

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH, JAIPUR.

**ORIGINAL APPLICATION No. 291/00086/2014**

**ORDER RESERVED ON 12.02.2015**

**DATE OF ORDER : 17.3.2015**

CORAM :

**HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**  
**HON'BLE SMT. CHAMELI MAJUMDAR, JUDICIAL MEMBER**

Varun Kumar Karwasra son of Shri Lal Chand Karwasra, aged around 31 years, resident of Village Dhandhariya, Post Bajwa, District Jhunjhunu (Rajasthan).

... Applicant

(By Advocate: Mr. P.P. Mathur)

Versus

1. Union of India through its General Manager, North Western Railway, Jagatpura Road, Malviya Nagar, Jaipur.
2. The Divisional Railway Manager, North Western Railway, Bikaner Division, Bikaner.

... Respondents

(By Advocate: Mr. Anupam Agarwal)

**ORDER**

**PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

The brief facts of the case, as stated by the learned counsel for the applicant, are that a notification was issued by the respondents for recruitment to the post of Senior Section Engineer in the Grade Pay of Rs.4600/- in different branches. The applicant being eligible submitted his candidature. The applicant was declared successful in the Signal category. That on 14.06.2013, the respondents issued the order of appointment to the applicant. He was further directed to provide Attestation Form and other relevant documents (Annexure A/4).

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2. That in the Attestation Form, the candidate is required to give informations including information regarding criminal offence committed by him. He is required to provide information regarding his arrest, his prosecution, his detention, his bail etc. In these columns, the applicant submitted 'No'.

3. That thereafter, the respondents passed an order dated 03.09.2013 (Annexure A/1), cancelling the candidature of the applicant. It has been stated in this order that his Attestation Form was sent for verification. The District Magistrate, Jhunjhunu has informed that a Criminal case under Section 341, 323, 324 and 34 of the IPC is pending against the applicant in the Police Station, Mandrela. It was mentioned that in view of the communication received from the District Magistrate, Jhunjhunu, hence his candidature has been rejected. Being aggrieved by this order, the applicant has filed the present OA and prayed that the order dated 03.09.2013 (Annexure A/1) may be quashed and set aside and the applicant be allowed to join the services on the post of Senior Section Engineer (Signal).

4. The learned counsel for the applicant submitted that in the year 2003, one FIR was registered in a family dispute. In view of the compromise between the parties, the matter was closed (Annexure A/5). Thus there was no pendency of criminal case against the applicant as mentioned in the order dated 03.09.2013 (Annexure A/1). However, it is admitted that information regarding criminal case was not mentioned by the applicant in the Attestation Form. It was a mistake on the part of

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the applicant but in no manner, it was with mala fide intend because the applicant was acquitted in the criminal case and his acquittal in no manner could have debarred him from getting appointment. The applicant did not make a mention about this case because of ignorance as well as the matter was settled in a very short period. Moreover, the incident relates to ten years back between the family members. The applicant was never sent behind the bar, he was never arrested and the matter was resolved through compromise. When the incident occurred, the applicant was merely 20 years old and a student. The District Magistrate vide letter dated 10.10.2013 (Annexure A/7) has informed the respondents that the applicant was never arrested and that the Court vide order dated 14.08.2003 acquitted the applicant on the basis of a compromise.

5. Therefore, the impugned order dated 03.09.2013 (Annexure A/1) passed by the respondents is illegal and arbitrary and hence liable to be quashed and set aside.

6. The learned counsel for the applicant further submitted that this technical ground cannot be made a ground to deny a meritorious candidate to get a chance of appointment.

7. The applicant is an Engineering Graduate in Computer Science. He never intended to get the appointment by concealment of facts. Initially the information received by the respondents was that a criminal case is pending against the applicant whereas later, the District Magistrate has informed that

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the case has been decided ten years back and that the applicant was never arrested and never released on bail. That there was a compromise between the parties. On the basis of this information, the applicant is entitled for the relief claimed in the OA. The applicant was selected in the Open Competitive Examination. Therefore, merely on the ground as mentioned in the letter dated 03.09.2013 (Annexure A/1), the applicant's candidature cannot be cancelled.

