

**Writ Petition No.1421/2015
(Dataram Yadav vs. State of M.P. and others)**

24/10/2016

Shri D.P. Singh, Advocate for petitioner.

Shri N.S. Kirar, Panel Lawyer for respondents/State.

This writ petition under Article 226 of the Constitution of India is directed against the impugned order dated 12/1/2015 cancelling the candidature of the petitioner after selection for appointment on the post of Constable (GD) as an Ex-Serviceman on the ground of ineligibility due to a criminal case vide Crime No.56/92 registered against him under Sections 147, 148 and 149 of IPC at Police Station Ater, District Bhind, though the case was disposed of on compromise by the criminal Court on 16/9/2002 during trial for the offences under sections 323, 324 (323/149, 324/149).

2. Facts relevant for disposal of the writ petition are to the effect that the petitioner belonging to OBC category started his career as Sipoy on 17/7/1989 in Indian Army. Thereafter, petitioner was promoted as Hawaldar and retired from the said post on 13/7/2013.

3. In response to an advertisement issued by the respondents, petitioner had applied for appointment to the post of Constable in the year 2013 as an Ex-Serviceman under OBC category. Result was declared and petitioner was selected. Posting orders for the Unit at District Bhind was issued in the year 2014, Annexure P/7. However, before petitioner joined the post, he was declared ineligible for the reason of registration of a crime case No.56/92 in the light of the judgment of the Hon'ble Supreme Court in

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the case of *Commissioner of Police, New Delhi and another vs. Mehar Singh*, (2013) 7 SCC 685.

4. Taking exception to the aforesaid impugned order, learned counsel for the petitioner contends that respondents though have passed the impugned order relying upon *Mehar Singh's* case, but as a matter of fact without appreciating the ratio of the decision. Further, a Bench of three Hon'ble Judges in the case of *Avtar Singh vs. Union of India and others*, (2016) 8 SCC 471 in fact have reviewed the entire case law on the subject, i.e. the jurisdiction of the employer to adjudge eligibility/suitability in the matter of selection for appointment to a post in the event of suppression of material information or false information in the application form as to conviction, acquittal, arrest or pendency of a criminal case and in the event where the employee has made a declaration truthfully of a concluded criminal trial or where the offence is of trivial nature ultimately resulting into acquittal based on compromise prior to submission of application for appointment. In para 38 of the judgment the Hon'ble Supreme Court has held comprehensively and inclusively various nature of eventualities in the aforesaid context and further explained the extent and scope of jurisdiction of the authority to deal with them while taking a decision for the eligibility / suitability of a candidate for employment to a post. Amongst others, the Hon'ble Supreme Court has cast an obligation upon the employer to consider all relevant facts available as to antecedents, gravity of the offence, degree of involvement, conduct of the candidate and effect

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on the employment and such other akin facts, thereafter to take a decision thereupon. The rule, therefore, is that there should be an objective assessment of the facts in hand based on relevant material to arrive at a decision.

Learned counsel further contends that in the case in hand though it is stated in the impugned order that the screening committee was constituted to examine the case of the petitioner, but it is not indicated as regards assessment of relevant facts by the committee, which led to a decision to cancel the candidature of the petitioner except reliance upon *Mehar Singh's* case.

While advancing contention in the context of *Mehar Singh's* case learned counsel puts forth that the Court had examined the relevant material, which were placed before the screening committee to adjudge the decision of the screening committee rendering the candidature of Mehar Singh as ineligible for appointment, i.e. nature of allegations, act/ overt-act attributed to Mehar Singh in the scene of offence, seriousness of offence on facts etc. Further in that case, the FIR was registered in the year 2004 under Sections 143, 341, 323 and 427 of IPC. Case was compromised with the complainant on 30/1/2009. Mehar Singh had applied for the post of Constable in the year 2009 pursuant to an advertisement. Considering gravity of offence, nature of allegations, degree of involvement, specific overt act attributed to Mehar Singh, his violent nature and that he had no respect for the law of the land after notice he was declared ineligible, as per the Standing Order No.398/2010 issued by the Delhi Police: a policy for deciding cases of candidates provisionally

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selected in Delhi Police involved in criminal cases (facing trial or acquitted).

Learned counsel contends that the element of discretion is involved in the process of scrutiny and assessment of antecedents before a decision is taken either to appoint/continue or not to appoint/cancel the appointment. The discretion conferred upon the Authority is not absolute in nature, but is guided by reasonableness and the decision arrived at must be objective, based on relevant considerations as propounded by the Hon'ble Supreme Court in the case of *Avtar Singh* (Supra).

