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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.376/2011

Date of decision:21.02.2012

**HON'BLE Mr. JUSTICE SHIV CHARAN SHARMA, JUDICIAL MEMBER,
HON'BLE Mr. SUDHIR KUMAR, ADMINISTRATIVE MEMBER.**

Gordhan Das S/o Shri Ganesh Das, aged about 38 years, R/o village Belasar via Sinthal, Tehsil Bikaner, District Bikaner. The applicant's father Shri Ganesh Das was holding the post of Gangman in Bikaner Division of North-Western Railway. The applicant is seeking compassionate appointment in the department.

Mr. Kuldeep Mathur, counsel for applicant.

: Applicant

Versus

1. The Union of India, through the General Manager, North-Western Railway, Jaipur.

2. The Divisional Rail Manager, North-Western Railway, Bikaner.

.....Respondents

Mr. Vinay Jain, counsel for respondents.

ORDER (ORAL)

Per Justice S.C. Sharma, Judicial Member

The instant O.A. has been filed by the applicant for seeking following relief(s):-

"8(i). That the Original Application may kindly be allowed.

(ii). That the communication dated 28.04.2011 (Annexure-1) may kindly be declared illegal and same may kindly be quashed and set aside.

(iii). That the respondents may be directed to provide appointment to the applicant on the post of Technician-III (C&W) on compassionate grounds with all consequential benefits.

(iv). Any other relief, which this Hon'ble Tribunal deems fit and proper in favour of the applicant, may kindly be granted.

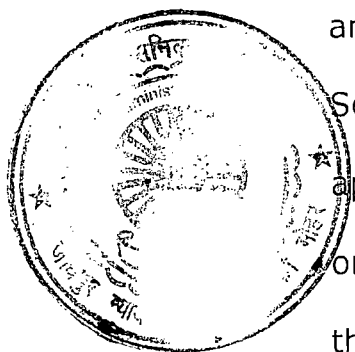
(v). Costs of this application be ordered to be awarded in favour of the applicant."

2. The facts of the ^{OA-2} may be summarized as follows:-

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It has been submitted by the applicant that Shri Ganesh Das, father of the applicant, while holding the post of Gangman in the respondent department, he was not able to discharge his duties properly due to illness, and he was medically de-categorized, and was allowed premature retirement w.e.f. 10.07.2008. However, an application was submitted by the father of the applicant for giving compassionate appointment to his son, Shri Gordhan Das, applicant, as per Railway Rules, and the respondent No.2 informed the applicant to appear before him for written examination and interview for the purpose of being given compassionate appointment. The applicant qualified in the written examination, and was required to formally apply to the respondents for an appointment, which he did. In the year 2003, an FIR was lodged against the applicant for the offences under Sections 447, 323 IPC and Section 3 of SC/ST Act, 1983. The applicant was charged but never arrested in that case, and vide order dated 04th March, 2006, he was acquitted of the charges by the Court of Additional Sessions Judge, Bikaner. When the applicant was asked to submit a formal application form furnishing all the relevant information, including information in regard to the filing of FIR and criminal case against him, inadvertently, in response to that query, since the case was ~~long over~~ ^{now pending}, he could not mention that an FIR in a criminal case had been lodged in the past against him, and since the applicant was not aware about the niceties of the law, he could not mention this fact. Thereafter, when the fact regarding this past criminal case emerged, the respondent No.2 issued a letter/notice dated 15.11.2010, and

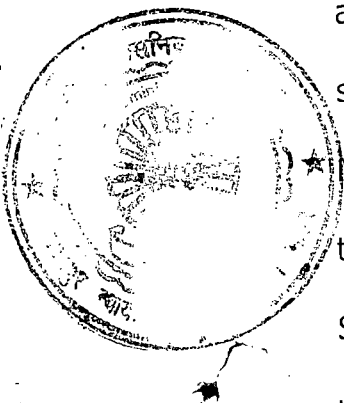


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directed the applicant to explain as to why he had not mentioned the facts regarding that past criminal case. It was specifically explained by the applicant that there was no intention to suppress this fact, but since the case had already resulted in acquitted, inadvertently this fact could not be mentioned. But the respondents have taken this very seriously, and deprived the applicant from compassionate ground employment, and hence this O.A.

3. The respondents have in their reply admitted most of the facts, but however it has also been alleged that information was not furnished by the applicant that he had faced a criminal trial, and for suppression of this material fact, he has no right to be appointed with the respondent department, and with the antecedents and the character of the applicant, he was not suitable for appointment to the Railway service. The District Magistrate, Bikaner had informed vide letter dated 01.11.2010 that the applicant faced a criminal trial for the offences under Section 323,447 IPC and under Section 3 of SC/ST ACT, and it was not expected from the applicant that he will suppress this material information, and hence the applicant deprived himself from the employment.

