CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

1) O.A. NO. 322/90
2) O.A. NO. 323/90

New Delhi this the 19th day of August, 1994

CORAM :
THE HON'BLE MR. S. R. ADIGE, MEMBER (A)
THE HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

1) O.A. NO. 322/90

Laxman Prasad S/O Ram Narain,
Ex. Mazdoor, 505 Army Base
Workshop EME, Delhi Cantt,
R/O Vill. Jhatikra, P.O.
Daulatpur, New Delhi-110043.

2) O.A. NO. 323/90

Satbir S/O Dalchand,
Ex. Mazdoor, 505 Army Base
Workshop EME, Delhi Cantt,
R/O Village Jhatikara, P.O.
Daulatpur, New Delhi-110043. ... Applicants

(By Advocate Shri R. K. Kamal)

Versus

1. Union of India through
the Director General,
Army Headquarters DHQ,
New Delhi - 110011.

2. Brigadier Commandant,
505 Army Base Workshop,
Delhi - Cantt-110010.

3. Shri R. K. Malhotra,
Workshop Officer
(Enquiry Officer Group 'A'),
C/O Brigadier Commandant,
505 Army Base Workshop,
Delhi-Cantt - 110010. ... Respondents

(By Advocate Shri M. K. Gupta)

O R D E R

Shri S. R. Adige, Member (A) -

As common questions of fact and law arise in these two original applications, they are being disposed of by a common judgment.

2. The two applicants in these two applications were appointed as Mazdoors in 505 Army Base Workshop EME, Delhi Cantt w.e.f. 1.6.1987. At the time of their appointment, they were required to submit two character certificates from two different gazetted officers as per the provisions laid down in Defence Ministry's O.M. dated 15.4.1963. Upon their appointment the attestation form for a verification of character antecedents was forwarded to the Deputy Commissioner of Police, New Delhi, who intimated that the applicants had been arrested by the police under various sections of the Indian Penal Code and the said cases were pending in the court of Metropolitan Magistrate for trial. On receipt of this information, the respondents terminated the services of the two applicants, who were temporary Government servants under Rule 5 (1) of the C.C.S. (Temporary Service) Rules, 1965 for having suppressed factual information in the attestation form in violation of the instructions contained in the Home Ministry's O.M. dated 30.4.1965.

3. The two applicants challenged the termination of their services in O.A. No. 1295/87 - Satbir vs. Union of India, and O.A. No. 1679/87 - Laxman Prasad vs. Union of India. Judgment in these two O.A.s was delivered on 21.12.1987 and 15.1.1988 respectively in which the Tribunal held that the applicants had not been given an opportunity to explain their conduct and that the impugned orders were violative of Articles 14 and 16 of the Constitution. Accordingly, the two O.A.s were allowed, the impugned orders were set aside and the

respondents were directed to pass fresh orders of termination of services of the applicants, if so advised, or any other order which they deemed fit after affording the applicants an opportunity to submit their explanation with regard to their alleged conduct and giving them a personal hearing, if they so desired.

4. The respondents issued a fresh chargesheet to the two applicants separately on 29.4.1988 on the charge of exhibiting conduct unbecoming of a Government servant and thereby violating the provisions of Rule 20 of the C.C.S. (Conduct) Rules, 1964. The departmental proceedings were conducted against each of them resulting in the issue of impugned orders dated 3.3.1989 imposing the penalty of removal from service which, however, would not disqualify them for further employment under the Government. Both applicants appear to have filed appeals against the penalty on 22.4.1989 (Annex. A-5), but no orders appear to have been passed thereon, and in the meantime, the two applicants have filed these O.A.s.

5. The first ground taken by the two applicants is that the charge against them is of conduct unbecoming of Government servants, but the alleged misconduct attributed to them occured on 25.5.1987, when they signed the attestation forms, while they acquired the status of temporary Government servants only on 1.6.1987, and hence the charge is ab-initio null and void. The respondents deny this ground and contend that the alleged misconduct very much occured

on 25.5.1987/1.6.1987 when the applicants signed the attestation and declaration forms. They go on to quote from the declaration form dated 1.6.1987 signed by the applicants wherein the applicants rendered themselves liable for their services being terminated immediately, in the event of the information furnished by them being found incorrect/false. However, we note that the Tribunal in its impugned judgments dated 21.12.1987 and 15.1.1988 have expressed themselves on this point and have held that the alleged misconduct on the part of the applicants was anterior to their joining Government service. The misconduct was not committed by them during the course of their services as Government servants as such.

6. The question whether misconduct on the part of persons prior to their joining Government service can render them ineligible under the rules for being appointed to Government service was considered by the Hon'ble Supreme Court in Jamil Ahmed Qureshi vs. Municipal Council Katangi & Ors. : 1993 SCC (L&S) 668. In that case the appellant had been convicted for an offence under Section 377 IPC and was sentenced to undergo rigorous imprisonment for a period of 1½ years before he joined service on 24.2.1967. Though his conviction had been brought to the notice of his employer even on 15.9.1971 and subsequently by the report of the police officer on 1.4.1981, no action was taken, but he was dismissed from service on receipt of a further complaint on 2.3.1982. The

