

21

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No 3091/2001
T.A.No.

Date of Decision 16.7.2002

Sh.Abdul Rahim ... Petitioner

Sh.V.S.R.Krishna ... Advocate for the Petitioner(s)

VERSUS

Govt of NCT of Delhi ... Respondent
through Chief Secretary and
Ors.

Shri Ram Kawar ... Advocate for the Respondents

Coram:-

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri V.K.Majotra, Member (A)

1. To be referred to the Reporter or not ? Yes
2. Whether it needs to be circulated to other
Benches of the Tribunal? No

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

Central Administrative Tribunal
Principal Bench

O.A. 3091/2001

New Delhi this the 26th day of July, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).
Hon'ble Shri V.K. Majotra, Member (A).

Sh. Abdul Rahim,
A-15/20, Chouhan Bagar,
New Seelampur,
Delhi-110053.

... Applicant.

(By Advocate Shri V.S.R. Krishna)

Versus

Govt. of NCT of Delhi

Through

1. The Chief Secretary,
Govt. of NCT of Delhi,
New Sachivalaya,
Players Building,
Delhi.
2. The Secretary,
General Administration Department,
Govt. of NCT of Delhi,
New Sachivalaya,
Players Building,
Delhi. ... Respondents.

(By Advocate Shri Ram Kawar)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

In this application, the applicant is aggrieved by the order dated 27.11.2000 issued by Respondent No.2 terminating his appointment as Driver in their office. He has also impugned the appellate authority's order dated 10.5.2001 rejecting his appeal.

2. The brief relevant facts of the case are that the applicant was appointed as a Driver in the office of

the respondents, on 19.1.1998 in pursuance of the order of the Tribunal dated 16.5.1997 in OA 2530/1996. The offer of appointment made to the applicant was to the temporary post of Driver in the pay scale of Rs.3050-4590 with the respondents. It was mentioned in the Memorandum of appointment dated 13.1.1998 that he will be on probation for a period of two years from the date of his appointment. The appointment was also liable to be terminated at any time by giving one month's notice without assigning any reason and it was also subject to other conditions mentioned in the Memorandum, including para 6 which states that if any declaration given or information furnished by the applicant proves to be false or if he is found to have wilfully suppressed any material/information, he will be liable to be removed from service or to any other action as the Government may deem necessary.

3. After the applicant had been appointed on temporary basis as Driver w.e.f. 19.1.1998 which was subject to character and antecedents verification report, the respondents have stated that it came to their notice that the applicant had remained in police/judicial custody from 10.8.1997 to 12.8.1997 and he was prosecuted in a case registered against him under FIR No.165/97 under Section 307/34 IPC in Police Station Pratap Nagar. They have submitted that these facts were later confirmed from the DCP, North District as well as SHO Pratap Nagar. Their contention is that in the attestation form filled by the applicant at the time of his temporary appointment as Driver in January, 1998 after his aforesaid appointment, the applicant had categorically denied that he was ever prosecuted which, according to the learned counsel for the

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14

-3-

respondents, shows that he has suppressed the material facts. The applicant was issued a show cause notice vide Memo dated 12.1.1999. The relevant portion of this Memo reads as follows:

"It has been intimated by the SHO, Pratap Nagar, Police Station that a case against Sh. Abdul Rahim, Driver has been registered under FIR No.165/97 U/S 307/34 IPC P.S. Pratap Nagar which is currently pending in the Tis Hazari Court, N. Delhi. However, Sh. Abdul Rahim while on his joining as regular Driver at the strength of GAD has stated in the negative against para-10 point (b) & (c) in the attestation form (copy enclosed) i.e. whether he has ever been prosecuted and whether he has ever been under detention although he has enclosed a copy of the aforesaid/relevant FIR. Later, it has been confirmed from the Dy. Commissioner of Police, North District as well as SHO, Pratap Nagar that Sh. Abdul Rahim had been in police/judicial custody from 10.8.97 to 12.8.97 and the prosecution against him is still on in the Tis Hazari Court, Delhi.

Therefore, Sh. Abdul Rahim, Driver is hereby directed to submit his explanation as to why he has given a wrong information against colum (b) & (c) in the attestation form while on his joining as driver in GAD. Sh. Abdul Rahim's explanation should reach this deptt. within 5 days of the receipt of this memo failing which it will be assumed that he has willingly misled the Admn. and action deemed suitable will be taken accordingly.

