

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATED FRIDAY THE EIGHTEENTH DAY OF AUGUST
ONE THOUSAND NINE HUNDRED AND EIGHTY NINE

PRESENT

HON'BLE SHRI S. P. MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

O.A. 133/87

N. Vijayamohan

Applicant

Vs.

1. The Union of India represented by its Secretary to Government of India Department of Space, Indian Space Research Organisation, F-Block, Cauvery Bhavan, District Office Road, Bangalore,
2. The Addl. Secretary to the Department of Space, Indian Space Research Organisation, F-Block, Cauvery Bhavan, District Office Road, Bangalore and

3. The Director, VSSC, Trivandrum

Respondents

Mr. B. Raghunathan

Consel for applicant

Mr. P. V. Madhavan Nambiar, SCGSC

Counsel for respondents

JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

The short facts in this application, filed by the petitioner challenging Annexure A-2, office order terminating his service with effect from the afternoon of 7.1.1987, are as follows:

2. The applicant was appointed as Draughtsman 'A' in the scale of pay of Rs. 300-400 in the PSLV Project of VSSC of the Department of Space with effect from the afternoon of

8th March, 1985. The appointment order stipulates a period of probation of one year from the date of appointment. While he was working in the project as Draughtsman, he was served with a memorandum dated 28.4.86 at Annexure A-1, which contains the following statement:-

" Sri N. Vijaya Mohan, Staff No. 28172, Draughtsman 'A' PSLV in column 14 of his application for employment in ISRO dated 10.12.1984 for the post of Draughtsman 'A' has suppressed the fact that he is an accused in Haripad P. S. Crime No. 245/82 u/s 143, 147, 148, 149, 451 and 427 IPC and crime 246/83 u/s 143, 147, 148, 149, 447, 506(ii) and 427 etc. The cases were charged before the Judicial I class Magistrate's Court, Kayamkulam where it was filed as CC 365/83 and 23/84 respectively.

In column 12 of the attestation form also Sri Vijaya Mohanan has suppressed these facts against specific querries.

Para 21 of the application for employment in ISRO and warning note 3 given on the top of the Attestation form stipulate that the furnishing of false information or suppression of any factual information would be a disqualification and if this come to the notice of the Appointing Authority at any time during the service of a person, his services are liable to be terminated.

Sri N. Vijaya Mohanan, Draughtsman 'A', PSLV is hereby directed to submit his written explanation if any, as to why his services should not be terminated forthwith for the above action. His explanation should reach the undersigned within two weeks of the receipt of this memorandum."

3. The petitioner submitted that the above memorandum was issued on the basis of certain false allegations by some people in the locality who were enemical to him. Really, he was not the person involved in the crime. The office order, Annexure-2, has been issued without giving him was ^{by} proper opportunity of being heard, not even a notice/issued by the authorities before passing the order. It is a punitive action hit by Article 311 of the Constitution of India and

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hence, according to him, Annexure-A is liable to be quashed.

4. In the counter affidavit filed on behalf of the respondents, the stand taken by them is that the applicant was selected as Draughtsman 'A' as per the interview conducted on 20/12/1984. Before the selection was completed up by he was to fill/the Application Form and Attestation Form in which the questions regarding involvement of criminal cases were answered in the negative by him. But subsequently Nos. it was known that he was accused in criminal cases/245/83 and 246/83 of the Haripad Police Station. In pursuance of Annexure A office memorandum, the applicant submitted a written reply stating that the person involved in the criminal case was one Mohan and not the applicant. This fact was enquired into through the District Collector, Alleppey, who after enquiry clarified that accused No. 3 in criminal case No. 245/83 and 246/83, is the applicant and his identity xxxx has been ascertained though the Supdt. of Police, Alleppey. When it was found that the applicant has suppressed the material facts about the criminal case in the Application Form and Attestation Form, it was decided to dispense with his service as he is not a fit person to be retained in/sensitive service. Hence by Annexure A-2 order, the applicant's service in the VSSC was terminated by invoking Clause 'E' of the order of appointment.

