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CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, CAMP AT NAGPUR.

ORIGINAL APPLICATION NO. 647/2014

Date Of Decision:- 3rd May, 2019.CORAM: R. VIJAYKUMAR, MEMBER (A).
R.N. SINGH, MEMBER (J).

Shailesh Shivaji Ghodekar,
S/o Shivaji Tukaram Ghodekar,
Age 28 years (DOB: 08.01.1987),
Worked as: Chargeman-II-Rigger,
Non-Gazetted Employee (Group-B Post),
in the office of the Naval Ship Repair Yard,
Navy Office, Naval Base, PO Arga, Karwar,
Karnataka- 581 308 and Residing at: 1/139,
B.I.T. Block, Sheth Moti Shah Lane, Love Lane,
Mazagaon, Mumbai- 400 010.

....Applicant.

(Applicant by Advocate Shri R G Walia)

Versus

1. Union of India,
Through: Vice Admiral,
Naval Head Quarters, Mint Road,
Opp. RBI, Mumbai- 400 023.
2. The Chief of Personnel,
IHQ of MoD (Navy),
Sena Bhavan,
New Delhi- 110 011.
3. The Admiral Superintendent,
Office of the Admiral Superintendent,
Naval Dockyard, Mumbai- 400 023.
4. Sr. Administrative Officer,
Personnel Manager for Admiral
Superintendent,
Office of the Admiral Superintendent,
Naval Dockyard, Mumbai- 400 023.

....Respondents.

(Respondents by Advocate Shri A M Sethna)

Reserved On : 26.03.2019

Pronounced on: 3.5.2019

ORDER

PER:- R. VIJAYKUMAR, MEMBER (A).

This application has been filed on 23.09.2014 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :-

"a) This Hon'ble Tribunal will be pleased to call for the records which led to the passing the impugned orders 20.01.2014 and 12.06.2014 and after going through its propriety, legality and constitutional validity be pleased to quash and set aside the same with full consequential benefits.

b) This Hon'ble Tribunal will be pleased to order and direct the Respondents to restore and reinstate the Applicant immediately with full consequential benefits i.e. back wages, pay fixation, increments, seniority, promotions, if any from the date of his juniors were given promotion etc etc with continuity of service.

c) Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the case.

d) Cost of this Original Application be provided for."

2. The facts of the case are that the applicant Graduated in October, 2008 with a B.Sc Degree from Elphinstone College, Mumbai and worked for three years as a Salesman for

reputed Pharmaceutical Companies. He was selected for appointment by the office of Admiral Superintendent, Naval Dockyard, Mumbai for the Group 'B' post of Chargeman Grade-II (Non-Gazetted) in the pay scale of Rs.9,300-34,800/- with Grade Pay of Rs.4,200/- in orders issued in File No. DYP/P/9509/CHARGEMEN/CONSTRUCTION/2 dt. 17.08.2012 and joined thereafter. Prior to this, the selection comprised a written test and interview after which the applicant was informed on 27.06.2012 that he had provisionally qualified for the post and was directed to report to the Naval Dockyard on 09.07.2012 to complete pre-recruitment formalities wherein he was also directed to fill an Attestation Form which was accordingly enclosed. The appointment letter prescribes a period of two years of probation and conditions on Police verification which were mentioned in the following paragraphs:

"3. You will be on probation for a period of two years from the date of joining duty. Your service is liable for termination without any notice and without assigning any reasons during

the period of probation. After completing the probationary period satisfactorily, you will continue to be in your appointment. Your service is also liable for termination by giving one months' notice. If you desire to resign from service, you will have to give one months' notice or one months' pay and allowances in lieu thereof.

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5. The appointment is provisional and subject to the verification of caste/age/Non-creamy layer certificate of OBC candidates/School Leaving Certificate through proper channels and character and antecedents through the Policy Authority. If the verification reveals that the claim of the candidate belonging to the caste/age is false, his services will be terminated forthwith without assigning any further reason and without prejudice to such further action as may be taken under the provision of Indian Penal Code for production of false certificate.

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10. Acceptance of this appointment is being considered as your acceptance of the conditions brought out in the above mentioned paras."

The applicant joined after accepting these conditions.

