



2024:DHC:7640-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 01.10.2024***+ W.P.(C) 11083/2022
MR BISHNU PRATAP

.....Petitioner

Through: Mr.Sandeep Mishra, Mr.Surbhit
Nandan, Ms.Nandika Vyas &
Mr.Arjun Kasana, Advs.

versus

UOI THROUGH MINISTRY OF HOME AFFAIRS & ORS.

.....Respondents

Through: Ms.Nidhi Raman, CGSC/UOI
with Mr.Zubin Singh, Ms.Rashi
Kapoor, Advs. with Mr.Yaspal,
CISF Inspector.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****HON'BLE MS. JUSTICE SHALINDER KAUR****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed by the petitioner challenging the Order dated 21.12.2020 passed by the Commandant, Central Industrial Security Force (CISF) Unit, Greater Noida (U.P.), terminating the service of the petitioner with immediate effect. The petitioner also challenges the Orders dated 03.09.2021 and 06.09.2021, by which his representation against the order of termination has been rejected by the respondents.

Case of the petitioner:

2. It is the case of the petitioner that the petitioner applied to the post of Constable/sweeper in the year 2017 with the CISF. During the



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selection process, the petitioner was named as an accused in an FIR bearing No. 138/2018 at Police Station Mau, Distt. Bhind, Madhya Pradesh, for an incident on 14.05.2018, alleging that he had physically assaulted the victim along with his brother after entering the house of the victim. However, the petitioner was acquitted of the charges *vide* a Judgment dated 10.06.2019 passed by the learned Special Judge.

3. The petitioner was appointed as a Constable [CT/TM(Swpr)] on 07.01.2019, and he attended his training programme at RTC Barwaha Unit, Dist. Khargoni, Madhya Pradesh. After completing the training, he received his first posting at CISF Unit SSG Greater Noida, on 23.06.2019. While he was serving in the said Unit, he received a Show Cause Notice dated 03.09.2019, issued to him by the Commandant CISF Unit Greater Noida, stating that he has concealed the fact of the registration of the above-mentioned FIR. The petitioner submitted his reply to the Show Cause Notice, however, by the Impugned Order dated 21.12.2020, he was terminated from service.

4. As noted hereinabove, his representations against the termination were also rejected *vide* Orders dated 03.09.2021 and 06.09.2021. Aggrieved of the same, the petitioner has filed the present petition.

Submissions of the learned counsel for the petitioner:

5. The learned counsel for the petitioner submits that mere suppression of a fact of registration of an FIR may not be sufficient to terminate the service of the petitioner. In support, he places reliance on the policy guidelines dated 01.02.2012 issued by the Government



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of India, Ministry of Home Affairs, as also on the Judgment of the Supreme Court in *Avtar Singh v. Union Of India and others*, (2016) 8 SCC 471.

Submissions of the learned counsel for the respondents:

6. On the other hand, the learned counsel for the respondents submits that in the present case, the petitioner filled his attestation form, which was also in vernacular, on 28.12.2018. She submits that the form warned the candidates that any false information provided in the form will be a ground for terminating the service of the candidate. In spite of such warning, the petitioner chose to conceal the factum of registration of the above-mentioned FIR and the pendency of the criminal case against him. She submits that, therefore, this itself was a sufficient ground to terminate the services of the petitioner, not only in terms of the policy guidelines referred hereinabove, but also in terms of Rule 26 (4) of the Central Industrial Security Force Rules, 2001 (in short, 'CISF Rules').

7. Placing reliance on the Judgment of the Supreme Court in *Daya Shankar Yadav v. Union of India & Ors.*, (2010) 14 SCC 103 and *Union of India & Ors. v. Methu Meda*, (2022) 1 SCC 1, she submits that suppression of a vital fact, such as registration of an FIR, itself is a ground to terminate the services of the petitioner.

8. She submits that, even otherwise, the acquittal of the petitioner in the criminal case being only for the reason of extension of the benefit of doubt, cannot be said to be an honourable acquittal, and no benefit thereof can be obtained by the petitioner.



