

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH

Jaipur, this the 09<sup>th</sup> day of December, 2010

**ORIGINAL APPLICATION NO. 02/2007**

**CORAM**

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER  
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Sultan son of Shri Ram Niwas aged about 20 years, by caste Harizan, resident of Nehru Nagar, Harijan Basti, Bheemganj Mandi, Kota. Ex-Safaiwala, West Central Railway, DRM Office, Kota Division, Kota.

.....Applicant

(By Advocate: Mr. S.K. Jain)

VERSUS

1. Union of India through General Manager, West Central Railway, Jabalpur.
2. General Manager, West Central Railway, Jabalpur.
3. Chief Medical Director, West Central Railway, Indira Market, Jabalpur.
4. Chief Medical Supdt., West Central Railway, Kota Divison, Kota.

.....Respondents

(By Advocate: Mr. Anupam Agarwal)

**ORDER (ORAL)**

The applicant has filed this OA thereby praying for the following reliefs:-

- "(i) That by an appropriate order or direction, the impugned order of imposition of penalty dated 24.09.2002 (Annexure A/1), that of appellate authority dated 7.2.2006/21.2.2006 (Annexure A/2) and that of the revisional authority dated 3.10.2006/12.10.2006 (Annexure A/3) be quashed and set aside forthwith.
- (ii) That the applicant be reinstated on duty forthwith as if no punishment has been imposed upon him with all consequential benefits. The applicant be awarded the arrears of salaries from the date of his removal till date of reinstatement with interest @ 18% per annum.
- (iii) Any other relief which this Hon'ble Tribunal deems fit may also be granted to the humble

82

applicant, looking to the facts and circumstances of the present case."

2. Briefly stated, facts of the case are that the applicant was selected for the post of Safaiwala in Kota Division and was given offer of appointment vide order dated 15.11.1999, which has been placed on record by the respondents as Annexure R/1 and was subject to character and antecedent verification. It may be stated that before issuing the appointing letter dated 15.11.1999, the applicant had signed the Attestation Form dated 27.10.1999 (Annexure R/2). Against Column No. 12(i) of the Attestation Form, he had mentioned that no criminal case was pending against him in any Court of law. On account of suppression of the material information in the Attestation Form, inquiry was held and the services of the applicant was terminated vide impugned order dated 24.09.2002 (Annexure A/1). Appeal and Revision filed by the applicant was also dismissed vide order dated 21.2.2006 (Annexure A/2) and 12.10.2006 (Annexure A/3) respectively. It is these orders, which are under challenge in this OA.

3. The contention raised by the applicant in this OA is that he is a Middle Pass and such Attestation Form was filled in by one Shri Bhatnagar, to whom he has informed about pendency of the criminal cases against him and since the Attestation Form was in English, he could not understand the contents of the questions which were in English. It is under these circumstances, he had signed the Attestation Form. Another contention raised by the applicant is that before Revisional Authority, he has raised the contention that one Shri

Rajendra Prasad Meena, Khallasi, who was similarly situated, was imposed penalty of withholding of increment for one year with future effect and one Shri Ramesh Chand , Assistant Director, in whose case punishment of reduction of pay by three stages with cumulative effect for three years was imposed. Thus, he has been discriminated in the matter. The applicant has also contended that inquiry has not been held in accordance with law.

4. Notice of this application was given to the respondents. The respondents have filed their reply. In the reply, the respondents have stated that in view of the pronouncement by the Hon'ble Supreme Court in the case of **R. Balasina Babu** holding that an employee seeking appointment through deceit has no right to remain in employment and is liable to be dismissed. It is further stated that one of the conditions in his appointment letter was that the said appointment is on provisional basis and his services can be terminated without any inquiry. Even on this ground, the applicant is not entitled for any relief. The respondents have further stated that the applicant has not presented himself before the Inquiry Officer on 18.09.2001, 29.09.2001 and 11.10.2001 despite service of notice. It is further stated that though prosecution witnesses stated in the charge sheet were not examined despite notice, they failed to appear before the Inquiry Officer. Under these circumstances, finding recorded by the Inquiry Officer is on the basis of submission given by the applicant regarding pendency of criminal and the same cannot be faulted. The respondents have also placed on record the copy of office order dated 15.11.1999 whereby the applicant was given provisional appointment, the copy of the Attestation Form (Annexure R/2) as well as submission

of the applicant before the Inquiry officer dated 10.11.2001 whereby in reply to Question No. 6, the applicant had admitted that three criminal cases were pending against him viz. (i) case No. 3/97 under Section 19/54 of Excise Act, (ii) Case No. 96/99 under Section 452, 327 and 341 of IPC and FIR No. 198/99 under Section 450, 327 & 34 of IPC.

