

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7871 OF 2018

Mr. Jadhav Satish Vijay Service Roll No.080301374

Age: 28 Years, Occupation : Nil, Address: S/o.

Jadhav Vijay Ramchandra, VPO – Ashta,

Gandhinagar, Tal.- Walwa, Dist -Sangli,

Maharashtra Pin – 416301

.... Petitioner.

Versus

1. **Union of India** Ministry of Home
Affairs, New Delhi - 110011
 2. **The Inspector General/HQrs,**
Central Industrial Security Force
(CISF), (Ministry of Home Affairs),
13, CGO Complex, Lodhi Road,
New Delhi -110003.
 3. **Sr. Commandant,** CISF, 5th Reserve
Battalion Ghaziabad, PO-Shipra
Sun City (Indra Puram), Dist –
Ghaziabad (UP) Pin -201014
 4. **Sr. Commandant,** CISF RTC, Bhilai,
Post Uttai, District Durg,
Chattisgarh
-Respondents

Mr. Madhav V. Chavan for the Petitioner (Through V. C.)

Mr. Neel Helekar a/w Aniruddha A. Garge for the Respondents.

**CORAM : NITIN W. SAMBRE
&
ASHWIN D. BHOBE, JJ.**

DATED : 22nd JANUARY, 2025

JUDGMENT PER (ASHWIN D. BHOBE J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Order dated 16.03.2016 of the Asst. Inspector General /Rectt. CISF HQrs New Delhi, which upheld the Order dated 04.03.2015 passed by the Respondent No.4, whereby the candidature of the Petitioner as Constable/Driver was canceled as “not suitable for appointment in Central Industrial Security Force”, on the ground of Petitioner, in the past being involved in a criminal case, are assailed in this petition.

Case of the Petitioner:-

a) Petitioner in the year 2013, applied for the post of Constable/Driver in Central Industrial Security Force (“CISF”).

b) By letter dated 25.11.2013, Petitioner was notified of the date (i.e. 10.12.2013) fixed for medical examination, at RTC, Bhilai, Uttai, Chhattisgarh.

c) Petitioner appeared for medical examination on 10.12.2013 and submitted the Questionnaire Form.

d) Vide offer of appointment letter dated 15.12.2013, Petitioner was notified of being provisionally selected for appointment as a Constable/Driver. He was directed to report to the Principal CISF, RTC, Bhilai, Uttai, Chhattisgarh on 28.12.2013 for joining the post of Constable/Driver and to undergo basic training w.e.f. 30.12.2013. According to the terms and conditions outlined in the offer of appointment letter, the Petitioner was required to submit amongst other documents, the Attestation Form, containing Column No. 12, wherein Petitioner was required to declare his antecedents/information of criminal cases/involvement in any criminal case, if any, supported by documents, if the answers to the question was in the affirmative. Attestation Form contains an undertaking clause that any false declaration may lead to cancellation of the candidature.

e) On 28.12.2013, the Petitioner reported for training at RTC, Bhilai, Uttai, Chhattisgarh. Duly filled Attestation Form was submitted. Though, the Petitioner responded to the questions in Column No.12 of the Attestation Form, however filed an application dated 28.12.2013, requesting for time to submit copy of the FIR and Police Report.

f) Character & Antecedent Certificate, copy of FIR No. 07/13 dated 24.01.2013, registered under Sections 323, 324, 504, 506 read with Section 34 of the IPC, copy of Charge Sheet/ Final Report dated 04.05.2013 and copy of the order dated 30.10.2013 passed by the 1st Class Joint Judicial Magistrate, Islampur in Regular Criminal Case No. 117/2013, were subsequently submitted to the officials of CISF at RTC, Bhilai.

g) Within four days of the Petitioner joining the training, Petitioner was asked to leave the Training Center, without assigning any reason.

h) On 04.03.2015, Petitioner was served with the order canceling the offer of appointment dated 15.12.2013. Order dated 04.03.2015, records that the Standing Screening

Committee of CISF having found the Petitioner not eligible for appointment in CISF, on the ground of the Petitioner being involved in criminal case.

- i) Petitioner submitted a representation dated 23.11.2015, seeking reconsideration of his case.
- j) By letter dated 16.03.2016, the Assistant Inspector General/Rectt. CISF HQrs, New Delhi, rejected the representation dated 23.11.2015.
- k) Aggrieved, the Petitioner is before this Court seeking the following substantial reliefs:-

“A. The Hon’ble High Court be pleased to issue a Writ of Mandamus or writ in the nature of mandamus or any other appropriate writ, direction and order to quash and set aside the order passed by the CISF dated 16/03/2016 and 04/03/2015.

