

(2022) 04 JH CK 0017

In the Jharkhand High Court

Case No : Writ Petition (S) No. 6600 Of 2014

Purshotam Gope

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 18-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 311(2)
Central Civil Service (Temporary Service) Rules, 1965 — Rule 5, 5(1), 16
Indian Penal Code, 1860 — Section 34, 290, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 481, 482, 483, 484, 485, 486, 487, 488, 489
Rajasthan Excise Act, 1950 — Section 47(A)

Citation : (2022) 04 JH CK 0017

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Anil Kumar, Rishikesh Giri, Nitu Sinha

Final Decision : Dismissed

Judgement

Anubha Rawat Choudhary, J

1. Heard Mr. Anil Kumar, learned Senior counsel appearing on behalf of the petitioner along with Mr. Rishikesh Giri, Advocate.
2. Heard Ms. Nitu Sinha, learned counsel appearing on behalf of the respondents.

Argument of the Petitioner

3. This writ petition was initially filed by the petitioner challenging the order of termination dated 11.09.2014 (Annexure – 1) passed by the respondent no.5. During the pendency of the present case, the appeal filed by the petitioner was

dismissed and the same was challenged before this Court by filing Interlocutory application and consequently a further prayer has been incorporated in the present case seeking setting aside the rejection of appeal vide appellate order dated 12.06.2015 (Annexure – 3) passed by the respondent no.3.

4. The services of the petitioner have been terminated on account of suppression of fact and furnishing incorrect information about pendency of a criminal case against the petitioner at the time of seeking appointment.

5. As per the list of dates furnished by the learned counsel for the petitioner, the petitioner was appointed on 20.08.2013 in the rank of RT/GD, Constable, Ranchi and was terminated by the Commandant on 11.09.2014; earlier on 27.03.2009, F.I.R was lodged against the petitioner for alleged offence under Sections 420, 467, 468, 471/34 and 290 of Indian Penal Code and under Section 47 (A) of Excise Act and charge was framed on 18.08.2010 against the petitioner under Sections 420, 467, 468/34 and under Section 47(A) of the Excise Act. It is not in dispute that though the petitioner was acquitted on 28.02.2015, but certainly on the date of appointment on 20.08.2013, the criminal case was pending and the charge was already framed.

6. During the course of argument, the learned counsel for the petitioner has also referred to the form which was filled by the petitioner and annexed along with the counter-affidavit, to submit that in the two columns i.e., column 12 (a) and (b) of the Form, the petitioner has clearly denied there being any criminal case pending against the petitioner and the allegation is that the petitioner had furnished false information regarding pending criminal case. During the course of argument, it is not in dispute that the information regarding case pending against the petitioner was suppressed by the petitioner while filling up the form. However, the learned counsel for the petitioner insisted that the principle of natural justice was required to be followed in spite of such admitted position.

7. The learned counsel for the petitioner while assailing the impugned orders has submitted that the impugned order of termination has been passed in gross violation of the principle of natural justice and the appellate authority has also not considered this aspect of the matter properly. The learned counsel has submitted that no opportunity of hearing has been given to the petitioner and therefore the impugned order of termination is ex facie illegal. The learned counsel has relied upon the judgment passed by Hon'ble Supreme Court reported in (2016) 8 SCC 471 (Avtar Singh Vs. Union of India), para 35 onwards, to submit that in case of suppression or false information also, the principle of nature justice is required to be followed and that the employer has to act on due consideration of Rules/ instructions.

8. Learned counsel has further referred to the supplementary counter affidavit filed by the respondents and has submitted that the respondents have themselves filed a policy guideline dated 01.02.2012 wherein it has been mentioned that if after recruitment, it comes to the notice of the recruiting

authority and found from the verification report received from the district authorities or otherwise that there has been suppression, the candidature / appointment of such persons will be cancelled. He also submits that the Clause – 1 is also coupled with the policy that in case the candidate has already been appointed, while cancelling / terminating the appointment, the principle of natural justice shall be followed and opportunity of being heard would be accorded to the candidate. The learned counsel submits that the principle of natural justice has admittedly not been followed in the present case, the policy guideline itself has not been followed and therefore, the impugned orders are fit to be set aside and matter is fit to be remanded to the concerned authority to take a fresh decision.