5. We have heard the learned counsel for the parties and have gone through the material placed on record. From the material placed on record, it is evident that while filling up the Attestation form, against column No. 12(i), the applicant had mentioned that no criminal case is pending against him in any court of law. The respondents have placed Attestation Form on record as Annexure R/2. Para Nos. 1 & 3 of the Attestation Form is in the following terms:-

- "1. 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.
- 3. 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 service of a person, his services would be liable to be terminated."

6. The Attestation form is both in Hindi as well as in English. The said Attestation Form was signed by the applicant on 27.10.1999. In Para No. 12(i), which is filled in by the applicant, reads as under:-

12(i)	Is any case pending against you in any court of law at the time of filling up this Attestation Form	No
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The applicant had also certified information in the Attestation, which is as under:-

"I certify that foregoing information is correct and complete to the best of my knowledge and belief. I am not aware to any circumstances which might impair my fitness for employment under Government."

7. Impugned order Annexure A/1 indicates that services of the applicant is terminated as there are two cases pending against him.

<sup>It remains</sup> The fact that cases were pending against the applicant at the time he had suppressed this material information and made false submission, which has clear bearing on his character and antecedent. It cannot be said that services of the applicant could not have been terminated. Law on this point is no longer res-integra. At this stage, we wish to reproduce the judgment of the Apex Court in the case of **Delhi Administration & Others vs. Sushil Kumar**, 1996 (11) 605, which thus reads as under:-

".....It is seen that verification of the character and antecedent is one of the important criteria to test whether the selected candidate is suitable to the post under the State. Though he was physically fit, passed the written test and interview and was provisionally selected, 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. The view taken by the Appointing Authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. 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 actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant to the case is of the antecedent of the candidate. Appointing Authority, therefore, has rightly focused this aspect and found it not desirable to appoint him to the service."

8. Thus the Apex Court has held that even if the person has been acquitted on merit, still he does not have any right for provisional appointment on account of his antecedent record. At this stage, it will be relevant to refer to the decision of the Apex court in the case of **Kendriya Vidyalaya Sangathan vs. Ram Ratan Yadav**, 2003 SCC (L&S) 306, whereby the Apex court has held that on verification of attestation form, it was found that information furnished by him was false and a criminal case under Sections 323, 341, 294 and 506-B read with Section 34 IPC was pending against him. Thus termination of services by the Sangathan was rightly upheld by the Tribunal. The Apex court set aside the decision of the Hon'ble High Court whereby the order of termination was set aside on the ground that the criminal case against him was subsequently withdrawn by the Government and offence did not involve any moral turpitude so as to disqualify him from employment. The said decision was reversed by the Apex court. Thus as per the decision rendered by the Apex Court in the case of Ram Ratan's case, the suppression of material information, making false statement had a clear bearing on the character, conduct and antecedent of a person employed and the employer was justified in terminating his service during the period of probation. The Court did not accept the Yadav's claim that he did not understand the contents of the question which were in English. The Apex court has further held that neither the gravity of the criminal offence nor the ultimate acquittal therein was relevant when considering whether a probationer who had suppressed a material fact (of his being involved in a criminal case, in the personal information furnished to the employer), is fit to be continued as a probationer.

9. The Apex court in the case of **Union of India & Others vs. Sukhen Chandra Das**, 2010 (1) SCC (L&S) 911 has held that furnishing of wrong information in the form relating to verification of character and antecedent, despite warning given in the form itself that wrong information would result in termination of service was held to be a valid ground for termination of service by the applicants. It was further held that termination was neither stigmatic/punitive nor was it actuated by any motive. Thus the law laid down by the Apex Court in the case of Ram Ratam and Sukhen Chandra is squarely applicable in the facts & circumstances of this case.

