

**Central Administrative Tribunal
Ernakulam Bench**

OA No.180/00674/2019

Wednesday, this the 21st day of October, 2020

CORAM

Hon'ble Mr.P.Madhavan, Judicial Member

Hon'ble Mr.K.V.Eapen, Administrative Member

1. Nijeesh M.K., aged 35 years,
S/o Kuttan,
Muttathil House, Chalakudy (T),
Kalloor Thekkumury Village,
House No.53, Mambara P.O.,
West Korarry, Thrissur Dist.680 308.

2. Kishor K.K., aged 35 years,
S/o Kumaran K.K.,
Kizhakkutta House, Thanniyam Village,
House No.438, Peringottukara P.O.,
Thrissur Dist-680 565.

3. Pradeep E.P., aged 34 years,
S/o Parameswaran,
VII/91, Edayapuram House, Muttathil House,
Chalakudy (T), Thrissur Dist. -680 721.

4. Haridas K.K., aged 34 years,
S/o K.K.Krishnankutty,
Karamvalappil House, Chalakudy Taluk,
Kalloor Vadakumury Village, House No.49,
Kathikudam P.O. Thrissur Dist-680 308. Applicants

(Advocate: Mr.R.Pushpangathan Pillai)

Versus

1. Union of India represented by the
Secretary,
Ministry of Defence, South Block,
New Delhi-110 011.

2. The Secretary,
Ordnance Factory Board, Ayudh Bhavan,
10-A. S.K.Bose Road,
Kolkata-700 001 (Under the Ministry of Defence).

3. The Senior General Manager,
Heavy Vehicles Factory,
Avadi, Chennai – 600 054.
(Under the Ministry of Defence)

4. The Joint General Manager/Administration,
Heavy Vehicles Factory,
Avadi, Chennai-600054.
(Under the Ministry of Defence)

5. The Additional Director General,
Armoured Vehicle Headquarters,
Avadi, Chennai-600 054. Respondents

(Advocate: Mr.V.A.Shaji, ACGSC)

The OA having been heard on 29th September, 2020, this Tribunal delivered the following order on 21.10.2020:

O R D E R

By P.Madhavan, Judicial Member

The applicants have filed this OA seeking the following reliefs:

(i) *Quash Annexure A-1(a) to A-1(d) as arbitrary and illegal.*

(ii) *Declare that the applicants are fully qualified to be appointed to the post of Heat Treatment Operator under the respondents having been provisionally selected for the post after a due process of selection.*

(iii) *Direct the respondents to reconsider the entire issue and issue appropriate orders upholding the candidature of the applicants and grant appointment thereon for the post in question.*

The case of the applicants is as follows.

2. The applicants had applied for the post of Heat Treatment Operator (HTO) in the Ordnance Factory, Avadi. The written examination was on 10.9.2017 and the applicants got qualified in the examination. They were also successful in the interview conducted and they were provisionally selected. But the respondents cancelled their selection as per letter dated 18.12.2018 (Annexure A1). Their selection was cancelled alleging

suppression of material facts in the forms of attestation given by the applicants. In the police verification, District Police Chief (Rural), Thrissur reported that the 1st applicant was fined on 11.7.2011 by the Judicial First Class Magistrate Court (JFMC), Chalakkudy in S.T. Case No.3672/11 for an offence under Section 279 Indian Penal Code (IPC) and 185 Motor Vehicles Act (M.V. Act); the 2nd applicant was fined on 5.7.2004 by the JFMC, Kodungallur in C.C.No.679/2004 for offences u/s 279 & 337 of IPC, the 3rd applicant was fined on 29.5.2017 by JFMC, Chalakkudy in CC No.1248/2017 for offences u/s 279 & 338 of IPC and the 4th respondent was fined by JFMC on 21.3.2009 in S.T. Case No.732/2009 for offences u/s 184 & 185 of M.V. Act and again in CC No.1878/11 on 12.12.2011. The applicant had omitted to mention the above facts in the declaration. The respondents had arbitrarily cancelled the selection even though the offences are petty in nature. Even though the applicants had submitted representations tendering their apology for the mistake and also filed an appeal before the Additional Director General, Avady, they were rejected.

3. The respondents filed reply, admitting the selection process undertaken and the cancellation of selection of the applicants. The applicants who were provisionally selected had to submit attestation forms in prescribed format. They had submitted attestation forms [vide R1(A), (B), (C), & (D)], and they were forwarded to the police for verification. They have produced the police verification reports of the applicants as Annexure [R2(A), (B), (C), & (D)]. It was reported that the applicants were fined for offences under Sections 279 & 337 IPC and 184 & 185 of the Motor Vehicles Act etc. It was clearly stated by respondents in the

attestation forms that furnishing of false information or suppression of factual information in the attestation form would be a disqualification.

4. The applicants did not reveal their involvement in the cases mentioned in the police report and suppressed material facts. Accordingly R3 had cancelled their selection on 18.12.2018 (Annexure R3).