9. The learned counsel has referred to a judgment passed by this Court in W.P. (S) No.2626 of 2014 decided on 22.04.2019 and submits that the aforesaid clause of the policy decision dated 01.02.2012 has been taken into consideration and judgment passed in the case of Avtar Singh Vs. Union of India (supra) has also been considered and thereafter the matter has been remitted back to the authority to comply the principle of natural justice by observing that the original authority as well as the appellate authority were not aware of the existence of Circular and judgement of the Hon'ble Apex Court.

10. The learned counsel has also submitted that the petitioner is not governed by Central Civil Service (Temporary Service) Rules, as the petitioner was not appointed in temporary service as defined under the said Rules and therefore the exercise of power under Section 5 (1) of the aforesaid Rule for terminating the services of the petitioner is itself illegal.

Argument of the Respondents

11. Learned counsel appearing on behalf of the respondents while opposing the prayer has submitted that even as per the policy guideline dated 01.02.2012, it has been specifically provided in Column III that the candidate will not be considered for recruitment if: he is involved in case / arrest in connection with offence mentioned in Annexure – A, which, interalia, refers to Sections 379 to 462 and also 465 to 489 of Indian Penal Code. The learned counsel submits that admittedly on the date of filling up the forms, the petitioner had suppressed the fact about pendency of the criminal case against the petitioner since 2009 in which the charge was also framed as back as in the year 2010.

12. The learned counsel refers to the counter-affidavit to submit that the petitioner was inducted awaiting report from the district authorities regarding the petitioner and awaiting the report, the petitioner was sent for training. As per the counter affidavit, as soon as the suppression of criminal case came to light, the petitioner was immediately called back in midst of his ongoing training and was not permitted to complete the training. The learned counsel submits that suppression of criminal case while induction in uniformed force is viewed very seriously even in the judgment passed by the Hon'ble Supreme Court in the case

of Avtar Singh Case (supra). The learned counsel has referred to two judgments passed by this Court in L.P.A. No.378 of 2015 (Chandra Prakash Sing Vs. Union of India) and the judgment passed in L.P.A. No.193 of 2017 (Rohitash Choudhary Vs. Union of India) as annexed with the supplementary counter affidavit to submit that the latter judgment has also considered Avtar Singh (supra) case and relief to the appellant was denied.

13. The learned counsel has also referred to a judgment of the Hon'ble Supreme Court in the case of State of Madhya Pradesh Vs. Abhijit Singh Pawar dated 26.11.2018 passed in Civil Appeal No.11356 of 2018 and submits that Hon'ble Supreme Court considered the judgement passed in the case of Avtar Singh (supra) wherein on the date when the applicant had applied for appointment, the criminal case was pending. She submits that the Hon'ble Supreme Court also considered the nature of offence in which the incumbent was involved and also the nature of his acquittal. She submits that even if the petitioner has been acquitted subsequently by giving benefit of doubt, but the fact remains that on the date of filling up of application form, he had made material suppression regarding pendency of criminal case against him and acquittal giving benefit of doubt does not help the petitioner in any manner.

14. The learned counsel submits that the appellate authority has considered the grievance of the petitioner and has passed a reasoned order and the same also does not call for any interference.

15. The learned counsel has also referred to C.R.P.F Rules, Rules 16 and 108 to submit that the person inducted has to undergo the period of probation and confirmation and Rule 16 clearly provides that all members of the force shall be enrolled for a period of 3 years and during this period of engagement, they shall be liable to discharge, at any time, on one month's notice by the appointing authority. It also provides that at the end of the period, those not given substantive status, shall be considered for quasi permanency under the provisions of Central Civil Services (Temporary Services) Rules, 1965. She submits that the authorities have rightly exercised their power to terminate the services of the petitioner as per law.

Rejoinder arguments of the petitioner

16. In response, the learned counsel for the petitioner has submitted that the judgement which has been relied upon by the respondents and annexed along with the supplementary counter affidavit i.e., L.P.A. No.378 of 2015 was rendered prior to pronouncement of the judgment in the case of Avtar Singh (supra) and does not take into consideration the 2012 Policy decision of the respondents and the latter judgment passed in L.P.A. No.193 of 2017 though considers the judgment passed in the case of Avtar Singh(supra), but the 2012 guideline / policy decision has not been considered. Learned counsel submits that in such circumstances, the aforesaid two judgments passed in L.P.As do not apply to the facts and circumstances of this case and the case is to be essentially seen in the

light of the policy guidelines of 2012 which clearly provides that principle of natural justice is required to be followed.