5. The two criminal cases referred to above were charged before the Additional First Class Magistrate's Court.

Karunagapally, as CC No. 365/83 and 23/84 respectively.

In the first case, the applicant was acquitted on 6.7.85
by learned Central Govt. and the second case is pending trial. The/counsel further states that only after knowing about his involvement in the criminal cases, that the applicant was called upon to explain the circumstances under which he has given the wrong information regarding his involvement in the criminal cases, by issuing Annexure A-1 memorandum. In reply to the memorandum, the applicant submitted a letter dated 19.5.86 denying the allegation and stated that the person involved in the above cases is some one else and there is a mistake regarding the identity. He also produced copies of the judgment in C.C. 365/83 and 23/84 of the Judicial First Class Magistrate, Kayamkulam with a view to establish that the persons involved in those criminal cases was one Mohan and not the applicant, Vijayamohan. This aspect was got enquired into through the District Collector, Alleppey and his report is produced as Annexure R-1(b). Shri V. Raghunathan, the learned counsel appearing on behalf of the applicant vehemently contended before us that Annexure A-2 order of termination is bad and violative of principles of natural justice and that no prior intimation was given to the applicant before taking a final decision with regard to the identity of the person involved in the criminal case, holding that the accused is not Mohan but the applicant. He has submitted that the enquiry of the District Collector was

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also conducted at the instance of the respondents without giving him an opportunity. Hence, the termination order is vitiated and liable to be quashed. He has also relied on the observations of the Supreme Court in the following decisions:-

1986 (4) S.C.C. 141 (Smt. Rajinder Kaur Vs. State of Punjab and another)

AIR 1967 S.C. 1260 (State of Uttar Pradesh Vs. Madan Mohan Nagar)

6. Shri P. V. Madhavan Nambiar, the learned Senior Central Government Standing Counsel raised two points in answer to the contentions of the counsel for the applicant:-

i) the applicant is not a full fledged member of the civil service but he is on probation and his probation has not been declared and ^{he was not} absorbed as a regular employee in the service; and

ii) VSSC is a sensitive organisation, its security requires ^{that} only persons of utmost integrity and honesty alone can be absorbed as employees.

dealing with the enquiry ^W Shri Nambiar is fair enough to produce all the files/before us for perusal. The order of appointment dated 22.2.1985 given to the applicant is in the file. Clause 'e' of the order reads as follows:-

"(e) During the period of probation, your services are liable to be terminated without notice or without assigning any reasons therefore, if your performance is found to be not satisfactory or if the Government is satisfied that you were ineligible for recruitment to the service/post in the first instance itself.

(f) After the successful completion of the period of probation, you will be treated as a regular temporary Government Servant and your service are liable to be terminated at any time by one month's notice given by either side namely, the employee or the appointing authority without assigning any reasons therefor.

The appointing authority however reserves the right for terminating your services forthwith or before the expiry of the stipulated period of notice by making payment to you a sum equivalent to the pay and allowances for the period of notice or un-expired portion thereof."

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7. We have carefully gone through the files in the case.

Column 14 of the Application Form reads as follows:-

" Have you ever been arrested or
detained or prosecuted by Police
or punished for any offence or
misconduct by a court of law? Or,
is there any proceedings involving
you in progress in any court of
law? If so, give details.

No

Column 12 of the Attestation Form reads as follows:

(i) 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 fined by a Court of Law? No
e) Have you ever been bound down? No
f) Have you ever been convicted by a Court
of Law for any offence? No
g) Have you ever been debarred from any examination
or rusticated by any University or any other
educational authority/institution? No
h) Have you ever been debarred/disqualified by any
Public Service Commission from appearing
at 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

(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 of this form.

NOTE: (i) Please also see warning at the top of this
Attestation form.
(ii) Specific answers to each of the questions should
be given by striking out 'Yes' or 'No' as the
case may be."

a / b / and on the facts and circumstances of this case
On/perusal of the files, we are satisfied that the applicant
has suppressed the fact of pendency of the criminal
proceedings against him while filling the application.