In the instant case, the petitioner served for a period of 24 years in the Indian Army (17/7/1989 to 13/7/2013). The incident occurred in the year 1992. The alleged offences under sections 323 read with 147, 148 and 149 of the IPC were of trivial nature. The criminal case was concluded as compromised on 16/9/2002 i.e. 11-12 years prior to submission of application for appointment as Constable (GD) as an Ex Serviceman. Thereafter, petitioner undertook written test and interview and was declared successful. However, at the stage of joining at a distance of time in the year 2014, he is slapped with the impugned order which merely mentions the criminal case registered as 56/92 and citation of the Hon'ble Supreme Court in *Mehar Singh's* case to justify cancellation of appointment of the petitioner. Though it is stated that the Screening Committee did not find the petitioner suitable, yet there is no mention of the relevant considerations either in the impugned order or in the counter affidavit or for that matter no document in the context has been

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submitted with regard to deliberations of the Screening Committee. With the aforesaid submissions, learned counsel contends that the impugned order has been passed in slipshod manner, without application of mind. As such, it suffers from vice of arbitrariness, caprice and unreasonableness, therefore, the same deserves to be quashed.

5. *Per contra* learned counsel for the respondent-State contends that Criminal Case No. 56/92 was registered against the petitioner for the offences under sections 323, 324, 147, 148 and 149 of the IPC and committed to the Court for trial. It is not a case of honorable acquittal, but acquittal on compromise. Charges levelled against the petitioner fall in the category of serious offence of moral turpitude. Therefore, the petitioner was not held suitable for appointment, as appointment in Police services requires men of integrity and clean conduct, as they are required to serve the public at large for maintenance of law and order. With the aforesaid submissions, the petition is sought to be dismissed.

6. Heard, counsel for the parties.

7. Whether cancellation of the appointment of petitioner on aforesaid facts and circumstances can be said to be justified in the light of judgment of the Hon'ble Supreme Court in the case of *Avtar Singh* (Supra), is the sole question to be addressed.

True it is that verification of character and

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antecedents of an incumbent before appointment to a post is an important criterion to test whether the selected candidate is suitable for that post under the State. The petitioner has qualified written test, found physically fit, declared successful in the interview and was provisionally appointed on the post. The competent Authority/employer while adjudging the suitability of a candidate is expected to act prudently and rationally on due consideration of facts and circumstances before arriving at a decision. It needs no mention that reasonableness of action by a public Authority is often quoted to be antithesis of arbitrariness and rests on principles of rule of law and in conformity with Article 14 of the Constitution which ensures every person equality before law and equal protection of laws.

8. Petitioner was recruited in the year 1989 as a *Sepoy* and superannuated in the year 2013 as *Havaldar* after serving the Indian Army for 24 years, a most coveted and foremost security services of the Government of India. His promotion to the post of *Havaldar* suggests that petitioner had an unblemished service career. Whether a singular incident of the year 1992 at his home place at Bhind wherein allegations under sections 323, 324, 147, 148 and 149 of the IPC were levelled against him and the case did not even to go to trial as the petitioner stood absolved of the charges though on compromise, by itself as a sole reason/justification without anything more can form the plank for cancellation of appointment of petitioner in question in the year 2014, requires serious consideration. The competent Authority/Screening Committee was

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required to consider relevancy of incident of 1992 in the year 2014 juxtaposing the same with his service profile in Indian Army before taking the decision for cancellation of appointment. That was not done. The Authority was also required to adjudge the nature of allegations, involvement of the petitioner and acts attributed to him in the alleged incident to ascertain whether the conduct of petitioner tantamounted to moral turpitude after 24 years of the date of incident. The competent Authority/Screening Committee was further required to otherwise ascertain the character and antecedents of the petitioner while adjudging his suitability for the post. But there is no such consideration by the competent Authority/screening Committee and the decision, as such, to cancel the appointment of the petitioner runs contrary to the mandate contained in *Avtar Singh's* case, particularly that in paragraphs 30, 38.4, 38.4.1 and 38.4.3 quoted thus:-

“30. The employer is given ‘discretion’ to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an incumbent for services in question. In case the employer come to the conclusion that suppression is immaterial and even if facts would have been disclosed would not have affected adversely 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,

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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 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.”

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 recourse 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.

38.4.3 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

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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.”

9. The competent Authority/Screening Committee was further required to take into consideration the concept of reformatory theory which has been held to be relevant and is required to be considered while exercising the power for cancellation of candidature or discharging an employee from services. In this context, para 37 of the judgment is relevant which reads thus:-

“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.”

10. Though the police force is a disciplined force and maintains high standards to shoulder the great responsibility of maintaining law and order and public order in the society; people repose great faith and confidence in it and a candidate wishing to join the police force must be a person of utmost rectitude having impeccable character and integrity, yet, it cannot be lost sight of that the gravity of the incident stood vastly mitigated due to efflux of time during which petitioner rendered unblemished services in country's most venerable and foremost armed forces engaged in security of the Country, and also due to

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incident's trivialness and lack of material on record, to conclude with vulnerability of candidature of petitioner. As such, without considering his antecedents and condemning the petitioner for a remote and obsolete incident after an elapse of 24 years, would not only deprive him of his job, but also cast a social stigma upon him which would further severely jeopardize his right to livelihood.

11. In view of the aforesaid, the petition stands allowed and the impugned order dated 12/1/15 is hereby set aside. Petitioner is directed to be taken back on the rolls of Police department with continuity of service. There shall be no order as to costs.

**(Rohit Arya)
Judge**

Arun*/(and)