Findings of this Court

17. It is not in dispute that the petitioner was enlisted in CRPF on 20.08.2013 during special recruitment rally in naxal affected State of Jharkhand vide office order dated 09.09.2013. The petitioner was allotted to one battalion and sent for basic training. Before proceeding for training, the petitioner submitted his verification roll in CRPF form no. 25 and column no. 12 of the form provided for disclosure of information, inter alia, about any pending case in any court of law to which the petitioner mentioned "no" and also certified that the information furnished by him is correct and complete to the best of his knowledge and belief.

18. On the one hand the petitioner was sent for basic training and on the other hand the character and verification roll in form no. 25 was sent to the concerned District Magistrate for verification of his character and antecedents. Vide letter dated 20.02.2014 issued by the District Magistrate, it was informed that a case no. 69 of 2009 dated 27.03.2009 under sections 420/467/468/471/290/34 of IPC and section 47(A) Excise Act was lodged against the petitioner in which charge sheet dated 15.07.2009 was filed. Keeping in view the aforesaid facts, the appointing authority discontinued the training of the petitioner, called him back and terminated the service of the petitioner with effect from 11.09.2004 by referring to sub-rule (1) of rule -5 of Central Civil Service (Temporary Service) Rules, 1965. The petitioner filed sought review of the orders of the appointing authority before the competent authority, which was also dismissed.

19. It has been stated by the learned counsel for the petitioner that charge in the criminal case was framed on 18.08.2010 under sections 420/ 467/ 468/34 of IPC and section 47(A) Excise Act and the petitioner was acquitted vide judgement dated 28.02.2015. Thus, it is not in dispute that on the date the petitioner filled his verification roll, charge was already framed in the aforesaid criminal case.

20. Prior to enlistment of the petitioner, it is not in dispute that one F.I.R. under Sections 420, 467, 468, 471/34 and 290 of IPC and under Section 47A of the Excise Act was instituted against the petitioner on 27.03.2009 and the charge was also framed under Sections 420, 467, 468/ 34 of Indian Penal Code and 47A of Excise Act on 18.08.2010. Admittedly, the petitioner was sent for basic training awaiting the verification report regarding his character and antecedent. In the meantime, adverse report of character and antecedent was received about the petitioner after due verification which revealed pendency of the aforesaid criminal case against the petitioner. Consequently, the information furnished under column no. 12 of the Verification Roll in the prescribed Form No.25 was found to be false and suffering from suppression of facts. It has been clearly mentioned in the Form itself that furnishing of false or suppression of any factual information in the Verification Roll would be a disqualification and is likely to render the candidate unfit for employment under the Government and also that if

the fact that false information has been furnished or that there has been suppression of any factual information in the Verification Roll comes to the notice at any time during the service of a person, his services would be liable to be terminated. Thus, it is not in dispute that the service of individual is liable to be terminated in case of suppression of fact or furnishing false information.

21. Considering the aforesaid furnishing of false information, the petitioner was not even permitted to complete the training and he was called back at once and was terminated forthwith w.e.f. 11.09.2014 in terms of sub rule (1) of Rule 5 of Central Civil Services (Temporary Service) Rules, 1965. The petitioner filed sought review of the orders of the appointing authority before the competent authority, which was also rejected vide order dated 12.06.2015.

22. The first point for consideration is as to whether Central Civil Services (Temporary Service) Rules, 1965 particularly Rule 5 is applicable upon the petitioner.

Admittedly, no show cause notice was issued to the petitioner and accordingly the second point for consideration is whether the impugned order of termination is fit to be set-aside on account of violation of principles of natural justice and the corollary point would be whether any prejudice has been caused to the petitioner on account of termination without show -cause notice.

The first point

23. The petitioner has not filed his appointment letter in-spite of order passed by this Court, but has filed the appointment letter of another employee namely Upendra Yadav and in the supplementary affidavit, he has stated that the terms and conditions of his appointment is the same as that of the co-employee Upendra Yadav. The supplementary affidavit was filed pursuant to order dated 23.4.2019 passed by this Court directing the petitioner to file letter of appointment, but in the supplementary affidavit, the petitioner has claimed that he has lost the letter of appointment.