B. The Hon’ble High Court be pleased to issue appropriate writ or order, directing the Respondent to reinstate the Petitioner in service from the date of removal from the training centre i.e. 31/12/2013 and to pay all the salary.”

Case of the Respondent Nos. 1 to 4 :

- 3. Respondents have filed their reply dated 08.05.2019 opposing the petition. Respondents, amongst other documents have placed on record the “Attestation Form”, the undertaking given by the

Petitioner along with the “Questionnaire Form” and Petitioner’s application dated 28.12.2013. Respondents in support of the cancellation of the offer of appointment letter dated 15.12.2013, contend as follows:-

- a) Petitioner did not disclose the registration of FIR/criminal case against him, while applying for the said post on 21.03.2013. Such disclosure was not made even during medical examination on 10.12.2013.
- b) In terms of clause 4(a) of the offer of appointment dated 15.12.2013, in the event of the answer to any question of Column No.12 of the Attestation Form was “yes” then complete details of the case were required to be furnished. Petitioner instead of furnishing the details/documents of the criminal case/proceedings, submitted an application dated 28.12.2013, seeking time to produce such documents. Reliance was placed on the undertaking forming a part of the Questionnaire, by which declaration was given by the Petitioner that if information was found to be false or incorrect, the candidature was liable to be canceled.
- c) It was only upon such delayed submission of documents (FIR dated 24.01.2013, copy of Charge Sheet/Final

Report dated 04.05.2013 and copy of acquittal order dated 30.10.2013) by the Petitioner, that the antecedents of the Petitioner, came to the notice of the Respondents.

d) Standing Screening Committee of CISF, upon consideration of the documents submitted by the Petitioner, by relying on *“Policy Guidelines for considering cases of candidates for appointment in the CAPFs-pendency of criminal cases against candidates- the effect of”*, dated 01.02.2012 of the Ministry of Home Affairs, Government of India, found the Petitioner “Not suitable for Appointment in CISF”.

e) In sum and substance, the contention of the Respondents was that though the Petitioner disclosed the criminal case being registered against him, the said disclosure was during documentation at CISF RTC, Bhilai. Thus, according to the Respondents, the Petitioner did not make candid and truthful declaration in the Questionnaire Form.

Submissions:-

4. Mr. Madhav Chavan, learned Advocate for the Petitioner, submitted that Petitioner had made truthful disclosure in the Attestation/Questionnaire Form submitted to the Respondents. He

submits that Petitioner having got an acquittal in the criminal case on 30.10.2013, i.e. much prior to the submission of the Attestation/Questionnaire Form, the Petitioner was under a bonafide impression that he had a clean slate in the context of criminal antecedents. He submits that the Petitioner had no intention to suppress any facts in the application, which was evident from the fact that the Petitioner had himself made disclosure with regard to the criminal proceedings against him. He further submits that acquittal of the Petitioner was on merits and after a full fledged trial. According to Mr. Chavan, some delay in furnishing the copies of the FIR, Charge-sheet and order of acquittal would not amount to suppression of information. He submits that the policy guidelines relied by the Screening Committee would not be attracted to the case of the Petitioner. He submits that the Respondent No.4 and the Asst. Inspector General /Rectt. CISF HQrs New Delhi have mechanically passed the orders impugned in the petition. He placed reliance on the following decisions :

- (i) *Pawan Kumar Vs. Union of India & Anr.*¹
- (ii) *Ram Kumar Vs. State of U.P. & Ors.*²
- (iii) *Commr. Of Police and Ors Vs. Sandeep*

