

**(Deepak Singh Tomar Vs. Union of India & Ors.)****09.08.2016**

Shri M.P.S.Raguwanshi, learned counsel for the petitioner.

Shri Vivek Khedkar, learned Assistant Solicitor General for respondent No.1/Union of India.

This petition under Article 226 of the Constitution of India assails the impugned orders dated 03.01.2009 and 20.11.2008 (Annexures P/1 and P/2) respectively whereby the probationary service of the petitioner appointed as Constable has been terminated on the ground of having suppressed material facts of criminal antecedents in his attestation form.

The facts which are undisputed are that the petitioner vide Annexure P/3 dated 11.08.2007 was selected and appointed as Constable in the Central Industrial Security Force (CISF) substantively in the pay scale of Rs. 3050-75-3950-4590. It is not disputed that the petitioner assumed charge on the post of Constable/Driver pursuant to the appointment order.

The probationary period was for two years. The petitioner while filling up the attestation form which has been subsequently filed by the Union of India along with the list of documents dated 09.08.2016, mentioned (*Nahi*)/No as answer to the query whether he had ever been prosecuted. Further the attestation form provided an endorsement in shape of warning that suppression of factual information or providing any false information would lead to cancellation of candidature and employment.

It was revealed to the employer by the police authorities that the petitioner was involved in Crime No. 219/2013 alleging offences u/S 341, 294, 323 and 506 IPC. It was further informed that the said crime led to filing of charge sheet which however, culminated into acquittal of the petitioner on 19.02.2004 vide Annexure P/5 under the

**W.P.No.1016/2009**

provisions of Section 320(8) by compounding the earlier offences alleged.

Learned counsel for the petitioner at this juncture invites the attention of this Court to the order of compounding dated 19.02.2004 by submitting that the petitioner was acquitted after compounding of the offences u/S 341, 294, 324/34, 323/34 and 506 part II of IPC, where the offence u/S 325 of IPC was not mentioned since it is the submission of the learned counsel for the petitioner that Section 325 of IPC was in fact never alleged against the petitioner.

Learned counsel for the petitioner while assailing the impugned order has relied upon the recent decision of the Larger Bench comprising of three Hon'ble Judges of the Apex Court in the case of Avtar Singh Vs. Union of India & Ors. decided on 21<sup>st</sup> July, 2016, wherein, after considering several cases including the cases of termination of service of the members of disciplined force on the ground of suppression of material facts in the attestation form, the Apex Court has laid down certain guidelines in para 30 which for convenience and ready reference are reproduced below:-

**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 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.

(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.

Learned counsel for the Union of India, on the other hand relies upon the decisions in the cases of **Devendra Kumar Vs. State of Uttaranchal And Ors.** reported in (2013) 9 SCC 363, **Commissioner of Police, New Delhi and Anr. Vs. Mehar Singh** with **Commissioner of Police, New Delhi and Anr. Vs. Shani Kumar** reported in (2013)7 SCC 685 and **State of Madhya Pradesh and Ors. Vs. Parvez Khan** reported in (2015) 2 SCC 591 and contends that the said three decisions of the Apex Court are specific on the point involved herein that suppression of material facts in the attestation form while considering appointment to disciplinary force.

It is submitted that these three earlier decisions have not been considered by the Larger Bench of the Apex Court in **Avtar Singh (Supra)**.

This Court has to first deal with the aspect as to whether the said three decisions cited by the learned Assistant Solicitor General which relate exclusively to the service in

disciplined force, continue to hold the field even in the face of the Larger Bench decision in the case of **Avtar Singh (supra)**.

There is no manner of doubt that the said three decisions relied upon by the learned ASGI are rendered by Benches of two Hon'ble Judges while the case of **Avtar Singh Vs. Union of India & Ors. Passed in Special Leave Petition © No. 20525/2011** decided on 21<sup>st</sup> July, 2016 is by a Bench comprising of three Hon'ble Judges.

More so, if the decision of the **Avtar Singh (supra)** is scrutinized minutely, the following observations made in the said decision are worthy of reproduction for resolving the controversy in question. The same are reproduced herein below:-

**PARA-1**

**29.9.** An employee in the uniformed service presupposes a higher level of integrity as such a person is expected to uphold the law and on the contrary such a service born in deceit and subterfuge cannot be tolerated.

31. Though there are very many decisions in support of the various points culled out in the above paragraphs, inasmuch as we have noted certain other decisions taking different view of coordinate Benches, we feel it appropriate to refer the abovementioned issues to a larger Bench of this Court for an authoritative pronouncement so that there will be no conflict of views and which will enable the courts to apply the law uniformly while dealing with such issues."