24. Upon perusal of the aforesaid appointment letter of the co-employee Upendra Yadav, the appointment letter is a proposal for appointment, purely temporary, candidate is to be governed by CRPF Act, 1949 and the CRPF Rules, 1955 and the pre-verification form was also enclosed. It was clearly stipulated that in terms of CRPF Rules, 1955, the services could be terminated any time within two years, without any notice or reason upon payment of one month's salary. Rule 16 of CRPF Rules, 1955 clearly provides that all members of the force shall be enrolled for a period of 3 years and they shall be liable to be discharged at any time on one month's notice by the appointing authority. At the end of this period those not given substantive status shall be considered for quasi permanency under Central Civil Services (Temporary Service) Rules, 1965 and those not declared quasi permanent shall be continued as temporary government employees. It also provides that those who are temporary shall be liable to be discharged on one month's notice and those quasi permanent shall be liable to

discharge on three months' notice in accordance with the said rules [i.e Central Civil Services (Temporary Service) Rules, 1965], as amended from time to time.

25. Further, Rule 16(a) of the C.R.P.F Rules, 1955 clearly mentions that all the members of the force shall be enrolled for a period of three years and during this period of engagement, they shall be liable to be discharge at any time on one month's notice by the appointing authority, in case of temporary engagement and will be governed by Central Civil Services (Temporary Service) Rules, 1965. For persons having uasi permanency status the notice period is 3 months. Rule 16 of C.R.P.F Rules 1955 is quoted as under: -

"16. Period of service. – (a) All members of the Force shall be enrolled for a period of three years. During this period of engagement, they shall be liable to discharge at any time on one month's notice by the appointing authority. At the end of this period those not given substantive status shall be considered for quasi-permanency under the provision of the Central Civil Services (Temporary Service) Rules, 1965. Those not declared quasi-permanent under the said rules shall be continued as temporary Government employees unless they claim discharge as per Schedule to the Act. Those who are temporary shall be liable to discharge on one month's notice and those who are quasi-permanent shall be liable to discharge on three months' notice in accordance with the said rules, as amended from time to time."

In the present case, the petitioner was recruited and sent for training awaiting verification report and his status as per Rule 16 of the CRPF Rules, 1955 was a temporary government employee and as per the Rule 16 of the CRPF Rules, 1955 itself the persons like the petitioner under temporary employment are governed by Central Civil Services (Temporary Service) Rules, 1965. In view of the aforesaid findings, the argument of the learned Senior counsel for the petitioner that the petitioner is not governed by Central Civil Service (Temporary Service) Rules, 1965, is devoid of any merit, hence rejected. The first point is decided against the petitioner. The second point

26. A supplementary counter-affidavit has been filed by the respondents in the present case brining on record that on 01.02.2012, the Ministry of Home Affairs, Government of India published policy guideline/circular for consideration of cases of candidates for appointment during pendency of criminal case. It reveals that if a candidate does not declare in his application form regarding arrest, prosecution, conviction by a court of criminal offence under IPC or any other Act and it subsequently comes to the notice of recruiting authorities as it is found out from the verification report received from the district authorities or otherwise his candidature/appointment will be cancelled. Clause 2 (III) interalia, provides that the candidate will not be considered for recruitment if such involvement is with an offence mentioned in Annexure-A which, interalia, refers to Sections 379 to 462 and also 465 to 489 of Indian Penal Code. The proviso to clause 2 (III) contemplates that the candidate will not be barred if no charges have been framed in the criminal case. Clause 2 (III) of the guideline clearly mandates that

the candidate will not be considered for recruitment if he is found involved in a case with an offence mentioned in Annexure – A. The policy guidelines are more stringent in the matter of those criminal cases covered under clause 2(III) as compared to other criminal cases which may be falling under clause 2(II) and not under clause 2(III). A criminal case in general as mentioned in clause 2(I) and those covered under clause 2 (III) dealing with certain categories of offences.