1 (2023) 12 Supreme Court Cases 317

2 (2011) 14 Supreme Court Cases 709

*Kumar*³

(iv) *Mr Bishnu Pratap Vs. UOI Through*

*Ministry of Home Affairs and Ors.*⁴

(v) *D. Srinivasan Vs The Commandant*⁵

(vi) *Deepa Tomar Vs Union of India and Ors.*⁶

5. Per contra, learned Advocate Mr. Neel Helekar for the Respondents placing reliance on the offer of appointment letter dated 15.12.2013, submits that the Petitioner was notified of the requirements of furnishing complete details in respect of questions in Column No.12 of the Attestation Form, which the Petitioner failed to comply, as such the Petitioner was guilty of suppression of information/material facts, which by itself was sufficient to cancel the candidature of the Petitioner. He submits that the “*Policy Guidelines for considering cases of candidates for appointment in the CAPFs-pendency of criminal cases against candidates- the effect of*”, notified by the Ministry of Home Affairs, on 01.02.2012, were squarely applicable to the case of the Petitioner. He submits that suppression of details of antecedents read with the policy guidelines

3 (2011) 4 Supreme Court Cases 644

4 2024 SCC OnLine Del 7035

5 W.P. No.9545 of 2014

6 2014 SCC OnLine Del 6843

justify the cancellation of the Petitioners candidature. He submits that supports the orders dated 04.03.2015 and 16.03.2016 and prays for dismissal of the petition. He placed reliance on the following decisions :-

a) *Avtar Singh vs. Union of India and Ors.*⁷

(b) *Swapnil Prakash Parab vs. State of Maharashtra*⁸

Position of law:-

6. In *Avtar Singh* (supra), the three Judges bench of the Hon'ble Supreme Court was constituted to resolve the conflicting opinion in various decisions on the question of effect on suppression of information or submitting false information in the verification column, when it comes to public employment. The Hon'ble Supreme Court has summarized its conclusion in paragraph Nos.38 to 38.11. Paragraphs *relevant* in the context of the instant case are 38.1, 38.5, 38.6 and 38.10, as such are quoted herein:-

“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.

38.5. In the 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 (2016) 8 Supreme Court Cases 471

⁸ (2022) SCC OnLine Bom 2338

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.

38.10 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.”

7. The Hon’ble Supreme Court in the case of *Satish Chandra Yadav Vs. Union of India and Ors.*⁹ taking note of the position of law post *Avtar Singh* (supra), shortlisted the following broad principles of law in paragraph No.93.1 to 93.7 as under:-

“93. In such circumstances, we undertook some exercise to shortlist the broad principles of law which should be made applicable to the litigation's of the present nature. The principles are as follows:

93.1. Each case should be scrutinized thoroughly by the public employer concerned, through its designated officials more so, in the case of recruitment for the Police Force, who are under a duty to maintain order, and tackle lawlessness, since their ability to inspire public confidence is a bulwark to society's security. (See Raj Kumar)

93.2. Even in a case where the employee has made declaration truthfully and correctly of a concluded criminal case, the employer still has the right to consider the antecedents, and cannot be compelled to appoint the candidate. The acquittal in a criminal case would not automatically entitle a candidate for appointment to the post. It would be still open to the employer to consider the

⁹ 2023 (7) SCC 536

antecedents and examine whether the candidate concerned is suitable and fit for appointment to the post.

93.3. The suppression of material information and making a false statement in the verification form relating to arrest, prosecution, conviction, etc, has a clear bearing on the character, conduct and antecedents of the employee. If it is found that the employee had suppressed or given false information in regard to the matters having a bearing on his fitness or suitability to the post, he can be terminated from service.

93.4. The generalizations about the youth, career prospects and age of the candidates leading to condonation of the offenders' conduct, should not enter the judicial verdict and should be avoided.

93.5. The Court should inquire whether the authority concerned whose action is being challenged acted mala fide.

93.6. Is there any element of bias in the decision of the authority?

93.7. Whether the procedure of inquiry adopted by the authority concerned was fair and reasonable?"

8. From the facts and the rival contentions raised in the present petition, the question for determination before us is whether the Petitioner has suppressed or withheld information in the context of his antecedents, warranting the Petitioner's disqualification to the post of Constable/Driver?

Analysis:-

9. As the controversy in the petition revolves around the documents and conditions in the said documents, the same are extracted herein below:-

Clause 4(a) of the letter of offer of appointment:-

“4(a) Two Copies of Attestation Forms (enclosed) duly filled in completely. (In case the answer to any question of column no.12 of attestation form is “YES” then you must submit complete details of the case to the Principal, CISF RTC, Bhilai immediately by post on receipt of this call up notice for joining. Only on hearing from the Training Centre you will report for the basic training. It is once again reiterated that without forwarding the details in advance and without hearing from Training Centre you will not be allowed to join for the basic training).”