3. The applicant filled the Attestation Form and at para 13 of this form, he has replied as under :-

Question	Answer
13a) Have you ever been arrested?	No
b) Have you ever been	No

prosecuted?	
c) Have you ever been kept under detention?	No
d) Have you ever been bound down?	No
e) Have you ever been fined by a Court of Law?	No
f) Have you ever been convicted by a Court for any offence?	No
g) Have you ever been debarred from any examination, rusticated by any University or any other educational authority/institution?	No
h) Have you ever been debarred/disqualified by any Public Service Commission from appearing at its examination/selection?	No
i) Is any case pending against you in any Court of Law at the time of filling up this Attestation Form?	No

14. If the answer to any of the above mentioned question (at para 13) is "Yes" give full particulars of the case/arrest/detention/fine/conviction or the nature of the case pending in the Court/University/Educational Authority etc., at the time of filling up this.

Note: i) Please also see the "Warning" at the top of this Attestation Form.
ii) Specific answer to each of the question should be given by striking out "Yes" or "No" as the case may be.

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16. I certify that the foregoing information is correct and completed to the best of my knowledge and belief. I am not aware of any circumstances which might impair my fitness for employment under Government.

Sd/-

Date: 06.07.2012

Place: Mumbai."

4. The respondents verified his character and antecedents through the Police Authority and received the report as under from the Special Branch of the CID, Mumbai as under:-

"Sub: Verification of character and antecedents.

Ref: Your letter No.
DYP/P/9505/CM/POLICE, dtd 16.04.2013.

Please refer your office letter under reference on the subject mentioned above.

Verification of character and antecedents in respect of below mentioned person has been done.

Shri Shailesh Shivaji Ghodekar was residing at given address before 1 year in the jurisdiction of Byculla Police Station, Mumbai.

He but came to adverse notice on the records of concerned Police Station and C.R.B., C.I.B.M.O.B. of Crime Branch, Mumbai as a criminal case vide C.R. No. 282/07 U/s.143, 147, 148, 149, 324, 336, 332, 427, I.P.C. is registered against him at Byculla Police Station, Mumbai."

5. Upon receipt of this report, a show-cause notice was issued to the applicant on 18.07.2013 inviting his attention to the contents of the verification and directing him to show cause why his services should not be terminated for suppression of this vital

information about his involvement in a criminal case and this was communicated him through his supervisors in letter dated 05.08.2013. On receipt of his reply which was communicated to the respondent No.3, certain directions were given to produce relevant documents since he claimed to have been acquitted by the Court and that the records were not updated at that Police Station. This request was communicated in respondents letter (Annexure A-8) dated 05.12.2013 and were required for production before 31.12.2013. Following the production of these details, the respondent No.3 issued an impugned order No. DYP/P/9509/CM/POLICE dated 20.01.2014 as under :-

Termination of Service.

"1. Refer to this office letter even number dated 18 Jul 13 and your reply dated 19 Aug 2013.

2. Your reply to above show-cause notice has been examined. Your contention that you have been acquitted from all the charges in Cr. No. 282/07 vide Court order dated 30 Aug 10 and record in the concerned police station was not updated cannot be a reason for retention in service.

The fact remains that your involvement in the criminal cases was not disclosed by you at the time of submission of attestation form and intentionally you had hidden the information with respect to the Character with respect to para 13(a) and 13(b) of the Attestation Form wherein you have answered/stated "No". Hence your reply is neither convincing nor pardonable.

3. In view of the above and in accordance with the para 05 of the appointing order DYP/P? 9509/CHARGEMEN/CONSTRUCTION/2 dated 17 Aug 12, the Appointing Authority, hereby terminate your services with immediate effect."

6. The applicant then filed an appeal on 14.02.2014 arguing that he was under the impression that only those persons who had been convicted had to record an affirmation at para 13 and further, the para 14 did not require full particulars in the cases of acquittal. He also stated that when the incident took place, he was not present at the site of the incident and it was a false criminal case wherein he had been absolved of all charges.