27. The criminal case against the petitioner is clearly covered under Annexure-A to the aforesaid guideline dated 01.02.2012 and admittedly, charges were already framed on the date of filling the verification form. Thus, there is a complete ban from recruiting a person like the petitioner i.e candidature of the petitioner, as his case squarely falls under clause 2(III) of the aforesaid policy guidelines of 01.02.2012. This aspect of the matter is not in dispute even from the side of the petitioner. It is neither the case of the petitioner that he did not have any knowledge of the criminal case nor this could be his case as charge was already framed in the criminal case on the date of filling up the verification form. Thus, even assuming that any show cause was required to be issued to the petitioner before termination, no prejudice has been caused to the petitioner by non-issuance of show-cause in view of the admitted position of furnishing of false information regarding pendency of criminal case falling under clause 2(III) of the policy guideline 01.02.2012.

28. The procedure for termination of temporary service has been prescribed in Rule 5 of Central Civil Services (temporary service) Rules, 1965, which reads as follows: -

5. Termination of temporary service.

(1) (a) The services of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant;

(b) the period of such notice shall be one month.

Provided that the services of any such Government servant may be terminated forthwith and on such termination, the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or as the case may be, for the period by which such notice falls short of one month.

NOTE:- The following procedure shall be adopted by the appointing authority while serving notice on such Government servant under clause (a).

(i) The notice shall be delivered or tendered to the Government servant in person.

(ii) Where personal service is not practicable, the notice shall be served on such Government servant by registered post acknowledgement due at the address of

the Government servant available with the Appointing Authority.

(iii) If the notice sent by registered post is returned unserved, it shall be published in the Official Gazette and upon such publication, it shall be deemed to have been personally served on such Government servant on the date it was published in the Official Gazette.

(2) (a) Where a notice is given by the Appointing Authority terminating the services of a temporary Government servant, or where the service of any such Government servant is terminated either on the expiry of the period of such notice or forthwith by payment of pay plus allowance, the Central Government or any other authority specified by the Central Government in this behalf or a head of Department, if the said authority is subordinate to him, may, of its own motion or otherwise, re-open the case, and after making such inquiry as it deems fit,-

(i) confirm the action taken by the Appointing Authority;

(ii) withdraw the notice;

(iii) reinstate the Government servant in service; or

(iv) make such other order in the case as it may consider proper.

Provided that except in special circumstances, which should be recorded in writing, no case shall be reopened under this sub-rule after the expiry of three months-

(i) from the date of notice, in a case where notice is given;

(ii) from the date of termination of service, in a case where no notice is given.

(b) Where a Government servant is reinstated in service under sub-rule (2) the order of reinstatement shall specify -

(i) the amount or proportion of pay and allowances, if any, to be paid to the Government servant for the period of his absence between the date of termination of his services and the date of his reinstatement; and

(ii) whether the said period shall be treated as a period spent on duty for any specified purpose or purposes."

29. This Court finds that the service of the petitioner has been terminated forthwith by following the procedure under Rule 5 of Central Civil Services (Temporary Service) Rules, 1965 by issuance of one month's notice for terminating the service. There is no allegation that the procedure prescribed under Rule 5 of Central Civil Services (Temporary Service) Rules, 1965 has not been followed by the respondents. The order of termination is not stigmatic. It is not in dispute that the amount as per Rule 5 has been paid to the petitioner.

It is not in dispute that the petitioner had suppressed material facts in the pre-verification form. The petitioner sought review of the decision which was

dismissed as follows: -

"5. Aggrieved with the order of termination, the individual has submitted an appeal dated 20/03/2015 addressed to the IGP, Jharkhand Sector (i.e. Competent authority) to review orders passed by appointing authority.

6. The undersigned has considered the appeal submitted by No. 135174398 Ex Rt/GD Purshotam Gope of GC, CRPF, Ranchi (Allotted to 133 Bn CRPF) under GOI decision No. (11) below Rule 5 of CCS (TS) Rules 1965. It is imperative to assert here that, the ground which entailed termination of service in respect of No. 135174398 Ex Rt/GD Purshotam Gope was "Suppression of facts" which apparently denotes that the intention of the Govt. servant was not "honest" and therefore his services were terminated. Above individual is a temporary Govt. servant and as per Rule 5 of CCS(TS), Rules-1965, his services has been terminated forthwith i.e. wef. 11/09/2014 by Commandant, GC CRPF, Ranchi vide termination order No. P.VIII-8/2014-EC-2 dated 11/09/2014. A sum of Rs. 20,195/- has been paid to individual on account of pay equivalent to amount of his pay plus allowances at the same rates at which he was drawn during August-2014 in lieu of one month notice. Further there is no provision to frame any charge sheet to applicant as per Rule 5 of CCS(TS), Rules-1965. Therefore, the undersigned upheld the decision of Appointing Authority and reject the appeal dated 20/03/2015 being devoid of merit."