Column No.12 of the Attestation Form (english version) :	
“12(1)	
a)	Have you ever been arrested?
b)	Have you ever been prosecuted?
c)	Have you ever been kept under detention? नही
d)	Have you ever been bound down?
e)	Have you ever been find Court of law?
f)	Have you ever been ever been convicted by a Court of law for any offense? नही
g)	Have you ever been debarred from any examination or rusticated by any University or any other Educational Authority/ Institution?
h)	Have you ever been debarred/disqualified by any Public Service Commission for any of its examinations/selections? नही
i)	Is any case pending against you in any Court of Law at the time of filling up this Attestation Form? नही
j)	Is any case pending against you in any University or any other Educational Authority/Institution at the time of filling up this Attestation Form? नही
k)	Whether discharge/expelled/withdrawn from any training institution under the Government or otherwise? नही
If the answer to an of the mentioned question is <u>Yes, give full particulars</u> of the case/ arrest/ detention/	

fine/ conviction/ sentence/ punishment etc. and the nature of the case pending in the Court/ University/ Educational Authority etc. at the time of filling up this form.

Note: (i) Please also see the “warning” at the top of this Attestation Form.

(ii) Specific answers to each of the questions should be given by striking out ‘Yes’ or ‘No’ as the case may be.

Are you or have you ever been a member of a Party or Organization of Political, Communal or Cultural nature? If so, state the name of Party or Organization with the period/periods of your membership thereto.

I certify that the forgoing information is correct and complete to the best of my knowledge and belief. I am not aware of any circumstances which might impair my fitness for employment under the Government.

Signature of Candidate

Date

Place आष्टा

“APPENDIX – ‘B’

QUESTIONNAIRE FORM

1. Have you ever been convicted by any court of law
or any other judicial institution? YES/NO
2. Is there is any case pending against you in any court of law? YES/NO
3. Has any FIR been lodged and case is pending against you? YES/NO
4. Was any FIR ever lodged against you in the past? YES/NO
 - a) If yes, case No. and sections under which FIR was lodged?
 - b) Name of Police Station where FIR as lodged?
 - c) Was the case charge sheeted or returned in FIR?
 - d) If case as charge sheeted, what was the outcome in the court?
 - i) Convicted
 - ii) Acquitted
 - iii) Compromised
 - iv) Compounded
 - v) Any other, please specify
5. Have you ever been dismissed from any service
under the Central or State Govt.? YES/NO
6. Have your services ever been terminated while on probation? YES/NO

If the answer to any of the above is YES then please provide complete details on the separate sheet.

UNDERTAKING

I ____ declare that the above information is true to the best of my knowledge and belief. I understand that in case the information is found to be false or incorrect my candidature is liable to be cancelled apart from any departmental or legal proceedings that initiated against me.

Signature of the Candidate

Name JADHAV SATISH VIJAY

Fathers Name JADHAV VIJAY

Address AT POST ASTHA

TAL-WALWA DIST- SANGLI PIN- 416301,

STATE- MAHARASHTRA

Place 8th Reserve Bharwad

Date 10/12/2013

10. Purpose of seeking the information is to ascertain the character and antecedents of the candidate so as to ascertain the suitability for the post. Verification of character and antecedents is one of the important criteria. Therefore, the candidate will have to answer the questions truthfully and any misrepresentation or suppression or false statement therein, would demonstrate the conduct or character.

11. In *Pawan Kumar Vs. Union of India*¹⁰ at para 11 the Hon'ble Supreme Court has made the following observations held as under :-

“11. This cannot be disputed that the candidate who intends

¹⁰ 2023 12 SCC 317

to participate in the selection process is always required to furnish correct information relating to his character and antecedents in the verification/attestation form before and after induction into service. It is also equally true that the person who has suppressed the material information or has made false declaration indeed has no unfettered right of seeking appointment or continuity in service, but at least has a right not to be dealt with arbitrarily and power has to be judiciously exercised by the competent authority in a reasonable manner with objectivity having due regard to the facts of the case on hand. It goes without saying that the yardstick/standard which has to be applied with regard to adjudging suitability of the incumbent always depends upon the nature of post, nature of duties, effect of suppression over suitability to be considered by the authority on due diligence of various aspects but no hard and fast rule of thumb can be laid down in this regard.”

