



2024:DHC:8775-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 13.11.2024*+ W.P.(C) 6098/2016
KRISHAN KUMAR

.....Petitioner

Through: Mr. H.S. Dahiya and Mr. Yuv
Dahiya, Advs.

versus

DIRECTOR GENERAL CISF & ORS.Respondents

Through: Ms. Saroj Bidawat, Adv.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****HON'BLE MS. JUSTICE SHALINDER KAUR****ORDER**

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13.11.2024**NAVIN CHAWLA, J. (Oral)**

1. This petition has been filed by the petitioner challenging the Order dated 31.05.2012 passed by the Senior Commandant, Central Industrial Security Force (in short "CISF"), terminating the services of the petitioner on the ground that he had concealed, in his attestation form and in the questionnaire form, that he had been prosecuted in Case No. 81/06 under Sections 341, 323, 34 of the Indian Penal Code, 1860, which had been registered and for which a Charge Sheet No. 67/06, dated 19.07.2006 had been framed at Bagad Police Station, Rajasthan against him.

2. It is the case of the petitioner that the FIR, that has been referred to by the respondents in the Impugned Order, had been registered on



an incident arising out of an altercation between his family members which took place sometime in 2006. When the charge sheet was filed, the family members entered into a settlement and on the first date itself, that is 14.08.2006, the case was closed and the charges were dropped against the petitioner. Five years from that incident, the petitioner applied for recruitment in the CISF in the year 2011. He was in a state of confusion whether the case, though had been closed on the basis of a compromise, still needed to be disclosed in the attestation form and in response to the questionnaire. Based on the advice received from his peers, he mentioned in the attestation form/questionnaire that there was no case which was registered or pending against him. The petitioner claims that this was a *bona fide* mistake for which the petitioner should not be penalised.

3. Learned counsel for the petitioner placing reliance on the judgment of the Supreme Court in ***Avtar Singh v. Union of India & Ors.***, (2016) 8 SCC 471, submits that mere non-disclosure of the above case could not have resulted in the termination of the services of the petitioner. He also places reliance on the judgments of this Court in ***Sumit Kumar v. Union of India & Ors.***, 2017:DHC:5129-DB and ***Davender Kumar v. Union of India & Ors.***, 2018:DHC:1227-DB.

4. On the other hand, the learned counsel for the respondents submits that the attestation form contained a specific warning to the effect that furnishing of a false information or suppression of a factual information would be a disqualification and likely to render the candidate unfit for employment under the Government Service. She



submits that despite this warning, in answer to Question No. 12(b), which sought the candidate to disclose if he/she had ever been prosecuted, the petitioner chose to answer in the negative. She submits that even in the questionnaire form filled by the petitioner in column no. 4, which required the petitioner to disclose if any FIR had been lodged against him in the past, and if any charge sheet was filed, the outcome thereof, the petitioner again chose to answer in the negative instead of giving the details of the charge sheet. She submits that as the petitioner was seeking appointment to a disciplined Force, non-disclosure of relevant material itself would be a ground to disqualify him from the appointment.

5. In support she places reliance on the judgments of the Supreme Court in *Satish Chandra Yadav v. Union of India & Ors.*, (2023) 7 SCC 536 and *Rajasthan Rajya Vidyut Prasaran Nigam Limited & Anr. v. Anil Kanwariya*, (2021) 10 SCC 136.

6. We have considered the submissions made by the learned counsels for the parties.

7. In the present case, what would be important to note at the outset is that the petitioner had been acquitted of the charges at least five years before he had applied for the post in the CISF. At the time of the incident, he was only 19 years of age. The criminal case had not proceeded to a trial, but had been settled at the initial stage itself. From the compromise deed placed on the record, it is evident that the criminal case was a result of an altercation that occurred between the family members and the nature of the offence that he was charged with, was also not heinous or one of moral turpitude.



8. In *Avtar Singh* (supra), the Supreme Court considering the effect of non-disclosure has held 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."

9. The Supreme Court in ***Commissioner of Police & Ors. v. Sandeep Kumar***, (2011) 4 SCC 644, in respect to similar facts, held as under:-

"8. We respectfully agree with the Delhi High Court that the cancellation of his candidature was illegal, but we wish to give our own opinion in the matter. When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often be condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

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12. It is true that in the application form the respondent did not mention that he was involved in a criminal case under Sections 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified. At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter."

