

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 641/2015

Reserved on : 10.1.2020

Pronounced on : 17.03.2020

**Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhaya, Member (A)**

Mahendra Son of Shri Shanti Lal, aged about 29 years, resident of House No.1/24, Badi Nagphani, Boraj Road, Sanjay Nagar, Amba Colony, Ajmer and Aspirant for appointment to the post of Traffic Khallasi, Traffic Department, North Western Railway, Ajmer Division, Ajmer.
...Applicant.

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India, through General Manager, North Western Zone, North Western Railway (Head Quarter), Near Jawahar Circle, Jagatpura, Jaipur-302017.
2. Divisional Regional Manager, North Western Railway, Ajmer Division, Ajmer.
3. Senior Divisional Operating Manager, North Western Railway, Ajmer Division, Ajmer.

...Respondents.

(By Advocate: Shri Anupam Agarwal)

ORDER

Per: Suresh Kumar Monga, Member (J):

Pleaded case of the applicant herein is that he applied for a Group 'D' post in the pay band of Rs.5200-20200 in North Western Railway. He was selected for the said post by the respondents on 13.05.2013 and vide order dated 02.07.2013, he was posted at Bhilwara. By way of a subsequent order dated

(2)

09.07.2013, he was posted as Trackman in Gang No.21 at Bhilwara. While serving on the said post, he again applied for a post in Traffic Department whereby he was selected and offered appointment to the post of Traffic Khalasi vide order dated 15.09.2014. Thereafter, he submitted his resignation from the post of Trackman which was accepted on 14.11.2014 and he was relieved from the said post on 30.11.2014. It has further been averred that in the year 2006 the applicant's age was about 20 years. A quarrel took place with the students on 06.10.2006 and an FIR was registered against him under Sections 323 and 341 of the Indian Penal Code. The said criminal case was decided by the court on 11.10.2010 and the applicant was extended the benefit under Sections 4 and 12 of the Probation of Offenders Act, 1958. The fact with regard to said criminal case came to the notice of the respondents and, therefore, Respondent No.2 vide order dated 12.02.2015 (Annexure A/9) directed the applicant to submit a certified copy of the judgment in the said case. The applicant applied for a certified copy of the said judgment. Since the record had already been weeded out, therefore, the certified copy of the said judgment was not made available to him and he could submit the order dated 05.02.2015 vide which his application for supply of certified copy of judgment was declined. It has further been averred that Respondent No.2 served a notice dated 16.03.2015 (Annexure A/11) to the effect that the applicant concealed the fact with regard to said criminal case at

(3)

the time of his appointment as Trackman and, therefore, why his offer of appointment on the post of Traffic Khalasi be not cancelled. Pursuant to said notice, the applicant submitted his reply stating therein that the fact with regard to said criminal case could not be mentioned inadvertently and there was no ill-motive behind the same as the case was also finalized prior to the date of offer of appointment on the post of Trackman as well as Traffic Khalasi. The respondents, however, while ignoring the facts as stated by the applicant in his reply, issued an order dated 14.05.2015 (Annexure A/1) vide which his offer of appointment on the post of Traffic Khalasi was cancelled. Aggrieved by the said order, the applicant has preferred the present Original Application under Section 19 of the Administrative Tribunals Act, 1985.

2. The respondents while filing their joint reply have joined the defence and opposed the applicant's claim stating therein that the applicant was extended the benefit under Sections 4 and 12 of the Probation of Offenders Act, 1958 and, therefore, he cannot be treated to be acquitted. Not only this, the fact that he failed to disclose this aspect of the matter while filling up his attestation form disentitles him from getting appointment. It has further been averred that his attestation form was sent for verification and the District Magistrate, Ajmer vide letter dated 09.01.2015 informed that case No.167/2006 under Sections 341 and 323 of

(4)

the Indian Penal Code was registered against the applicant and the Hon'ble court vide order dated 11.10.2010 held him guilty of the offences committed by him. However, he was extended the benefit under Sections 4 and 12 of the Probation of Offenders Act, 1958. Since no justification in applicant's reply for non-disclosure of said fact was found, therefore, the respondents have rightly cancelled his offer of appointment on the post of Traffic Khalasi vide order dated 14.05.2015 (Annexure A/1). With all these assertions, the respondents have prayed for dismissal of the present Original Application.

3. Heard learned counsels for the parties.

4. Shri C.B.Sharma, learned counsel for the applicant submitted that the applicant was a young man aged about 20 years when he was involved in the aforesaid criminal case and the said criminal case was concluded even prior to his appointment on the post of Trackman. He while placing reliance upon a judgment dated 07.10.2016 rendered by this Bench of the Tribunal in OA No.751/2015 in the case of **Vaseem Khan vs. Union of India & Others** and also a judgment of the Hon'ble Supreme Court in the case of **Avtar Singh vs. Union of India & Others** (2016) 8 SCC 471 submitted that in a case trivial in nature where conviction is recorded and the said conviction do not render an incumbent ineligible for appointment, such a non-disclosure in the attestation form is liable to be ignored.

(5)

5. Per contra, Shri Anupam Agarwal, learned counsel for the respondents submitted that the applicant was convicted under Sections 323 and 341 of the Indian Penal Code and he was required to disclose the said fact while furnishing his attestation form. Since he concealed the said material fact, therefore, in terms of warning recorded on the attestation form itself, he has no right to continue on the post. The applicant has even failed to submit a copy of the judgment rendered by the criminal court when he was asked to submit the same after receipt of report from the District Magistrate.