12. Registration of FIR No. 07/13 on 24.01.2013, against the Petitioner under Sections 323, 324, 504, 506 read with Section 34 of the IPC. Filing of Charge Sheet/Final Report on 04.05.2013, the same being registered as Criminal Case No. 117/2013 and the acquittal of the Petitioner by the 1st Class Joint Judicial Magistrate Islampur in Regular Criminal Case No. 117/2013, vide judgment dated 30.10.2013 are facts which are not in dispute. Similarly, copies of the said documents being submitted by the Petitioner, subsequent to his application dated 28.12.2013 is also not in dispute.

13. Dispute is whether the answers given by the Petitioner in the Questionnaire/Attestation Form, would amount to suppression of information and/or incorrect information with reference to antecedents, for want of complete details and supporting documents.

14. Petitioner submitted the Questionnaire Form on 10.12.2013. Apparently, the answers in the Questionnaire Form discloses confusion in the mind of the Petitioner. Be that as it may, answers given by the Petitioner to each question in the Questionnaire Form is “yes”.

In the context of the subject matter, answer given to question No. 4 in the Questionnaire Form would be relevant. {Was any FIR ever lodged against you in the past? YES/~~NO~~}.

Fault if any on the part of the Petitioner would be in not giving the details of the case and the status of the said proceedings.

15. With reference to the Attestation Form, fault on the part of the Petitioner would be in not answering questions in column No. 12(1) (a) & (b). Further details, would be dependent on answers to the said question.

However, answer as given in the Attestation Form, viz 12 (1)

(c), (f), (h), (i), (j) and (k) of the Column, apparently are based on documents.

16. Though, Mr. Helekar would be right to contend that it would have been appropriate for the Petitioner to have furnished / produced the details/ copies of FIR and the Charge-Sheet along with the Attestation/Questionnaire Form, however when admittedly copies of FIR, Charge-sheet and the order of acquittal being made available to CISF by the Petitioner, thus the Petitioner's antecedents being placed before the CISF, it would be too harsh to hold the Petitioner to be guilty of withholding information pertaining to antecedents or to conclude the Petitioner having furnished wrong or incorrect information.

Answers given by the Petitioner to the questions in the Questionnaire and the Attestation Form read with the documents submitted by the Petitioner, disclosed the antecedents of the Petitioner in the context of his involvement in criminal case, in the past. Even otherwise, it is not the case of the Respondents that the criminal case/proceedings against the Petitioner were discovered by the Respondents.

17. It is a matter of record that the Petitioner faced a full fledged trial in the Regular Criminal Case No.117 of 2013. The said trial culminated into an order of clean acquittal of the Petitioner, on merits. In the facts of the present case we are inclined to accept the contention urged on behalf of the Petitioner, that the Petitioner had reasons to believe, on the basis of a clean acquittal, that the shadow of criminal antecedents stood wiped off. In such circumstances, non-production of the documents along with the forms furnished by the Petitioner can be treated as a minor lapse. The same would not amount to suppression. Even otherwise the Petitioner would not have gained by withholding such documents which were in his favour.

18. Reference to para 35 in the case of *Avatar Singh* (supra) would be useful:

“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.”

19. Respondents rely on the “Policy Guidelines for considering cases of candidates for appointment in the CAPFs- pendency of criminal cases against candidates- the effect of”, notified by the Ministry of Home Affairs, on 01.02.2012 to support their decision. Reference to paragraph No.2(I) to (VII), and 4 of the said policy as relevant is transcribed hereunder:-

“2. Accordingly, the matter has been considered in this Ministry in consultation with CAPFs, and it has been decided as follows:-

I. A candidate is required to declare in the application from, whether he has been arrested, prosecuted or convicted by a court for any criminal offence. If a candidate does not disclose the fact of his/her involvement and/or arrest in criminal case(s), complaint case(s), preventive proceedings etc. under IPC or any other Act of the Central or State Government in the application form, during medical examination as well as in the attestation/verification form and the fact subsequently comes to the notice of recruiting authorities found out from the verification report received from the District authorities or otherwise, his candidature/appointment will be cancelled. However, in case the candidate has already been appointed, while cancelling/terminating the appointment, the principle of natural justice shall be followed and opportunity of being heard would be accorded to the candidate.

II. If a candidate does not disclose his/her involvement and/or arrest in criminal case(s), complaint case(s), preventive proceedings etc. under IPC or any other Act of the Central or State Government in the application form but discloses the same during medical examination/PET and/or in the attestation/ verification form, in writing, the candidature will not be cancelled on this ground alone.