5. The attestation form contains the following information “*The furnishing of false information or suppression of any factual information in the Verification Roll would be a disqualification and is likely to render candidate unfit for employment under the government.*” The applicants had given answer “No” to the following questions:

“12(b) Have you ever been prosecuted?

12(e) Have you ever been fined by a Court of Law for any offence?

12(f) Have you ever been convicted by a Court of Law for any offence?

6. So, the applicants had deliberately suppressed the fact that they have been fined by JFM Court. It is also a false information regarding their character and antecedent in the prescribed form.

7. The applicants filed a rejoinder reiterating their contentions in the OA. The respondents filed an additional reply stating the details of the offences for which the applicants were fined and the amounts of fine imposed. The applicants filed an additional rejoinder also suggesting that those offences are petty in nature and will not invite any moral turpitude and there is no serious suppression of facts done in this case.

8. We have perused the pleadings and annexures and also heard the counsel appearing on both sides. The main ground urged by the counsel for the applicants is that Annexure A1 cancellation order was arbitrary, unjust

and illegal and, therefore, it is liable to be struck down. There is no proper application of mind and it has caused miscarriage of justice. The order has wiped out the expectations of the applicants. The denial of public appointment on the basis of unreasonable reasoning is against the principles laid down under Articles 14 & 16 of the Constitution. The competent authority in this case ought to have condoned the lapses on the part of the applicants, which occurred while filling up the application forms. The impact of suppression of material facts has been clearly discussed in the decision of the Hon'ble Apex Court in *Avtar Singh vs. Union of India & Ors., reported in 2016 SC 3598*.

9. The competent authority has lost sight of the meritorious nature of the candidates on the mere reason of an inadvertent omission committed by the applicants. According to the counsel for the applicants, all the offences committed are petty in nature and the applicants were only fined. There is no moral turpitude attached to any of the above offences as they are purely technical in nature.

10. The counsel for the respondents, on the other hand, submitted that the applicants had submitted 3 sets of attestation forms duly filled, which are produced as Annexure R1 series. It was clearly instructed in the above attestation forms that furnishing of any false information or suppression of any factual information in the attestation forms would be a disqualification and it is likely to render candidates unfit for employment under the Government. It was clearly mentioned that even if the conviction or debarment happened subsequently, it should be intimated to the Selection Committee and if they fail, it would be deemed to be suppression of factual

information. It has been clearly asked whether the applicant has been prosecuted; whether he has ever been fined by a Court of Law for any offence and whether he has ever been convicted by a Court of Law for any offence. All the applicants had clearly stated in R1 series that they are not prosecuted or fined or convicted by any Court of Law. They all had given an emphatic 'NO' to all the three questions. The above attestation forms were forwarded for police verification and in the police verification report, it came out that the applicants were fined for offences like 279 & 337 IPC and 184 & 185 M.V. Act earlier and they had clearly suppressed the same. This amounts to suppression of facts which the applicant were not expected to do. The counsel for the respondents mainly relied upon the decision of the Hon'ble Supreme Court in ***Dayashankar Yadav Vs. Union of India and others (Civil Appeal No.9913/2010***, arising out of SLP (C) No. 16989 of 2006 in support of their case. The said appeal was dismissed by the Supreme Court observing that the appellant had suppressed material facts for not being truthful regarding his antecedents which are relevant for employment in a defense service. It was also contended that the decision of the Hon'ble Supreme Court in ***Avatar Singh vs. Union of India & Others*** is factually different and the principles cannot be applied to this case.

11. On a perusal of the pleadings and annexures, it seems that the applicants were selected to the post of Heat Treatment Operator by the respondents and they were provisionally selected. Before joining, the applicants had to furnish a verification form and they had given negative answers to the following questions:

Have you ever been prosecuted?

Have you ever been fined by a Court of Law?

Have you ever been convicted by any Court of Law for any offence?

12. When the respondents forwarded the verification forms to the police, they had reported that the applicants were involved in the following cases:

First applicant was fined Rs.2000 by the JFMC for drunken driving. Second applicant was fined Rs.1500 by the JFMC, Kodungallur, u/s 279 & 337 IPC; Third applicant was fined Rs.2000 in 2017 by the JFMC, Chalakudy u/s 279 & 338 IPC and the Fourth applicant was fined Rs.1500 by JFMC, Chalakudy u/s 184 & 185 of MV Act, for drunken driving and he was also fined Rs.1750 on 12.12.2011 u/s 279 and 338 IPC for road accident case. So, according to the respondents, they had suppressed the above material facts in the verification forms and they are not eligible to be appointed. Annexures R3 series are the lists issued by the respondents cancelling the selection of the applicants.

13. We have gone through both the decisions on the point, produced by both sides. The main contention put forward by the counsel in this case is that the offences alleged against the applicants are trivial in nature and the fine was imposed on pleading guilty before the Court and it was a mistake committed by the applicants in not disclosing the same in the verification report. None of the offences has an element of moral turpitude and the respondents ought to have considered the nature of the above offences and the circumstances in which it might have been committed before cancelling the selection.

