



2024:DHC:8366-DB



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

Reserved on: 27.09.2024

Pronounced on: 04.11.2024

+ **W.P.(C) 6278/2022**

RAJESH

.....Petitioner

Through: **Mr. Ganesh A. Khemka & Mr.
Shreenath A. Khemka, Advs.**

versus

**DIRECTORATE GENERAL SASHASTRA SEEMA BAL
AND ANR.**

.....Respondents

Through: **Mr. Aditya Dewan, Adv.**

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

NAVIN CHAWLA, J.

1. This petition has been filed by the petitioner challenging the Memorandum dated 20.12.2019, whereby the respondents have cancelled the Selection Letter issued to the petitioner for the post of Constable (Driver) in Sashastra Seema Bal (hereinafter referred to as 'SSB'), and the Order dated 23.03.2022, whereby the representation of the petitioner was dismissed.

2. In brief, it is the case of the petitioner that the petitioner had applied for the post of Constable (Driver) in SSB pursuant to an Advertisement dated 30.07.2016. The petitioner, in the application



form itself, had disclosed the pendency of the criminal case arising out of FIR No. 211/2014 registered at Police Station Kotwali, Sikar, Rajasthan. The petitioner was selected to the said post *vide* Selection Letter dated 04.07.2018, and was asked to report at the 45th Battalion SSB, Birpur, Bihar for joining. However, on presenting himself, he was not allowed to join the post due to the pendency of the criminal trial.

3. By the Judgement and Order dated 31.08.2019 passed by the learned Additional Sessions Judge No.4 Sikar, Rajasthan in Session Case No. 51/2016, titled *State v. Vikram Singh & Others*, the petitioner was acquitted of the offences he was charged with. The petitioner, therefore, *vide* letter dated 02.12.2019, requested the respondents to allow him to join service for the said post. However, by the Impugned Memorandum dated 20.12.2019, the respondents cancelled the appointment of the petitioner, observing therein that keeping in view the serious nature of offences for which the petitioner was charged and the acquittal being on the basis of giving benefit of doubt due to lack of evidence, which is not considered an “*honourable acquittal*”, the petitioner’s appointment could not be considered.

4. Curiously, in the said Memorandum, the respondents did not take the ground of suppression of any fact by the petitioner, as a reason for cancelling his appointment.

5. The petitioner challenged the above Memorandum by way of a Writ Petition before this Court, being W.P.(C) 318/2020, titled *Rajesh v. Union of India & Anr.* The said Writ Petition was withdrawn by the petitioner on 17.01.2020, with liberty to approach the appropriate



forum.

6. Availing of this liberty, the petitioner made a representation dated 18.02.2022 to the respondents. We may also note that the learned counsel for the petitioner has submitted that the delay in filing of the said representation was due to the COVID-19 pandemic intervening in between.

7. The said representation of the petitioner was rejected by the respondents *vide* the Impugned Order dated 23.03.2022, observing therein that as the petitioner had been charged under Sections 147, 148, 149, 307, 332, 333 & 353 of the Indian Penal Code, 1860 (in short, 'IPC'), and has been acquitted only by giving the benefit of doubt due to lack of evidence, therefore, it was not found appropriate to appoint him to the post of Constable (Driver). The respondents also referred to the Judgement of the Supreme Court in ***Avtar Singh v. Union of India***, (2016) 8 SCC 471, and stated that as SSB is an Armed Force guarding Indo-Nepal and Indo-Bhutan borders, which is directly related to national safety and security, therefore, the person joining the Force must have an impeccable character and integrity.

8. Aggrieved of the above Order, the petitioner has challenged the same in form of the present petition.

Submissions of learned counsel for the Petitioner

9. The learned counsel for the petitioner submits that the Impugned Memorandum and Order are based on the premise that the acquittal of the petitioner in the criminal trial was not "*honourable*" and was on the basis of extension of benefit of doubt granted to the



petitioner. He submits that, in fact, it was a case of no evidence against the petitioner, with even the victims not having identified the petitioner as the perpetrator of the offence.