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After the enquiry conducted by the District Collector, even though enquiry was conducted without notice to him, the applicant was called upon to answer the question as to whether he has to say anything about the disputed identity. In answer to the query, he again submitted that he was not the actual person involved in the criminal case. But on perusal of the entire file and the reports of the District Collector, there cannot be any serious dispute regarding the identity of the person. The applicant has not produced before us any evidence to convince us that he is not the person actually involved in the criminal case but somebody else by name Mohan.

8. Having regard to the facts and circumstances of the case, the VSSC being a sensitive organisation which only persons of ^{by} ~~by~~ ^{they} ~~they~~ requires/utmost integrity and honesty/alone could be given opportunity to serve in that establishment. A person of doubtful integrity and honesty, we are not finally saying anything about the applicant's honesty or integrity in this matter, may have to be avoided as a policy for making appointment to public service especially in an establishment of the nature of VSSC which requires utmost security.

9. The decisions relied on by the counsel for the petitioner are not applicable to this case. But at the end of the argument, Shri Raghunathan brought to our notice a decision of this Tribunal in TA K-709/87 in which one of the Members of this Bench (Hon'ble Shri N. V. Krishnan) is a party. We have carefully gone through that judgment. There, the facts are distinguishable. In that case, the petitioner's services were terminated during his apprenticeship. The offer of appointment contained a stipulation to execute an Attestation Form requiring him to state among other items whether a case is pending against him in any court of law

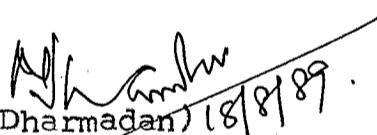
at the time of filing of the Attestation Form. The answer given by the applicant against the said column was in the negative. In that case, the applicant was second accused in SC 43/83 before the Sessions Court, Alleppey. The case was pending trial before the Sessions Court, but the "registered letter was despatched only on 8.9.83 i.e. after the petitioner was appointed", to the post. Having found on facts that the respondents in that case have not produced any documents to substantiate their charge that at the time of submission of the Attestation Form duly filled by the applicant, he was aware of the pendency of the criminal case in the court, the Tribunal was pleased to accept the plea of the petitioner in that case. Moreover, the report of the District Collector also does not state when the charge sheet was filed in the criminal court. Hence, on facts of that case, the Tribunal found that the petitioner did not furnish any false information or suppressed any factual information at the time of filing of the Attestation Form. Hence, the application was allowed quashing the order of termination.

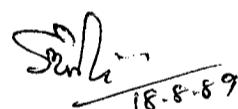
10. But in the case before us, at the time of submitting ^W ~~xx~~ the Application and the Attestation Form, the case was pending. The contention which is urged by the applicant in the application ^W ~~xxx~~ before us, is one of ^W ~~xx~~ identity of the person. He contended that one Mohan is the accused and not the applicant. But the applicant thoroughly failed in establishing this plea and satisfying us that he is not the accused involved in the criminal case referred to by the respondents. We have all sympathy for the applicant but this being a sensitive establishment and the conduct of the applicant having not proved to be beyond any doubt, we are not inclined to accept the vehement arguments placed

before us by the learned counsel appearing for the applicant.

11. We are also not inclined to accept the plea of violation of principles of natural justice raised by the applicant in this case. Though no notice of enquiry was given to the applicant by the District Collector, after the report of the Collector, the applicant was notified and requested him to give his explanation, but he did not make use of the opportunity by submitting a bonafide and correct statement with regard to the identity and sought the indulgence of the respondents so as to enable them to consider his case sympathetically and obtain relief from the hands of the respondents. Having failed to make use of the opportunity by submitting the correct details in a straight forward manner at the appropriate time, the petitioner cannot now be allowed to succeed on the technical plea of violation of natural justice. We feel that the applicant is not entitled to any relief in this case. Accordingly, we dismiss the application.

12. There is no order as to costs.


(N. Dharmadan) 18/8/89
Judicial Member
18.8.89


18.8.89
(S. P. Mukerji)
Vice Chairman
18.8.89

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