

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

**ORIGINAL APPLICATION NO. 291/131/2014**

Order reserved on 29.10.2020

**DATE OF ORDER:** 05.11.2020

**CORAM**

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**  
**HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER**

Fateh Singh S/o Shri Bal Kishan, aged about 22 years, Resident of Jaisinghpura, P.S. Sadar Gangapurcity, Tehsil Gangapurcity, District Sawai Madhopur (Raj.) at present working as Trackman Unit No. 62, under Senior Section Engineer (Pway) (South), West Central Railway, Gangapurcity (Raj.).

....Applicant

Shri K.K. Sharma, counsel for applicant (through Video Conferencing).

**VERSUS**

1. Union of India through its General Manager, West Central Railway, Jabalpur (M.P.).
2. Divisional Railway Manager, West Central Railway, Kota (Raj.).
3. Assistant Divisional Engineer, West Central Railway, Gangapurcity, District Sawai Madhopur (Raj.).

....Respondents

Shri Anupam Agarwal, counsel for respondents (through Video Conferencing).

**ORDER**

**Per: Hina P. Shah, Judicial Member**

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 with a prayer for quashing and setting aside the impugned order dated 13.02.2014 (Annexure A/1) and that the respondents be directed to reinstate the applicant in service with all consequential benefits.

2. It is the case of the applicant that due to health issues of his father, Shri Bal Kishan, who was working as Gangman, under the Scheme of Railways, his father obtained voluntary retirement and in his father's place, he was appointed as Trackman vide order dated 20.08.2013. On the said post, he discharged his duties with full satisfaction to the respondents. The respondents issued a show cause notice dated 31.01.2014 (Annexure A/3) stating that at the time of appointment, wrong information was provided by the applicant about registration of criminal case at Gangapur City Police Station being Criminal Case No. 102/2012 under Sections 363, 366

and 120-B of I.P.C. The applicant replied to the said notice, but the respondents in an illegal, arbitrary and with malafide intention, issued termination order dated 13.02.2014 (Annexure A/1), which is cryptic, unreasoned and bad in law. The said order was passed without conducting a proper inquiry, without providing reasonable opportunity of personal hearing and without following principles of natural justice. Therefore, the applicant has approached this Tribunal stating that he has not committed any mistake by stating that no criminal case is pending against him and, hence, the impugned termination order is bad in law and the same is liable to be quashed and set aside.

3. The respondents, after issue of notices, have filed their reply justifying their stand that the orders passed by them are just and proper and in accordance with relevant rules and instructions and prayed for dismissal of the Original Application. The respondents further stated that the services of the applicant are terminated as per Rule 14 of the Railway Servants (Discipline and Appeal) Rules, 1968. The respondents

stated that the applicant was appointed under LARSGESS Scheme on voluntary retirement of his father. As per the said Scheme, father was allowed to retire and applicant was appointed in lieu thereof. As per letter dated 30.08.2013 (Annexure A/2), the appointment of the applicant was provisional. It was specifically provided that in case after appointment, it is found that he has suppressed any information during his appointment, then his services will be terminated. The information provided by the applicant in his declaration form was found to be false as criminal case was pending against him at Gangapurcity Police Station under Sections 363, 366 and 120-B of I.P.C. At Column 12 of the Attestation Form, in spite of warning clause, applicant has filled incorrect information. Therefore, after serving a show cause notice dated 31.01.2014, the competent authority i.e respondent No. 3 after consideration finding that the applicant despite knowledge had suppressed pendency of criminal case No. 102/2012 while filling the Attestation Form, treating it as a serious matter, terminated the services of the

applicant. Therefore, there is no illegality in the action of the respondents.

4. The applicant has filed a rejoinder denying the claim of the respondents and reiterated that the appointing authority is respondent No. 2 while the services of the applicant have been terminated by incompetent authority and, therefore, the impugned order is wrong. The true facts are that at the time of submitting the attestation form on 29.07.2013, no criminal case was pending against the applicant. Therefore, terminating the services of the applicant is in violation of Article 311 of the Constitution of India. As it is a settled law that even an administrative order cannot be passed without assigning reasons, therefore, passing a two line order is against the principles of law. As no false information was provided about criminal case, termination order cannot be passed without conducting regular departmental inquiry and without holding a fact finding inquiry. Therefore, action of the respondents is bad in law and the same is liable to be quashed and set aside.

