



2024:DHC:9811-DB



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

Reserved on: 21.11.2024

Pronounced on: 19.12.2024

+ W.P.(C) 47/2018

JAGVINDER SINGH

.....Petitioner

Through: Dr.Kanwar Sapra & Mr.Arun
Kumar Sapra, Advs.

versus

THE SECRETARY, MHA AND ORS.

.....Respondents

Through: Mr.Rajesh Kumar, CGSC with
Mr.Rahul Kumar Sharma, GP,
Mr.Yash Narain, Adv.
SI Shrabanta Sarkar, SSB.

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 under Article 226 of the Constitution of India seeking the quashing of an Order dated 04.10.2017 issued by the Deputy Inspector General (Personnel), Sashastra Seema Bal (in short, 'SSB'), rejecting the representation of the petitioner seeking reinstatement into service. The petitioner further prays for a direction to the respondents to reinstate him to his previous post of Constable (Driver) with all consequential benefits.

Case of the Petitioner



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2. It is the case of the petitioner that he was appointed as a Constable (Driver) in the SSB on 12.08.2013, following a rigorous selection process. At the time of recruitment, the petitioner was required to submit a Verification Roll disclosing any criminal cases or legal proceedings against him. The petitioner asserts that he was unaware of the FIR registered against him, and answered the Verification Roll questions in good faith in the negative.

3. During the post-recruitment verification, it was discovered that an FIR No. 287/13 had been registered at Police Station, Madhu Vihar, East District, New Delhi on 25.05.2013, against the petitioner under Sections 323, 341, and 34 of the Indian Penal Code (in short, 'IPC').

4. Thereafter, a Show Cause Notice dated 28.06.2014 was issued by the Commandant 60th Bn to the petitioner asking him to submit an explanation regarding the non-disclosure of a criminal case against him.

5. The petitioner claims that he became aware of this case only upon receiving court summons in June 2014.

6. The petitioner submitted response to the show cause notice contending therein that he was not aware of the registration of the FIR as he had been informed by the police that the matter had been settled. He claimed that he had never applied for bail in that case.

7. The respondent no. 4, however, vide order dated 24.11.2014, terminated the service of the petitioner under Rule 18 (iv) of the



Sashtra Seema Bal Rules, 2009 for furnishing wrong information at the time of appointment and wilful concealment of facts.

8. Aggrieved by the same, the petitioner filed representations dated 12.12.2014, 22.03.2015 and 03.03.2016, to contest the termination and to seek reinstatement in service. However, the respondent no. 4, vide Memorandum dated 29.04.2016, informed the petitioner that the DG, SSB has rejected the representation of the petitioner, vide Memorandum dated 05.04.2016, as being devoid of merit.

9. As far as the criminal case registered against the petitioner is concerned, the same was amicably settled in mediation proceedings between the petitioner and the complainant on 18.02.2017 and was allowed to be compounded vide order dated 18.02.2017 passed by the learned Metropolitan Magistrate.

10. Despite the acquittal and the petitioner's repeated representations, the respondents declined to reinstate him into service.

11. Aggrieved of termination of service, the petitioner had filed W.P. (C) No. 6534/2016, on 04.07.2016 before this Court, challenging the orders of termination and rejection of representation. This Court, vide its Order dated 24.05.2017, while disposing of the petition, directed the respondents to re-examine the petitioner's case for reinstatement and pass a reasoned and speaking order in light of relevant legal jurisprudence, including the judgment of the Supreme Court in *Avtar Singh v. Union of India*, (2016) 8 SCC 471. The



respondents issued the rejection Order dated 04.10.2017, once again denying reinstatement. Aggrieved of which, the petitioner filed the present writ petition.

Submissions of the Learned Counsel for the Petitioner

12. The learned counsel for the petitioner submits that the termination of the petitioner from service was arbitrary and disproportionate, particularly since the FIR was based on a minor altercation and did not involve any elements of moral turpitude. He further submits that the FIR was settled amicably, and he was subsequently acquitted, clearing him of any legal culpability.

13. The learned counsel for the petitioner submits that the failure of the petitioner to disclose the FIR was unintentional, as he was unaware of its registration due to misleading assurances from the police.

14. Placing reliance on the judgment of the Supreme Court in *Avtar Singh* (supra), the learned counsel submits that suppression of minor offences, particularly when compounded and leading to acquittal, should not result in termination from service.