6. Considered the rival contentions of learned counsels for the parties and perused the record.

7. Admittedly, the applicant was involved in a criminal case registered under Sections 323 and 341 of the Indian Penal Code on 06.10.2006 when he was aged about 20 years. The said criminal case was decided by the competent court of law on 11.10.2010. Though the applicant was convicted but still looking towards his young age, he was extended the benefit under Sections 4 and 12 of the Probation of Offenders Act, 1958. After about a period of 3 years, the applicant was selected for the post of Trackman and he was appointed on the said post by respondents on 02.07.2013. While working on the said post, the applicant again applied for the post of Traffic Khalasi. He was

(6)

selected for the said post as well and an offer of appointment was given by the respondents vide order dated 15.09.2014. After getting the said offer of appointment, the applicant submitted his resignation from the post of Trackman. His resignation was duly accepted by the respondents without raising any objection and he was relieved on 30.11.2014. Before he could join on the post of Traffic Khalasi pursuant to offer of appointment dated 15.09.2014, he was served with a show cause notice dated 16.03.2015 (Annexure A/11) stating therein that while submitting the original documents as well as the attestation form, the case with regard to his involvement in a criminal matter has not been disclosed and since he failed to disclose the said fact while submitting attestation form at the time when he was considered for appointment on the post of Trackman, therefore, why the offer of appointment on the post of Traffic Khalasi be not withdrawn. After getting the said notice, the applicant submitted a detailed reply stating therein that the criminal case had already been concluded when he was appointed on the post of Trackman and because of lack of knowledge he failed to disclose the said fact while furnishing the attestation form at that time. However, while submitting the attestation form after getting the offer of appointment on the post of Traffic Khalasi, he has disclosed the fact with regard to said criminal case. The respondents, while treating non-disclosure of concluded criminal case at the time when the offer of appointment was made for the post of

(7)

Trackman as disqualification, opted to cancel the offer of appointment for the post of Traffic Khalasi vide order dated 14.05.2015 (Annexure A/1). A perusal of the order dated 14.05.2015 reveals that the non-disclosure of aforesaid criminal case by the applicant while accepting the offer of appointment on the post of Trackman has been considered his disqualification for appointment on the post of Traffic Khalasi.

8. In our considered view, such a ground to cancel the offer of appointment on the post of Traffic Khalasi cannot be sustained as the same goes contrary to the principles laid down by the Hon'ble Supreme Court in the cases of **Manjunatha vs. State of Karnataka and Others**, 2015 (1) SCT 507 (SC), **Avtar Singh** (supra) and **Commissioner of Police & Others vs. Sandeep Kumar**, (2011) 1 SCC (L&S) 734.

9. In the case of Manjunatha (supra), the petitioner had not furnished the information as required under column Nos. 12 and 13 of the application form, which was neither intentional nor deliberate with a view to misrepresent and mislead the department to get public employment. The Hon'ble Supreme Court ruled that there was no basic disqualification suffered by the petitioner for appointment by withholding the information required to be furnished under Column Nos. 12 and 13 of the application form.

(8)

In the case of Sandeep Kumar (supra), the Hon'ble Supreme Court was also dealing with a case where the candidate was involved in a criminal case which was closed after compromise about which he did not make a mention in the application form. In the circumstances, the Hon'ble Supreme Court held that when the incident happened, the candidate was aged about 20 years and at that young age, people often commit indiscretions, and such indiscretions can often be pardoned. It was further observed that the youth are not expected to behave in as matured manner as older people and thus the court held that our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

10. In the matter of Avtar Singh (supra), the Hon'ble Supreme Court has summarized the law specifically as to in which conditions, the employment can be denied to a candidate. The relevant portion of the said judgment is reproduced here as under:

"30. 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,

(9)

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."

11. While placing reliance upon the principles enunciated by the Hon'ble Supreme Court in the aforesaid judgments, this Tribunal also in an identical case, i.e. Vaseem Khan (supra) has held that the candidate cannot be non-suited for appointment, if a criminal matter was concluded a decade ago when he submitted his application for such an appointment.

12. In the case in hand, the applicant, who was involved in a trivial offence, no doubt convicted but looking towards his young age, was extended the benefit under Sections 4 and 12 of the Probation of Offenders Act, 1958 by a court of competent

(10)

jurisdiction. The said matter was concluded three years prior to his submission of application for appointment in the year 2013 on the post of Trackman. Non-disclosure of said criminal case at that time cannot be construed to be a valid ground for cancellation of offer of appointment to another post of Traffic Khalasi, more particularly when the applicant disclosed the said fact while furnishing his attestation form at the time when offer of appointment was made for the post of Traffic Khalasi.

13. In the conspectus of discussions made in the foregoing paragraphs, the order dated 14.05.2015 (Annexure A/1) cannot be sustained and the same is liable to be quashed.

14. Accordingly, the Original Application is allowed and the order dated 14.05.2015 (Annexure A/1) is hereby quashed and set aside. The respondents are directed to process the applicant's case for appointment on the post of Traffic Khalasi within a period of one month from the date of receipt of a certified copy of this order and permit him the joining after completion of all necessary formalities as stipulated in the offer of appointment letter dated 15.09.2014 (Annexure A/6).

15. There shall be no order as to costs.

(A.Mukhopadhaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

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