**PARA-2**

This Court while referring the matter had expressed the opinion that in case an appointment order has been secured fraudulently, the appointment is voidable at the option of the employer and the employee cannot get any equity in his favour and no estoppel is created against the employer only by the fact that the employee has continued in service for a number of years. It has been further observed that if appointment is secured on forged documents, it would amount to

misrepresentation and fraud. The employer has a right to terminate the services on suppression of important information or giving false information, having regard to nature of employment. Verification of character and antecedents is important if the employer has found an incumbent to be undesirable for appointment to a disciplined force. It cannot be said to be unwarranted. The Court thus further opined that suppression of material information necessary for verification of character/antecedents will have a clear bearing on character and antecedents of a candidate in relation to his continuity in service and such a person cannot claim a right for appointment or continuity in service. The Bench was of the view that in uniformed service, suppression or false information can be viewed seriously as it requires higher level of integrity and the employer is supposed to find out before an appointment is made that criminal case has come to an end and pendency of a case would serve as a bar for appointment and in such cases of suppression whether different yardsticks can be applied as noted in the various decisions of this Court. The question which has been referred to arises frequently and there are catena of decisions taking one view or the other on the facts of the case. It would be appropriate to refer to the various decisions rendered by this Court; some of them have been referred to in the impugned order.

**PARA-26**

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.

**PARA-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.

**PARA-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.

**PARA-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.

It is also relevant to mention here that the specific contention of the learned ASGI that the matters of employment in armed force have not been taken into account in **Avtar Singh (supra)** is required to be considered.

In this regard perusal of the decision of **Avtar Singh (supra)** in particular Para 11, 12, 15, 17, 18 and 19 reveal that the Apex Court has dealt with the matters of termination of appointment/candidature due to suppression of material information in the attestation form by the members disciplined force in the cases of **R.Radha Krishnan Vs. Director General of Police and Ors.** reported in **(2008)1 SCC 660**, **Union of India and Ors. Vs. Bipad Bhanjan Gayen** reported in **(2008)11 SCC 314**, **Daya Shankar Yadav Vs. Union of India and Ors.** reported in **(2010)14 SCC 103**, **State of West Bengal and Ors. Vs. SK. Nazrul Islam** reported in **(2011)10 SCC 184** **Commissioner of Police Vs. Sandeep Kumar** reported in **(2011) 4 SCC 644** and **Ram Kumar Vs. State of U.P.** reported in **(2011)14 SCC 709**.

Thus, the submission of the learned ASGI as mentioned above does not hold water.

Considering the final guidelines laid down by in para 13 of the Larger Bench decision, it is noticed that the law laid down which squarely applies to the factual matrix of the case herein is contained in para 30(4)(a) which is reproduced again for ready reference:-

**PARA-30**

**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.

Consequently, it is evident that after taking into account various decisions including those of members of disciplined force, the Larger Bench of Apex Court has laid down that where it is found that there is suppression of information in a criminal case where acquittal or conviction has already been recorded and this fact comes to the knowledge of the employer later, then the appropriate recourse to be followed is that if the criminal case was of trivial nature and the same may not render the incumbent unsuitable for the post in question the employer may in its discretion, ignore such suppression of fact or false information by condoning the lapse.

It is thus evident that since though the Larger Bench in Avtar Singh did not consider the earlier three decisions rendered by Benches of lesser composition, but the point of



law in those three earlier decision was duly considered in detail, this Court is compelled to infer that the earlier three Division Bench decision of the Apex Court are impliedly over ruled by the Larger Bench comprising of three Hon'ble Judges of the Apex Court.

Whether the criminal case in which the petitioner was involved which ended in acquittal was trivial in nature is not for this Court to decide as the said decision may depend on various factors including nature of duty attached to the post in question, the extent of discipline required in the service in question and whether the offence and suppression of the same would adversely reflect upon the character of the incumbent. All these factors or may be some more ought to be left to the discretion of the employer to decide.

In view of the above, this Court is of the considered view that in the light of the law laid down by Larger Bench of the Apex Court in **Avtar Singh (supra)** the question as to whether the petitioner in the given facts and circumstances as enumerated above is fit to be retained in disciplined force or not, needs to be reconsidered by the respondents.

Considering the aforesaid, instant petition is disposed of with the following directions:-

1. The respondent No.5 shall reconsider the case of the petitioner to adjudge his suitability for retention in police force in terms of the above directions keeping the law laid down by the Apex Court( **Avtar Singh Vs. Union of India & Ors.**) in mind.
2. Case of the petitioner shall be decided within 60 days from the date of receipt of the copy of this order.
3. The necessary decision taken by the employer shall be communicated to the petitioner within the above said

period.

4. While considering the case of the petitioner the respondent shall not be influenced by passing of the impugned termination order and the fact of the petitioner having approached this Court.

5. It is needless to emphasis that in case, the decision that is ultimately taken by the employer after due consideration in terms of the directions given above, is of retaining the petitioner in service then appropriate orders for reinstatement shall be passed as expeditiously as possible by giving the petitioner continuity in service along with all the consequential benefits.

No order as to costs.

**(Sheel Nagu)**  
**Judge**

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