

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.447/2019

Dated this Friday the 11th day of June, 2021

CORAM: DR. BHAGWAN SAHAI, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

Mukesh K. Thakur,
MTS (SAFAIWALA)
Age: 24,
Address: No.104/4, Shivramwadi,
P.N. Road, Near Joakim Compound,
Pratap Nagar, Bhandup West,
Mumbai - 400 078. ... *Applicant*

(By Advocate Shri L.C. Kranti)

Versus

1. Union of India through
The Secretary,
Ministry of Defence,
South Block,
New Delhi - 110 011.
2. The Chief of Personnel
Integrated Headquarters,
Ministry of Defence (Navy)
Sena Bhavan, New Delhi - 110 011.
3. The Flag Officer Commanding-in-Chief
Western Naval Command
Tiger Gate, Naval Dockyard,
Mumbai - 400 023.
4. The Admiral Superintendent
Naval Dockyard,
Mumbai - 400 023. ... *Respondents*

(By Advocate Shri N.K. Rajpurohit)

ORDER

PER: RAVINDER KAUR, MEMBER (J)

Vide present OA, the applicant has claimed
the following reliefs:-

"8.a That this Hon'ble Tribunal be pleased to quash and set aside the impugned order Annexed at Annexure A1, A2, A3 and A4.

b. For the costs of this Application.

c. For such further and other reliefs as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

2. The applicant was appointed to the post of Safaiwala vide appointment letter dated 24.03.2015 (Annex A-6). Paras 3 and 5 of the appointment letter are relevant and read as under:-

"3. You will be on probationary service for a period of two years from the date of your joining duty. You are required to undergo at least two weeks training. Successful completion of training is pre-requisite qualification for completion of probation period. In accordance with DOP&T OM No.28020/1/2010.Estt(C) dated 30 Oct.2014. Your service is liable for termination without any notice and without assigning any reasons during the period of probation. After completing the probationary period satisfactorily, you will continue to be in your appointment. Your service is also liable for termination by giving one month notice. If you desire to resign from service, you will necessarily have to give one month notice.

4.

5. The appointment is provisional and subject to the verification of caste/age/school leaving certificate through proper channels and character and antecedent through Police Authority of the verification reveals that the claim of the candidate belonging to caste/age is false, his/her service will be terminated forthwith without assigning any further reasons and without prejudice to such further action as may be taken under the provisions of Indian Penal Code for production of false certificate."

2.1 The services of the applicant were terminated vide order dated 13.05.2016 (Annex A-1) which reads as under:-

" In terms of the Proviso contained at para 03 and 05 of this Headquarters Appointment Order CS(II)/3300/WNC/DR/N-I/RB-B dated 24 Mar 2015, the Appointing Authority hereby terminates forthwith the services of Shri Mukesh Kumar Thakur, MTS Ministerial (erstwhile Safaiwala)."

2.2 Vide letter dated 19.07.2016 (Annex A-2), the applicant was intimated that his services had been terminated w.e.f. 13.05.2016. He preferred Mercy Petition against the aforesaid order which was rejected vide order dated 27.07.2018 (Annex A-3). He made another Mercy Petition to the respondents which was also rejected vide order dated 05.11.2018 (Annex A-4). As per Annex A-3 dated 27.07.2018, during verification of character and antecedents of the applicant from the concerned police authorities, it was observed that he was involved in a criminal case registered at Parksite Police Station, Vikhroli, Mumbai in terms of C.R. No.209/11, under Sections 454 and 380 IPC. It is alleged therein that the applicant suppressed the relevant information at the time of joining. Under the advise of the Branch Secretariat, Ministry of Law and Justice vide letter dated 25.04.2016, the services of the applicant were terminated vide Annex A-1 dated 13.05.2016. This order further finds mention that the termination order could not be served upon

the applicant since he was absent from office w.e.f. 30th May, 2016 till date. Consequently, the said termination order was forwarded to the applicant by post. However, it was returned back by the postal authorities stating that his whereabouts could not be found. Thereafter, the termination order was published in the Newspaper vide letter dated 30.11.2017 under the instructions of the Headquarters. It is further mentioned in the order that though the termination order could not be served upon him, yet he filed the appeal dated 19.05.2016.

2.3 The applicant states that he had a difficult childhood and was able to pursue education upto Matriculation. In 2011, he had an altercation with his friend due to minor disagreement and was implicated wrongly under Section 379 IPC. Thereafter, he met with a road accident in 2013 and was comatose for over 60 days.

2.4 The applicant applied for an appointment as safaiwala and was selected for the said post vide appointment letter dated 24.03.2015 (Annex A-6). To his utter shock, he received letter dated 13.05.2016 whereby his services were terminated on the ground of furnishing the false

information in the attestation form dated 20.03.2015. He claims that the aforesaid criminal case was settled before Lok Adalat in 2015 vide order dated 10.10.2015 Annex A-5. He contends that he had inadvertently answered in negative the queries regarding any criminal proceedings pending against him.

2.5 The applicant seeks setting aside of the impugned orders and relies upon the judgment of Hon'ble Apex Court in the case of **Avtar Singh Vs Union of India & Ors**, Special Leave Petition [C] No.20525/2011 dated 21 July, 2016.