10. He further contends that it is only in the counter affidavit filed by the respondents, that they have now taken a plea that there was also a suppression of facts insofar as the petitioner had failed to mention in the application form, the Sections/offences for which he had been charged and/or the status of the criminal trial pending against him. He submits that this is a ground which is not taken in the Impugned Memorandum or the Impugned Order, and even otherwise, the petitioner had given complete details of the criminal case pending against him and the same had also been discovered in the form of the Verification Report prior to the issuance of the appointment letter to the petitioner. He submits that this ground is taken merely as an afterthought and cannot be used to justify the Impugned Memorandum and Order.

Submissions of learned counsel for the Respondents

11. On the other hand, the learned counsel for the respondents submits that the acquittal of the petitioner from the criminal trial was by extending a benefit of doubt to the petitioner. He submits that, in fact, the witnesses therein had turned hostile and the Court also found lacuna in the investigation that had been carried out. He submits that, therefore, the acquittal of the petitioner cannot be said to be “honourable”, and would not entitle him to be considered for appointment to the post of Constable (Driver) in the SSB.



12. He placed reliance on the Policy Guidelines dated 01.02.2012, issued by the Government of India, Ministry of Home Affairs, to submit that where the candidate has been found involved in cases for offences mentioned in the said Policy Guidelines, and has been acquitted by extending benefit of doubt or acquitted for the reasons that the witnesses turned hostile, such candidate will typically not be considered suitable for appointment to the Central Armed Police Force (in short, 'CAPF') including SSB.

13. The learned counsel for the respondents further submits that the application form required the candidates to truthfully disclose not only the FIR number, and the date of its registration, but also the Sections for which the applicant is accused as well as the status of the case. In the present case, the petitioner only disclosed the FIR number and the date of its registration, but did not intentionally disclose the offences for which he had been accused and the status of the Chargesheet having been filed.

14. Relying upon the Judgment of the Supreme Court in *Avtar Singh* (supra), he submits that as there was suppression of material facts in the application, that in itself is a sufficient ground to cancel the offer of appointment to the petitioner.

15. He further submits that as considerable time has passed since the offer of appointment, the petitioner today cannot be directed to be appointed without first ascertaining the vacancy position and, in any case, cannot be granted retrospective benefit with respect to seniority and pay.

16. We have considered the submissions made by the learned



counsels for the parties.

Analysis and Findings

17. As would be evident from the above, in the Application Form itself, the petitioner in response to a requirement for disclosure regarding criminal proceedings, had truthfully disclosed that there was an FIR bearing No.211/14 registered on 27.04.2014 at Kotwali, Sikar, Rajasthan. Though the Application Form also required him to disclose the Sections under which the FIR was registered and the status of the case, admittedly, he did not do so. In spite of this lacuna, however, the petitioner was considered for appointment, and *vide* Selection Letter dated 04.07.2018, was offered the appointment to the post of Constable (Driver). It is only when he reported to the 45th Battalion SSB on 17.08.2018 alongwith Police Verification Certificate, that the Commandant 45th Battalion, SSB, Birpur did not allow him to join the duty. The petitioner was eventually acquitted from the charge *vide* judgment dated 31.08.2019 passed by the Additional Sessions Judge No.4, Sikar, Rajasthan. In spite of such acquittal, the petitioner was not granted the appointment as the respondents considered the acquittal to be not honourable but to be only on the basis of benefit of doubt being granted to the petitioner.

18. In this regard, the respondents relied upon the “*Policy Guidelines for considering cases of candidates for appointment in CAPFs – pendency of criminal cases against candidates – the effect of:*” issued by the Ministry of Home Affairs dated 01.02.2012. We may quote from the letter dated 23.03.2022 addressed by the



respondents to the petitioner, rejecting his representation for appointment to the post, as under:

“3. Further, Sh. Rajesh S/o Mohan Lal was selected provisionally for the post of Constable (Driver) in SSB but not allowed to join the post by the Commandant, 45th Bn, SSB, Birpur as a criminal case was pending against him in Kotwali Sikar, Rajasthan vide FIR No.211/2014 u/s 147,148,149,332,353,333 & 307 of IPC. Later on, he was acquitted by the Hon'ble Upper Session Court of Sikar (Rajasthan) vide judgment dated 31/08/2019 from the charges giving benefit of doubt due to lack of evidence.