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Analysis and findings:

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

10. In the present case, a reading of the Impugned Orders would show that the only reason for terminating the service of the petitioner is the concealment of the registration of the FIR against him. Though the Order dated 03.09.2021 makes a reference to the acquittal of the petitioner in the said criminal case, it does not further state that the acquittal is not being considered as it was because of an extension of a benefit of doubt and was not honourable. Therefore, the submission of the learned counsel for the respondents that the acquittal not being honourable cannot be considered or come to the aid of the petitioner, cannot be accepted.

11. As noted hereinabove, the only ground for terminating the service of the petitioner is the suppression of the registration of the FIR and the pendency of the criminal case against him. In ***Avtar Singh*** (supra), the Supreme Court, while considering the law applicable to cases of suppression of fact and effect thereof, 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



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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. xxxxxx

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



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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, 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*



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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/



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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



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such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8. *If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.*

38.9. *In case the employee is confirmed in service, holding departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.*

38.10. *For determining suppression or false information attestation/ verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.*

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

(Emphasis Supplied)

12. In **Avtar Singh** (supra), the Supreme Court has *inter alia* held that while passing an order of termination of service or cancellation of candidature for giving false information, the employer may take into account the special circumstances of the case, if any. 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



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be dealt with arbitrarily, and the exercise of power has to be in a reasonable manner with objectivity, having due regard to facts of the case. Not every technical or trivial matter being suppressed can lead to termination of service.

13. In *Pawan Kumar v. Union of India*, 2022 SCC OnLine SC 532, after considering the Judgment of *Avtar Singh* (supra), the Supreme Court reiterated 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 being 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.”

(Emphasis Supplied)

14. In the facts of that case, wherein the petitioner had been discharged from service only on account of concealment of a criminal case, the Supreme Court further held as under:-

“18. The criminal case indeed was of trivial



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nature and the nature of post and nature of duties to be discharged by the recruit has never been looked into by the competent authority while examining the overall suitability of the incumbent keeping in view Rule 52 of the Rules 1987 to become a member of the force. Taking into consideration the exposition expressed by this Court in Avtar Singh (supra), in our considered view the order of discharge passed by the competent authority dated 24th April, 2015 is not sustainable and in sequel thereto the judgment passed by the Division Bench of High Court of Delhi does not hold good and deserves to be set aside.”

15. Applying the above test to the facts of the present case, it is noticed that the criminal case which was pending against the petitioner was one with respect to a fight which took place in the village between two youth. The injured in the case did not support the case of the prosecution. The petitioner was, therefore, acquitted of the criminal charges.

16. Rule 26(4) of the CISF Rules reads as under:-

“26. Termination

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(4) During the period of probation or its extension thereof, as the case may be, the appointing authority may without assigning any reason terminate the services of a member of the Force on the grounds of furnishing false or incorrect information at the time of appointment of that member of the Force or for his failure to pass the basic training or repeat course, by tendering a notice of one month to that effect or one month's pay in lieu thereof.”



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17. The above Rule also vests discretion with the appropriate authority to consider the effect of suppression and pass an appropriate order thereon. The discretion must be exercised keeping in view all the relevant facts. Mere suppression of the fact, therefore, may not be sufficient to terminate the services.

Conclusion:

18. In view of the above, the Impugned Orders dated 21.12.2020, 03.09.2021, and 06.09.2021 passed against the petitioner cannot be sustained. They are accordingly set aside.

19. The respondents are directed to reinstate the petitioner in service to the post of Constable [CT/TM(Swpr)] on which he was selected pursuant to his participation in the selection process. We, however, 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, but at the same time, he will be entitled to all notional benefits, including pay, seniority and other consequential benefits etc.

20. The petition is allowed in the above terms.

NAVIN CHAWLA, J

SHALINDER KAUR, J

OCTOBER 1, 2024/rv/SG/VS

Click here to check corrigendum, if any