

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/376/2019

Order reserved on 30.03.2021

DATE OF ORDER: 12.05.2021

CORAM

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

Vishal Beniwal S/o Manroop Singh Beniwal, age about 25 years, R/o 206, Hingoniya, Phulera, Jaipur (Rajasthan).

(Applicant has applied for the post of Scientific/Technical Assistant-A-Group-B post) in the office National Information Centre, New Delhi.

Mob. No. 8929239222

....Applicant

Shri Tanveer Ahmed, counsel for applicant (through Video Conferencing).

VERSUS

1. Union of India through the Secretary, Ministry of Electronics and Information Technology, New Delhi. Electronics Niketan, 6, CGO Complex, New Delhi – 110003, India.
2. National Informatics Centre (Ministry of Electronics and Information Technology), through its Joint Director, A- Block, CGO Complex, New Delhi – 110003, India.

....Respondents

Shri Anand Sharma, counsel for respondents Video Conferencing).

ORDER**Per: DINESH SHARMA, ADMINISTRATIVE MEMBER**

In this case, the applicant has prayed for quashing the orders at Annexure A/1 dated 21.06.2019 by which he is informed about cancellation of his candidature for the post of Scientific/Technical Assistant-A under the National Informatics Centre (NIC) on account of his failure in verification of character and antecedents. The applicant had applied for this job and was in the provisional list of selected candidates. He was given a provisional offer of appointment by letter dated 20.09.2018 (Annexure A/9) and he had submitted complete details in the attestation form (Annexure A/10) as required by the respondents. He had provided the details of the criminal case pending against him at that time. He has been subsequently convicted by the order of the Additional Sessions Judge, Ajmer, dated 13.12.2018 but has been granted the benefit of Probation of Offenders Act and stated that the conviction shall not be treated as disqualification for accused. The cancellation of the provisional offer of appointment, in such circumstances, is arbitrary and illegal and, therefore, it is prayed to be quashed.

2. The respondents have denied the claims of the applicant in their reply. It is stated that the applicant has approached the CAT without exhausting alternate remedies (of filing an appeal/ representation before the competent authorities). He has also not impleaded the Head of Department of the Respondent Department (DG NIC), who, being the appointing authority, is a necessary party. The reply also states that the applicant wrongly mentioned in his verification form (Annexure R/1) that he had been prosecuted in case 340/2015 under Section 4/25 of IPC (in which he got acquitted in appeal, on witnesses turning hostile, on 10.08.2018), whereas the case was under the Arms Act. Further, the applicant has been convicted in the criminal case under Sections 451, 323/34, and though released on probation with the observation of the Hon'ble Court that the conviction will not be a disqualification, the respondents are required to consider all the relevant facts as to the antecedents of the applicant and decide the suitability of a person for the appointment in Government service. The reply quotes the judgment of the Hon'ble Supreme Court in the case of **Avtar Singh vs Union of India** [(2013) 7 SCC 685], to support their contention.

3. A rejoinder has been filed reiterating the arguments made in the O.A. and stating that his O.A. is not premature as the applicant is aware of his legal and fundamental rights. Since all communications in this matter have been received from respondent No. 2, there was no need to make anyone else a party. It is also stated that the reply of the respondents has for the first time stated that the cancellation of his appointment was on account of the applicant's acquittal not being an honourable acquittal. The rejoinder also questions the applicability of Avtar Singh's judgment of the Hon'ble Apex Court on the facts of this case as the conviction, in the present case, is not for any heinous crime or a case involving moral turpitude.

4. A reply to the rejoinder has been filed denying the claims made by the applicant. It gives further details of the cases (case under the Arms Act in which the applicant was first convicted and later acquitted in appeal and the case of House trespass and grievous hurt in which he was convicted for house trespass and simple hurt with benefit of probation) against the applicant. The reply also states that there was incorrect or misleading reporting in the relevant

columns of the attestation form (his stating "No" to the question regarding his ever having been convicted, and quoting Section 4/25 of the IPC instead of the Arms Act).

5. We have gone through the pleadings and heard the arguments of the learned counsels of both the parties through Video Conferencing on 30.03.2021. The simple issue before us is whether the cancellation of the applicant's candidature by the respondents, on the ground of his failing to meet the character and antecedent verification required by the respondents, is justified while taking into account the facts of this case.

6. There is no substantial dispute about the facts in this case. The applicant was tried for two criminal cases. The first one was under the Arms Act, for carrying a sword in an unnumbered vehicle, in which he was convicted by the lower court (Annexure R/4). This conviction was set aside since the Appellate Court found discrepancy in evidence about the size of the weapon, the time when the unnumbered vehicle was reported, corrections in the timing, and a number of official witnesses turning hostile (Annexure A/13, filed with the rejoinder to reply). In the second case, the

applicant was charged for forceful entry in somebody else's house and causing grievous hurt (causing multiple fractures by hitting with iron rods in the middle of the night etc.). The Court did not find evidence to convict the applicant on charge of causing grievous hurt (since the Radiologist was not examined to prove fracture) but did convict him of forcible house trespass and of causing simple hurt. He was let out on probation on learned advocates arguing (in that case) that this was the applicant's first offence and there is no evidence of any previous conviction (Annexure A/12, Page 76 of the Paper Book). The learned Judge mention in her order of punishment (Page 77 of the Paper Book) that this conviction would not incur disqualification for appointment.

7. There is also no dispute about what the applicant disclosed in his attestation form. The applicant did not hide facts about the two cases against him, out of which only one was pending in a court at that time, since he had already been acquitted by the appellate court in the first case. It is true that he was not completely truthful when he said "No" against the column about whether he had "ever" been convicted of a criminal act, since he had been convicted by the

trial court and later acquitted by the appellate court. However, we can take a lenient view of this since it can be argued that an acquittal in appeal makes the earlier conviction *non est*. The same cannot be said about his mentioning IPC instead of the Arms Act, and can certainly be suspected as a deliberate attempt to mislead.

8. Such being the facts, whether the rejection of candidature can be quashed on ground of it being illegal or arbitrary. The Learned District and Sessions judge convicting the applicant for house-trespass and simple hurt did mention that this conviction would not amount to disqualification. The respondents have argued that the rejection was not only on account of this conviction but on account of their not finding the applicant fit for the job on overall consideration of his antecedents and character. Their finding is based on the applicant's earlier trial, conviction and later acquittal (for want of convincing evidence) in a case relating to Arms Act. Another trial, for an equally serious offence, of house trespass at night, beating up and causing grievous hurt with iron rods, resulted in his conviction (for causing simple hurt and house trespass) and release on probation. The respondents

have also found his declaration in the attestation form to be not fully correct and a clear misrepresentation regarding his being involved in a case (stating the provisions to be under the IPC while it was under the Arms Act). The decision of the learned Sessions Court in the case relating to causing hurt and house trespass is with respect to the punishment and conviction in that case. We find the same observation when the applicant was earlier convicted by the trial court and released on probation on the same ground (on being mentioned by the learned counsels, in that case, of that being the first case of the applicant, refer Annexure R/4). Thus, the decision of the respondents to cancel the candidature, which is based on their evaluation of all these facts, cannot be said to be arbitrary, or based on illegal or irrelevant considerations. We, therefore, see no reason to interfere with that. The Original Application is, therefore, dismissed. No costs.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER