

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH
JODHPUR

.....
DATE OF ORDER : 29.06.1999.

O.A.NO. 50/1998.

Vikram Singh Chouhan aged about 25 years, S/o Late Shri Poonam Singh by caste Chouhan, R/o Purabiyon Ka Bas, Unmed Chowk, Jodhpur.

.....APPLICANT.

VS.

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. The Controller of Defence Accounts (Southern Command), Pune 1.
3. The Senior Accounts Officer (AN) (Southern Command), Pune-1.

.....RESPONDENTS

Present :

Mr.M.S.Singhvi, Counsel for the applicant.

Mr.Vineet Mathur, Counsel for the respondents.

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CORAM

HON'BLE MR. A.K.MISRA, JUDICIAL MEMBER
HON'BLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

.....
ORDER

(PER MR. A.K.MISRA, JUDICIAL MEMBER)

1. The applicant has filed this O.A. with the prayer that the order dated 14.1.1998 (Annex.A-1), be quashed and the respondents be directed to give appointment to the applicant on the post of Auditor w.e.f. the date other persons have been given appointment i.e. w.e.f. 21.7.1997 with all consequential benefits.

2. Notice of the O.A. was given to the respondents who have filed their reply.

3. It is alleged by the respondents that the applicant had inspite of specific caution gave false information in the attestation form by concealing certain material facts relating to his prosecution under various sections of Indian Penal Code and, therefore, as per the warning printed on the attestation form he has been declared dis-qualified from being appointed on the post of Auditor. The applicant is not entitled to any relief and the O.A. deserves to be dismissed.

4. The applicant had challenged the impugned order on the ground that no proper opportunity was provided to the applicant prior to the passing of impugned order and consequently the principles of natural justice have been violated. The applicant had not supplied any wrong information to the concerned authorities in the said form because he was neither prosecuted nor convicted for the criminal offence. The criminal case was compromised on the very first day of presentation of challan, therefore, the applicant had a bonafide belief that he was not tried and prosecuted for the offence and, therefore, the information cannot be said to be wrong and consequently the allegation of suppression of material facts is without any force.

5. We have heard the learned counsel for the parties and gone through the case file. In order to appreciate the entire controversy, it would be worth while to quote all the three warnings which are printed on the attestation form for guidance of the candidates :-

"1.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.

2.If detained, arrested, prosecuted, bound down, fined, convicted, debarred, acquitted etc., subsequent to the completion and submission of the form the details should be communicated immediately to the authorities to whom the attestation form has been sent early failing which it will be deemed to be a suppression of factual information.

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

6. It would be worthwhile to quote Paragraph 12.1 (i) and 12.1 (ii) of the attestation form and the answer given by the applicant in respondent of information sought.

- 12.1 "a) Have you ever been arrested ? NO
b) Have you ever been prosecuted? NO
c) Have you ever been kept under detention ? NO
d) Have you ever been bound down ? NO
e) Have you ever been find by a Court Law ? NO
f) Have you ever been debarred from any examination or resticated by any University or any other educational authority/ Institution ? NO
g) Have you ever been convicted by Court of Law for any offence ? NO
h) Have you ever been debarred/dis-qualified by any Public Service Commission/Staff Selection Commission for any of its examination/Selection ? NO
i) Is any case pending against you in any Court of Law at the time of filling up this attestation form ? NO
j) Is any case pending against you in any University or any other educational authority/Institution at the time of filling up this attestation form ? NO
k) Whether discharged/expelled/withdrawn from any training institution under the Govt. or otherwise ? NO
ii) If the answer to any of the above mentioned questions is 'YES' give full particulars of the case/arrest/detention/ fine/conviction/sentence/punishment etc. and/or the nature of the case pending in the Court/University/Educational Authority etc. at the time of filling up this form."

7. The learned counsel for the applicant had argued that the applicant was acquitted on the very first day of presentation of challan due to compromise between the parties. The order of acquittal is dated 7.7.1993. The applicant had not faced the trial of the case even for a day. No charges were framed against him. Therefore, he cannot be said to have been prosecuted for any offence whatsoever and, therefore, the

information supplied by the applicant cannot be said to be false. He has further argued that even if the applicant is deemed to have been prosecuted even then the applicant was acquitted consequent to compromise. Therefore also, he cannot be deprived of his right to be employed. The learned counsel for the applicant has cited following rulings in support of his contention :-

- 1.(1992) 20 ATC Page 783 - Krishan Kumar Vs. U.O.I. and Ors.
- 2.(1994) 26 ATC Page 177 - Shamsher Singh Vs. U.O.I. and Ors.
- 3.(1998 SCC (L&S) Page 1740- Commissioner of Police, Delhi & Anr. Vs. Dhaval Singh.
- 4.SBCWP No. 758/84-Takhat Singh Vs.UOI, decided by Rajasthan High Court on 10.10.1995.
- 5.1983 SCC (L&S) Page 263 - State of M.P. Vs.Ramashanker Raghuvanshi and Anr.

