

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 65 of 1997.

Dated this Wednesday the 1st day of August, 2001.

Jagdish Dattatraya Pethkar, Applicant.

Shri P.A. Prabhakaran, Advocate for the
Applicant.

VERSUS

Union of India & Others, Respondents.

Shri R. R. Shetty for Advocate for
Shri R. K. Shetty, Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri S. L. Jain, Member (J).

- (i) To be referred to the Reporter or not ? ✓
- (ii) Whether it needs to be circulated to other ✓
Benches of the Tribunal ?
- (iii) Library. ✗


(B. N. - BAHADUR)
MEMBER (A).

OS*

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CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri S. L. Jain, Member (J):

Jagdish Dattatraya Pethkar,
Residing at quarter no. G-277,
Gandhinagar, Nashik 422 006.

Applicant.

(By Advocate Shri P.A.Prabhakaran)

VERSUS

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

2. Controller of Defence (SC),
Office of the CDA (SC),
Pune - 411 001.

3. Joint Controller of
Defence Accounts,
Lekhanagar,
Nashik - 422 009.

Respondents.

(By Advocate Shri R. R. Shetty
for Shri R. K. Shetty).

O R D E R (ORAL)

PER : Shri B. N. Bahadur, Member (A):

The Applicant in this case has come up to the Tribunal seeking relief for the quashing of the impugned order at Annexure 'A' and for a consequential direction to Respondents to give



appointment to him as Peon, with effect from 28.11.1996, and benefits of arrears, etc.

2. The facts of the case are in a very short compass, in that, the Applicant was selected and offered the post of Peon in the Department of Defence Accounts. For this purpose, inter alia, information in prescribed proforma was sought from him, as is the usual practice. The Applicant had answered in the negative on questions at para 12.1 of the proforma. In other words, he had denied that he had ever been arrested or prosecuted or kept under detention or bound down or fined by a Court of Law. It transpired through the receipt of Police Verification Report that the Applicant had been involved in a criminal case being Sessions Case No. 165 of 1990. He, alongwith others, had faced trial for commission of offences punishable under Sections 302, 498-A read with Section 34 of the Indian Penal Code. A copy of the judgement annexed at Annexure A-3 shows that the accused, including the Applicant, were acquitted of the offence, since the offences alleged to have been committed were not proved beyond all reasonable doubts.

3. The stand of the Respondents is that the very fact of suppression of information by a candidate seeking employment and entry into Government service goes against the Applicant, and that the Applicant is not fit for Government service in view of false information and the facts of his antecedents as revealed through police verification report.

B.S.

4. We have seen all papers in the case and have heard the Learned Counsel for the Applicant, Shri P.A. Prabhakaran, as also the Learned Counsel for Respondents, Shri R. R. Shetty for Shri R. K. Shetty.

5. Learned Counsel, Shri Prabhakaran, argued on the basis of the grounds taken at para 5 of the O.A. and first made the point that no mens rea was involved, and that even if he had answered the query in the affirmative, he could not have been denied employment in view of the fact of his acquittal of the criminal charges. He also dwelt at length on the point that the Applicant was only IXth standard passed and not sufficiently educated to fill up the proforma himself. He had thus taken the help of his friend to fill up the proforma on his behalf and pressed the point, as made by the said person who filled up the proforma, as seen in the affidavit at Annexure A-5. Learned Counsel sought to seek support from the case of State of M.P. V/s. Ramshankar Raghuwanshi [AIR 1993 SC 374] cited by him at para 5 of the O.A.

6. Learned Counsel for Respondents, Shri R. R. Shetty, besides reiterating the point made in the Written Statement, sought to depend on the judgement of this Tribunal, to which one of us (B. N. Bahadur) was a party in the matter of E. Jebamani V/s. Union of India & others decided on 13.08.1999 in O.A. No. 919/95. He quoted at some length from this judgement to make the point of reliance in the matter decided by Supreme Court in the case of Delhi Administration through its Chief Secretary & others V/s. Sushil Kumar [1997 SCC (L&S) 492]. Also, the other case law

depended upon by this Bench in the matter of Jebamani, as discussed in para 12 and 13 of the judgement was argued by the Learned Counsel; Shri R. R. Shetty, to be relevant to the present case.

7. It is clear and undisputed that the Applicant had denied in the proforma that he had ever been arrested, prosecuted, etc. and that this was an utter falsehood, as is clearly seen from the record. The argument that there was no mens rea cannot stand at all. It was a clear suppression of fact by a person who was trying to enter Government service for the first time. The proforma had specifically warned of any attempt to suppress information. So the argument of lack of mens rea cannot help the Applicant's cause.

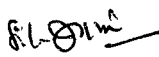
8. Similarly, the affidavit filed by Shri S. S. More, has also been carefully seen by us and begs the question. It is as if somebody else is trying to stand in the shoes of the Applicant and defend him. To our mind, this affidavit is of no use and does not help the Applicant in any manner. It is also a bit far fetched, as argued on behalf of Applicant that he is educated only upto IXth standard and this was one cause of the stand taken by him. A person educated even upto that level and selected in competition for the post of Peon, cannot claim to be so innocent, that he can be excused for taking a plea that his acquittal meant that he could justifiably answer the proforma questions in the negative.

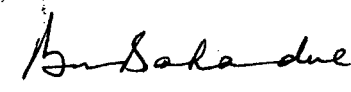


9. We have carefully seen the case of Delhi Administration V/s. Sushil Kumar cited above and have also seen the judgement in the matter of E. Jebamani at length. In Sushil Kumar's case, it has, in fact, been held that even if the candidate had been acquitted of criminal charges, the denial of appointment to him on the ground of undesirability cannot be said to be improper. The case in so far as this aspect is concerned, is therefore directly applicable to this O.A.

10.....What is further important here is the point regarding suppression of information by the Applicant who was trying to get into Government service. In the case of E. Jebamani, this Tribunal has held that the fact that applicant suppressed vital information is important enough to go against him, and the vital question was not whether a criminal case had ended in an acquittal or conviction but that vital information was suppressed. The issues decided in Jebamani's case are very much relevant to the case before us.

11. In view of a clear action to suppress vital information, we see no flaw in the action of the Respondents and, therefore, find no cause for interfering in the matter or for providing the relief as sought by the Applicant. In the consequence, this O.A. is hereby dismissed with no order as to costs.


(S. L. JAIN)
MEMBER (J).


(B. N. BAHADUR)
MEMBER (A).