8. On the other hand, the respondents have filed their reply. In the reply, the respondents have stated that the applicant despite knowledge failed to furnish correct information in the Attestation Form. He did not mention the fact about the pendency of criminal case against him in the Court in Column No. 11 of the Attestation Form. On being sent for verification of character and antecedents to the District Magistrate, Jhunjhunu, it was informed vide letter dated 05.08.2013 that a case No. 173/2003 dated 02.07.2003 under Section 147, 148, 149, 447, 341, 323 and 307 of IPC was registered against the applicant and challan in charge sheet no. 129 dated 31.07.2003 under Section 341, 323, 324 and 34 of IPC was filed before the Court which is still pending (Annexure R/1). Due to concealment of the fact in Para 11 of the Attestation Form, his appointment on the post of Senior Section Engineer (Signal) was cancelled in accordance with the instructions received vide letter dated 19.03.2013. He, however, informed that this case was already settled by the Court on 14.08.2003. Accordingly, the matter was again enquired wherein it was confirmed that the case has been

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finalized on 14.08.2003 with the consent of both the parties. However, the same since immaterial, any submission on the basis was of no relevance. Applicant since guilty of concealment of facts has rightly been denied appointment. Thus he has no reason to be aggrieved of the alleged impugned orders.

9. The appointment of the applicant was cancelled as per the warning on the Attestation Form. The fact remains that a criminal case was registered against the applicant which he did not mention in the Attestation Form even if he was acquitted in the case on the basis of compromise. He should have mentioned this fact. Since he did not mention this fact which proves that applicant is guilty of concealment of facts. He himself has admitted that it is a mistake on his part. In fact the applicant did it intentionally. The applicant cannot ask for any benefit on the basis that the dispute related amongst the family members or the applicant was never sent behind the bars or that he was acquitted on the basis of compromise. The applicant is guilty of furnishing false information as well as suppressing material information. The applicant has been denied appointment not because of the matter involving him in a criminal case but because of suppressing material information and furnishing false information. Therefore, there is no merit in the OA and it should be dismissed with costs.

10. Heard the learned counsel for the parties, perused the documents on record and the case law referred to by the learned counsel for the parties.

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11. The learned counsel for the applicant reiterated the facts, as mentioned in the OA. He submitted that the applicant was involved in a family dispute. That the applicant was acquitted in the criminal case on the basis of a compromise. Since the applicant was acquitted, therefore, he could not have been debarred from getting appointment. The incident is of the year 2003, which is almost 10 years old. Not to mention about this criminal case in the Attestation Form was a mistake on the part of the applicant for which he cannot be penalized by not giving him appointment on the post of Senior Section Engineer (Signal) as the charges against the applicant in the criminal case is not of serious nature.

12. In support of his arguments, the learned counsel for the applicant referred to the judgments of the Hon'ble High Court of Rajasthan at Jodhpur in the case of **Rai Sahab vs. State (Personnel) & Another** (SB Civil Writ Petition No. 4229/2012 decided on 27.04.2013) and **Prabhudayal Vishnoi son of Babu Lal vs. State of Rajasthan & Others** (SB Civil Writ Petition NO. 12602/2011 decided on 26.03.2014). He also referred to the case of this Tribunal in OA NO. 97/2012 decided on 27.08.2012 (**Narendra Kumar Chandel vs. Union of India & Others**).

13. On the other hand, the learned counsel for the respondents also reiterated the facts as mentioned in their written reply. The learned counsel for the respondents submitted

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that letter dated 03.09.2013 (Annexure A/1) has been issued not because the criminal case is pending against the applicant but because he suppressed the facts that he was involved in a criminal case while filing the Attestation Form. Thus the applicant is guilty of giving false information and suppressing material information. Therefore, the applicant himself is to be blamed for this lapse. In support of his arguments, the learned counsel for the respondents relied upon the judgments of the Hon'ble Supreme Court in the case of **Jainendra Singh vs. State of Uttar Pradesh through Principal Secretary, Home and Others**, 2012 (2) SCC (L&S) 754, and **Davendra Kumar vs. State of Uttaranchal & Others**, 2014 (1) SCC (L&S) 270.

