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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 48/1999
T.A. No.

199

DATE OF DECISION 03.11.2000

Suraj : Petitioner

Mr. S.K. Malik Advocate for the Petitioner (s)

Versus

Union of India & Ors. : Respondent

Mr. Kuldeep Mathur, Adv.,
Brief holder for Mr. Ravi Bhansali : Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

The Hon'ble Mr. Gopal Singh, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ? yes

Gopal Singh
(Gopal Singh)
Adm. Member

BSR
(Justice B.S. Raikote)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 03.11.2000

O.A. No. 48/99

Suraj son of Shri Jagdishji by caste Harijan (S.C.) aged about 26 years resident of Bhadwasia Road, Opposite Ice Harijan Basti, Jodhpur (Raj.).

... Applicant

versus

1. Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. A.O.C. (Records), Post - Trimulchery, Secunderabad (A.P.).
3. The Commandant, No. 6, Field Ordnance Depot, C/o. 56 A.P.O.

... Respondents.

Mr. S.K. Malik, Counsel for the applicant.

Mr. Kuldeep Mathur, Adv., Brief holder for Mr. Ravi Bhansali, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

: O R D E R :

(Per Mr. Justice B.S. Raikote)

This application is filed for a direction to the respondents to give the applicant an offer of appointment on the post of Civilian Motor Driver Grade II with effect from the date the vacancy arises, in the department of the respondents, with all consequential benefits.

2. The applicant stated that the respondent No. 3, i.e., the Commandant, No.6 Field Ordnance Depot, C/o. 56 APO, called for the names of suitable candidates through the Employment Exchange, Jodhpur, for the post of Civilian Motor Driver Grade II and accordingly, the Employment Exchange, Jodhpur, forwarded the name of suitable candidates. The applicant was also one of the candidates sponsored by the Employment Exchange. The applicant stated that the respondents conducted written test, driving test and interview on 05.01.98 and the applicant was one of the selected candidates for the said post of Civilian Motor Driver Grade II. The applicant further stated that vide

[Signature]

Annexure A/4 dated 07.10.98, he was directed to produce original copy of the Court order duly affixed with the Court seal, driving licence and education certificate and accordingly, the applicant furnished the same. The applicant stated that the medical examination was also done and even antecedents with regard to his character were verified by the police. But the department did not issue any appointment order on the ground that the applicant suppressed the existence of a criminal case against him in the year 1995. In fact, in that case, the applicant was acquitted of the charges under Sections 323 and 325 of I.P.C. on compromise vide order dated 16.12.95 (attached to Annexure A/4). Therefore, the applicant did not suppress any material fact. The applicant has furnished all the materials what has been required by the department. Therefore, the appointment order should have been issued to the applicant. The post in question was reserved for Scheduled Caste and the applicant being a Scheduled Caste candidate, should have given appointment on that post. Therefore, there should be a direction to the respondents as prayed for, in this application.



3. The respondents by filing counter, denied the case of the applicant. They have stated that while filling up the form, the applicant deliberately suppressed the fact that he was prosecuted in a criminal case, by making 'No' entry in the application prescribed. The respondents further stated that on their request, the police verified the antecedents of the applicant and it was reported that there was a criminal case against the applicant in the year 1995. The said report dated 04.02.98 is filed at Annexure R/1. On the basis of the said police report, the applicant was asked to produce the original copy of the Court order alongwith driving licence and educational certificate vide Annexure A/4 dated 07.10.98. Accordingly, the applicant furnished the same. Thus, from the material it is clear that the applicant had suppressed his involvement in a criminal case in the year 1995. Accordingly, Annexure R/2 dated 30.11.98 was issued, stating that as per the letter of District Magistrate, Jodhpur, dated 04.02.98, the applicant was involved in a criminal case. Moreover, his character and antecedents have ~~not~~ been verified by the appropriate ~~exist~~ authorities and, in these circumstances, the applicant was not found suitable for appointment on the post in question. On the basis of these proceedings dated 30.11.98 vide Annexure R/2, no appointment order was issued to the applicant. The learned counsel for the respondents further contended that the applicant deliberately suppressed the fact, therefore, he was not eligible for appointment. The learned counsel for the respondents submitted before us a zerox copy of the application filed by the applicant for appointment. The application is in a prescribed form. He invited our attention to the heading of the