4. We have heard Shri Kuldeep Mathur, learned counsel for the applicant, and Shri Vinay Jain, learned counsel for the respondents at the stage of admission itself, and also perused the documents. It was argued by the learned counsel for the applicant that the only reason mentioned by the respondents for

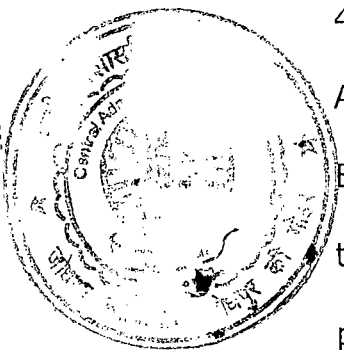


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not giving the appointment to the applicant is that the applicant had suppressed the material facts while submitting the application form for his compassionate appointment. The District Magistrate, Bikaner, had vide his letter informed the respondents that the applicant had faced a criminal trial for the offences under Section 323,447 IPC and under Section 3 of SC/ST ACT, and as the material facts were concealed, and the applicant was not fit for compassionate appointment. It has been argued by the learned counsel for the applicant that inadvertently these facts could not be mentioned in the application form, but there was no deliberate intention on the part of the applicant to suppress these facts. It has also been argued by the learned counsel for the applicant that prior to submitting the application for giving compassionate appointment, the applicant had already been acquitted from the Criminal Case No.62/2003 State Vs. Goverdhan Das under Section 447, 323 and Section 03(1)(5) and Section 3(1)(10) of the SC/ST Act. Copy of the judgment of the Court of Sessions Judge, Bikaner, has been annexed in the O.A. as Annexure-A/5. From the perusal of the judgment of the criminal case, it is evident that prior to the submission of the application form, the applicant had already been acquitted on 04th March, 2006, and at the time of submission of the application form for giving compassionate appointment, no criminal case was pending against the applicant.

5. However, it has been argued by the learned counsel for the respondents that as the material facts were suppressed by the applicant, and it has also been submitted that Annexure-A/6 is the



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proforma for submitting the application for employment, and in the application form there are specific columns for providing information regarding any criminal charge ever faced by the applicant in para No.12, that material information was required regarding the earlier criminal case. It may be the fact that at that time no criminal case was pending against the applicant, but it was the further fact that the applicant had already faced the trial of the criminal case, and it is immaterial that the applicant was acquitted from the criminal case, but it can not absolve the applicant for not mentioning these facts. The fact that whether the applicant had faced any criminal case earlier, or he was ever arrested in the criminal case, whatever para 12 said, ought to have been mentioned, and the applicant cannot plead ignorance of all these facts, as the applicant himself was accused in the criminal case, and it may not be intentional but material.

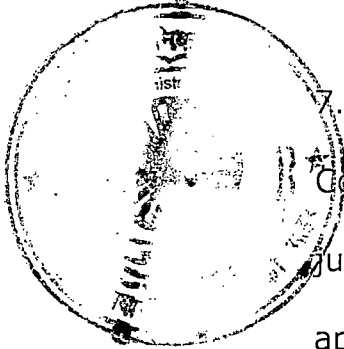


We have also perused the averments made in the O.A., and it has been alleged by the applicant that inadvertently this fact could not be mentioned in the application form, and that he was never arrested in the criminal case. At the time of submitting the application form, he was in the impression that no criminal case was pending against him, and it will suffice for the purpose. He was not well aware about the technicalities about this fact, and yet he was deprived from the employment. Learned counsel for the applicant cited a judgment of the Hon'ble Supreme Court reported in (2011) 4 SCC 644 (Commissioner of Police and others

vs. Sandeep Kumar). It has been held by the Hon'ble Supreme Court in Para 8 & 9 of the judgment as follows:-

"8..... When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often be condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

9. In this connection, we may refer to the character "Jean Valjean" in Victor Hugo's novel Les Miserables, in which for committing a minor offence of stealing a loaf of bread for his hungry family Jean Valjean was branded as a thief for his whole life. The modern approach should be to reform a person instead of branding him as a criminal all his life."



We have perused the judgment of the Hon'ble Supreme Court, and in particular the above cited paragraphs of the judgment. It is evident that when the incident took place, the applicant was aged about 20 years, and at that time he may have committed any indiscretions and such indiscretions can be condoned. We are of the opinion that the case of the applicant of this O.A. is squarely covered by the judgment of the Hon'ble Supreme Court. It is the contention of the respondents that the applicant's case was not considered merely on the ground that the applicant had suppressed the material facts, and as we have stated above, that as the applicant was young man at that time, and he could not have anticipated the technicalities of this fact, so as to deprive him of his future employment. As the applicant's

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case is covered with the judgment of the Hon'ble Supreme Court, and no other judgment has been cited by the respondents, so we condone the indiscretion made by the applicant. Even though he had suppressed the material facts, but he may not have anticipated that he will be held responsible, and he will be deprived of future employment. Under these circumstances, we are of the opinion that in view of the judgment of the Hon'ble Supreme Court, this was unintentional and inadvertently this fact could not be mentioned and it may be excused.

8. For the above mentioned reasons, we are of the opinion that, in view of the judgment of Hon'ble Supreme Court, even though the applicant had concealed the facts, he may not have known that it was material. and the case of the applicant is covered from the Hon'ble Supreme Court's judgment. Therefore, the O.A. deserves to be allowed. Therefore, the O.A. is allowed at the stage of admission itself, and the impugned annexures are quashed, and the respondents are directed to consider the case of the applicant for compassionate appointment within a period of three months from the date of production of this order before the respondent No.2. It has been made clear that the applicant shall not be deprived from giving compassionate appointment only on the ground that he concealed the material facts. No order as to costs.


[Sudhir Kumar]
Administrative Member


[Justice S.C. Sharma]
Judicial Member