IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

1) ORIGINAL APPLICATION NO.772/98.
2) ORIGINAL APPLICATION NO.399/99.

this the 29th day of April 1999

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member(A).

1) **Original Aplication No.772/98.**

Subhash Murlidhar Nanekar,
Uttam Nagar,
Pune - 411 023. ...Applicant.
(By Advocate Mr.D.V.Gangal)

Vs.

1. The Union of India through
The Secretary,
Ministry of Defence,
South Block,
New Delhi - 110 001.

2. The Commandant,
Vice-Admiral,
National Defence Academy,
Khadakawasla,
Pune - 411 023. ...Respondents.
(By Advocate Mr.R.K.Shetty)

2) **Original Application No.399/99.**

Pandit Dagdu Walke,
At & Post Dighigaon,
Taluka - Haveli,
District - Pune. ... Applicant.
(By Advocate Mr.S.P.Saxena)

Vs.

1. The Union of India through
The Secretary,
Ministry of Defence,
New Delhi - 110 011.

2. The Chairman,
Ordnance Factory Board,
10-A Shahid Khudiram Bose Marg,
Calcutta - 700 001.

3. The General Manager,
Ordnance Factory,
Dehu Road,
Pune. ...Respondents.
(By Advocate Mr.R.K.Shetty)

: ORDER :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

These are two applications filed by the respective applicants under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed their reply in both the cases. The point covered is common to both the cases. Hence, both the OAs are being disposed of by this common order. We have heard Mr.D.V.Gangal and Mr.S.P.Saxena, the learned counsels for the respective applicants and Mr.R.K.Shetty, the learned counsel for the respondents in both the OAs.

2. Few facts which are necessary for disposal of these two applications are as follows.

In O.A. No. 772/98, the applicant is S.M.Nanekar. He was appointed on probation as a Workshop Attendant in the National Defence Academy, Khadakawasla, Pune w.e.f. 27.6.1996. He had filled up and signed the attestation form in the printed proforma. He had not disclosed that he was involved in a Criminal case or about his arrest in the Criminal case in the relevant columns in the attestation form. The Administration came to know that the applicant had been involved in a Criminal case and he had been arrested there. The administration issued a show cause notice dt. 26.6.1998 that the applicant has furnished false information or he has suppressed the factual information in the attestation form and he was called upon to show as to why disciplinary action should not be taken against him. The applicant submitted a reply to the show cause notice. Then, the

administration passed the impugned order dt. 10.8.1998 terminating the services of the applicant w.e.f. one month after the date of receipt of the notice. According to the applicant, he was acquitted in the Criminal case about a month later viz. on 10.9.1998. The applicant has challenged the order of termination on many grounds.

3. In O.A. No.399/99, the applicant is P.P.Walke. He was appointed as an Un-skilled Labourer in the Ordnance Factory at Dehu Road, Pune w.e.f. 1.8.1995. He had also filled up and signed the attestation form in the printed proforma. The applicant had not mentioned about his involvement or prosecution in a Criminal case or about his arrest in the relevant columns in the attestation form. The administration came to know about the involvement of the applicant in the Criminal case and about his arrest. Hence, the administration issued a show cause notice dt.14.11.1995 to the applicant alleging that he had furnished false information / suppressed real information in the attestation form and called upon him to show cause as to why his services should not be terminated on this ground. The applicant sent a reply to the show cause notice. Afterwards, the administration issued an order dt. 9.1.1996 terminating the services of the applicant. Being aggrieved by that order, the applicant filed an OA in this Tribunal in O.A. No. 848/98. That OA was disposed of at the admission stage by a Division Bench by order dt. 30.10.1998 directing the applicant to exhaust the statutory remedy of appeal. Accordingly, applicant preferred an appeal before the Appellate Authority, but the Appellate Authority dismissed the appeal by order dt. 10.2.1999. It has also come on record that applicant was acquitted in the Criminal

case by Judgment dt. 30.11.1993. Being aggrieved with the order of termination, the applicant has filed this OA challenging the same on many grounds.

4. The respondents in their reply to both the cases have taken common defence. The defence is that this is a simplicitor order of termination as per the terms of contract in view of applicants' furnishing false information or suppressing real information in the attestation form. The respondents have justified the action taken by them against the applicants.