'Attestation Form (Revised)' and contended that according to this form, it was made clear that suppression of any factual information in the attestation form would be a disqualification and would likely to render the candidate unfit for employment under the Government. Para No. 2 in the heading, it was further made clear that furnishing of false information and suppression of any factual information in the attestation form, the service of the applicant would be liable to be terminated. Accordingly, he contended that the applicant was not found suitable for appointment of Civilian Motor Driver for suppressing the information that he was prosecuted by the criminal Court. Therefore, the action of the respondents in not issuing the order to the applicant was just and correct. He also relied upon the judgement of Full Bench of Rajasthan High Court, reported in 2000 (2) WLC (Raj) 400 [Dharampal Singh & 4 Ors. vs. The State of Rajasthan & Ors.], in support of his arguments. On the other hand, the learned counsel appearing for the applicant submitted that the said judgement would not apply to the facts of the case, since the suppression of criminal case in the year 1995 was not material. He contended that the offences charged in the criminal case were not the one involving any moral turpitude. Therefore, the alleged suppression cannot be a ground for refusing the appointment to the applicant. In support of his contention, he relied upon following judgements:-



- (i) [1990] 13 ATC 178 - Girish Bhardwaj vs. Union of India & Ors.
- (ii) [1992] 20 ATC 783 - Krishan Kumar vs. Union of India & Ors.
- (iii) [1993] 25 ATC 311 - Shish Pal vs. Union of India & Ors.
- (iv) 1998 SCC (L&S) 1740 - Commissioner of Police Delhi & Another v. Dhaval Singh.

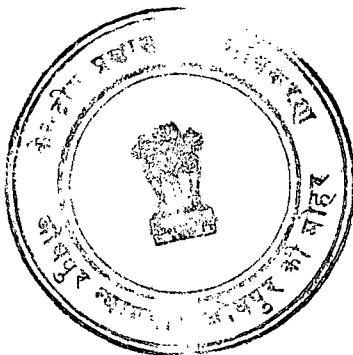
4. From the pleadings as well as the arguments addressed on both sides, we find that certain facts are established. It is an admitted fact that the applicant was sponsored by the Employment Exchange and accordingly, he was found suitable for the post of Civilian Motor Driver Grade II. It is also an admitted fact that while giving the application for appointment, applicant filled up a prescribed form, and for column 12 (ii) of the said form, the applicant said 'No' regarding the question whether he has ever been prosecuted. It is also not in dispute that in the police enquiry, it was revealed that there was a criminal case against the applicant in the Court of ACJM-3, Jodhpur. Thereafter, the applicant was called upon to produce the copy of the Court order alongwith other few documents, namely, driving licence and education certificate, vide Annexure A/4 dated 07.10.98 and accordingly, the applicant produced the said order. Having regard to these circumstances, it cannot be agreed with the arguments of the



applicant's counsel that he filed the judgement/order of the criminal Court voluntarily. In fact, the applicant filed the judgement/order of the criminal Court only on the basis of the letter dated 07.10.98 vide Annexure A/4. From these facts, it is clear that the applicant did suppress the fact. The 'warning' in the prescribed form itself stated that furnishing of false information would be a disqualification for employment. We think it appropriate to extract the relevant portion of the prescribed attestation form filled in by the applicant for the purpose of employment. In the preamble of the application form, 'warning' is printed, which reads as under:-

ATTESTATION FORM (REVISED)

WARNING : 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.



1. If, detained, convicted, debarred etc., subsequent to the completion and submission of the form, the details should be communicated immediately to the authority to whom the attestation form has been sent earlier, as the case may be, failing which it will be deemed to be a suppression of factual information.

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

In column No. 12 of the application form, which were to be filled in by 'yes' or 'No' is as under:-

12. (i) Have you ever been arrested?	Yes/No
(ii) Have you ever been prosecuted?	Yes/No
(iii) Have you ever been kept under detention?	Yes/No
(iv) Have you ever been bounds down?	Yes/No
(v) Have you ever been fined by a Court of Law?	Yes/No
(vi) Have you ever been convicted by a Court of Law for any offence?	Yes/No
(vii) Have you ever been debarred from any examination or restricted by any University or any other educational authority institution?	Yes/No
(viii) Have you ever been debarred/disqualified by any Public Service Commission from appearing at/its examination/selection?	Yes/No
(ix) Is any case pending against you in any	

[Signature]

Court of law at the time of filing this
attestation?