3. The respondents in their reply affidavit have stated that the appointment of the applicant vide order dated 24.03.2015 was subject to various conditions mentioned in the appointment order itself. These conditions we have already mentioned in para 2 above. It is stated that vide para No.13 of the attestation form dated 20.03.2015 (Annex R-1) several questions were put to the applicant regarding his involvement in any criminal case. The applicant gave reply to all such questions in negative. Para 13 of attestation form alongwith the Answers given by the applicant is reproduced as under:-

- "13.(a) Have you ever arrested? Yes/No
- (b) Have you ever been prosecuted? Yes/No
- (c) Have you ever been kept under detention? Yes/No
- (d) Have you ever been bound down? Yes/No
- (e) Have you ever been fined by a Court of Law for any offence? Yes/No
- (f) Have you ever been convicted by a Court of law for any offence? Yes/No
- (g) Have you ever been debarred from any examination, rusticated by any University or any other educational authority/institution? Yes/No
- (h) Have you ever been debarred/disqualified by any Public Service Commission from appearing at its examination/Selection? Yes/No
- (i) Is any case pending against you in any Court of Law at the time of filling up this Attestation Form?" Yes/No

3.1 The respondents submit that a case Cr. No.209/2011 under Sections 454, 457 and 380 of IPC was registered against the applicant at Parksite Police Station, Vikhroli, Mumbai and was pending against him at the time of his appointment whereas he furnished false information in this regard vide para 13 of the attestation form. Therefore, as per conditions stipulated in para 5 of the appointment order, the services of the applicant were terminated.

3.2 The respondents in support of their contentions have relied upon the judgment of

Hon'ble Bombay High Court in WP No.12127/2015 (*The Joint Director of Vocational Education and Training Vs. Shri Ashish Sadashiv Lohar*) as well as the judgment of this Tribunal in OA No.757/2016 (*Mukund Prabhakar Borse Vs. UOI & Anr.*) whereby the identical issue was dealt with.

3.3 The applicant has filed rejoinder to the reply of the respondents and has reaffirmed his assertions in terms of his OA.

4. We have heard the arguments addressed by the learned counsels for the parties and have gone through the material available on record as well as the case laws cited by both the parties.

5. It is not in dispute that the applicant was appointed to the post of MTS Ministerial vide appointment order dated 24.03.2015. It is also not in dispute that the applicant had filled in the attestation form dated 20.03.2015. Vide its para 13 (a)(b)(f)(j), the applicant had been specifically asked to furnish the information as to whether he had ever been arrested/prosecuted/convicted by a Court of law for any offence or whether any case is pending against him in any Court of law at the time of filling up this attestation form. The applicant gave answers

as 'No' to all these queries. Learned counsel for the respondents has argued that a criminal case vide Cr. No.209/2011 under Sections 454, 457 and 380 of IPC was registered against the applicant in the year 2011 and was pending against him at the time of furnishing the relevant information in this regard vide para 13 of the attestation form. He willfully and with malafide intention to obtain the job with the respondents furnished the false information to this effect.

6. On the other hand, learned counsel for the applicant has submitted that he was falsely implicated in the aforesaid criminal case by his friend on account of some minor altercation. Later on, the said case was compounded by the complainant with the applicant before Lok Adalat and he was acquitted vide order dated 10.10.2015.

Regarding the furnishing of false information by the applicant vide para 13 of the attestation form, learned counsel has submitted that he had inadvertently answered all the queries in negative.

7. On perusal of the record, we observed that in the attestation form it is clearly mentioned in para 14 that if the answer to any of the above mentioned questions i.e. in para 13, is, "Yes",

the applicant was required to disclose the particulars of the case/arrest/detention/fine/conviction or the nature of the case pending in the Court at the time of filling up this form. The Note below para 14 of the attestation form reads as under:-

"(i) Please also see the "Warning" at the top of this Attestation Form.

(ii) Specific answer to each of the question should be given by striking out "Yes" or "No" as the case may be."

The warning on the top of the attestation form reads as under:-

"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."

Para 3 of the attestation form reads as under:-

"3. If the fact that false information has been furnished or that there has been suppression of any factual information in the attestation form, come to notice any time during the service of a person, his services would be liable to be terminated."

8. The warning in the attestation form clearly finds mention that furnishing of the 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. At the same time furnishing of false information or suppression of any factual

information in the attestation form, which come to notice any time during the service of a person, his services would be liable to be terminated. Even as per the appointment order (Annex A-6), the appointment of the applicant was provisional and subject to verification of character and antecedents through police authorities. In the present case, during the police verification it revealed that the applicant was facing criminal prosecution under sections 454 and 380 IPC at the time of filling the attestation form. However, the applicant suppressed this fact while furnishing the information vide para 13 of the form. The offences under sections 454 and 380 IPC are not minor offences so as to ignore such suppression of true facts by the applicant. The contention of the applicant that the aforesaid criminal case was compounded with the complainant before Lok Adalat is also of no consequence. Firstly, for the reason that these offences are not compoundable in view of the provision of Section 320 Cr.PC and secondly, for the reason, if at all these were compounded, it was on 10.10.2015 i.e. subsequent to the filling of the attestation form. The contention of the applicant that

inadvertently he gave negative reply to the queries raised vide para 13 of the aforesaid form also does not inspire any credence as the queries were very specific. In our considered opinion, this is a clear case of suppressing material information intentionally and with malafide intention by the applicant to obtain employment with the respondents.

9. On account of concealment of material facts by the applicant, the respondents have terminated his services and we do not find such action as unreasonable. In view of the above discussions, the Original Application is devoid of merit and is, therefore, dismissed. No order as to costs.

(Ravinder Kaur)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

ma.

JD
11/10/21