10. At this stage, we may also notice another decision of the Apex court in the case of **Kamal Nayan Mishra vs. State of Madhya Pradesh & Others**, 2010(1) SCC (L&S) 573, whereby the earlier decision in the case of Ram Ratan Yadav was followed and it was further held that where the service of probationer is terminated on account of giving wrong information in record or material having bearing offence for giving appointment, his services can be terminated without giving any opportunity to show cause before termination. It was further held that once the probationer is confirmed in the post, his position is supposed to be different as he gets the protection of Article 311 of the Constitution of India. In such circumstances, holding of disciplinary proceedings as per relevant rules is mandatory. At this stage, it will be useful to quote Para No. 17, which thus reads as under:-

“17. Ram Ratan yadav held that the services of a probationer who gave wrong information in regard to material particulars having a bearing on his fitness or suitability for appointment, can be terminated without giving any opportunity to show cause against the proposed termination. But once probation is

confirmed in the post, his position and status become different as he get the protection of Article 311. If it is found that the government who is the holder of a civil post, has given any false information during the course of employment, that will have to be treated as a misconduct, and punishment can be imposed only after subjecting him to an appropriate disciplinary proceedings as per the relevant service rules."

11. As already noticed above, the applicant was on probation and was not confirmed and his services could have been terminated even without issuing the show cause notice. Still in this case, the respondents have issued the charge sheet and hold inquiry. The contention of the applicant that inquiry was not held properly need not be noticed in view of the law laid down by the Apex Court that in such type of cases where a person has not been confirmed, his services could have been terminated even without holding an inquiry and also in view of the fact that factum of pendency of three criminal cases against the applicant has not been disputed even by the applicant. The contention of the applicant that the Attestation Form was in English and it was filled in by another employee to whom he had stated regarding pendency of the criminal cases and still the said fact was not mentioned in the relevant column cannot be accepted. The said Attestation Form was both in English as well as in Hindi. Such type of objection was also taken by the respondent before the Apex Court in the case of **Ram Ratan Yadav**. The Apex Court did not accept the Yadav's contention that he did not understand the contents of the Form which were in English. For the same reasoning also, the contention of the applicant cannot be accepted.

*[Handwritten signature]*

12. Learned counsel for the applicant has placed reliance upon the decision of the Apex Court in the case of **Sengara Singh & Others vs. State of Punjab & Others**, 1983 (3) SLR 685; decision of the Calcutta High Court in the case of **Mrinal Chowdhury vs. Union of India & Others**, 2004 (8) SLR 189 and decision of the Central Administrative Tribunal, Principal Bench, New Delhi in the case of **Sh. Daulat Ram vs. Union of India & Others**, 2006 (2) ATJ 609, to contend that it was not permissible for the respondents to impose different punishments for the same type of offence as was awarded to two other employees where lesser punishment was awarded. We fail to understand how the applicant can take assistance from these authorities. These were cases where for same charge sheet and same delinquency, different punishment was imposed. It was in that context, the Apex court as well as Hon'ble High court and CAT had held that delinquents cannot be awarded different punishment when charges were same and identical in relation to one and same incident. In the instant case, incidents are different. Here not only one but three criminal cases were pending against the applicant. It is not pleaded how the applicant stand on the same footing as that of two persons whose instances has been quoted by the applicant and how they stand on the same footing. At this stage, we wish to refer to the decision of the Apex Court in the case of **M/s Obetee Pvt. Ltd. vs. Mohd. Shafiq Khan**, 2005 (2) SC SLJ 353. That was a case where service of the respondents before the Apex Court was terminated on account of participation in the strike whereas others were left out on unconditional apology tendered by them after giving them a letter of warning. Respondent did not tender any apology. Charge sheet was issued and after inquiry, service of the respondent was terminated.

*l/s*

The Tribunal held that the termination of the service of the applicant is legal and proper. Hon'ble High court set aside the judgment of the Tribunal and directed that respondent was to be re-instated in service if he had not attained the age of superannuation and was to be paid 50% of the back wages. The matter was carried to the Hon'ble Apex Court. The Apex Court relying upon the case of **Union of India vs. Parma Nanda**, JT 1989 (2) SC 132, wherein it was held that a person did not stand on the same footing, same yardstick cannot be applied and it was held that same is the view in the instant case and the order of the Hon'ble High Court was set aside. Thus in the absence of any material on record, the applicant and two persons named by him does not stand on the same footing, no case of discrimination regarding imposition of penalty is made out. As already stated above, not only one but three criminal cases pertaining to the period 1997 to 1999 were pending against the applicant before the Criminal Court and if under these circumstances, authority had come to the conclusion that such a person's character and antecedent is such that he is not suitable person to continue in service, in exercise of judicial review, it is not permissible for us to interfere in such matter and, more particularly, in view of the laid down by the Apex court, as noticed above.

13. For the foregoing reasons, the OA is bereft of merit and is accordingly dismissed with no order as to costs.

*Anil Kumar*  
(ANIL KUMAR)

MEMBER (A)

*M.L. Chauhan*  
(M.L. CHAUHAN)

MEMBER (J)

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