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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1072/2002

New Delhi, this the 16th day of August, 2002

Hon'ble Sh. Govindan S.Tampi, Member (A)

Jitender Kumar
S/o Sh. Mahar Singh
R/o D-2, Central Jail, Tihar
New Delhi.

...Applicant

(By Advocate Sh. Sudarshan Rajan)

V E R S U S

1. Govt. of NCT of Delhi
through Lt. Governor of Delhi
Raj Niwas, Delhi.
2. The Director General Home Guards
Directorate General of Home Guards
and Civil Defence, Raja Garden, New Delhi.
3. Commandant Home Guards
The Directorate General of Home Guards
and Civil Defence, Raja Garden, New Delhi.

...Respondents

(By Advocate Sh. Ajay Gupta)

O R D E R

By Sh. Govindan S.Tampi,

Challenge in this OA is directed against the threatened termination of the applicant's services.

2. S/Shri Sudarshan Rajan and Ajay Gupta, ld. counsel represented the applicant and the respondents, during the hearing.

3. The applicant had joined duties on 28-9-2001 as Chowkidar in the office of the Director General Home Guards and Civil Defence, after being selected and fulfilling all the necessary formalities. The applicant had not filled up the column in the form, which related to involvement in criminal proceedings, as the false case wherein he was implicated in 1997, had resulted in his acquittal much

earlier i.e. 2-7-2000. Applicant's police verification report dated 23-10-2001 also had reflected the same. However, on 2-4-2002, he was served a notice proposing the termination of his services, which was represented against but to no avail, leading to this OA.

4. Grounds raised in this OA are that :-

i) the impugned order was bad in law ;

ii) the order did not disclose the reasons for termination of services ;

iii) his involvement in a criminal case has reliably been the basis of the termination, though he was acquitted by the Court in the said case ;

iv) the effect of compounding an offence in acquittal as has been laid down by the Hon'ble Apex Court in Rajinder Singh Vs. State (Delhi Admn.) (AIR 1980 SC 1200) and Fahimuddin Vs. State of UP [1982 (2) SCC 174 (2)] and, therefore, compounding of the case against the applicant should not have been held against him ; as the respondents have apparently done;

v) there was no case pending against him while filling up the forms and ;

vi) there was no moral turpitude in a case when the individual was acquitted or his offence was compounded.

3

5. Sh. Sudarshan Rajan fully reiterated the above position by delineating the legal position and his client's case to show that the respondents' action was illegal.

6. The applicant is continuing with his job on account of the stay granted by the Tribunal.

7. In his strong and vocal reiteration of the respondents' pleas, Sh. Ajay Gupta, Id. counsel denied the charges made by the applicant. the applicant had kept back from the respondent the fact of his involvement in a criminal case, which he was specifically found to disclose in terms of the requirement in Column No. 12 (A) & (B) of the attestation form. However, the report of verification dated 20-12-2001, had confirmed his involvement in a criminal case. Hence the present order. The appointment order had clearly mentioned that the individual was liable to be removed if any false information had been given or if any material information had been suppressed. As the applicant had been put on notice in advance, he has no reason to complain against the respondents' action. His representation had been considered and disposed of on 19-4-2002, which has not been disclosed by the applicant. As the applicant had deliberately suppressed information, respondents ordered the action called for in law. OA, in the circumstances, deserved to be dismissed, argues Sh. Gupta.

3

8. In reply it has been argued by Shri Sudarshan Rajan that the applicant should not have been penalised as the withholding of the information was not material to the job as the applicant was in fact acquitted. He also relied upon the judgement of the Hon'ble Delhi High Court in the case of Pramod Kumar Rastogi Vs. UOI & Ors. [1999(49) DRJ] which, according to him supported his case.

9. I have carefully considered the matter. Facts are not disputed that the applicant had failed to indicate in his attestation form that he was involved in a criminal case much earlier, as he was acquitted in the same. Respondents from their side, aver that the termination of the applicant's service was not on account of his involvement in the case but on account of his not mentioning the same, in the attestation form. Doubtless, therefore the applicant has been guilty of the minor indiscretion of non-disclosure but the fact remains that the fact, even if disclosed would not have come in the way of his ultimate appointment. The case of the applicant gains support from the decision of the Hon'ble Delhi High Court in Pramod Kumar Rastogi's case (supra) wherein it is held as below :-

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"The word concealment has got a definite connotation in law. Everything withholding of a fact would not be concealment. When civil consequences follow on the basis of the any act of omission on the part of the employees, the provision has to be strictly construed and the second respondent should not only prove and establish that there was a concealment in law and act complained of was such that the employee concerned could not be entrusted with any responsible job having regard to his propensity to commit crime. From the information made available

the second respondent should have come to a positive conclusion that the general tendency of the petitioner is to resort to force and to take law into his hands and the employee has no regard for the rule of law. The law does not empower the second respondent to presume proprio vigore that the concealment would amount to the petitioner being rendered unfit for the tasks assigned to him and the petitioner would compromise the interests of the organisations."

10. In view of the above, it is clear that the respondents are making too much of an issue, which at worst could be treated as a minor indiscretion not deserving anything more than a verbal reprimand. Respondents over-reaction has no basis and deserves to be set aside.

11. In the above circumstances, OA succeeds and is accordingly allowed. The impugned order dated 02.04.2002 is quashed and set aside and the applicant is to be continued in his job, as if the said order has not been issued. The interim status quo order granted on 24.04.2002 and continued from time to time is made absolute. No costs.

(GOVINDAN S. TAMPI)
MEMBER (A)

16/6/02