5. Heard learned counsels for both the parties through Video Conferencing and perused the material available on record along with the judgments.

6. The applicant, besides reiterating his stand, has stated that sufficient opportunity should have been given to him to put forth his case. Order of termination cannot be passed by respondent No. 3. Applicant could not understand English while filling the Attestation Form. Since the services of the applicant are terminated discriminatorily, the same is in violation of Articles 14 and 16 of the Constitution of India. The respondents should have decided the case independently taking into consideration the statement of Kumari Rekha recorded by Judicial Magistrate and Police. To substantiate his claim, the applicant has relied on the judgment dated 10<sup>th</sup> February, 1999 passed by the Hon'ble Supreme Court in the case of *Dipti Prakash Banerjee vs. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta and Others*.

7. The respondents also reiterated their stand taken earlier. They further stated that the respondent No. 2 is not the appointing authority for the post of Trackman. Any order of termination can be passed by the appointing authority or an equivalent authority or any higher authority than them. There is no violation of Article 311 of Constitution of India in the present case as the same is applicable if it was a case of dismissal, removal or suspension. The question that the applicant could not understand English also cannot be accepted as the Attestation Form was in Hindi as well as in English. As his termination is as per Rule 14 (2) of the Railway Servants (Discipline and Appeal) Rules, 1968, the impugned order is justified. To substantiate his claim, the respondents have relied on the order dated 02.07.2015 passed by the Mumbai Bench of this Tribunal in the case of *Kailash Moreshwar Bhoir vs. Union of India & Others* (OA No. 108/2011).

8. The main issue which requires consideration is whether action of respondents in terminating services

of the applicant is just and proper and in accordance with law.

9. It is not disputed that the applicant was appointed under LARSGESS Scheme in place of his father, Shri Bal Kishan, who was working in Railways as Gangman. Under the said Scheme, the applicant was appointed as Trackman vide order dated 20.08.2013 as he was fulfilling all the requirements and conditions. The applicant was required to fill the Attestation Form providing correct information as required under various columns. Accordingly, applicant filled the said Form on 24.08.2013. At Column No. 12, pertaining to the details required to be provided about arrest, prosecution, pending criminal case in any court of law or providing full particulars about the pending case, etc., the applicant has clearly mentioned "No" in Hindi. The details required to be filled in Attestation Form were both in Hindi as well as English. Below Column No. 12, there was a specific 'Note' mentioning to see the 'Warning' at the top of the Attestation Form. The 'Warning' in the Attestation Form clearly mentioned that "The furnishing of false information or



suppression of any factual information in the Attestation Form would be a disqualification, and is likely to render the candidate unfit for employment under the Government. If the fact that false information has been furnished or that there has been suppression of any factual information in the attestation form comes to notice at any time during the service of person, his/her service would be liable to be terminated.” In fact, the information sought for by the employer if not disclosed by the employee/candidate, as required in the Attestation Form, would definitely amount to suppression of material information.

10. Seeing the Attestation Form, it is clear that the applicant at Column No. 12 (a), (b) and (c) has failed to provide any information. It is clear from the Report of the Collector and District Magistrate, Sawai Madhopur dated 16.01.2014 towards the information sought for by the respondents vide letter dated 22.11.2013 pertaining to Verification of Character and Antecedents in the case of the applicant, that one case is pending against the applicant in jurisdiction of

Gangapur City Police Station being Case No. 102/2012 under Section 363, 366 and 120-B of I.P.C. Accordingly, a show cause notice dated 31.01.2014 (Annexure A/3) under Rule 14 of Railway Servants (Discipline and Appeal) Rules, 1968 was served upon the applicant to show cause as to why action should not be taken against the applicant for providing false information about pending criminal case. It was further reminded that the appointment of the applicant was considered under the LARSGESS Scheme vide letter dated 03.09.2013. In condition No. 10 of the appointment letter dated 30.08.2013 (Annexure A/2), which was issued in pursuance to letter dated 20.08.2013, it was made clear that if any facts regarding suppression of any information comes to the knowledge at the time of appointment in Railways or after appointment, the services of the applicant shall be terminated even without giving a show cause notice. In condition No. 20 of the said letter, it was made clear that at the time of appointment, the applicant was required to declare that his conduct is good and no case is pending against him before the court and he has not

suppressed any facts at the time of appointment and if it comes to know that any information has been suppressed by him at the time of appointment or has been submitted any educational / caste or other certificates by which it is found that he was not eligible for obtaining service, then his services shall be terminated without any notice and action can be taken against him as per law.

