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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision: 06.01.2023***

+ W.P.(C) 114/2023 & CM APPL. 421/2023

SHYAM ALI

..... Petitioner

Through: Mr. Shanker Raju, Mr. Nilansh Gaur
& Mr.Rajesh Sachdeva Advocates

Versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr. Shoumendu Mukherji, Senior
Panel Counsel, Ms.Megha Sharma,
Ms.Akansha Gupta & Mr.Prashant
Rawat, Advocates

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The petitioner claims to have been appointed as Constable Pioneer (Recruit) in 36 Battalion of Indo Tibetan Border Police ('ITBP') after completion of due recruitment process. According to petitioner, during the selection process he was required to fill Column No. 12 (A) & (B) & 13 of attestation form in the Verification Roll which seeks composite information regarding arrest, prosecution and detention of the candidate and he had filled "No" in the said columns. When the office of 36 Battalion sent his Verification Roll to District Magistrate, Bharatpur for character verification, it transpired that an FIR No. 56/2013 was registered against him wherein

charge sheet No. 101 dated 14.08.2013 under Sections 323/325/341/147 IPC was filed and the case was pending for adjudication.

2. The petitioner was issued a Show Cause Notice dated 18.05.2016 seeking reasons for suppression / concealment of pendency of an FIR against him. In reply to the aforesaid Show Cause Notice, the petitioner pleaded to have made a clerical mistake, due to confusion and also stated that mere pendency of an FIR or criminal case against him, be not construed as if he was convicted. Against the aforesaid Show Cause Notice dated 18.05.2016, the petitioner claims to have preferred a writ petition before the High Court of Rajasthan at Jaipur [W.P.(C) 7872/2016], wherein vide order dated 20.06.2016 the Court directed to keep the impugned Show Cause Notice in abeyance till the next date. However, on the next date, respondent-ITBP informed the Court that petitioner had already been removed from service vide order dated 17.06.2016.

3. Against the order dated 17.06.2016, the petitioner preferred an appeal before the competent authority, which was dismissed vide order dated 16.11.2016.

4. During the course of hearing, learned counsel for petitioner submits that when petitioner was only aged 19 years, his father had won Sarpanch election whereas the complainant of FIR in question had lost and he got the FIR registered against the petitioner along with 10 other persons. Since the offences were bailable, petitioner was never arrested or taken into custody. However, due to inadvertence, the petitioner has written 'No' in the columns of Verification Roll. Learned petitioner's counsel has pointed out that the learned ACMM after dealing with the facts of the said case, has held that the evidence placed on record is unreliable and the offences against the accused

persons were not proved. Thereby, petitioner along with other accused, have been acquitted of the offences charged with giving benefit of doubt.

5. Learned counsel next submits that subsequent to acquittal of petitioner, he preferred a representation dated 08.08.2022 before the competent authority for review of order dated 16.11.2016. However, the respondents vide order dated 28.10.2022 rejected the said representation.

6. Aggrieved against the order dated 28.10.2022, the present petition has been filed seeking quashing thereof as well as setting aside of order dated 17.06.2016.

7. Notice issued.

8. Mr. Shoumendu Mukherji, learned Senior Panel Counsel, appearing on behalf of respondents, accepts notice and opposed the present petition on delay and latches and merits as well.

9. Learned counsel for petitioner has submitted that vide impugned order dated 28.10.2022, the review petition filed by the petitioner has been dismissed by the respondents by referring to the guidelines of MHA dated 01.02.2012. Learned counsel submitted that as per Section 11 of the ITBP Act, 1992, penalty of removal from service has to be preceded by an inquiry. However, in the present case the petitioner was only issued two Show Cause Notices. It is submitted that the petitioner has been 'removed from service' and under Rules 17 & 22 of Act do not envisage penalty of removal from service on alleged suppression of information in the Verification Roll.

10. Learned counsel submitted that petitioner, for suppression of the fact of pendency of an FIR against him, petitioner has been removed from service and now since he has been acquitted of the offences charged with, rejection of his representation on the ground that petitioner was charged

under Section 325 IPC and he has been acquitted by giving benefit of doubt, is bad in law.

11. During the course of hearing, learned counsel appearing on behalf of petitioner relied upon decision of Hon'ble Supreme Court in Civil Appeal No.18798/2017, arising from SLP(C) No. *Avtar Singh Vs. Union of India And Ors.* to submit that in case of acquittal on benefit of doubt, the entire relevant facts and antecedents are required to be considered for continuation of an employee in service.

12. On the other hand, learned senior counsel appearing on behalf of respondents have disputed the pleas raised in the present petition and has submitted that the impugned order dated 17.06.2016 and Office Memorandum dated 28.10.2022 are well merited and do not call for any interference by this Court.

13. Upon hearing learned counsel for the parties and on perusal material placed before this Court as well as consideration of decision cited, we find that the as per guidelines of the Ministry of Home Affairs, a candidate is required to declare in the application form whether he has been arrested, prosecuted or convicted by a court for any criminal offence. The purport of putting such a condition is to have a clear and unambiguous knowledge of the candidate who is seeking employment in a Force which governs the security of the State and the nation. The petitioner has pleaded that at the time of registration of the FIR he was 19 years of age and due to inadvertent clerical error he missed to give information in the prescribed Column regarding pendency of FIR against him. However, in the enquiry it was revealed that petitioner had appeared in the Court on 20.01.2016 and has thus made false declaration before the competent authorities.

14. Upon going through the Office Memorandum dated 28.10.2022 we find that the respondents have relied upon decision of Supreme Court dated 01.12.2014 in the matter of *State of M.P. & Ors. Vs. Parvez Khan* wherein it is held that *‘a candidate to be recruited in the police service must be worthy of confidence and must be a person of utmost rectitude and must have impeccable character and integrity. A person having criminal antecedents will not fit in this category’*. The Office Memorandum dated 28.10.2022 also takes note of the decision in *Avtar Singh (Supra)* to hold that in the said case there was clear acquittal, whereas in the present case petitioner has been given benefit of doubt. Upon perusal of decision in *Avtar Singh (Supra)* we find that in the said case the petitioner had left column No.12 blank and during the verification it came to the knowledge of the appointing authorities that an FIR was pending against him. When the respondents terminated services of *Avtar Singh*, an appeal at the instance of respondents was pending against him. However, he was subsequently acquitted of the charges. In the facts of the said case, the Hon’ble Supreme Court had permitted him to make a representation before the competent authorities. In the case in hand, the petitioner has not left the column unfilled but has written “No” in the said column thereby concealing the factum of pendency of FIR against him.

15. During the course of hearing, learned counsel for the petitioner raised the plea that the petitioner has been “removed from service” and not terminated and removal from service has to be preceded with inquiry. On this aspect we find that petitioner was in the process of appointment, as it was during the process of his character verification only, pendency of FIR against him was transpired. There was no occasion to hold an enquiry in

respect of a candidate who infact has not been appointed or selected for the post.

16. Moreover, we find that it is too late in the day for the petitioner to have approached this Court seeking setting aside of his termination order dated 17.06.2016 in the garb of Office Memorandum dated 28.10.2022.

17. This petition and pending application are accordingly dismissed being highly belated as well as on merits.

**(SURESH KUMAR KAIT)
JUDGE**

**(NEENA BANSAL KRISHNA)
JUDGE**

JANUARY 06, 2023

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