5. The applicants' challenge to the orders of termination is that no enquiry has been done and thereby there is violation of Article 311 of the Constitution of India. Then on merits, it is stated that the applicants have been acquitted in the Criminal case and therefore, their involvement in Criminal case, unless they are found guilty and convicted, will not come in their way to continue in government employment. Mere pendency of Criminal case by itself is not a ground to take away the appointment given to the applicants, particularly when they have been acquitted by the competent Criminal Court. On the other hand, the learned counsel for the respondents contended that acquittal in the Criminal case is wholly irrelevant and the action is taken for suppressing truthful information in the attestation form and the order is passed in pursuance of the warning given in the attestation form which is a term of contract between the parties.

6. This is not a case where action is taken against the applicants for any mis-conduct and therefore, the question of holding an enquiry under Article - 311 of the Constitution of India does not arise. Here the order of termination is passed in terms of the contract of employment. There is a specific warning

clause in the attestation form that furnishing false information or suppressing of real information is a ground for termination of service at any time. The orders of termination are simplicitor termination and not due to any mis-conduct. Therefore, in such a situation holding of departmental enquiry as provided under the CCS (CCA) Rules is not attracted in these cases.

We are also not impressed by the arguments addressed on behalf of the applicants that both the applicants have been acquitted and therefore there was no necessity to take any action. The acquittal in the Criminal case is wholly irrelevant since the action is taken against the applicants not on the ground that they are guilty of a Criminal offence, but only on the ground of suppression of factual information in the attestation form. In such a situation, the acquittal itself has no relevance. We will, presently refer to the Judgment of Supreme Court and some other decisions which we have come across bearing on the point under consideration.

7. The attestation form is a printed proforma which has been filled by both the applicants. In OA 772/98, copy of attestation form signed by the applicant is at page 35 of the paper book. It also bears passport size photograph of the applicant pasted on it with his signature over the photograph. Similarly, in OA 399/99 xerox copy of the attestation form duly filled by the applicant and bearing his signature and passport size photograph is at page 78 of the paper book.

In both these attestation forms there are three warnings. As Warning Nos. 1 and 3 are relevant for our present purpose, the same is reproduced below:

> "1. The furnishing of false information or supression of any factual information in the

...6.

Attestation Form would be a disqualification and is likely to render the candidate unfit for employment under the Government.

2. 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 at any time during the services of a person, his services would be liable to be terminated."

Warning No.3 in particular mentions that if administration comes to know that false information has been furnished or suppression of factual information at any stage during the service, then the service is liable to be terminated. Therefore, the question of holding an enquiry does not arise in a matter like this. This is like terminating service in terms of the contract of employment. One of the conditions in the contract of employment is one has to sign the attestation form and if there is suppression of fact, the service is liable to be terminated at any time during the entire service.

In the attestation form, the relevant column for our present purpose is Column No.12. There is a specific question whether the applicant has been arrested and the answer is "no". Then there is a further question whether the applicant has been prosecuted and the answer is "no".

Therefore, both the applicants have answered in the negative in respect of the two questions regarding arrest and prosecution. But, it is an admitted case that both the applicants had been arrested during the investigation by the Police and both of them were prosecuted by the Police.

In OA 772/98, the Judgment of the learned Sessions Judge in S.C. No.543/95 is at page 47 of the paper book. It shows that this applicant Subhash Nanekar was an accused in a murder case. Of course, he has been acquitted for want of legal evidence since

some witnesses turned hostile. At page 49 it is recorded by the learned Sessions Judge that applicant was arrested on 2.10.1995.

In OA 399/99, Judgment of the Sessions Judge in S.C. 316/93 is at page 33 of the paper book. It shows that the applicant was prosecuted as one of the accused for the offence of gang rape, kidnapping and abduction, which are offences punishable under section 376 and 366(2)(g) of the Indian Penal Code. The Judgment also shows that the present applicant Walke was Accused No.4 before the Sessions Judge and he came to be arrested on 28.3.1992 as could be seen from para 7 of the Judgment at page 37 of the paper book. It may be, for want of sufficient evidence, Accused Nos. 2 to 4 including the present applicant came to be acquitted and only Accused No.1 was convicted and sentenced to suffer imprisonment for 7 years and to pay a fine of Rs.300/-.

8. Therefore, we find that both the accused had been arrested and they were prosecuted by the Police, but conveniently both of them have suppressed this information while filling up Column No.12 of the attestation form.