4. To the aforesaid Memo, the applicant has filed his reply dated 18.1.1999. In this reply, he has stated that it is a fact that a case FIR No.165/97 dated 24.6.97 under Section 307/34 IPC PS Pratap Nagar was registered against him which, according to him, was false and he was arrested on 11.8.1997. He has stated that he had stated so in the attestation form that he had been arrested at the time of joining as Driver and also enclosed a copy of the aforesaid FIR. He has also specifically mentioned that "It is correct that I was in police/judicial custody from 11.8.97 to 12.8.97". Shri V.S.R. Krishna, learned counsel, has emphatically submitted that even though the respondents had received a report from the Deputy

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Superintendent, Central Jail, Tihar, New Delhi that the applicant had been lodged in jail on 11.8.1997 in FIR No. 165/97 and released from jail on 12.8.1997 on bail by the Hon'ble Court of the M.M, Tis Hazari Courts, the respondents have made reference of his arrest from 10.8.1997 to 12.8.1997 which is incorrect. The applicant in his reply has further submitted that he had no intention to conceal the facts as he had answered in the affirmative to the query in paragraph 10 (a) of the attestation form. He has also taken the point that the FIR had also been enclosed with the attestation form and, therefore, there was no intention on the part of the applicant to conceal any materials or information from the respondents at the relevant time. Learned counsel for the applicant has also submitted that subsequently after the impugned termination order had been issued by the respondents dated 27.11.2000, the applicant had also been acquitted from the criminal case on 4.4.2001 which was initiated against him under FIR No.165/97. He has relied on the judgement of the Supreme Court in Commissioner of Police, Delhi and Anr. Vs. Dhaval Singh (JT 1998 (9) SC 429).

5. Shri Ram Kawar, learned counsel for the respondents has, on the other hand, submitted that the applicant had deliberately suppressed the material facts as he had answered in the negative the questions in paragraph 10 (b) and (c) of the attestation form which relate to the fact of his prosecution and whether he had ever been kept under detention. He has also submitted that to the question 10 (i) of the attestation form, whether any case is pending against him in any court of law at the time of

Y2

filling of the form, the applicant had replied "Yes". Learned counsel for the respondents has submitted that there is no infirmity or illegality in the impugned order dated 27.11.2000 passed by the Secretary, GAD or the rejection of his appeal by the Chief Secretary of Govt. of NCT, Delhi as the appellate authority by order dated 12.5.2001. He has also submitted that the appellate authority has very correctly taken into consideration the fact that the Government is not obliged to retain a person in its employment when it is apprehended that such act will shake the general confidence of the public. The standard of proof required in the Departmental proceedings is different from that in the criminal proceedings and other reasons given by the appellate authority. He has also submitted that there is no ground for the Tribunal to interfere in the matter as there is no illegality. He has, therefore, prayed that the OA should be dismissed.

6. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

7. In the Memo dated 12.1.1999 issued by the respondents, the relevant portion of which has been reproduced in para 3 above, it is stated that the applicant had while joining as regular Driver on the strength of GAT, stated in the negative against paragraph 10, sub-paras (b) and (c) ~~(b) and (c)~~ ^{ys.} in the attestation form, that is whether he has ever been prosecuted and kept under detention. They have, however, admitted that he had enclosed a copy of the relevant FIR. Further, it has been stated that the

18.

8. From the above facts, we find force in the submissions made by Shri V.S.R. Krishna, learned counsel that what was in the mind of the respondent in passing the order dated 27.11.2000 as per his own averments in the order, was that the applicant had knowingly concealed information about his arrest in the attestation form. A mere perusal of the Memo dated 12.1.1999 shows that it refers to the negative answers with regard to paragraph 10 (b) and (c) in the attestation form and not to sub paragraph 10 (a) which specifically deals with the question of arrest, to which the applicant has answered in the affirmative. The reply given by the applicant dated 18.1.1999 read with the certificate of the Deputy Superintendent, Central Jail about his detention in jail from 11.8.1997 to 12.8.1997 does not also appear to have been considered by the respondents while passing the aforesaid impugned order. It is relevant to note that in the impugned order dated 27.11.2000, there is no mention of the replies to paragraph 10 (b) and (c) in the attestation form which are the main issues on which the show cause notice had been earlier issued by the respondents vide their Memo dated 12.1.1999. It is also relevant to note that the respondents have not denied the fact that the applicant had answered to query in sub-paragraph (i) of paragraph 10 in the affirmative, meaning that there was a case pending against him in the court of law and it is also a fact which has not been denied by the respondents that he had also supplied a copy of FIR No. 165/97 filed under Section 397/34 IPC at PS Pratap Nagar.

9. Learned counsel for the respondents had also made eloquent submissions as to the undesirability of employing persons having criminal activities in public offices with which

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19

-6-

applicant has been in police/judicial custody from 10.8.1997 to 12.8.1997 and the prosecution against him is still pending in the competent criminal court. The facts of his arrest and release stated in this Memorandum as well as in the impugned order dated 27.11.2000 i.e. he has been in police custody from 10.8.1997 to 12.8.1997 are quite contrary to the facts mentioned in the certificate dated 1.5.1999 issued by the Deputy Supdt., Central Jail, Tihar, New Delhi, wherein it has been certified that the applicant was lodged in jail on 11.8.1997 and released from jail on 12.8.1997 on bail by orders of the Hon'ble MM Tis Hazari Courts. Nothing has been brought on record by the respondents to show how they have stated in both the Memorandum dated 12.1.1999 and the order dated 27.11.2000 that the applicant had remained in police custody from 10.8.1997 to 12.8.1997 in the criminal case under Section 307/34 IPC. In the attestation form submitted by the applicant, copy placed at Annexure A-3, in reply to query at paragraph 10 (a) whether he has ever been arrested, ~~that~~ he has replied "Yes". This fact is not denied by the respondents. According to the Memorandum of show cause notice issued by the respondents asking him to give his explanation as to why he had given wrong information, the reference is to the negative answers given by him with regard to paragraph 10 (b) and (c). Paragraph 3 of the impugned order dated 27.11.2000 reads as follows:

"3. WHEREAS, Sh. Abdul Rahim, before he could be appointed to the post was required to submit vital information about himself in the Attestation Forms. The information provided by the candidate in the Attestation Form is used by police authorities during verification of candidate's character antecedents. Sh. Abdul Rahim knowingly conceded (sic) information about his arrest in the Attestation Form."

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(Emphasis added)

19

we have no difficulty to agree. In other words, there can be no two opinions on these submissions as it is necessary to have a clean administration which upholds the rule of law at all times. However, it is settled law that the respondents have to act in accordance with the relevant law and rules and not in a manner which is unreasonable and arbitrary. It is relevant to note that in the order of the appellate authority, it has been mentioned that the applicant had submitted the attestation form with a denial against prosecution and detention, 10 (b) and (c) from which it is concluded that this manifests that he had not intended to provide fact of his arrest to the Government. This patently is contrary to the averment made by the applicant which has not been specifically denied by the respondents that he had affirmatively answered the question in paragraph 10(a) of the attestation form that he has been arrested. We do not find either in the impugned order dated 27.11.2000 or in the appellate authority's order dated 10.5.2001 any application of mind or reasons given by these authorities, on the reply of the applicant to the show cause notice with regard to his negative answers to paragraphs 10 (b) and (c) of the attestation form. In the Memorandum/Show cause notice dated 12.1.1999, the respondents have stated that the applicant while ~~on his~~ joining ^{as a} ~~as a~~ regular Driver ~~on~~ the strength of GAD, had stated in the negative against paragraph 10, points (b) and (c) in the attestation form but it is also relevant to note that it is not denied by ^{the} ~~the~~ respondents that the applicant had furnished a copy of FIR to them at the relevant time.

10. In Dhaval Singh's case (supra), the Hon'ble Supreme Court had in the facts and circumstances of the case, come to the conclusion that cancellation of the appointment of

the applicant as Constable in Delhi Police was without proper application of mind and as such they upheld the Tribunal's order as justified in setting aside the cancellation. In this case, the Hon'ble Apex Court has held as follows:

"That there was an omission on the part of the respondent to give information against the relevant column in the Application Form about the pendency of the criminal case, is not in dispute. The respondent, however, voluntarily conveyed it, on 15.11.1995, to the appellant that he had inadvertently failed to mention in the appropriate column regarding the pendency of the criminal case against him and that his letter may be treated as "information". Despite receipt of this communication, the candidature of the respondent was cancelled. A perusal of the order of the Deputy Commissioner of Police cancelling the candidature on 20.11.1995 show that the information conveyed by the respondent on 15.11.1995 was not taken note of. It was obligatory on the part of the appellant to have considered that application and apply its mind to the stand of the respondent that he had made an inadvertent mistake before passing the order. That, however, was not done. It is not as if information was given by the respondent regarding the inadvertent mistake committed by him after he had been acquitted by the trial Court it was much before that. It is also obvious that the information was conveyed voluntarily. In vain, have we searched through the order of the Deputy Commissioner of Police and the other record for any observation, relating to the information conveyed by the respondent on 15.11.1995 and whether that application could not be treated as curing the defect which had occurred in the Form. We are not told as to how that communication was disposed of either. Did the competent authority ever have a look at it, before passing the order of cancellation of candidature? The cancellation of the candidature under the circumstances was without any proper application of mind and without taking into consideration all relevant material. The Tribunal, therefore, rightly set it aside. We uphold the order of the Tribunal, though for slightly different reasons, as mentioned above".

11. In the present case, termination of the applicant's service as Driver vide the impugned orders has been passed, on the ground that the applicant had knowingly concealed information about his arrest in the attestation form. As mentioned above, following the judgement of the Hon'ble Supreme Court in Dhaval Singh's case (supra), we find that, in the facts and circumstances of the case, there has been no application of

15

mind by the authorities on the reply filed by the applicant to the show cause notice and also to the fact that he had, in fact, answered the query about his arrest in the affirmative, while coming to the conclusion that he had concealed information of his arrest. Therefore, we are of the considered view that the judgement of the Hon'ble Supreme Court in Dhaval Singh's case (supra) is applicable to the facts and circumstances of the case.

12. In the result, for the reasons given above, the impugned orders dated 27.11.2000 and 10.5.2001 terminating the temporary services of the applicant as Driver are quashed and set aside. The applicant should be reinstated in service within one month from the date of receipt of a copy of this order. No order as to costs.

V.K. Majotra,
(V.K. Majotra)
Member(A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

'SRD'