoj Kumar and Sanoj Kumar not guilty of the offence U/s 366A/34 IPC for which they are charged and tried thereunder.

14. Consequently, all the accused persons stand hereby acquitted of the charges tried therefor. They are also released from the liabilities of their respective bail bonds.”

(emphasis supplied)

11. Keeping in view the aforesaid clean acquittal, this Court is of the view that the present case is squarely covered by paragraph 38.4.3 of the Supreme Court Judgment in **Avtar Singh** (supra), wherein it has been held that, in case there is suppression of involvement in a criminal case where acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

12. Since in the present case, no departmental inquiry was held prior to termination of services of the Petitioner, even when he was a confirmed employee, this Court is of the view that the impugned order cannot be sustained. It has also been held in **Avtar Singh** (supra) that in case the employee is confirmed in service, holding Departmental enquiry would be necessary before passing of termination/removal or dismissal order on the ground of suppression or submitting false information in verification form. Consequently, the orders dated 08th February, 2019 and 09th July, 2019 are quashed and the Petitioner is directed to be reinstated in service.

13. The Petitioner shall be entitled to continuity in service and he shall be treated to have been notionally in service all throughout. It is clarified that since the Petitioner has not worked between the date of termination and till his reinstatement, he shall not be entitled to any salary on the principle of 'No Work, No Pay'.

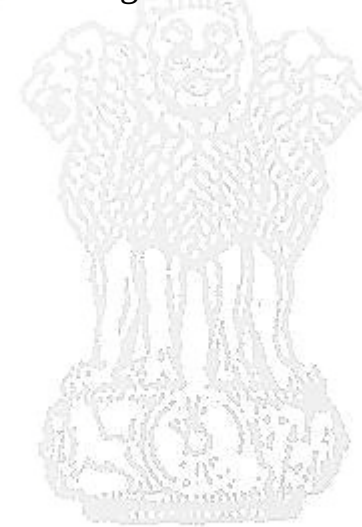
14. With the aforesaid directions, present writ petition along with pending application stand disposed of.

15. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

ASHA MENON, J

**MARCH 03, 2021
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