14. On going through the decision of the Hon'ble Supreme Court in *Avtar Singh and others*, it can be seen that the said decision was rendered by a Full Bench comprising of 3 judges of the Supreme Court to consolidate the conflicting decisions rendered earlier by various Division Benches. The Hon'ble Supreme Court has summarized its conclusions in Para No.30 of the judgment as follows:

"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, 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 inquiry 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.”*

15. On going through the aforesaid principle laid down by the Hon'ble Supreme Court, we find that the present case comes under conclusion No.4 of the said decision. Conclusion No.4 says that “*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.

16. In this case also, the offences committed by the applicants are purely without any *mens rea* or criminal intent. The main offences alleged against the applicants are the ones u/s 279 & 338 IPC. Another offence alleged is only under Motor Vehicles Act, i.e., rash driving under the influence of alcohol. The applicants were imposed only fine and no imprisonment was awarded. These offences will not, in any way, indicate that the applicants are not suitable to be selected as Heat Treatment Operators. It also does not indicate that they are people with no integrity. So, we are of the opinion that the respondents in this case have not applied their minds and have not taken into consideration the circumstances in which the offences were committed and the circumstances in which the said information was given. As per the Police Verification Report, the Police had nothing to report regarding any other bad antecedents of the applicants.

17. In view of the well laid down principle of the Hon'ble Supreme Court in this matter, under para 30, Sub Clause 4, we find that the impugned orders passed cancelling the appointment of the applicants are liable to be set aside. The respondents are expected to consider the circumstances in which those petty offences were committed and whether they are trivial in nature and whether it will render the incumbents unfit for the post selected etc before cancellation. We find that the action of the respondents as arbitrary and it cannot stand in the eye of law laid down by the Apex Court.

.11.

Hence we set aside Annexure A1(a) to A1(d). The respondents are directed to consider the case of the applicants in the light of the decision of the Hon'ble Apex Court explained in Parra 30 Sub Clause 4 and various rules and regulations and pass an order in the matter within three months from the date of receipt of this order. The OA stands allowed to this extent. No order as to costs.

(K.V. Eapen)
Administrative Member

(P. Madhavan)
Judicial Member

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Annexures filed by the applicants:

Annexure A-1(a) to A-1(d): True copies of letter No.01265/LB/RECT/DR/2018 dated 18.12.2018 issued by the 4th respondent in respect of all the applicants.

Annexure A-2(a) to A-2(c): True copies of letter No.01265/LB/RECT/DR/2019 dated 13.2.2019 regretting appeals preferred against Annexure A-1 in respect of applicants 1, 2 and 4.

Annexure A-3(a) to A-3(d): True copies of Admit Card for direct recruitment of industrial employees in respect of the applicants.

Annexure A-4(a) and A-4(b): True copies of Provisional Call letter for Document Verification/Trade Test held on 21.01.2018 in respect of applicants 1 and 2.

Annexure A-5(a) to A-5(d): True copies of the Attestation Form dated 31.8.2018 duly signed and attested by the 4th respondent.

Annexure A-6(a) to A6 (d): True copies of verification report in terms of letter No.376/SB/VR/CR/2018 dated 15.10.2018, 13.10.2018, 13.10.2018 and 15.10.2018 issued by the District Police Chief, Thrissur (Rural), Kerala.

Annexure A7(a) and A-7(b): True copies of the apology letter dated 29.12.2018 in respect of applicants 1 and 4 submitted before the 3rd respondent.

Annexure A8(a) and A-8(b): True copies of appeal preferred by applicants 1 & 2 before the 5th respondent.

Annexures filed by respondents:

Annexure R-1(A): True copy of Attestation form submitted by the 1st applicant to the 3rd respondent.

Annexure R-1(B): True copy of Attestation form submitted by the 2nd applicant to the 3rd respondent.

Annexure R-1(C): True copy of Attestation form submitted by the 3rd applicant to the 3rd respondent.

Annexure R-1(D): True copy of Attestation form submitted by the 4th applicant to the 3rd respondent.

Annexure R-2(A): True copy of the police verification report of the 1st applicant from the District Police Office, Thrissur Rural.

Annexure R-2(B): True copy of the police verification report of the 2nd applicant from the District Police Office, Thrissur Rural.

Annexure R-2(C): True copy of the police verification report of the 3rd applicant from the District Police Office, Thrissur Rural.

Annexure R-2(D): True copy of the police verification report of the 4th applicant from the District Police Office, Thrissur Rural.

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Annexure R-3(A): True copy of the letter 18.12.2018 cancelling the candidature of the 1st applicant.

Annexure R-3(B): True copy of the letter 18.12.2018 cancelling the candidature of the 2nd applicant.

Annexure R-3(C): True copy of the letter 18.12.2018 cancelling the candidature of the 3rd applicant.

Annexure R-3(D): True copy of the letter 18.12.2018 cancelling the candidature of the 4th applicant.

Annexure R-4: True copy of the advertisement No.1021/11/0209/1718.