11. It is also clear that for character verification of the applicant, respondents had sought information vide their letter dated 22.11.2013 from the Collector and District Magistrate, Sawai Madhopur. The Collector and District Magistrate, Sawai Madhopur sought information in the matter from the Superintendent of Police, Sawai Madhopur vide letter dated 19.12.2013. As per letter dated 01.01.2014, Superintendent of Police, Sawai Madhopur informed the District Collector and Magistrate, Sawai Madhopur about the pending criminal case of the applicant, who in turn vide letter dated 16.01.2014 informed the respondents about pending criminal case against the applicant before Police Station Gangapur City being

Criminal Case No. 102/2012 under Section 363, 366 and 120-B of I.P.C. As per the information provided by the applicant in the Attestation Form at Column No. 12, he has failed to disclose information about his pending criminal case. Thus, it is clear that he has suppressed information about criminal case registered against him though Note below Column No. 12 was very clear that he has to read the 'Warning' clause given at the top of the Attestation Form. The applicant cannot take the umbrage under the claim that he did not understand English and there is no basis for us to come to such conclusion as the Attestation Form was both in Hindi as well as in English. It was clearly stated that suppression of any material facts would lead to termination of services, which would be done even without providing any notice. In spite of clear instructions, despite having knowledge about the 'warning' mentioned in Attestation Form, it is seen that the applicant did not fill correct details at Column No. 12 (a), (b) and (c) in the Attestation Form dated 24.08.2013. Though, respondents could uprightly terminate the services of the applicant, yet a show cause notice dated

31.01.2014 was served upon the applicant asking explanation as to why action should not be taken against him for suppression of information pertaining to criminal case. After receipt of the reply to the show cause notice, the respondents terminated the services of the applicant vide impugned order dated 13.02.2014 (Annexure A/1) as per Rule 14 of the Railway Servants (Discipline and Appeal) Rules 1968. Thus, the action of the respondents cannot be said to be arbitrary or unjust as the same is passed in consonance with the rules.

12. The Hon'ble Supreme Court has thrashed out the entire law on the very issue in the case of **Avtar Singh vs. Union of India & Others**, reported in (2016) 8 SCC 471, which was decided by three Judges Bench of the Hon'ble Supreme Court. The relevant portion of the aforesaid judgment are as under: -

"38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise 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 recourses 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.

38.4.3 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."

From the analysis of the said judgment, it is made clear that obtaining a job by a false certificate and wrong declaration, services have to be terminated. A candidate having suppressed material information and / or giving false information cannot claim right to continue in service. It is equally settled by the Lordships that sympathy has no role to play while discharging judicial functions. Thus, the applicant deserves no sympathy and the ratio of law laid down by the Hon'ble Apex Court in the pointed case applies to all four corners of the facts and circumstances of the present Original Application.

Also in a recent judgment of the Hon'ble Apex Court, on the same question of law, in the case of State of Odisha & Ors. vs. Gobinda Behera (Civil Appeal No. 893/2020) decided on 31.01.2020, placing its reliance upon the case of Avtar Singh, has allowed the Appeal and set aside the judgment and order of the Hon'ble High Court and maintained the order



passed by the Tribunal, which had dismissed the Original Application.

13. In view of the discussions made above, we are of the considered view that since the applicant has concealed the material information from the respondents about a criminal case pending against him while submitting his Attestation Form, the fact remains that he knowing fully has withheld the information, which cannot be said to be an inadvertent mistake. It is clear that order of termination in the present case was passed after following principles of natural justice. Thus, we do not find any ground to interfere with the impugned order dated 13.02.2014 (Annexure A/1).

14. Accordingly, the present Original Application is dismissed. No order as to costs.

**(HINA P. SHAH)**  
**JUDICIAL MEMBER**

**(DINESH SHARMA)**  
**ADMINISTRATIVE MEMBER**