15. The learned counsel submits that the respondents failed to comply with the Court's directions for a reasoned reconsideration, and the rejection Order dated 04.10.2017 merely reiterates the grounds of the initial termination without addressing the petitioner's subsequent acquittal or relevant legal precedents.

Submissions of the Learned Counsel for the Respondents



16. The learned counsel for the respondents submits that the petitioner's termination from service was justified as he failed to disclose material information regarding the pending criminal case at the time of recruitment. The learned counsel submits that the suppression of facts is a serious breach of service rules and undermines the integrity required for personnel serving in Armed Forces like the SSB.

17. The learned counsel for the respondents contends that the case was re-examined in accordance with this Court's earlier direction, and the rejection of reinstatement was consistent with the principles of maintaining discipline and integrity within the Force.

18. The learned counsel for the respondents further submits that the petitioner's acquittal does not absolve him of the responsibility to have disclosed the pending criminal case during recruitment.

Analysis & Findings

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

20. It is evident that the termination was based solely on the petitioner's alleged suppression of facts during the recruitment process.

21. In the present case, the petitioner is alleged to have suppressed the fact of the registration of FIR No. 287/2013 registered at Police Station Madhu Vihar, East District, New Delhi under Sections 323, 341 and 34 of the IPC. The said FIR was result of a minor altercation,



which took place over an issue of parking of a vehicle. It is the case of the petitioner that the petitioner was not even aware of the registration of the said FIR and became aware of the same only in June 2014, when he was served with a notice issued by the Court. It has also come on record that the criminal case resulting from the FIR was settled between the petitioner and the complainant/injured and the same was allowed to be compounded *vide* an order dated 18.02.2017 passed by the learned Metropolitan Magistrate-01, Shahdara District, Karkardooma Court. The effect of such compounding would be an acquittal of the petitioner. The petitioner has also claimed that the Commandant, 12th Battalion, NDRF, had also recommended the case of the reinstatement of the petitioner in service, as the offences for which he was charged were not severe in nature, neither did they involve any allegation of moral turpitude. It was further observed that after joining the SSB, the petitioner was sponsored for Basic Recruit Training Court (in short, 'BRTC') at ATC Sapri and there was no complaint of indiscipline either from his Battalion or from ATC Sapri.

22. This Court, *vide* its judgment dated 24.05.2017 passed in the earlier Writ Petition filed by the petitioner, being WP(C) 6534/2016, after taking note of nature of the FIR against the petitioner and its compromise and compounding of the offences against the petitioner, had *inter alia* observed and directed as under:-

*“10. In our opinion, the matter requires reconsideration by the respondent authorities in view of the recent decision of the Supreme Court in **Avtar Singh versus Union of India and Others**, (2016) V SLT 743 in which after*



referring to the earlier case law, the following principles have been laid down:-

“27. 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.

28. 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 concerned authorities considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.

29. 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.



30. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

(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.

(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.

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

(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 recourse appropriate to the case may be adopted:-

(a) 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.

(b) Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

(c) If acquittal had already been recorded in a 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.

(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.

(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.

(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.



(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.

(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.

(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.

(11) Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him."

11. The respondent authorities would re-examine the case of the petitioner in light of the aforesaid ratio. If the petitioner is found to be covered and entitled to the benefit of the said decision, the petitioner would be reinstated in service. Appropriate order would also be passed by the respondents relating to the period between 24th – 27th November, 2014 till the date of reinstatement, if directed. In case of an adverse decision, the petitioner,



would be entitled to challenge the same in accordance with law.

12. With the aforesaid observations, the writ petition is disposed of, without any order as to costs.”

23. The respondent no. 3, however, *vide* its impugned order dated 04.10.2017, after recording the history of the case, in a cryptic and unreasoned order, which does not even show that the respondent no. 3 had considered the judgment of the Supreme Court in **Avtar Singh** (supra), rejected the claim of the petitioner for reinstatement. We reproduce the relevant extract from the order, as under:-

“NOW THEREFORE, in compliance to the Judgment Order dated 24/05/2017 passed by the Hon'ble High Court of Delhi in the instant writ petition, the case has been re-examined in the light of extant instructions after taking into consideration the contentions of the petitioner and all relevant aspects of the matter. After due examination of the case, the Competent Authority has found that termination order issued vide Commandant 60 Bn Order No.01/68/SSB/60thBn/E-1/P-veri(PF)/14/8115-30 dated 24/11/2014 is in consonance with the SSB Act and Rule and the request of the petitioner for re-instatement in service cannot be acceded to being devoid of merit.”

24. The principles of law governing a case of alleged suppression or false information of involvement in a criminal case as summarized by the Supreme Court in **Avtar Singh** (supra) have been quoted hereinabove in the earlier judgment dated 24.05.2017 of this Court. The Supreme Court has held that in case of suppression or false information of involvement in a criminal case, the employer should also consider the nature of the offence with which the employee has



been charged. If it is of trivial nature and does not involve moral turpitude or a serious offence, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse. Equally important is to ascertain if it was a case of deliberate suppression. Before a person is held guilty of *suppressio veri* or *suggestion falsi*, knowledge of the fact must be attributable to him.

25. In ***Pawan Kumar v. Union of India***, 2022 SCC OnLine SC 532, the Supreme Court has held as under:-

“13. What emerges from the exposition as laid down by this Court is that by mere suppression of material/false information regardless of the fact whether there is a conviction or acquittal has been recorded, the employee/recruit is not to be discharged/terminated axiomatically from service just by a stroke of pen. At the same time, the effect of suppression of material/false information involving in a criminal case, if any, is left for the employer to consider all the relevant facts and circumstances available as to antecedents and keeping in view the objective criteria and the relevant service rules into consideration, while taking appropriate decision regarding continuance/suitability of the employee into service. What has been noticed by this Court is that mere suppression of material/false information in a given case does not mean that the employer can arbitrarily discharge/terminate the employee from service.”

26. Recently, the Supreme Court in ***Ravindra Kumar v. State of U.P.***, (2024) 5 SCC 264, reiterating the decision in ***Satish Chandra Yadav v. Union of India***, (2023) 7 SCC 536, and ***Avtar Singh*** (supra), has held that while a person cannot claim unfettered right for



appointment after suppression of fact of a criminal case, he would still be granted the right to not be dealt with arbitrarily. It was also held that mechanical cancellation of appointment of a candidate based on misrepresentation of facts in the application/verification form would be incorrect. The Court held 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.”

xxxxx

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.

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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.”

27. The Ministry of Home Affairs has also issued “Policy Guidelines for considering cases of candidates for appointment in CAPFs – pendency of criminal cases against candidates- the effect of” dated 01.02.2012. The same also lays emphasis on the nature of offence with which the candidate is charged, and in form of Annexure A thereto, delineates what is described as serious offence or offence involving moral turpitude. Section 323 or 341 of the IPC, with which the petitioner was charged, are not mentioned in Annexure A to these Guidelines and are, therefore, considered minor offence.

28. As noted above, in the present case, the petitioner was accused of offence involving a minor road altercation, with no allegations of moral turpitude or serious misconduct. The criminal case was compounded, and the petitioner was acquitted.

29. The respondents’ rejection Order dated 04.10.2017 is found to be non-speaking and fails to address the parameters on which the case had to be tested by the competent authority. The rejection mechanically reiterates the grounds for termination without addressing



the petitioner's subsequent acquittal or relevant legal precedents, nor does it take into account the offence with which the petitioner had been charged. It does not show an application of mind to the relevant factors that had to be taken into consideration. The impugned order is, therefore, arbitrary and is liable to be set aside.

30. One of the options open to us would have been to again remand the matter back to the competent authority of the respondents to pass a fresh order on considering the relevant factors. However, in the facts of the present case, where we have once already remanded the matter to the Competent Authority of the respondents, and the Competent Authority has failed to consider the case in accordance with law, we are of the opinion that again remanding the matter shall cause injustice to the petitioner.

31. Applying the law applicable to the facts of the present case, we find that the termination of services of the petitioner was totally unwarranted. The petitioner is therefore, entitled to reinstatement in service with all consequential benefits.

Conclusion

32. In view of the above, the Impugned Order dated 04.10.2017 cannot be sustained and is accordingly set aside.

33. The petitioner is directed to be reinstated in service with effect from his termination from service, that is, 24.11.2014, with all consequential benefits. However, the petitioner will not be entitled to



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draw any wages/salary for the period between the date of his termination and his reinstatement pursuant to the present order. The respondents shall pass the order of reinstatement of the petitioner in service within a period of four weeks of the present order.

34. The petition is allowed in the above terms. There shall be no order as to costs.

NAVIN CHAWLA, J

SHALINDER KAUR, J

DECEMBER 19, 2024/rv/as

Click here to check corrigendum, if any