10. Recently, in ***Ravindra Kumar v. State of Uttar Pradesh & Ors.***, (2024) 5 SCC 264, the Supreme Court reiterated that though a person suppressing material information cannot claim unfettered right for appointment, however, has a right not to be dealt with arbitrarily. The



power to deal with such person must be exercised reasonably with objectivity after due consideration of all the relevant aspects. Each case depends on facts and circumstances prevailing thereon and the Court must take a holistic view, based on objective criteria. Further, the Court opined that mechanical cancellation of candidature for suppression/misrepresentation of facts in the verification form would be improper. The Court also considered its decision in **Satish Chandra Yadav** (supra), and observed as under:-

“29. We have also kept in mind the recent judgment of this Court in Satish Chandra Yadav v. Union of India [Satish Chandra Yadav v. Union of India, (2023) 7 SCC 536 : (2023) 2 SCC (L&S) 43] and the broad principles set out by this Court in para 93, especially, paras 93.1, 93.3 and 93.7. Even the broad principles set out therein recognise that each case should be scrutinised thoroughly by the public employer concerned and the Court is obliged to examine whether the procedure of enquiry adopted by the authority concerned was fair and reasonable. Avtar Singh [Avtar Singh v. Union of India, (2016) 8 SCC 471 : (2016) 2 SCC (L&S) 425] in para 38.2 has held that while passing the order of cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information. Further, in para 38.4.3 of Avtar Singh [Avtar Singh v. Union of India, (2016) 8 SCC 471 : (2016) 2 SCC (L&S) 425] the principle that, in case of suppression or false information of involvement of criminal case, where acquittal has already been recorded, the employer can still consider all relevant facts available as to antecedents and may take appropriate decision as to the continuance of the employee.

30. We have read and understood the broad



principles laid down in Satish Chandra Yadav [Satish Chandra Yadav v. Union of India, (2023) 7 SCC 536 : (2023) 2 SCC (L&S) 43] with the following crucial paragraph in Avtar Singh [Avtar Singh v. Union of India, (2016) 8 SCC 471 : (2016) 2 SCC (L&S) 425] : (SCC pp. 506-507, para 35)

“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.”

32. The nature of the office, the timing and nature of the criminal case; the overall consideration of the judgment of acquittal; the nature of the query in the application/verification form; the contents of the character verification reports; the socio-economic strata of the individual applying; the other antecedents of the candidate; the nature of consideration and the contents of the cancellation/termination order are some of the crucial aspects which should enter the judicial verdict in adjudging suitability and in determining the nature of relief to be ordered.

34. On the facts of the case and in the backdrop of the special circumstances set out hereinabove, where does the non-disclosure of the unfortunate criminal case, (which too ended in acquittal), stand in the scheme of things? In our opinion on the peculiar facts of the case, we do not think it can be deemed



fatal for the appellant. Broad-brushing every non-disclosure as a disqualification, will be unjust and the same will tantamount to being completely oblivious to the ground realities obtaining in this great, vast and diverse country. Each case will depend on the facts and circumstances that prevail thereon, and the court will have to take a holistic view, based on objective criteria, with the available precedents serving as a guide. It can never be a one size fits all scenario.”

11. In ***Rajasthan Rajya Vidyut Prasaran Nigam Limited*** (supra), the Supreme Court was considering a case where the respondent therein had been convicted in a criminal trial, which he suppressed in his application form. It is only when a show cause notice was issued to him on discovery of the above fact, that the respondent therein challenged the order of conviction. It was in those peculiar facts that the Supreme Court found that there was no infirmity in the decision of the employer therein in terminating the respondent therein from service.

12. In the present case, as noted herein above, the criminal case against the petitioner stood closed five years before him applying with the respondents. The criminal case was a result of some family dispute which was amicably settled amongst the family members on the first date itself. The petitioner was a young boy of 19 years at the time of the incident and has a whole life ahead of him to look up to rather than being made to suffer for one minor indiscretion, if at all he was involved in the same.

13. In the peculiar facts of this case, therefore, we find that the respondents have failed to apply their mind to the relevant



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considerations in passing the impugned order, making it liable to be set aside on ground of being arbitrary and in violation of right of the petitioner under Article 14 of the Constitution of India. The punishment of termination of the service awarded to the petitioner was entirely disproportionate to the misconduct of the petitioner in not disclosing the information regarding the criminal case that had been closed at least five years before his application.

14. One option open to us is to remand the matter back to the competent authority of the respondents to re-consider the punishment awarded to the petitioner. However, in the facts of the present case, we do not opt for this course inasmuch as the petitioner has remained without a job for a period of almost 12 years.

15. We, therefore set aside the Impugned Order dated 31.05.2012. We direct that the petitioner to be reinstated in service with all consequential benefits, within a period of six weeks of this judgment, however, without being entitled to any back wages.

16. With the above directions, the petition stands disposed of.

NAVIN CHAWLA, J.

SHALINDER KAUR, J.

NOVEMBER 13, 2024

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Click here to check corrigendum, if any