Yes/No

(x) Is any case pending against you in any
University or any other educational
authority/Institution at the time of
filling up this attestation form?

Yes/No

5. Thus, from the reading of the entire prescribed form which was filled in by the applicant, the applicant was clearly made known the fact that submission of false information or suppressing any factual information would render disqualification of the applicant and would make him unfit for employment under the Government. Even after appointment, on the basis of false information or suppression of any factual information, the services of such persons are liable to be terminated. If that is so, the applicant should have stated under Column 12(ii) that he was in fact, prosecuted by a criminal Court for the offences under Section 323 and 325 of I.P.C. and the matter ended in a compromise. Thus, it is a suppression of fact. The applicant did not disclose the fact regarding the criminal case until he received the communication from the department vide Annexure R/2 dated 30.11.98. The department called for the order of the criminal Court on the basis of the police report dated 04.02.98. Thus, it follows from this fact that the applicant did not furnish the information regarding the criminal case voluntarily also. From the above facts, now we have to see whether the applicant was entitled to be appointed on the post of Civilian Motor Driver Grade II in the Defence department.

6. Applicant's counsel relied upon the judgement of Hon'ble the Supreme Court reported in 1998 SCC (L&S) 1740 [Commissioner of Police, Delhi and Another vs. Dhaval Singh], stating that at any rate, information regarding pendency of earlier criminal case was informed to the department. But from the reading of the said judgement of Hon'ble Supreme Court, we find that in that case, the concerned person voluntarily informed the authorities concerned about the criminal case against him and in these circumstances, Hon'ble the Supreme Court held that non-disclosure of the case in the application must have been inadvertent mistake as pleaded. But in the instant case, the applicant said 'No' to the question as to whether he was prosecuted, in the application for appointment. But he furnished such information afterwards only on the basis of the letter issued by the department vide Annexure R/2 dated 30.11.98 that there was a criminal case against him. Therefore, the applicant did not voluntarily inform the department regarding his prosecution in a criminal case and in these circumstances, it is not possible for us to hold in this case that non-furnishing of a true fact in a particular column was an inadvertent mistake. In fact, it was an intentional



suppression. Therefore, the said judgement of Hon'ble the Supreme Court does not apply to the facts of the case. Learned counsel for the applicant nextly relied upon following judgements/orders rendered by the C.A.T., Principal Bench, New Delhi :-

- (i) [1990] 13 ATC 178 - Girish Bhardwaj vs. Union of India & Ors.
- (ii) [1992] 20 ATC 783-Krishan Kumar vs. Union of India & Ors.
- (iii) [1993] 25 ATC 274 - Satyender Singh Mann vs. Commissioner of Police and Another.

In Girish Bhardwaj's case, the Principal Bench of the C.A.T. held that mere involvement of a person in a criminal case cannot be a ground for denial of appointment and it was always for the Government to take appropriate action if ultimately the case results any conviction. They also stated that the appointment could be given subject to outcome of criminal case. From these facts, it is clear that it was not a case of concealment or suppression of facts for obtaining an employment. The facts in Krishan Kumar's case was that the order of termination was issued on the basis of suppression of facts, without giving any notice or opportunity to the applicant. In those circumstances, the C.A.T., Principal Bench, New Delhi, held that the termination order was contrary to the principles of natural justice, though the suppression may amount a lapse committed by him. It was futher held that it does not make the applicant unsuitable for Government service, since he was discharged by the criminal court. In the third judgement/order (Satyender Singh Mann's case), it was held that since the applicant was acquitted in the criminal case and there was no bar for his appointment to the post of Constable (Executive) under the Delhi Police (Appointment and Recruitment) Rules, 1980. It was further observed that the respondents were given liberty to make suitable entry in applicant's service record. The learned counsel for the applicant relying these judgements submitted that at any rate, the case, in which the applicant was prosecuted, did not involve any moral turpitude, therefore, the said suppression was not a material for the purpose of employment. But from the Full Bench judgement of Rajasthan High Court reported in 2000 (2) WLC (Raj.) 400, we find that the Full Bench of High Court considered similar principles after referring to number of judgements of both Hon'ble Supreme Court as well as High Courts and also the judgement of the Court in England, held that such suppression of fact that the applicant was prosecuted in a criminal case, could be a valid ground for the employer to deny employment to such candidate. The Full Bench of Hon'ble High Court further held that ultimate acquittal of a candidate does not condone or wash out the consequences of material fact and suppression of such material fact would itself disentitle the candidate from being appointed. They have also held