We are not impressed by the allegations in the OAs and the arguments addressed at the bar that applicants got the form filled up by somebody and he did not ask the applicants proper questions. Many of the questions in the attestation form have been properly answered and properly filled up and this shows that applicants have been questioned by the author and they have given proper answers which are recorded in the attestation forms. The applicant in the first O.A. has passed XII th standard and applicant in the second O.A. has passed IX th standard. Both of

them have given the reply to the show cause notice only in English. Therefore, the argument that they do not understand English properly has no merit. When they have taken the assistance of some person, there is no reason for him to commit fraud on the applicants by entering false replies to the questions particularly in Column No.12 of the attestation form.

9. Now, the question is whether in view of the suppressed information about arrest and prosecution, the administration can terminate the services of the applicants. We have already seen the warning clause in the attestation form which clearly empowers the administration to terminate the service at any time if it comes to know of false answers or suppression of facts. Now, in this connection, we may refer to some decisions which were highlighted at the time of arguments and also some decisions we have come across and which have a direct bearing on the point under consideration.

In 1997 (1) SC SLJ 10 (Delhi Administration Through its Chief Secretary & Ors. Vs. Sushil Kumar), an identical case arose for consideration. It was a case of appointment of a Constable in the Delhi Administration. Though he was provisionally selected, on verification it was found that the official had been prosecuted in Criminal Court for the offence under section 304 IPC and 324 IPC. Since the official had given false information his services came to be terminated. He filed an application in the Principal Bench of this Tribunal at Delhi. The Tribunal allowed the application on the ground that the applicant has been acquitted or discharged in the Criminal case. The State took up

the matter in appeal before the Apex Court. This is what the Supreme Court has observed in the Judgment :

> "It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State.....on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force....Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actualresult thereof....The consideration relevant to the case is of the antecedents of the candidate."

Therefore, in our view, the question that the applicants have been acquitted in the criminal case is wholly irrelevant as pointed out by the Supreme Court. We are concerned in both these cases appointment of civilians in Defence Department. If in view of the prosecution of the applicants in a Criminal case and their arrest in the Criminal case and since the information had been suppressed in the attestation form, if the Competent Authority now feels that in view of these circumstances it is not desirable to continue them in service and terminate the services, the order of termination cannot be said to be faulty. Further, the administration has followed the principles of natural justice by issuing a show cause notice to the applicants as to why action should not be taken and after getting the reply and considering their representation the Competent Authority has come to the conclusion that their services should be terminated.

10. In the first case viz. 772/98, the order of appointment of the applicant is at page 19 where it clearly mentions that the appointment is temporary and terminable on giving one month's

notice on either side. No doubt, the appointment order also says that the applicant is on probation for a period of two years which may be extended.

In the second case viz. 399/99 the order of appointment is at page 74 of the paper book (Ex. R-1) produced by the respondents. It clearly says that it is an appointment as temporary labourer at the Ordnance Factory. He will be on probation for two years which may be extended. Then, it further says that during the probation period the services may be terminated at any time. After the probation period services can be terminated with one month's notice or salary of one month in lieu of notice.

It is therefore, seen that in both the cases it is purely a case of temporary appointment terminable with one month's notice. The fact that the applicants are put on probation does not make the appointment as permanent. Even temporary servant can be placed on probation.

In this connection, we are fortified in our view by the decision of the Supreme Court in the case of Union of India & Ors. Vs. Arun Kumar Roy (1986 (1) SLJ 474), where also the order of appointment showed that it was temporary appointment and the official has been placed on probation. The Supreme Court held that putting an employee on probation does not make it a permanent employment if the order of appointment says that it is a temporary appointment.

Therefore, we find that in both the cases it is a case of temporary appointment and as per the terms of employment, services can be terminated at any time. Even the CCS (Temporary) Service Rules also provides that services of a temporary employee

can be terminated at any time either by giving one month's notice or by giving salary in lieu of one month's notice. That means, this is a case of termination in terms of the contract of employment. There is also the further contract of employment to which both the applicants are parties having filled up and signed the attestation form where there is one more contract viz. that the services can be terminated if false information is given or factual information is suppressed.