7. Reference to the judgment of the criminal case shows the State (Byculla Police Station) as complainant with the applicant as

accused No.16. The incident occurred on 21.10.2007 when the applicant was admittedly 20 years old and the judgment notes the allegation that on that day, when Garba Dance was being performed, some volunteers tried to pacify accused 2, 4, 7 and 12 who were alleged to be drunk and not performing the dance properly. In the fight that ensued, some 50-60 residents of the applicant's Chawl have stated to have come down and pelted stones and tube lights on the injured persons and thereafter, when the police arrived, they also pelted stones on the police and caused injuries to the some of the policemen. The charges, therefore, were essentially of unlawful assembly in the Metropolitan City, for hurtful intention, being armed with deadly weapons of stones and tube lights, committing mischief, damage to windows of residences by breaking glasses, and by voluntarily causing hurt to police officials and preventing public servants in the discharge of their duty. During the enquiry, the two witnesses who are residents of that

colony denied that the accused were responsible for their injuries or for any damage. The injured police officers could not identify the exact persons who were pelting stones and by which they had sustained injuries. On this basis, in the absence of detailed and specific evidence, the Court held that the prosecution had failed to prove the guilt of the accused under Sections 143, 144, 147, 148, 324, 427 & 332 r/w 149 of the IPC beyond reasonable doubt and therefore, acquitted the accused. Essentially, it appears that the Police had rounded up the available members of the unlawful assembly who had engaged in an affray which ended in rioting and filed this case against them and in this, the applicant was one such member. While the quarrel initially began between private parties, it is also apparent from the judgment of the Criminal Court that no persons of the other side were detained by the Police. The private quarrel continued into an assault on the police and the only reason the accused

got away was because the injured policemen were not able to identify the stone thrower who injured them from among the crowd, an impossible task anyway. The applicant has, in his application, stated that he did his schooling in Marathi medium and did not intend to mislead or suppress material while filling up the Attestation Form. He states that he was under the impression that only in case he was convicted and punished, he would need to give details. He refers to certain appreciation letters received by him for his work from the Chief Manager(Hull). On receipt of the show-cause notice on 05.08.2013, he replied stating that it appeared that the Police had not informed that the case was over and he had been acquitted on 30.08.2010 itself. He was then asked to produce further documents which he had done so but the respondents thereafter issued a termination order on 20.01.2014 and his appeal dt. 14.02.2014 was dismissed on 12.06.2014. He argues that after issue of a show-cause notice, the respondents should

have held a departmental enquiry and given him reasonable opportunity for defense and hence the termination orders are illegal and unconstitutional in terms of Article 311 of the Constitution.

8. In reply, the respondents argue that the initial notice for pre-recruitment formalities including submission of Attestation Form were very clear and were not obeyed by the applicant. The appointment order also refers to the verification of character and antecedents through the Police authority. All that the applicant had to do was to give the information that he was arrested and that he was acquitted so that the matter could be considered and his selection would have been decided on that basis. However, he had suppressed this vital information which rendered his integrity as doubtful and therefore, he was not considered deserving enough to be kept in Government service in accordance with the instructions issued by DoPT OM No. 42011/15/92-Est.(A) dt. 03.06.1993. Therefore, they had observed the

constitutionally laid down procedure under Article 311 of the Constitution for termination. They stated that the questions in the Attestation Form which were in Hindi and English were very simple and only required a 'Yes' or 'No' answer for question No. 13 and the applicant cannot plead lack of knowledge of Hindi or English for this purpose. They referred to the case of Hon'ble High court of Delhi *in Shri Rajesh Kumar Vs. Union of India & Ors. in W.P.(C) No.7223/2004, decided on 20.02.2007* where the Hon'ble High court of Delhi laid down that: "14. What is relevant for us is not the seriousness of the offence which has a bearing on the propensity to crime, but with regard to credibility of the individual and his character and antecedents in this regard. When a candidate despite clear warning in the beginning of Attestation Form does not disclose the fact of his involvement in a particular case and has no reasonable explanation for the omission, then the department is justified in taking action and

removing him from service after holding an enquiry."

9. They also referred to *Delhi Administration & Ors. Vs. Sushil Kumar* in C.A. No. 13231 of 1996, decided on 04.10.1996 where the Hon'ble Apex Court emphasized that verification of character and antecedents is an important criterion for determining suitability of a candidate to a post under the State. What was relevant was the conduct or character of the candidate to be appointed to a service and not the actual result thereof. They also refer to the terms of appointment in their appointment order in regard to its provisional character, subject to verification etc. and that the termination has been done within the probation period. They emphasized that the applicant was not terminated on grounds of poor performance or any shortcoming but only on the above aspect.