30. It is important to note that the process of recruitment of the petitioner was not complete in as much as the report of verification was awaited and awaiting verification report from the concerned district, the petitioner was simultaneously sent for training. As soon as the verification report was received, the petitioner was called back from ongoing training and was terminated forthwith. The proviso to Rule 5 of Central Civil Services (Temporary Service) Rules, 1965 empowers the authority to terminate the service "forthwith" and in such circumstances, the arguments of the petitioner that natural justice was required to be followed before termination is devoid of any merits. Accordingly, clause 2(I) of the policy guidelines dated 01.02.2012 regarding following the principles of natural justice shall have no applicability when the rule enables forthwith termination. If the law permits forthwith termination, there is no scope to read natural justice of issuance of show cause etc. into such provision of forthwith termination. Even the terms of the proposal for appointment enables termination without notice and without assigning any reasons upon payment of one month's salary. It is also important to note that rule 5 of Central Civil Services (Temporary Service) Rules, 1965 itself has internal checks of scrutiny of such decision by Central Government or any other authority authorized in this behalf. The petitioner had submitted before the competent authority for review of the orders passed by the appointing authority which was dismissed by a well-reasoned order.

31. Upon receipt of the verification report, the petitioner was called back from training and was terminated and was also provided the required amount for the notice period. The fact that the criminal case was pending against the petitioner

falling under clause 2 (III) of the aforesaid policy guidelines dated 01.02.2012 is not in dispute even from the side of the petitioner and the fact that the petitioner had suppressed and had given false information about pendency of the criminal case of the nature of offence falling under Annexure-A of the aforesaid policy guidelines dated 01.02.2012 at the time of filling up of the form no.25 is also not in dispute. Thus, the candidature of the petitioner was not worth consideration by the respondents. In such admitted position, terminating the services of the petitioner without granting an opportunity of hearing to the petitioner is fully justified as no prejudice has been caused to the petitioner on account of violation of such principles of natural justice.

32. In the judgment passed by this Court in L.P.A. No.378 of 2015, the appellant therein was terminated without any notice without any charge sheet and without any procedure. In the said case also, the appellant was appointed on the post of Constable in C.R.P.F w.e.f. 02.05.2012 and was appointed on Probation and the provision of Rule 5 (1) of Central Civil Services (Temporary Service) Rules, 1965 was found to be applicable. This Hon'ble Court ultimately held that the appellant was working in a disciplined force. When there is a specific information sought from the candidate, he had to supply the true a correct fact. In the facts of the present case, this appellant has suppressed the material facts and has given a false information coupled with the fact that he was appointed purely on a temporary basis and his services have been terminated under Rule 5 of the Central Civil Services (Temporary Services) Rule, 1965 by giving salary in lieu of the notice period. In the said background, it was held as follows: -

"These facts make the present case different from the aforesaid two decided cases cited by the counsel for the appellant. Moreover, in these eventualities, there is no need of any notice or charge -sheet or any other procedure to be followed because he was appointed on a temporary basis. These aspects of the matter have been properly been appreciated by the learned Single Judge while dismissing the writ petition. We see no reason to take any other view than what is taken by the learned Single Judge. We, therefore, uphold the decision rendered by the learned Single Judge in W.P.(S). No.6828 of 2013 dated 19th May, 2015."

33. This Court finds that the facts and circumstances of the present case is similar to the facts involved in L.P.A. No.378 of 2015 although it is contended by the petitioner that the judgment was rendered prior to the decision passed in the case of Avatrar Singh Vs. Union of India and Others reported in (2016) 8 SCC 471 and the policy guidelines of 2012 was also not taken into consideration.

34. The relevant paragraphs for the purposes of this case i.e., para 32 to 38 of Avatar Singh's case are as follows:

"32. No doubt about it that once verification form requires certain information to be furnished, declarant is duty bound to furnish it correctly and any suppression of material facts or submitting false information, may by itself lead to

termination of his services or cancellation of candidature in an appropriate case. However, in a criminal case incumbent has not been acquitted and case is pending trial, employer may well be justified in not appointing such an incumbent or in terminating the services as conviction ultimately may render him unsuitable for job and employer is not supposed to wait till outcome of criminal case. In such a case non disclosure or submitting false information would assume significance and that by itself may be ground for employer to cancel candidature or to terminate services.