Therefore, these are the cases where the termination is done in pursuance with the contract of employment and further contract mentioned in the attestation form. If it is a case of termination in terms of contract then the question of interference by a Court or Tribunal does not arise. The Supreme Court has pointed out in a case reported in 1996 (1) SC SLJ 197 (State of Rajasthan and Ors. Vs. Rameshwar Lal Gahlot), where it is stated that an employer can always terminate the services of an employee in terms of the contract of employment.

In the case of State of U.P. Vs. Kaushal Kishore Shukla ((1991) SCC (L&S) 587), the Supreme Court has again reiterated that termination simplicitor in terms of contract of service and rules is valid and not punitive in nature so as to attract Article 311(2) of the Constitution of India.

In the case of The Oriental Insurance Company Limited Vs. T.Mohammed Raisuli Hassan (1993(1) SLR SC 431), where the Apex Court has held that the termination of services in terms of the appointment order is perfectly valid and is not invalidated even if one month's salary is not paid since the official can always claim and recover one month's salary in lieu of the notice.

11. A Division Bench of this Tribunal to which one of us was

a party (Justice R.G.Vaidyanatha, Vice-Chairman) had an occasion to consider a similar question in OA No.919/95 filed by E.Jebamani against Union of India & Ors. By Order dt. 13.08.1999, the Bench has held that termination of service in terms of contract of employment and violation of the condition in attestation form by suppressing factual information is perfectly valid and cannot be interfered with by a Court or Tribunal. The Bench has referred to number of Judgments bearing on the point. The Bench has referred to the case of Satbir Singh Vs. Union of India & Ors. (ATR 1988 (1) CAT 464), where again the Tribunal held that termination of service due to suppression of vital information about pending criminal case was valid. However, in that case, the Tribunal found that principles of natural justice had not been complied with in not issuing a show cause notice to the officer and therefore the order was set aside by giving liberty to the administration to issue a show cause notice and take into consideration the explanation given by the officer and pass appropriate orders. But, such a situation does not arise in the present cases, Since both the applicants have been given show cause notice and they have given their reply and afterwards the Competent Authority has passed the impungned orders. The Bench has also referred to a decision of the Calcutta Bench of the Tribunal in Jagga Dutta Chatterjee Vs. Union of India & Ors. (1990 (1) SLJ 52), where it was again an identical case of termination of service on the ground of giving false information or suppression of vital information. It was held by that Bench that termination is valid in view of the warning clause in the attestation form. Similar view was taken by another Bench about suppression of certain facts regarding involvement in the

Criminal case in the attestation form which is reported in 1989 (9) ATC 437 (Bagirath Prasad Vs. Union of India & Ors.)

From the above discussion, we can safely hold that simplicitor order of termination due to suppressing of factual information in the attestation form is a termination in pursuance of the contract of employment and cannot be invalidated by a Court or Tribunal.

12. The learned counsel appearing for the applicants invited our attentions to some decisions.

In AIR 1983 SC 374 (State of M.P. Vs. Ramashankar Raghuvanshi and Another), It was a case of termination due to official's earlier involvement in RSS and Jansangh activities. The Supreme Court has observed that earlier involvement in political activity prior to government service is not a ground for termination unless the organisation was banned by the government at the relevant time. We do not know how this decision has any bearing to a case of this type where the termination is because of suppression of factual information in the attestation form. In fact, in para 3 of the reported Judgment at page 375 the Apex Court has observed that "It is a different matter altogether if a police report is sought on the question of the involvement of the candidate in any criminal or subversive activity in order to find out his suitability for public employment". Therefore, involvement of an official in a Criminal case has a bearing on his character may throw light on the desirability of appointing or continuing him in service. As already stated by us by referring to the latest decision of the Supreme Court earlier, the acquittal in the Criminal case is wholly irrelevant in such a case.

In the case of Anoop Jaiswal Vs. Government of India & Anr. (1984 (1) SLJ 428 (SC), the Supreme Court found that it was a case of termination due to mis-conduct and hence it is not permissible unless a regular enquiry is held. This decision has also no bearing on the fact of the present case because this is purely a simplicitor order of termination due to suppressing factual information about involvement in a criminal case.