10. In rejoinder, the applicant urges that more than twenty people were involved in the matter and he was only a student of 20 years at that point in time on 22.10.2007 and

the punishment was very harsh. In reply to rejoinder, the respondents have invited attention to the fact that the applicant was a BSc Degree holder and he had filled up the application in English although the Attestation Form was printed in both Hindi and English. They asserted that the applicant had provided false information to gain entry into a Defence organization and with such doubtful integrity, he did not deserve to be kept in a Defence Establishment. They refer to a decision of this Bench in *Shri Y.N. Aversekar Vs. UoI & Ors. in OA No. 93/2013, decided on 28.07.2016* which held that: "Any other candidates who had provided correct information and had clean and unblemished character and antecedents would have been considered suitable and selected in place of applicant. But applicant's suppression of factual information denied the other, more suitable candidate from being selected. The action of the applicant has wider ramifications and implication for others and not just to

himself. It was not a matter between the appointing authority and the applicant alone. In view of the above, retention of applicant in service did not lie. The only fateful outcome was termination of his services. No other proportion lies."

11. During arguments, learned counsel for the applicant referred to the Attestation form at Para 13(b) which asked: "Have you ever been prosecuted?(Kya aap per kabhi mukadama chalaya gaya hai?" to which the applicant claims to have understood it as 'Punished'. He refers to the judgment of the Criminal Court which held that the prosecution had miserably failed to bring home the guilt of accused. In support of his case, he cites the judgments of the Hon'ble Apex court in *Union of India Vs. Amit Singh* in C.A. No(S). 18799/2017 and in *Vikram Singh Vs. The Commissioner of Police* in C.A. No(S). 18800/2017 which relied on the rulings of the Hon'ble Apex Court in *Avtar Singh V. Union of India & Ors.* (2016) 8 SCC 471 to argue that the Competent Authority had to

apply his mind on the nature of the involvement of the applicant who had been acquitted by the aforesaid Criminal Court.

12. The learned counsel for the respondents emphasized the aspects already noted in pleadings and urged that the applicant had suppressed material facts and he was terminated during the probation period. He relies on the judgment of the Hon'ble Apex Court *in Kendriya Vidyalaya Sangathan & Ors. Vs. Ram Ratan Yadav (2003) 3 SCC 437* and the orders of this Bench of Tribunal *in Yuvraj Narayan Aversekar Vs. UoI in OA No. 93/2013 decided on 28.07.2016 & in Prashant Pandurang Parte Vs. UoI in OA No. 760/2016 decided on 14.11.2018* subsequent to the judgment of the Hon'ble Apex Court in *Avtar Singh(supra)*.

13. We have heard the learned counsel for the applicant and learned counsel for the respondents and carefully considered the facts and circumstances, law points and rival contentions in the case.

14. Three aspects of this matter come to

attention. The first is whether there was any procedural error in the manner in which the respondents acted after discovery of suppression of information by the applicant. Upon receiving the report of the Police, they issued one show-cause notice, learnt of the wrong report by the police on fact of acquittal and then obtained the relevant information through the applicant after which they issued a second show-cause notice. All this occurred during the period of two years' probation of the applicant and after getting the reply of the applicant, they issued termination orders which are consistent with the terms of appointment and with the rules on the subject. Therefore, the applicant cannot plead that there is any illegality or unconstitutionality in the procedure adopted by the respondents.

15. On the second aspect of the plea of the applicant that he was not aware of or could not understand the language of the Attestation Form in the concerned paragraphs, as pointed out by the respondents, the form

was bilingual. Against the word prosecution, the Hindi form read 'mukadama chalaya gaya hai' which can be very plainly understood. Further, the next question No. 14 asked for details of arrest, detention etc. The applicant studied at Raja Shivaji Vidyalaya, Mumbai during 2002-03 and at Elphinstone College, Mumbai during 2003-08 to obtain a BSC Degree and has worked with major pharmaceuticals(Unikem, Ranbaxy) in sales departments between 2009 and 2012. Not only does he have academic experience but also actual field experience interacting with various persons. He cannot claim any innocence from this aspect and will have to be accountable and held to his responsibilities as a citizen. Therefore, the best that can be urged on his behalf would be that his guilt has only been inferred from various aspects of his origin, qualifications, service and the way in which he filled up the forms. Of course, grave negligence can also be an indicator of mala fides.