14. The learned counsel for the respondents submitted that in the case of **Davendra Kumar vs. State of Uttaranchal & Others**, 2014 (1) SCC (L&S) 270, the Hon'ble Supreme Court has held that suppression of material information itself amounts to moral turpitude and is a separate & distinct matter than what is involved in criminal case. In such a case, service of appointee concerned is liable to be terminated, even if there had been no further trial or person concerned stood acquitted/ discharged. In the case before the Hon'ble Supreme Court, the termination of service of the appellant on the ground of aforesaid suppression of material information by him was held proper.

15. Under the facts of the present OA, it is not disputed that the applicant qualified the examination of Senior Section Engineer (Signal). That a criminal case was registered against

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the applicant in 2003 and a challan in charge sheet No. 129 dated 31.07.2003 under Section 341, 323, 324 and 34 of the IPC was filed before the Court. That the applicant was acquitted by the Criminal Court on the basis of a compromise. However, the applicant while filling the Attestation Form in Para No. 11 has not mentioned the facts relating to this criminal case. Therefore, the respondents due to concealment of these facts have cancelled the selection of the applicant vide order dated 03.09.2013 (Annexure A/1). Thus the short controversy before the Tribunal is whether the concealment by the applicant of his involvement in criminal case though acquitted would lead to cancellation of the candidature of the applicant for the post of Senior Section Engineer (Signal). The learned counsel for the applicant relied upon the judgment of the Hon'ble High Court of Rajasthan at Jodhpur in the case of **Rai Sahab vs. State (Personnel) & Another** (SB Civil Writ Petition No. 4229/2012 decided on 27.04.2013) and **Prabhudayal Vishnoi son of Babu Lal vs. State of Rajasthan & Others** (SB Civil Writ Petition NO. 12602/2011 decided on 26.03.2014). The Hon'ble High Court of Rajasthan at Jodhpur while deciding the case of **Prabhudayal Vishnoi son of Babu Lal vs. State of Rajasthan & Others** (supra) has relied upon the case of **Rai Sahab vs. State (Personnel) & Another** (supra). Hon'ble High Court in Para No. 9 of the judgment in the case of **Prabhudayal Vishnoi** (supra) has held that:-

"9. This Court is satisfied in the present case that the controversy in hand is squarely covered by the detailed and well reasoned judgment of the coordinate bench of this Court in the case of **Rai Sahab (supra)**, in which the earlier precedents of the Hon'ble Apex Court have also

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been discussed by the learned Single Judge. It will be useful to quote the relevant part of the said judgment for ready reference. It may also be pointed out that in that case also, a criminal case against the petitioner had been decided upon a compromise between the parties and the accused person, upon such compounding of offence, the petitioner was acquitted on that ground. The learned Single Judge in para 28 of the judgment held that the distinction between the 'honourable acquittal; and 'acquittal by compounding of offence' is wafer thin. The acquittal on the basis of the compromise or compounding of offence has to be treated at par with the honourable acquittal and such an acquitted person cannot be denied appointment as Constable, if otherwise so qualified....."

16. The Hon'ble High Court in the case of **Prabhudayal Vishnoi** (supra) has also discussed the judgment of the Hon'ble Supreme Court in the case of **Davendra Kumar vs. State of Uttaranchal & Others**, 2014 (1) SCC (L&S) 270, which has been relied upon by the learned counsel for the respondents. In the case of **Prabhudayal Vishnoi** (supra), the Hon'ble High Court in Para 16 of the judgment has held that:-

"16. The judgment relied upon by the learned counsel for the respondents in the case of **Devendra Kumar (supra)** does not apply to the facts of the present case as the present case is not the case of total concealment of the relevant facts by the petitioner, which itself was held to be a case of 'moral turpitude' by the Hon'ble Apex Court in the case of **Devendra Kumar (supra)**....."