No doubt, the decision of the Rajasthan High Court reported in 1998 (3) ATJ 512 (Ram Dhan Choudhary Vs. Union of India & Ors.) supports the case of the applicants. There, the learned Single Judge of the Rajasthan High Court has held that involvement in the Criminal case has no relevance, particularly when he has been subsequently acquitted. In our view, the applicants cannot get any sustinance from this Judgment since we have already referred to the latest Judgment of the Supreme Court on the point reported in 1997 (1) SC SLJ 10 (Union of India Vs. Sushil Kumar), where the Supreme Court has observed that pendency of a criminal case may be a ground for the Competent Authority to decide that it is not desirable to appoint such a person or continue such a person in service and subsequent acquittal is wholly irrelevant.

Then, strong reliance was placed by both the learned counsels on a recent Judgment of the Apex Court reported in 1999 (1) SC SLJ 147 (Regional Manager, Bank of Baroda Vs. The Presiding Officer, Central Govt. Industrial Tribunal & Anr.) in support of their contention that involvement in a criminal case and particularly in view of subsequent acquittal is no ground to terminate services of the applicants.

In our view, the said judgment of the Supreme Court cannot be cited as an authority for more than one reason. The Supreme Court itself has mentioned in clear terms that the said decision is given on the peculiar facts and circumstances of that case and should not be treated as a precedent. This is what the Supreme Court has observed in the last sentence of the reported judgment which reads as follows :

> "We make it clear, this order of ours is rendered on the peculiar facts and circumstances of the case as mentioned earlier and will not be treated as a precedent in future".
> (underlining is ours)

In view of the direction of the Supreme Court itself that it should not be treated as a precedent in future, the applicants cannot get any advantage of the said judgment. In addition to [this, we find that even on facts the said case is distinguishable.

In that case, no action was taken against the official though the administration came to know about the pending criminal case till he was convicted. Then, the official explained that on the date he filled up the attestation form he was not aware of the criminal case since he received the summons in the criminal case only subsequent to the date of signing attestation form. What is more, the official had informed the Management about the filing of the charge sheet subsequently. In para 7 of the reported Judgment an argument was addressed on behalf of the Bank that when an official gets appointment after conceiling a fact about prosecution in Criminal case it amounts to mis-r[presentation and a fraud on the employer and it would create no equity in his favour and for such misconduct termination would be justified without holding any enquiry. After noticing this

argument at para 7 of the reported judgment, in para 8 the Apex Court observes that there can be no dispute on this settled legal position and having observed that, the Supreme Court posed a question whether on the peculiar facts of the case does it call for intereference by the Apex Court under Article 136 of the Constitution of India. Then, the Supreme Court observed in the next sentence that in the peculiar facts of the case it is not a fit case for interfering in the matter. The Supreme Court also took into consideration delay on the part of the management in taking action not when the Criminal case was pending, but took action only after the official was convicted by the Criminal Court, though later he was acquitted by the High Court.

Therefore, we find that on facts the above case is distinguishable. Further, the Supreme Court itself has cautioned that this Judgment is purely in the peculiar facts and circumstances of the case and it should not be cited as a precedent in future.

13. The applicants counsels also relied on Dayaram Dayal Vs. State of M.P. and Another (1997 SCC (L&S) 1797), where it is a case of termination of a probationer on the ground of mis-conduct. A Judicial Officer had been suspended from service and then action was taken due to unsatisfactory work. It was therefore, held that the termination of service was not simplicitor termination and hence an enquiry was necessary.

14. In view of the above discussion, we hold that this is a case of simplicitor termination of the two applicants on the basis of contract of employment viz. that their appointment was temporary and could be terminated at any time and further the

termination is in pursuance of the warning clause given in the attestation form, which is also taken as a term of the contract of employment. The fact that the applicants have been acquitted in the Criminal case is not at all relevant. The question is one of giving false information/suppressing factual information from the knowledge of the employer. Inspite of mentioning Criminal case an official can be appointed depending upon the nature of service etc. Here, we are concerned with the appointment to a Defence Establishment. The administration may feel that an official who has given deliberate false information or deliberately suppressed factual information is not a person who is desirable to be continued in service, acquittal in the Criminal case notwithstanding. Therefore, in such a case, if the administration finds that it wants to terminate services of the applicant and when the order of termination is in terms of the contract of employment this Tribunal cannot interfere with such an order. Therefore, in our view, both the applicants have not made out any case for interfering with the impugned orders of termination.

15. In the result, both the OAs fail and are hereby dismissed. In the circumstances of the case, there will be no order as to costs.

(D.S.BAWEJA)
MEMBER(A)

(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B.