4. As per MHA guidelines circulated vide MHA UO No. I.45020/6/2010-Pers II dated 01/02/2012, Para-02 (V) states that "such candidates against whom charge sheet in a Criminal Case has been filed in the court and the charges fall in the category of serious offences or moral turpitude, though later on acquitted by extending benefit of doubt or acquitted for the reasons that the witness turned hostile due to fear of reprisal by the accused person(s), he/she will generally not be considered suitable for appointment in the CAPF. The details of crimes which are serious offences or involve moral turpitude are enclosed as Annexure-A. However, cases in which the criminal court, while acquitting, has categorically mentioned that the criminal case would not be a bar on appointment in Government Services, the candidates shall be considered for appointment in the concerned CAPF.

5. Due to the reasons that criminal cases under Sections 307 of IPC (attempt to murder) and Section 333 (voluntarily causing grievous hurt to deter public servant from his duty), appointment to the post of Constable (Driver) of Sh. Rajesh in discipline force is not appropriate as he had been acquitted giving him benefit of doubt due to lack of evidence by



the Hon'ble Court of Sikar(Rajasthan) vide judgment dated 31/08/2019.

6. Further, the Hon'ble Supreme Court in SLP [C] 4757/2014 and 24320/2014 Avtar Singh Vs UOI & Others on question of suppression of information, false information in verification form, question of having been immediately prosecuted or as to pendency of a criminal case has summarized their conclusion. Some of the operative portions of the judgement are as under:-

Para 30. (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 of false mention of required information.

Para 30. (3) The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

Para 30.(4)(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 antecedent, and may take appropriate decision as to the continuance of the employee.

Para 30. (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.

7. Besides, Sashastra Seema Bal is an armed Force and guarding Indo Nepal and Indo Bhutan Borders which is directly related to National Safety and Security and person joining in disciplined Force whose services



are different from others must have impeccable character and integrity.

8. In view of the above and taking into consideration the MHA guidelines, the Competent Authority has approved that appointment for the post of Constable (Driver) in SSB is not appropriate.”

19. As far as the ground of the petitioner of his being acquitted by extending the benefit of doubt, is concerned, we may note that in aforementioned Session Case No. 51/2016, the petitioner along with others had been accused of assaulting two police officers who had reached a hostel on information being received of some hooligans creating nuisance therein. The Police Officers who were allegedly assaulted were PW1-Rakesh Kumar and PW2-Mahendra Singh. PW1 was posted as a Constable at Police Post Kalyan Circle, and PW2 was posted as Head Constable at Police Station Kotwali. The learned Sessions Judge in his Order, while discussing the statement of PW1, records as under:

“14. In the matter, if cross-examination of said injured Rakesh Kumar is perused, following position comes in light :

(1) I do not recognize accused persons Pawan, Rajesh, Kishan, Balbir, Kuldip and Anil.

(2) I only recognize Ganpat and Parmeshwar Jangid.

(3) It is correct that apart from Ganpat and Parmeshwar Jangid, nobody fought with us.

(4) I neither recognize nor identify the accused persons present in the court. I did not see them at place of occurrence.

(5) I did not receive injury on my body from anybody except Ganpat and Parmeshwar.”



20. Regarding PW2, the learned Sessions Judge again discussed the cross-examination of the said witness as under:

“17. In the matter, if the cross-examination of evidence of PW No.2 Mahendra Singh is perused, some important following situation have arisen –

(1) It is correct that except Ganpat and Parmeshwar Jangid, nobody had fought with us. I do not recognize or identify other accused persons. Who was calling whom, I cannot explain. Further stated that they were talking with each other. During investigation, no identification was conducted in presence.