16. The respondents have cited four cases, the first of **Prashant Pandurang Parte(supra)** which relates to a person who did not reveal his qualifications to the Atomic Energy Department and that falls into a completely different category. The case of **Yuvraj Narayan Aversekar(supra)** is similar to the present one but the latest citation constitutes in the rulings of the Apex Court in **Avtar Singh(supra)**. This judgment reviews a variety of previous judgments of the Hon'ble Apex Court and of various other Courts and makes the following observations while concluding with a set of guidelines at para 38. These observations and guidelines are as below:

"29. The verification of antecedents is necessary to find out fitness of incumbent. In the process if a declarant is found to be of good moral character on due verification of antecedents, merely by suppression of involvement in trivial offence which was not pending on date of filling attestation form, whether he may be deprived of employment? There may be case involving moral turpitude/serious offence in which employee has been acquitted but due to technical reasons or giving benefit of doubt. There may be situation when person has been convicted of an offence before filling verification form or case

is pending and information regarding it has been suppressed, whether employer should wait till outcome of pending criminal case to take a decision or in case when action has been initiated there is already conclusion of criminal case resulting in conviction/acquittal as the case may be. The situation may arise for consideration of various aspects in a case where disclosure has been made truthfully of required information, then also authority is required to consider and verify fitness for appointment. Similarly in case of suppression also, if in the process of verification of information, certain information comes to notice then also employer is required to take a decision considering various aspects before holding incumbent as unfit. If on verification of antecedents, a person is found fit at the same time authority has to consider effect of suppression of a fact that he was tried for trivial offence which does not render him unfit, what importance to be attached to such non-disclosure. Can there be single yardstick to deal with all kind of cases?

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 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 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. xxx. In case offence is petty in nature committed at young age, such as stealing a bread, shouting of slogans or is such which does not involve moral turpitude, cheating, misappropriation etc. or otherwise not a serious or heinous offence and accused has been acquitted in such a case when verification form is filled, employer may ignore lapse of suppression or submitting false information in appropriate cases on due consideration of various aspects.

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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 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 concerned authorities 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 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."

17. On this basis, the Hon'ble Apex Court discharged the reference made to them and left it to the concerned Division Bench to decide the matter on the basis of the principles reproduced above as it applied to the facts of the case.

18. In the present case, the respondents have urged that theirs was a Defence Establishment. It is also true that the applicant had been appointed to a non-gazetted post and would, in the normal course of time, rise to a Gazetted position which receives a Grade Pay of Rs. 4800/- against the Grade Pay of Rs. 4200/- which was obtained by the applicant at the time of appointment and when his monthly salary would

be is in excess of Rs. 50,000/-. Therefore, it is not inconceivable for the respondents to expect the highest level of integrity from among the pool of applicants available for selection. However, the responsibility is cast on them to assess the nature of offence in which the applicant was involved before taking a decision in his case since he had already been selected and was working as a probationer and had therefore, a right to be considered in terms of the law and the Constitution and as the Hon'ble Apex Court held in **Avtar Singh judgment (supra)** that the reformatory theory of punishment cannot be held out in toto. It could be considered that if the applicant had disclosed the fact of the case along with his application, the respondents would have been obliged to consider its full details but that would have occurred in the context of an honest and truthful presentation of his facts by the applicant. Viewed from that aspect, the impugned orders of termination record that the applicant had not disclosed the fact of

criminal cases and had intentionally hidden information which was not convincing or pardonable. Therefore, the decision of termination is clearly not in accordance with the manner in which the Hon'ble Apex Court had laid down criteria for disposal of such matters by employers such as the respondents who, as a Government, had to act as a model employer.

19. In these circumstances, the respondents are directed to review the reply of the applicant and the facts of this case by reference to the guidelines set out by the Hon'ble Apex Court in Avtar Singh(supra) and also consider the various options of either condoning the suppression of facts by the applicant or, in the alternative case, if such condonation is not acceptable, then the range of penalties that are available for dealing with such cases.

20. Accordingly, the orders of termination are quashed. The respondents are directed to consider the explanations and documents already furnished by the applicant

and pass orders within a period of four weeks from receipt of a certified copy of these orders. In the aforesaid terms, this OA is allowed without any order as to costs.

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(R.N. Singh)
Member (J)

(R.Vijaykumar) 31 -
Member (A)

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