The Hon'ble High Court in this case on the other hand has relied on the judgment of the Hon'ble Supreme Court in the case of **Commissioner of Police & Others vs. Sandeep Kumar**, 2011 (4) SCC 644.

17. However, from the perusal of the facts of the present case, we are of the opinion that the ratio laid down by the Hon'ble High Court of Rajasthan at Jodhpur in the case of **Rai Sahab**

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(supra) and **Prabhudayal Vishnoi** (supra) are not applicable. In Para 12 of the judgment in the case of **Prabhudayal Vishnoi** (supra) the Hon'ble High Court has clearly stated that in the case before the Hon'ble High Court, the petitioner had admittedly disclosed the fact of the aforesaid criminal trial against him in the initially filed application form, therefore, he cannot be held guilty of concealment as such. Whereas in the present OA before us, the case of the respondents is that the applicant concealed the fact that he was involved in a criminal case though acquitted on the basis of compromise. It is not the case of the respondents that the applicant was involved in a criminal case in the year 2003 and, therefore, because of that criminal case, he is not eligible for appointment as Senior Section Engineer (Signal) but the case of the respondents is that the applicant concealed this fact while filling that Attestation Form that he was involved in a criminal case in the year 2003. Thus we are inclined to agree with the averments made by the learned counsel for the respondents that the applicant gave false information and suppressed material information while filling up his Attestation Form. It was the duty of the applicant to give true and correct information in the Attestation Form to the respondents.

18. We have carefully perused the order passed by this Tribunal in the case of OA No. 97/2012 decided on 27.08.2012 (**Narendra Kumar Chandel vs. Union of India & Others**). In that case, the Tribunal allowed the OA under similar circumstances but the order passed by the Tribunal in that OA is

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dated 27.08.2012. However, subsequent to the passing of this order, the Hon'ble Supreme Court in the case of **Davendra Kumar vs. State of Uttarakhand & Others**, 2014 (1) SCC (L&S) 270, has held that suppression of material information itself amount to moral turpitude and is a separate and distinct matter than what is involved in criminal case. In such a case, service of appointee concerned is liable to be terminated, even if they had been no further trial or person concerned stood acquitted/ discharged. The Hon'ble Supreme Court in that case did not interfere with the termination of service of the appellant on the ground of aforesaid suppression of material information by him. This order of the Hon'ble Supreme Court is dated 29.07.2013. The ratio decided by the Hon'ble Supreme Court in this case is squarely applicable under the facts & circumstances of the present OA. In view of the subsequent judgment of the Hon'ble Supreme Court in the case of **Davendra Kumar vs. State of Uttarakhand & Others**, we are not following the order passed by this Tribunal in the case of OA NO. 97/2012 decided on 27.08.2012 (**Narendra Kumar Chandel vs. Union of India & Others**).

19. We have carefully perused the judgment of the Hon'ble Supreme Court in the case of **Jainendra Singh vs. State of Uttar Pradesh through Principal Secretary, Home and Others**, 2012 (2) SCC (L&S) 754, as referred to by the learned counsel for the respondents. The Para Nos. 10, 11 and 12 of the judgment are quoted below:-

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"10. We have come across the following decisions in which this Court has taken a similar view which has been propounded in *Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav*, 2003 SCC (L&S) 306. The said decisions are in *Union of India v. M. Bhaskaran*, 1996 SCC (L&S) 162, *Delhi Admn. V. Sushil Kumar*, 1997 SCC (L&S) 492, *Bank of Baroda v. Central Govt. Industrial Tribunal*, 1999 SCC (L&S) 546, *Deptt. Of Home, A.P. v. B. Chinnam Naidu*, 2005 SCC (L&S) 323, *R. Radhakrishnan v. DG of Police*, 2008 (1) SCC (L&S) 283, *Union of India v. Bipad Bhanjan Gayen*, 2008 (2) SCC (L&S) 1034, *Daya Shankar Yadav v. Union of India* 2011 (2) SCC (L&S) 439, *State of W.B. v. Sk. Nazrul Islam* 2012 (1) SCC (L&S) 273.