(2) Injuries sustained on my body are only because of Ganpat and Parmeshwar. Neither I know or recognize the accused persons present in the court.”

21. From the above, it would be apparent that by both the injured persons, who were in fact the Police Officers, the petitioner was not identified as an assailant.

22. Before the learned Sessions Judge, the prosecution examined as many as 18 witnesses and relied upon a total of 38 documents. After considering all the evidence led by the prosecution, the learned Sessions Judge found various lacunae in the case of the prosecution and the manner in which the investigation had been conducted, and held as under:

“42. As such, as a result of foregoing deliberation in the matter, the prosecution, in the absence of evidence against the accused persons beyond doubts, has failed to prove offence under sections 148/149, 332/149,



333/149, 353/149, 307/149 IPC. Therefore, accused persons Vikram Singh, Kuldeep Kumar, Pawan Kumar, Rajesh Kumar aka Raju, Ajay Kumar, Rajesh, Krishan Kumar, and Narendra Yadav are found to be eligible for acquittal from the offense under section 148 /149, 332/149/333/149, 353/149, 307/149 IPC.'

23. In *Deputy Inspector General of Police and Anr. v. S. Samuthiram*, (2013) 1 SCC 598, the Supreme Court discussed the meaning of the expression "honourable acquittal" and held that where the accused is acquitted after full consideration of the prosecution's evidence and wherein the prosecution has miserably failed to prove the charges levelled against the accused, it can positively be said that the accused was honourably acquitted. We may quote from the Judgment as under:

"24. The meaning of the expression "honourable acquittal" came up for consideration before this Court in *RBI v. Bhopal Singh Panchal* [(1994) 1 SCC 541 : 1994 SCC (L&S) 594 : (1994) 26 ATC 619] . In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can



possibly be said that the accused was honourably acquitted.”

24. The above principle was followed by the Supreme Court in ***Joginder Singh v. Union Territory of Chandigarh and Ors.*** (2015) 2 SCC 377.

25. A Division Bench of this Court in ***Manoj v. Union of India & Ors.***, 2016:DHC:4953-DB, again relying on the above Judgment, held that an acquittal following the prosecution’s examination of all witnesses, would be a case of “*honourable acquittal*”.

26. In the Order dated 27.01.2020 in WP(C) 11951/2019, titled ***Anand v. Union of India & Ors.***, a Division Bench of this Court held that the observation that the benefit of doubt is given to the accused, would not alter the nature of the acquittal when the prosecution has led its evidence, but the accused is acquitted due to lack of incriminating evidence against the accused. We may quote the relevant finding from the Judgment as under:

“15. A perusal of the paragraphs extracted hereinabove shows that the acquittal of the Petitioner has in fact been on merits. Even though the “star” witnesses had been declared hostile at the request of the Additional Public Prosecutor (‘APP’), the Court nonetheless observed that the statements of the said witness presented no evidence against the accused, including the Petitioner. In fact, the Court found that the said witnesses specifically averred that the accused persons “never inflicted any injuries on them.” Thus, the Court’s observation that the “benefit of doubt is given to the accused” does not, in any manner of speaking, alter the character of the acquittal of the Petitioner to imply that that the



said acquittal was not merits.

*16. Therefore, the Court finds that the reliance placed by the Respondents on paragraph 2.V of the aforementioned guidelines dated 2nd February, 2012, and the order of this Court **Narender Singh** (supra), is misplaced. The aforesaid decision was predicated on the fact that the acquittal of the candidate there was not on merits but, in complete contrast, on a compromise reached between him and the complainants. Unlike the present case, therefore, there was no occasion for to Court to examine witnesses only to find that there was no material against the accused.*

17. Therefore there can be no manner of doubt that paragraph 2.V could not have been relied on by the Respondents to deny the Petitioner appointment. To reiterate, the said paragraph envisages a situation wherein acquittal is the result of “extending benefit of doubt” to the accused, or the witnesses turning hostile “due to fear of reprisal by the accused.” The present case does not relate to either of these situations. As discussed at some hereinabove, the Petitioner has been acquitted due to the complete lack of incriminating evidence against him, and the witnesses were declared hostile “at the request of the Ld. APP.””

