

SUPREME COURT OF INDIA

Avtar Singh

Vs.

Union of India

C.A.No.18798/2017

(Kurian Joseph and R.Banumathi,JJ.,)

15.11.2017

JUDGMENT

Kurian Joseph,J.,

SLP(Civil) No.20525/2011

1. Leave granted.

2. This is a case in which the appellant was terminated from service on account of suppression of his involvement in a criminal case. He was enlisted for appointment in CRPF on 24.08.1994. He submitted a verification form on 9.12.1994. Column No.12 belonged to involvement in any criminal case. That was left unfilled.

3. On subsequent verification it was found that an FIR had been registered against him on 28.10.1992 under Sections 323, 324 read with Section 34 IPC. He was acquitted by judgment dated 2.5.1994. But, an appeal at the instance of the respondent(s) was pending when the termination took place. The High

Court has upheld the termination.

4. In *Avtar Singh v. Union of India and Others, reported in'*, this Court has considered in detail as to the circumstances under which the stringent action could be taken and to what extent the employer can exercise its discretion. Relevant portion reads as follows:-

"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/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 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.

38.4.2 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 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."

5. In view of the judgment in Avtar Singh (supra), operative portion of which we have extracted above, we direct the Appointing Authority to consider afresh the case of the appellant in the light of the law laid down by this Court and subsequent development pertaining to the order passed in appeal and pass appropriate orders thereon.

6. We make it clear that a speaking order will be passed.

7. In order to enable the Appointing Authority to pass orders, as above, we direct the appellant to file an appropriate representation before the Appointing Authority and the Appointing Authority will pass orders, in accordance with law, within four months from the date of receipt of a representation after affording an opportunity of hearing to the appellant.

8. The appeal is disposed of as above.

9. Pending applications, if any, shall stand disposed of.

10. There shall be no orders as to costs.