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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,  
J\_O\_D\_H\_P\_U\_R.

Date of Order : 27-9-2000

O.A. No. 193/1998

Nena Ram S/O Shri Banna Ram, aged about 36 years, R/O Coal Pachpadra Thana Balotra, District Barmer, at present employed on the post of Coalman in the office of the Loco Foremen, Northern Railway, Jodhpur.

... Applicant

Vs

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Assistant Personnel Officer, Northern Railway, Jodhpur Division, Jodhpur.

... Respondents

Mr. J.K. Kaushik, Counsel for the Applicant

Mr. S.S. Vyas, Counsel for the Respondents.

COURT :

Hon'ble Mr. A.K. Misra, Judicial Member

Hon'ble Mr. Gopal Singh, Administrative Member

O\_R\_D\_E\_R

( PER HON'BLE MR. GOPAL SINGH )

In this application under Section 19 of the Administrative Tribunals Act, 1985, applicant Nena Ram has prayed for setting aside the impugned order dated 24.7.1998 (Annexure A/1) ordering the termination of the applicant from service with all consequential benefits.

2. Undisputed facts of the case are that the <sup>applicant</sup> was initially engaged as casual labour on 14.6.1983 with the

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respondent-department. On 22.2.1988, he was implicated in a Criminal Case and was arrested by the police. He remained in Judicial Custody upto 15.5.1991 when the learned Additional District & Sessions Judge No.3, Jodhpur acquitted him of all the charges. The applicant was re-employed on 5.5.98 as casual labour on provisional basis subject to the certification of his characters and antecedents. The Collector and District Magistrate, Barmer vide his letter dated 6.7.98 submitted his report about the entecedents of the applicant stating therein that the applicant was prosecuted under Section 457 IPC by the Court of Chief Judicial Magistrate, Barmer. On the basis of this report of the Collector the services of the applicant had been terminated vide order dated 24.7.98 (Annexure A/1). It is also seen from the records produced before us by the learned Counsel for the respondents that the applicant did not furnish any information regarding his prosecution in the Attestation Form for entecedents verification. Against the question "Have you ever been prosecuted", the applicant has indicated "No". Thus, the applicant has suppressed this material information while giving details in the Attestation Form. The applicant has challenged Annexure A/1 dated 24.7.98 on the ground that the applicant was minor on the date when above mentioned crime was committed. The applicant has also contended that there is no application of mind by the Competent Authority in terminating his services and that his services had been terminated simply because of his conviction in a Cr. case. In such cases Article 311 (2) of the Constitution of India is attracted and, therefore, his services could not have been terminated without affording an opportunity to the applicant to defend his case. Hence, this application.

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3. we have heard the learned Counsel for the parties, and perused the records of the case carefully.

4. In the Full Bench judgment of the High Court of Rajasthan, Jo-dhpur reported in 2000 (2) WLC (Raj) 400 -Dharam Pal Singh and 4 Ors. Vs State of Rajasthan & Ors the Hon'ble High Court has held that the very suppression of the fact that a Criminal case was pending against the applicant would be material and suppression of such material facts entitles the employer to deny an employment or to order for removal from service.

5. It is a fact that the applicant did not disclose his prosecution while filling the Attestation Form. From the Full Bench judgment of Hon'ble High Court of Rajasthan, cited supra, we find that the present dispute is squarely covered by the ratio of the said judgment. Hon'ble High Court in that case held that ultimate acquittal of a person on a criminal charge does not condone or wash out the consequences of suppression of that fact. Suppression of such material fact by itself disentitles a candidate from being appointed. We think it appropriate to extract the relevant para of the judgement as under :

"26. In the light of the facts stated and the discussion made above, we answer the questions 1 to 3 as follows : -

1. That a candidate was prosecuted or subjected to investigation on a criminal charge is a material fact, suppression of which, would entitle an employer to deny employment to a candidate on that ground.
2. The ultimate acquittal of a candidate who was prosecuted on a criminal charge, would not condone or wash out the consequences of suppression of the fact that he was prosecuted.
3. That suppression of material fact would be itself entitles a candidate from being appointed in service."

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In view of the above judgment, we are of the opinion that the contention of the applicant is not acceptable. Admittedly, the applicant had suppressed the material fact. In this view of the matter, we do not find any merit in this application. Accordingly, we pass the order as under

"Application is dismissed. But in the circumstances, without costs." The interim order issued on 5.8.98 stands vacated."

Gopal Singh  
( GOPAL SINGH )  
Adm. Member

AM 27/9/2000  
( A.K. MISRA )  
Judl. Member

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R1 (Copy)  
on 29/9  
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29/9/97  
G. D. M.  
29/9/97

Part II and III destroyed  
in my presence on 29/9/97  
under the supervision of  
Section Officer ( ) as per  
order dated 19/11/96  
M. A. Khan  
Section Officer (Record)