33. The fraud and misrepresentation vitiates a transaction and in case employment has been obtained on the basis of forged documents, as observed in M. Bhaskaran's case (supra), it has also been observed in the reference order that if an appointment was procured fraudulently, the incumbent may be terminated without holding any inquiry, however we add a rider that in case employee is confirmed, holding a civil post and has protection of Article 311(2), due inquiry has to be held before terminating the services. The case of obtaining appointment on the basis of forged documents has the effect on very eligibility of incumbent for the job in question, however, verification of antecedents is different aspect as to his fitness otherwise for the post in question. The fraudulently obtained appointment orders are voidable at the option of employer, however, question has to be determined in the light of the discussion made in this order on impact of suppression or submission of false information.

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:

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. 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."

35. This Court finds that there is another decision passed by this Court in L.P.A. No.193 of 2017 (Rohitash Choudhary Vs. Union of India and Ors.) where again the Constable appointed in CISF was terminated on the allegation of suppression of fact and furnishing false information regarding his involvement in criminal case, which was still pending, it was contended by the petitioner in the said case that he had no knowledge about the pendency of the criminal case. The judgment passed in the case of Avatar Singh (supra) was also considered wherein it was held that before attributing that the person is guilty of suppression, the knowledge of the fact must be attributed to him. This Court while dismissing the L.P.A found that prior to his declaration the appellant had obtained bail from court and certain witnesses were also examined, therefore, there was sufficient material to show that the appellant had knowledge of the criminal case pending against him on the date of submission of his application and also at the time of appointment. This Court recorded in para 11 of the judgement as follows:

11. Even in Avtar Singh's case (supra), relied upon by the learned counsel for the appellant, the law has been laid down as follows: -

"32. No doubt about it that once verification form requires certain information to be furnished, declarant is duty-bound to furnish it correctly and any suppression of material facts or submitting false information, may by itself lead to termination of his services or cancellation of candidature in an appropriate case. However, in a criminal case incumbent has not been acquitted and case is pending trial, employer may well be justified in not appointing such an

incumbent or in terminating the services as conviction ultimately may render him unsuitable for job and employer is not supposed to wait till outcome of criminal case. In such a case non-disclosure or submitting false information would assume significance and that by itself may be ground for employer to cancel candidature or to terminate services."

36. In the present case also the knowledge of pendency of the criminal case on the date of filling up of the verification form is neither in dispute nor can be disputed as charge was already framed prior to the date of filling up the form.

37. This Court finds that the action of the respondents is neither in violation of the rules nor contrary to the judgement passed in the case of Avatar Singh(supra) and considering the nature of employment being temporary and governed by the specific provision of Rule 5 of Central Civil Services (Temporary Service) Rules, 1965 which enables termination of service forthwith. As already held above, the requirement of following principles of natural justice as contemplated under clause 2(II) of policy guidelines dated 01.02.2012 has no role to play in view of clear provisions of Rule 5 of Central Civil Services (Temporary Service) Rules, 1965. Moreover, apparently, clause 2(II) of policy guidelines applies to those who have already been appointed and certainly the same cannot be read to include those who are temporary and verification report is awaited. As per rule 16 of CISF Rules, 1955, even those who are acquire the status of quasi - permanency are governed by Central Civil Services (Temporary Service) Rules, 1965 though the notice period is 3 months.

Accordingly, the ratio of the judgment passed in L.P.A. No.378 of 2015 as well as L.P.A. no. 193 of 2017 is fully applicable in the present case. The candidature of the petitioner having been rejected solely on account of suppression of material fact is not in dispute. Compliance of the principle of natural justice is not at all required, particularly, when the candidature was subject to verification from the district authorities and the petitioner was still under temporary employment. Considering the fact that the recruitment relating to C.R.P.F, the suppression of a pending criminal case is all the more serious and merely because the petitioner has been acquitted later on vide judgment passed in the year 2015, does not dilute the allegation of suppression as alleged against the petitioner. Accordingly, the second point is also decided against the petitioner.

38. As a cumulative effect of the aforesaid findings, this Court finds no merit in the case, which is hereby dismissed.

39. Pending interlocutory application, if any, is closed.