27. Applying the above principle to the facts of the present case, it has to be held that apart from the fact that the learned Sessions Judge found the investigation in the case to be lacking, the learned Sessions Judge had also discussed in detail the evidence that was led before the Court and found that even the star witnesses, that is the injured, who were the Police Officers, had failed to identify the accused, including the petitioner herein. In the facts of the present case, therefore, it has to be held that the acquittal of the petitioner was “honourable” and mere description of the same by the learned Sessions Judge has been



one of extending the “*benefit of doubt*”, which would not change the character of the acquittal for the purpose of denying him the opportunity of appointment to the post by the respondents.

28. On the question of suppression of material facts, as would be evident from the Order dated 23.03.2022, quoted hereinabove, except making a general reference to the Judgment of the Supreme Court in ***Avtar Singh*** (supra), there was no mention of the particulars of what according to the respondents was concealed by the petitioner. It is only in the counter affidavit that these particulars have been mentioned as the offences for which the petitioner had been charged and the stage of the prosecution, that is, the charge sheet having already been filed on the date of the application against the petitioner.

29. In ***Avtar Singh*** (supra), the Supreme Court has laid down the principles that would be applicable to a case where the suppression of fact is alleged to have been made by the candidate to deny him appointment to a post, as under:

“30. The employer is given “discretion” to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an incumbent for services in question. In case the employer comes to the conclusion that suppression is immaterial and even if facts would have been disclosed it would not have adversely affected fitness of an incumbent, for reasons to be recorded, it has power to condone the lapse. However, while doing so



employer has to act prudently on due consideration of nature of post and duties to be rendered. For higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However, same standard cannot be applied to each and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed, to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully, the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence, etc. have to be considered. Even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or of dubious character. In case employer comes to conclusion that conviction or ground of acquittal in criminal case would not affect the fitness for employment, incumbent may be appointed or continued in service.

31. Coming to the question whether an employee on probation can be discharged/refused appointment though he has been acquitted of the charge(s), if his case was not pending when form was filled, in such matters, employer is bound to consider grounds of acquittal and various other aspects, overall conduct of employee including the accusations which have been levelled. If on verification, the antecedents are otherwise also not found good, and in number of cases incumbent is involved then notwithstanding acquittals in a case/cases, it would be open to the employer to form opinion as to fitness on the basis of material on record. In case offence



is petty in nature and committed at young age, such as stealing a bread, shouting of slogans or is such which does not involve moral turpitude, cheating, misappropriation, etc. or otherwise not a serious or heinous offence and accused has been acquitted in such a case when verification form is filled, employer may ignore lapse of suppression or submitting false information in appropriate cases on due consideration of various aspects.

32. No doubt about it that once verification form requires certain information to be furnished, declarant is duty-bound to furnish it correctly and any suppression of material facts or submitting false information, may by itself lead to termination of his services or cancellation of candidature in an appropriate case. However, in a criminal case incumbent has not been acquitted and case is pending trial, employer may well be justified in not appointing such an incumbent or in terminating the services as conviction ultimately may render him unsuitable for job and employer is not supposed to wait till outcome of criminal case. In such a case non-disclosure or submitting false information would assume significance and that by itself may be ground for employer to cancel candidature or to terminate services.

33. The fraud and misrepresentation vitiates a transaction and in case employment has been obtained on the basis of forged documents, as observed in M. Bhaskaran case [Union of India v. M. Bhaskaran, 1995 Supp (4) SCC 100 : 1996 SCC (L&S) 162 : (1996) 32 ATC 94], it has also been observed in the reference order that if an appointment was procured fraudulently, the incumbent may be terminated without holding any inquiry, however, we add a rider that in case employee is confirmed, holding a civil post and has protection of Article 311(2), due inquiry has to be held before terminating the services. The case of



obtaining appointment on the basis of forged documents has the effect on very eligibility of incumbent for the job in question, however, verification of antecedents is different aspect as to his fitness otherwise for the post in question. The fraudulently obtained appointment orders are voidable at the option of employer, however, question has to be determined in the light of the discussion made in this order on impact of suppression or submission of false information.

34. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.

35. Suppression of “material” information presupposes that what is suppressed that “matters” not every technical or trivial matter. The employer has to act on due consideration of rules/instructions, if any, in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.

36. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by authorities concerned considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.



37. The “McCarthyism” is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformatory theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.

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."

30. In the present case, though the petitioner had been charged for a heinous crime of having assaulted the Police Officers, the fact remains that the petitioner had duly disclosed the fact of the registration of the FIR against him in the Application Form. If the respondents felt that further disclosure of offence for which the FIR was registered and the status thereof was also important for consideration for the said post, they could have sought this information from the petitioner at any stage of the recruitment process or even rejected his application,



however, they did not do so. In fact, the respondents proceeded to issue a Selection Letter to the petitioner on 04.07.2018.

31. Even otherwise, we find that the respondents were also obliged to consider other attendant circumstances, including the acquittal of the petitioner and nature thereof, while considering if the lapse of the petitioner in disclosing other details can be condoned.

32. The Impugned Order dated 23.03.2022, as noted hereinabove, does not even disclose what the respondents felt was a material circumstance which needed to be disclosed by the petitioner in the Application Form and, because of suppression whereof the petitioner could not be granted appointment to the post. Furthermore, the respondents cannot add new grounds of refusal in its counter affidavit.

33. In view of the above, we find that the petitioner could not have been denied appointment only because he failed to disclose the offences for which he has been charged in the FIR registered against him and/or charge-sheet having been filed against him for the said offences.

34. As far as delay in filing the present petition is concerned, the petitioner had earlier filed a Writ Petition, being W.P.(C) 318/2020. The same was disposed of as withdrawn, granting liberty to the petitioner to approach appropriate forum, *vide* Order dated 17.01.2020. The petitioner has claimed that immediately thereafter COVID intervened, because of which there was a delay in the petitioner filing the representation before the respondents. The representation was eventually filed by the petitioner on 18.02.2022, and has been rejected *vide* Order dated 23.03.2022. The delay has,



therefore, been explained by the petitioner.

35. At the same time, though the delay has been adequately explained by the petitioner, it has a vital effect on the eventual relief that the petitioner would be entitled to in the present case.

36. As is noted hereinabove, pursuant to the Selection Letter dated 04.07.2018, the petitioner had reported to the 45th Battalion, SSB, Birpur on 17.08.2018. On perusing the Verification Report, which disclosed the pendency of criminal case against the petitioner, the petitioner was not allowed to join the post. The petitioner was eventually acquitted in the trial *vide* Judgment and Order dated 31.08.2019. Consequently, he made a representation to the respondents dated 09.09.2019, seeking appointment, and thereafter approached the National Human Rights Commission (in short, 'NHRC') with a complaint on 14.12.2019. The said complaint was disposed of by the NHRC *vide* Order dated 17.01.2020, directing the respondents to take appropriate action on the representation of the petitioner. The petitioner thereafter filed a representation only on 18.02.2022. Therefore, more than six years have passed since the initial offer of appointment to the petitioner.

Conclusion

37. In the above peculiar facts, we therefore hold that the denial of appointment to the petitioner cannot be sustained. The same is accordingly set aside. The respondents are directed to reinstate the petitioner in service to the post of Constable (Driver) on which he was selected pursuant to his participation in the selection process, if he is



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found medically fit for the same. We make it clear that the petitioner will not be entitled to the arrears of salary for the period during which he has not served the Force, however, he will be entitled to all notional benefits, including pay, seniority and other consequential benefits, etc., at par with his batchmates.

38. The petition is allowed in the above terms.

NAVIN CHAWLA, J

SHALINDER KAUR, J

NOVEMBER 04, 2024/ab/KM/Arya/as