Hon'ble Supreme Court rejected the contention of the appellant that the employer had elected to continue him in service by waiving or condoning his misconduct and hence, he could not go back upon his election and claim a right to dismiss him in respect of the offence condoned. Their lordships held that the appellant having been convicted for an offence involving moral turpitude was ineligible under the rules for being appointed in service. It is no doubt true that the action of the applicants before us in allegedly suppressing material facts regarding their arrest by the police at the time they signed the attestation forms, is nowhere near an offence as henious as under Section 377 IPC, in which the appellant Qureshi was convicted, but barring that aspect, the applicants' case is even weaker than that of the appellant in Qureshi's case (supra), inasmuch as the appellant in that case had continued in service for over 15 years before he was dismissed, while in the present case, the applicants' services were terminated soon after the receipt of the information that they had suppressed the material facts regarding their arrest. The principle of law ennunciated in Qureshi's case is fully applicable to the facts and circumstances of this case, that facts not disclosed while seeking employment but brought to the notice of the employer subsequently can render a person ineligible under the rules for being appointed in service, which may even invite dismissal. Hence this ground fails.

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7. Shri Kamal for the applicant, has assailed the impugned orders on various other grounds also, including various alleged infirmities in the conduct of the proceedings, such as the inquiry officer styling himself as a court of inquiry; no evidence being produced by the presenting officer; the case not being adjourned as required under Rule 14(11) CCS (CCA) Rules, 1965 to enable the applicants to prepare their defence; no witnesses being examined or cross examined under Rule 14(14) CCS (CCA) Rules; no opportunity being given to the applicants to state their defence as required under Rule 14(16) CCA Rules; no evidence on behalf of the applicants being allowed to be laid as required under Rule 14(17) CCA Rules; provisions of Rule 14(18) CCA Rules not being followed, etc. Shri Kamal has also alleged that the inquiring officer cross examined the two applicants, and thus assumed the role of the prosecution, which has specifically been prohibited. In this connection, he cited various judgments including Smt. Saroj vs. Union of India - 1992 (2) ATJ 41; Mukesh Kumar vs. Union of India : 1992 (2) ATJ 1; and G. Silawaty vs. Director Social Welfare - 1991 (18) ATC 33. Shri Kamal stated that as the respondents had drawn up regular departmental proceedings against the applicants, it was mandatory for them to have followed the rules and in this connection cited the ruling in Kishan Lal Gautam vs. Union of India - 1992 (1) AIR 297.

8. We note that the Tribunal by its orders dated 21.12.1987 and 15.1.1988 while setting aside the impugned orders terminating the services of the two

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applicants had directed the respondents to pass a fresh order of termination of the services of the applicants, if so advised, or any other order which they deemed fit after affording an opportunity to the applicants to submit their explanation with regard to their alleged misconduct and hearing them, if they so desired. In other words, in the light of these directions, the respondents could very well have terminated the services of the two applicants by an order simpliciter or they could have passed any other order which they deemed fit. The only requirement was that they were to afford an opportunity to the applicants to submit their explanation with regard to the alleged misconduct and give them a hearing, if they so desired.

9. It would appear that in the interest of adhering to the principles of natural justice, however, the respondents went far beyond what they were required to do in terms of the Tribunal's directions dated 21.12.1987 and 15.1.1988, and gave the applicants every opportunity of defending their action in the course of the departmental inquiry. It is in this background that we have to examine the infirmities in the conduct of the departmental proceedings which have been alleged by Shri Kamal.

10. The ground that the departmental proceedings are infirm because the inquiry officer styled himself as a court of inquiry can be dismissed straightway, because it is the substance and not the form that we are concerned with. Merely the inquiry officer

styled himself as a court of inquiry does not make him a court. The second ground taken that no evidence was produced by the presenting officer also lacks merit because the applicants had themselves admitted that the article of charge framed against them was correct. The next ground taken that the case was not adjourned as required under Rule 14(11) CCA Rules to enable the applicants to prepare their defence, has no force, because of the applicants' own admission that the article of charge against them was correct. The applicants have failed to show how any prejudice was caused to them by non-adjournment of the case. Likewise, the question of examining and cross examining the witnesses under Rule 14(14) would arise only if there were witnesses, but in the present case there were none, and the applicants at no stage have contended that the non-examination of defence witnesses has prejudiced their case. The contention that letter dated 7.8.1987 from the police was not authenticated, loses force in the light of the applicants' own admission that the articles of charge framed against them was correct. Shri Kamal has alleged that the inquiry officer took on the role of the prosecution, which has vitiated the departmental proceedings. It is well settled that the inquiring authority is allowed to put questions to the charged official to test the veracity of the statements made, clear doubts and ambiguities and point out any inaccuracies. In the present case, there were no witnesses as the charge itself related to suppression

of certain material facts in the attestation forms submitted by the applicants for seeking employment. It is clear that the questions that were put by the inquiry officer were only limited to whether the defence wanted any defence assistants and whether they had been arrested by the police prior to employment, and if so for how many days. This is clear from page 2 of the inquiry proceedings, which is headed by the title "Questions by I.O.". The subsequent proceedings were conducted on different dates and there is nothing to indicate that the questions on those dates were put to the applicants by the inquiry officer, and in fact it appears that it was the presenting officer who produced attestation forms and asked the applicants to confirm whether the entries had been filled by them or through someone else. Hence, this argument also fails.

11. In the facts and conspectus of this case, we, therefore, see no reason to interfere with the impugned orders, and these two applications are dismissed. No costs.

(Lakshmi Swaminathan)
Member (J)

(S. R. Adige)
Member (A)

/as/