

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 11th DAY of September, 2015)

Hon'ble Mr. Justice L.N. Mittal - Member (J)
Hon'ble Mr. U.K. Bansal - Member (A)

Original Application No. 1094/2007

(Filed on 29.10.2007)

Vinod Kumar Yadav S/o Sri Gulab Yadav r/o G-II 112 Armapur Estate, Kanpur Nagar.

..... *Applicant*

Advocate for Applicant : Shri H.N. Singh

Versus

1. Union of India through the Secretary, Ministry of Defence, Govt. of India, New Delhi.
2. Appellate Authority/ Additional Director General of Ordnance Factory/ Member the Govt. of India, Ministry of Defence Ordnance Factory Board, 10-A Shaheed Khudi Ram Bose Road, Kolkata.
3. Senior General Manager Ordnance Factory Kalpi Road, Kanpur.
4. Director General Ordnance Factory Kanpi Road, Kanpur.

..... *Respondents*

Advocate for Respondents : Shri H.N. Pandey

O R D E R

Delivered by :
Hon'ble Mr. Justice L.N. Mittal - J.M

Shri O.P. Singh, Senior Advocate with Shri S. Narain, Advocate present for the applicant. Shri L.P. Tiwari, Advocate present for the respondents.

2. After examination and interview, the applicant was selected for appointment as Machinist (Semi-skilled) provisionally subject to production of two character certificates vide letter dated 14.05.2002. However, before he could join, his appointment was cancelled by order dated 01.06.2002 without assigning any reason. The applicant by filing O.A No. 601/2003 challenged the said order. The said O.A was allowed by this Tribunal vide order dated 09.02.2004 Annexure A-4 on the ground that the impugned order had been passed without assigning any reason and without any opportunity to show cause to the applicant. Accordingly, the impugned order dated 01.06.2002 was quashed and the applicant was held entitled to all consequential benefits. However, the respondents were given liberty to take appropriate action in accordance with law. Resultantly the applicant was again offered appointment vide letter dated 10.03.2004 and he joined duty on 25.03.2004 as Machinist (semi skilled). Thereafter, show cause notice dated 21.08.2004 was issued to the applicant alleging suppression of facts in his attestation form wherein he specifically asserted that

he had not been prosecuted in any court of law, although infact, he was prosecuted in court of law in criminal case No. 250 of 2000 under Sections 147, 323 and 504 of Indian Penal Code.

3. After Court of enquiry, applicant was removed from service vide order dated 13.01.2006 passed by the disciplinary authority i.e. respondent No. 3. Appeal preferred by the applicant stands dismissed by respondent No. 2, Appellate authority, vide order dated 19.09.2006 Annexure A-1. Representation preferred by the applicant also stands rejected vide order dated 16.04.2007 Annexure A-3. All these orders are under challenge in the instant O.A in which the applicant has also sought mandamus directing the respondents not to interfere in the peaceful working of the applicant.

4. Respondents in their counter affidavit while admitting the factual position leading to the removal of the applicant from service controverted the grounds pleaded by him to challenge the impugned orders.

5. The applicant by filing rejoinder controverted the version of the respondents and reiterated his own opinion.

6. We have heard Shri O.P. Singh, Senior Advocate and Shri S. Narain, Advocate on behalf of the applicant and Shri L.P.

Tiwari, Advocate for the respondents and perused the file with their assistance.

7. Learned Senior Counsel for the applicant very vehemently contended that the applicant submitted the attestation form (containing the alleged concealment of criminal case) on 19.03.2002, the day he was acquitted in the criminal case vide judgement dated 19.03.2002 Annexure A-8 and he filled in the relevant column without understanding the true import of the question and he mentioned that he had not been prosecuted in any court of law. It was also contended on the strength of various judgements namely judgement of High Court of Allahabad 2004-LBESR-2-899 Santosh Choube Vs. Inspector General of Police, Supreme Court Civil Appeal No. 7106 of 2011 in the case of Ram Kumar Vs State of U.P. & Ors., LAWS(all)-2001-5-129 in the case of Satish Kumar Shukla Vs UoL, Civil Appeal No. 1430 of 2007 in the case of Commr. Of Police & Ors Vs Sandeep Kumar, W.P.(C) 8731/2011 in Devender Kumar Yadav Vs Govt. of NCT of Delhi & Another, 2012(3) AWC 2433 in the case of Rajesh Kumar, Constable 3055 C.P. Vs. State of U.P. & Ors, O.A No. 48 of 2013 in Vipin Rathi Vs The Commissioner of Police, that even if there was any such concealment of facts, the same is not sufficient to remove the applicant from service because the offences were not grave and the applicant also stood acquitted. It was also argued that no finding has been given by the respondents that the applicant was not suitable for the post

on the aforesaid ground nor the applicant has been debarred from future service by the impugned order.

8. We have carefully considered the aforesaid contentions but we find ourselves unable to agree with the same. It is undisputed that the applicant submitted attestation form Annexure CA-1. This form is in English as well as in Hindi. At the top of the form, there is paragraph 3 specifically stating that if at any stage any information in the attestation form is found to be false or if the applicant is found to have suppressed any information, he shall be liable to be removed from service. There is question No. 12(i)(b) in the said form as under:

“क्या आपके ऊपर कभी मुकदमा चला है?

Have you even been prosecuted?”