III. The candidate will not be considered for recruitment if:
*a) Such involvement/case/arrest is concerned with an offence mentioned in **Annexure-A**;*
b) Such arrest/detention is made under any of the Acts

which are concerned with security and integrity of the country, terrorist and disruptive activities, acts against the State, insurgency, etc.;

c) The candidate has been detained under the National Security Act/Crime Control Act/any similar legislation, and the same is confirmed by the Reviewing Authority;

d) Such involvement/case/arrest is concerned with an offence involving moral turpitude;

e) He/she has been convicted by a Court in any case whether or not an appeal is pending against such conviction.

Provided that the candidate shall not be barred in the above cases, if only an FIR has been registered/the case is under investigation and no charges have been framed either on FIR or on the complaint in any Court of Law.

Provided further that the candidate shall not be debarred if he/she has been finally acquitted/discharged by a Court, whether an appeal is pending or not against such a acquittal.

Provided further that the candidate shall not be debarred if the proceedings are withdrawn by the Central/State Government.

Provided further that the candidate shall not be debarred if he/she has been involved/convicted/concerned with minor offences mentioned in Annexure-B or those mentioned in Chapter VIII & X of Code of Criminal Procedure, 1973.

IV. Where a candidate has been convicted and awarded a jail-term of more than six months, he/she will generally not be considered suitable for appointment in the CAPF.

V. Notwithstanding the provisions of 3(III) above, such candidates against whom chargesheet 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 have turned hostile due to fear or reprisal by the accused persons(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 at 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 candidate shall be considered for appointment in the concerned CAPF.

VI. Involvement in minor offences, traffic violations, juvenile in conflict with law (tried in open courts/Juvenile Justice Boards) and accident cases will not debar an individual for appointment in CAPFs & ARs provided that appointments for the post of Driver and those related to driving will not be offered to the individuals, punished for serious traffic offences.

VII. If a candidate is discharged by extending the benefit under the Probation of Offender Act, 1958, the suitability of such candidate shall be put up for consideration of the selection committee as constituted by the DGs of CAPFs & ARs from time to time for assessing his/her suitability for appointment in the concerned CAPF.

4. Where the Appointing Authority is of the opinion that it is necessary or expedient to do so, it may after consultation with the Ministry of Home Affairs, by order, for reasons to be recorded in writing, relax any of the provisions of this Policy with respect to any individual, class or category or individuals.”

20. Though, the said policy guidelines do not excuse the candidate from giving correct answers to the questions posed in the Attestation Form, however we find that the said policy would aid the case of the Petitioner.

- a) Said policy does not *per se* debar a candidate from being considered for recruitment merely on account of non-disclosure of the criminal cases/offense against him.
- b) Annexure-A of the said policy enlist the crimes which are considered as serious offenses or offense involving moral turpitude.

c) The offenses alleged against the Petitioner do not fall in the crimes enlisted in said Annexure-A to the said policy.

d) In terms of Clause 2(II) of the said policy disclosure of antecedents at a subsequent stage, would not be a ground to cancel the candidature. The Respondents in their reply have admitted that the Petitioner had disclosed the registration of the FIR and the status of the criminal proceedings at the stage of documentation.

e) Proviso to Clause 2(III) makes a reference to a candidate involved in the crimes listed in Annexure-A to the said policy, not being debarred if he has been finally acquitted/discharged by a Court. Petitioner has been acquitted of the offense charged. Said acquittal was on merits, after a full fledged trial and prior to the offer of appointment.

21. The decision of this Court in the case of Swapnil Prakash Parab (supra) relied by the Respondents, would not apply to the case at hand. In the said case the candidate was appointed as a hospital work assistant. Though a crime was registered against the said candidate and he was facing a criminal case, however the said fact was not disclosed in the Attestation Form. The said fact came to the

knowledge of the employers, who thereafter, terminated the services.

As held above, in the instant case, the Petitioner cannot be said to have suppressed his antecedents.