that the recruitment rules have made no distinction between offences involving moral turpitude and offences not involving moral turpitude. Suppression of fact and his ultimate acquittal does not condone such suppression of material fact. In view of the Full Bench judgement of Hon'ble Rajasthan High Court, we have to take that the judgements/orders rendered by the C.A.T., Principal Bench, New Delhi, reported in ~~1992 XXXX XXXX XXXX 78~~, (1992) 20 ATC 783 and (1993) 25 ATC 274, cannot be taken as laying down correct law. However, the learned counsel for the applicant tried to distinguish the judgement rendered by the Full Bench of Hon'ble High Court, contending that the said judgement should be understood as interpreting Rajasthan Police Subordinate Service Rules, 1989, and it cannot be taken as a general law laid down. We are afraid that this contention cannot be accepted. In fact, the Full Bench of Hon'ble High Court laid down the law on suppression of any kind, as a principle, and this judgement cannot be taken as only applicable to the Police Subordinate Service in Rajasthan. We think it appropriate to extract para 46 of the Full Bench judgement of Hon'ble High Court, as under :-



"46. For above reasons, I have no hesitation in coming to the conclusion that unity, human relationships and fraternity, necessitate the speaking of truth by the parties to one another and, therefore, by application of doctrine of necessity, a duty to speak the truth may be inferred, if the parties are under legal obligation to create and preserve a bond of fraternity between them, subject of course to right to silence which may be available to them, having regard to the degree of proximity between them. No civilised human society permits any compromise with the quality of disclosure of truth. Therefore, if any person wants to give information about a matter, in any state of fraternity/human relationship/unity, it is considered to be his duty to speak whole truth without committing "suppression veri" or "suggestio falsi". In case, the particular fraternity, in relation to which he is interacting, permits him to exercise "right to silence" in respect of a particular matter which is not relevant in any manner for his relationship or human bond of fraternity, then in place of committing "suppressio veri" or "suggesto falsi", he may exercise the right to silence and may decline to give the answer to a question put to him or to disclose any information in respect of certain matter. If the disclosure of truth, is prohibited by any law or is against the norms of decency or is likely to cause such injury as is impermissible, or for any other good reason the disclosure must not be made, the reason for not disclosing the fact in question must be disclosed, if there is duty imposed by the bond of fraternity to speak the truth in the matter."

7. From the above judgement of Full Bench, it is clear that suppression of fact itself may disentitle a person from being appointed in a Government service. The reason is obvious that as long as the department enjoyed the confidence of the public by maintaining high





degree of integrity and honesty, there would be effective implementation of the Rule of Law and in the absence of that the Rule of Law collapses. It is only on the basis of this cardinal principles, the democratic institution survives.

8. For the above reasons, we are of the considered opinion that the respondents have not committed any illegality in refusing the employment to the applicant in the Defence department due to suppression of the pendency of criminal case against him earlier. His ultimate acquittal does not condone the consequences of suppression of fact. Such acquittal cannot convert the untruth into truth. For these reasons, we have no option but to pass the order as under:-

"The application is dismissed. But in the circumstances, without costs."

Gopal Singh
(GOPAL SINGH)

Adm. Member

B.S. RAIKOTE
(JUSTICE B.S. RAIKOTE)
Vice Chairman

cvr.

McCall
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S. K. Malikh
09/11

Copy of Order
have been circulated
to all the Services & CBT
Mobile nos 2302 to 2322
Date 13-11-2000
Add-13-11-2000

Part II and in my presence,
in my presence on 13-11-2000
under the supervision of
Section Officer (1) as per
order dated 13-11-2000

Section Officer (Recorder)