8. From the aforesaid information, it appears that the applicant has given negative information in respect of the questions posed to him by the attestation form (Annex.A/5). On the other hand, it was argued by the learned counsel for the respondents that the applicant had suppressed the material facts of F.I.R. having been lodged against the applicant, Challan having been filed against the applicant by the police in the Court of Law and accused having been acquitted of the offences as per the compromise. Since the police had filed challan against the applicant, therefore, he should have informed about his prosecution in the attestation form which he had intentionally suppressed and, therefore, as per the warning printed on the attestation form, he was rightly held dis-qualified from being employed.

9. We have considered the rival arguments and also the rulings cited by the learned counsel for the applicant.

10. In this case a challan against the accused was filed on 7.3.1993 by the police in the Court of Additional Chief

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Judicial Magistrate, Court No.4, Jodhpur, under Sections 451, 427, 323 and 341 Indian Penal Code. The case was compromised on the very same day and the accused was acquitted of the offence as per the compromise on the very same day. The attestation form was filled by the accused on 20.3.1997. The accused had not faced the trial even for a day. He was also not read over the charges by the Court. Therefore, the negative reply of the applicant in the attestation form, cannot be said to be incorrect. He was never arrested in this case by the police. He was also not detained in judicial custody by the Court nor he was even bound down or fined by the Court in this case. The parties to the challan had entered into a compromise and in view of the compromise, the accused was acquitted, therefore, in our opinion, he cannot be said to have been prosecuted for any offence by the Court. In view of these facts, the answer given by the applicant in negative to the question "have you ever been prosecuted " cannot be said to be suppression of material facts or denial of a correct position.

11. In (1992) 20 ATC Page 783 - Krishan Kumar Vs. U.O.I. and Others, it was held "involvement in a criminal case of village quarrel - applicant discharged by criminal court after compromise between the parties - he was never arrested in this case - held on facts, appointment could not be denied to him". In another case reported in (1994) 26 ATC Page 177 - Shamsher Singh Vs. U.O.I. and Ors., it was held that "acquittal in a criminal case on the basis of compromise - denial of appointment on the plea that such acquittal was not complete exoneration, declared invalid. It was also held that in such cases after acquittal no stigma remains on the accused. Besides, the offences in this case were not of moral turpitude. Therefore, in the instant case also non disclosure of the fact by the applicant that a challan, as mentioned above, was filed

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against him and resulted into compromise is of no consequence so as to enable the authorities to refuse the appointment to the applicant. In this case, the applicant was never asked any reason and was never given an opportunity to explain the so called wrong reply given by him in the attestation form. Denying appointment without giving such opportunity is bad in law. In 1998 SCC (L&S) Page 1740-Commissioner of Police, Delhi and Anr. Vs. Dhaval Singh, it was held that "cancellation of candidature of the selected candidate without application of mind is not proper and valid", therefore, the denial of appointment to the applicant in the instant case, is not justified. In the case decided by Hon'ble Rajasthan High Court on 10.10.1995 (S.B.C.W.P.NBo.758/84)-Takhat Singh Vs. U.O.I., it was held that if the accused was acquitted of the charges, the authorities can be directed to take him back in service. As far the case of State of Madhya Pradesh Vs. Ramashanker Raghuvanshi and Anr. reported in 1983 SCC (L&S) Page 263, is concerned, we find that this ruling is absolutely on different point than the case in hand, hence, is not applicable in this case. In our opinion, if a case does not involve offences relating to moral turpitude and the accused stands acquitted either by compromise or after the trial, the case would not come in the way in appointing the applicant to the post to which he was selected. Therefore, in the instant case, the cancellation of applicant's candidature as mentioned in Annex.A-1 dated 14.1.1998, can not be sustained. In our opinion, reply of the applicant cannot be categorised as suppression of material facts or wrong information. The impugned order dated 14.1.1998 (Annex.A-1) deserves to be quashed.

12. The applicant has sought his appointment w.e.f. 21.7.1997 with all consequential benefits but we are afraid such relief cannot be granted to the applicant. The Authorities

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can only be directed to give appointment to the applicant prospectively as per the direction given in this order with no consequential past benefits. The O.A. deserves to be accepted in part.

13. The O.A. is, therefore, partly accepted. The respondents are directed to give appointment to the applicant on the post of Auditor as per his selection within a period of thirty days from the date of communication of this order. The applicant shall, however, not be entitled to any back wages as he had not worked on that post. The seniority of the applicant shall, however, be placed at the bottom of his batch mates but above the subsequently selected candidates. Parties are left to bear their own costs.

Gopal Singh
(GOPAL SINGH)
Adm. Member

Dr. A.K. Misra
29.6.99.
(A.K.MISRA)
Judl. Member

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