22. In *Ravinder Kumar Vs. State of Uttar Pradesh*¹¹, the Hon'ble Supreme Court was considering a case of the candidate who was terminated from services on the ground of non-disclosure of a criminal case, in which the said candidate was acquitted. The Hon'ble Supreme Court by referring to the law laid down in *Avtar Singh* (supra), *Satish Chandra Yadav* (supra) and other decisions, set aside the termination by holding that there was no suppression. In paragraph No.33.10, the Hon'ble Supreme Court has observed as under:-

“33.10 While examining whether the procedure adopted for enquiry by the authority was fair and reasonable, we find that the order of cancellation of 12-4-2005 does not even follow the mandate prescribed in Clause 4 of the Form of Verification of Character set out in the earlier part of this judgment (see para 13, above). Like it was found in Ram Kumar⁶ instead of considering whether the appellant was suitable for appointment, the appointing authority has mechanically held his selection was irregular and illegal because the appellant had furnished an affidavit with incorrect facts. Hence, even applying the broad principles set out in para 93.7 of Satish Chandra Yadav¹², we find that the order of cancellation dated 12.04.2005 is neither fair nor reasonable, Clause 9 of the recruitment notification has to be read in the context of the law laid down in the cases set out hereinabove.”

¹¹(2024) 5 SCC 264

23. In *Mohd. Imran v. State of Maharashtra*¹², a case similar to the case of the Petitioner, wherein a candidate had made the disclosure of a criminal case, the Hon'ble Supreme Court made following observations in para 5:-

“5. Employment opportunities are a scarce commodity in our country. Every advertisement invites a large number of aspirants for limited number of vacancies. But that may not suffice to invoke sympathy for grant of relief where the credentials of the candidate may raise serious questions regarding suitability, irrespective of eligibility. Undoubtedly, judicial service is very different from other services and the yardstick of suitability that may apply to other services, may not be the same for a judicial service. But there cannot be any mechanical or rhetorical incantation of moral turpitude, to deny appointment in judicial service simpliciter. Much will depend on the facts of a case. Every individual deserves an opportunity to improve, learn from the past and move ahead in life by self-improvement. To make past conduct, irrespective of all consideration, an albatross around the neck of the candidate, may not always constitute justice. Much ill, however depend on the fact situation of a case.

24. From the position of law as it stands, criminal antecedents of a candidate, in itself would not be a bar for appointment. Even in a case where the candidate has made a declaration truthfully and correctly of a criminal case, the employer still has a right to consider the antecedents and cannot be compelled to appoint the candidate. The test is whether the candidate has made truthful declaration of his antecedents. In the instant case, we find substance

12 2019 (17) SCC 696

in the contention of Mr. Chavan that the non-production of the documents along with attestation form/questionnaire form, at the most would be a lapse. Reason put forth by the Petitioner for non-production of documents along with the said form in the facts of the present case would be acceptable. At any rate, the same would not be fatal to the case of Petitioner.

It is not the case of the Respondents that the involvement of the Petitioner in a criminal case, in the past and / or the Petitioner being charged of the offenses referred to in the FIR No. 07/13 on 24.01.2013, would amount to his disqualification.

25. In the case of Arunima Baruah v/s. Union of India & Ors.¹³, the Hon'ble Supreme Court has observed as follows :

“12. It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the list between the parties, the court may not refuse to exercise its discretionary jurisdiction. It is also trite that a person

13 (2007) 6 SCC 120

invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.”

26. Petitioner was issued an offer of appointment and was directed to join duties. Petitioner's candidature was abruptly cancelled, without assigning any reasons. Petitioner was not afforded a hearing before the cancellation of his candidature / cancellation of the offer of appointment dated 15.12.2013.

27. Having considered the facts of the case and the legal position, we are of the opinion that the reasons given for cancellation of the offer of appointment dated 15.12.2013 issued to the Petitioner are illegal. Consequently, we direct the reinstatement of the Petitioner to the post of Constable/Driver in CISF. Accordingly, the impugned order dated 04.03.2015 and order dated 16.03.2016 are quashed and set aside. Cancellation of the offer of appointment by the Respondent No.4 is declared as illegal.

28. We direct the Respondents to reinstate the Petitioner w.e.f. 01.04.2025. The period between 31.12.2013 till 01.04.2025 may be taken into consideration for continuity of service and other benefits.

However, the Petitioner will not be entitled for any salary for this period. Even otherwise no salary is required to be paid to the Petitioner as the Petitioner did not actually work during the said period and, therefore, principle of no work and no pay will also apply.

29. Rule made absolute to the aforesaid extent. There shall be no orders as to cost.

(ASHWIN D. BHOBE, J)

(NITIN W. SAMBRE, J)

Nikita