11. We also find that the following decisions have taken a different view than what has been expressed in *Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav*, 2003 SCC (L&S) 306 i.e. *Commr. of Police v. Dhaval Singh* 1998 SCC (L&S) 1740, *Kamal Nayan Mishra v. State of M.P.* 2010 (1) SCC (L&S) 573, *Commr. of Police v. Sandeep Kumar* 2011 (1) SCC (L&S) 734 and the unreported judgment relied upon by the learned counsel for the appellant in *Ram Kumar v. State of U.P.* 2011 (14) SCC 709.

12. One common feature which we noted in all these cases is that all the above decisions were rendered by a Division Bench consisting of two judges alone. Though in the decisions in which the principle laid down in *Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav* 2003 SCC (L&S) 306 has been either followed or similar view has been taken, we find a common thread in all those decisions in having laid down as a proposition of law that suppression of material information which a candidate was called upon to furnish and which he failed to do, such concealment would result in serious consequences and also not befitting the nature of service for which such recruitment was made, the State would be well within its powers to resort to cancellation of such appointment when the appointee was undergoing probation in order to ensure cleanliness in the service."

20. In Para No. 29 of the judgment, the Hon'ble Supreme Court has given cardinal principles which required attention from the Courts before giving any relief to the aggrieved party. Para No. 30, 31 and 32 of the judgment are quoted below:-

"30. When we consider the above principles laid down in the majority of the decisions, the question that looms large before us is when considering such claim by the candidates who deliberately suppressed information at the time of

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recruitment, can there be different yardstick applied in the matter of grant of relief.

31. Though there are very many decisions in support of the various points culled out in the above paragraphs, inasmuch as we have noted certain other decisions taking different view of coordinate Benches, we feel it appropriate to refer the abovementioned issues to a larger Bench of this Court for an authoritative pronouncement so that there will be no conflict of view and which will enable the courts to apply the law uniformly while dealing with such issues.

32. With that view, we feel it appropriate to refer this matter to be considered by a larger Bench of this Court. The Registry is directed to place all the relevant documents before the Hon'ble the Chief Justice for constitution of a larger Bench.

21. Thus the issue involved in the present OA has been referred to a larger Bench of the Hon'ble Supreme Court. However, this judgment of the Hon'ble Supreme Court is dated 30.07.2012 and thereafter the Hon'ble Supreme Court in the case of **Davendra Kumar vs. State of Uttaranchal & Others** (supra) has held that termination order of the appellant cannot be interfered with on the ground that he suppressed the material information from the employer. Thus on the basis of ratio decided by the Hon'ble Supreme Court in the case of **Davendra Kumar vs. State of Uttaranchal & Others**, we are of the opinion that under the facts & circumstances of the present OA, the applicant is not entitled for any relief from the Tribunal. The applicant has suppressed material facts while filling up the Attestation Form that he was involved in a criminal case in 2003 though he was acquitted by the Criminal Court on the basis of compromise. Thus we do not find any illegality/ irregularity in the letter dated 03.09.2013 (Annexure A/1) issued by the

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respondents where the applicant has been disqualified for the post of Senior Section Engineer (Signal) on the basis of suppression of material facts by him.

22. Consequently, the OA being bereft of merit is dismissed with no order as to costs. However, this order shall be subject to the final outcome of the order of the larger Bench of the Hon'ble Supreme Court, as referred to in Para Nos. 20 & 21 of this order.

*Chameli Majumdar*  
(SMT. CHAMELI MAJUMDAR)  
MEMBER (J)

*Anil Kumar*  
(ANIL KUMAR)  
MEMBER (A)

Abdul