Since this question in the form was in very simple Hindi also, besides in English, even a completely illiterate layman could have understood the true import thereof. The applicant is fairly literate person. According to the attestation form, he had passed intermediate (12th standard) examination on 30.06.1991 and then he had undergone three years course from 01.04.1992 to 31.03.1995 (perhaps some diploma required for the post in question) from National Council of Vocational Training. Consequently, it cannot be said that the applicant could not understand the true import of the aforesaid question in the attestation form. On the other hand, this form was signed by

him on 10.03.2002 while the prosecution was still pending against him. He had not been acquitted in the said case by then.

He was acquitted subsequently on 19.03.2002. At the time of filling in the form, he was facing the prosecution. Consequently, it can not be said that due to his acquittal in the case, he wrongly answered the aforesaid question. Even if the form was actually submitted on 19.03.2002, the date on which he was acquitted in the criminal case, even then the fact remains that he committed the double misconduct of falsely stating that he was not prosecuted in any case and of suppressing his prosecution in the aforesaid criminal case. Thus, undisputedly aforesaid misconduct of the applicant on both counts is established.

9. It has to be repeated to emphasize that in the opening part of the attestation form itself, the applicant had been cautioned that his services would be liable to be terminated if he gave false information or if he suppressed any information in the attestation form. Inspite of this, the applicant gave false information and suppressed the information regarding the criminal case in which he was facing prosecution.

10. In view of the aforesaid established position, the respondents cannot be said to have committed any illegality in removing the applicant from service. In other words, the

impugned orders do not call for any interference by this Tribunal.

11. Judgements cited by learned counsel for the applicant do not help the applicant in any way. In the case of Satish Kumar Shukla (Supra), services of the employee were terminated without any rhyme of reason, and without giving him opportunity of hearing and without any prior show cause notice. However, in the instant case, the impugned orders have been passed after issuing show cause notice and after affording opportunity to the applicant and by assigning reasons. Infact earlier order dated 01.06.2002 was set aside by this Tribunal on this ground, but the same ground is not available to the applicant now because the respondents have followed the due procedure.

12. In the case of Rajesh Kumar (Supra), contention of the petitioner was that registration of FIR against him was not in his knowledge and he acquired the knowledge thereof only after he had submitted his form and affidavit to the respondents. For this reason, this judgement is not applicable to the instant case.

13. In the case of Vipin Rathi (Supra), there was no concealment at all in respect of involvement of the applicant (of that case) in the criminal case. Admittedly, the applicant in that case had furnished all the required information with all the particulars. Consequently, the show cause notice in that case in respect of alleged concealment was ab-initio wrong and against

the record. Obviously the said judgment has no applicability to the facts of the instant case.

14. In the case of Devender Kumar Yadav (Supra) also, the petitioner had disclosed that he had been involved in two criminal cases, giving particulars of both the criminal cases registered against him. Consequently, this judgement also has no applicability to the facts of the instant case. Observations of some other judgements as quoted in the said judgement were referred to, but the said case being completely distinguishable on facts can be of no help to the applicant in the case before us.

15. Similarly, in the case of Sandeep Kumar (Supra), the respondent employee had disclosed in the attestation form that he had been involved in a criminal case which was later compromised. Consequently, it was also not a case of concealment.

16. We are left with the case of Raj Kumar (Supra). It was in the peculiar facts of that case that the Hon'ble Supreme Court found the action of the authorities to be untenable.

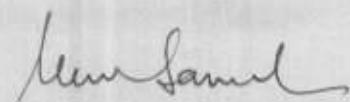
17. In the instant case, it has to be emphasized that inspite of specific warning in the opening part of the registration form, the applicant gave false information and suppressed the material information regarding his prosecution in the court of law in the

criminal case mentioned above. Consequently, the respondents were justified in removing the applicant from the service.

18. Counsel for the applicant referred to report dated 01.05.2002 Annexure CA-2 sent by District Magistrate to the respondents. It was submitted that in the said report, it has been mentioned that there was no case against the applicant and after that report, the applicant was given appointment. The contention is devoid of substance. It appears that on receipt of this report, wherein it is specifically mentioned that the applicant was involved in the aforesaid criminal case, but had been acquitted by the court, that the respondents learnt of the involvement of the applicant in the said criminal case. Thereupon order dated 01.06.2002 cancelling the appointment of the applicant was made even before he could join the post. It is a different matter that the said order was set aside by this Tribunal in the circumstances noticed herein before, giving liberty to the respondents to proceed again against the applicant in accordance with law. Pursuant thereto, the impugned orders have been passed after following due procedure. In the aforesaid report of the District Magistrate, it was not mentioned that the applicant was not involved in any criminal case and it was rather mentioned that he was involved in the criminal case, but acquitted.

19. The mere fact that the applicant has not been debarred from future service would not vitiate or invalidate the impugned orders in any manner. Omission to record any finding that the applicant was not suitable for the post also does not vitiate the impugned orders because the applicant has been found guilty of giving false information and suppressing information regarding his involvement in the criminal case and therefore, in terms of the attestation form itself, the services of the applicant were liable to be terminated. Here it would not be out of place to notice that the appointment to the applicant had been offered in a sensitive establishment i.e. Ordnance Factory.

20. In view of the discussion forgoing, we find no merit in this O.A. which is, therefore, dismissed, with no order as to cost.



Member (A)



Member (J)

Maurya/