

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 29.1.2001

OA 251/2000

Mahendra Sharma s/o Late Shri Pratap Sharma r/o 28, Patel Colony, Opp.Govt.Press, Jaipur.

... Applicant

Versus

1. Union of India through Director General, Employees' State Insurance Corporation, Panchdeep Bhawan, Kotla Road, New Delhi.
2. Regional Director, ESIC, Panchdeep Bhawan, Bhawani Singh Road, Jaipur.

... Respondents

CORAM:

HON'BLE MR.A.K.MISHRA, JUDICIAL MEMBER

For the Applicant ... Mr.S.D.Sharma

For the Respondents ... Mr.U.D.Sharma

O R D E R

PER HON'BLE MR.A.K.MISHRA, JUDICIAL MEMBER

The applicant has filed this OA with a prayer that the impugned order dated 31.5.2000 (Ann.A/1), by which his services have been terminated, be declared illegal and be quashed. Alternatively, the respondents be directed to keep the services of the applicant regular. The applicant has also prayed for staying the operation of the impugned order.

2. Notice of the OA was given to the respondents, who have filed their reply.

3. It is stated in the reply that applicant was appointed on probation for a period of two years and

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his services were liable to be terminated without any notice. It is also stated by the respondents that at the time of entering in the service the applicant had undertaken that in case applicant is found unsuitable on the ground of verification of character, his services could be terminated without notice and the applicant would not claim any advantage of such appointment. The applicant was issued an attestation form, which was required to be filled in by the applicant correctly. This attestation form contains warning notice and as per the warning notice it was expected from the applicant that he would not suppress any material fact and would give correct information. However, the applicant failed to supply necessary information in reply to Question No.12, as contained in the attestation form. On verification of his character from the District Magistrate, it was found out that the applicant was being prosecuted for various offences under IPC and consequently the services of the applicant were terminated vide Ann.A/1. The OA of the applicant bears no merit and deserves to be dismissed.

4. Arguments were heard and the case file was gone into. So far as the facts of the case are concerned, there is no dispute. The applicant was appointed on compassionate grounds on temporary basis on probation for a period of two years. In the letter offering appointment, the applicant was to file a Character Certificate. Thereafter, the applicant was directed to fill an attestation form, in which it was asked from him in Question No.12(1)(b); "Have you ever been prosecuted ? (Answer 'No')". In Question No.12(1)(i) it was asked that; "Is any case pending against you in any court of law at the time of filling up this attestation form ?" and applicant's answer is 'No'.

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5. The information supplied by the applicant in respect of these two questions was found wrong on the basis of a letter received from the Additional District Magistrate, Jaipur, vide (Ann.R.4). From Ann.R.4 it appears that a case was registered against the applicant u/s 147, 447, 379 and 504 IPC in the Police Station Vidhayak Puri and after investigation a challan was filed in the criminal court.

6. It is stated by the applicant that his services have been terminated by a simple order Ann.A.1, whereas the order in fact is a punitive one and no notice was given to him. On the contrary, the learned counsel for the respondents relying upon 1997 (1) SLR 803, Sanjay Kumar Bappai v. Union of India and Others, and 2000 (3) ATJ 569, Dharam Pal Singh v. The State of Rajasthan and Others, argued that non-supply of desired information or suppression of important information disentitles a candidate from seeking an employment and subsequent acquittal is of no consequence. It is also argued that it is not material whether the applicant was <sup>not</sup> being prosecuted for an offence involving moral turpitude. All what was required of the applicant was that he should give correct information relating to <sup>a</sup> criminal case <sup>if</sup> having been instituted against him and for facing the trial in the criminal court. Since the applicant had suppressed the material fact relating to his prosecution in a criminal case and pendency of such case, therefore, he is not entitled to be retained in service.

7. I have considered the rival arguments. In my opinion, the law laid down by Hon'ble the Supreme Court as propounded in 1997 (1) SLR 803, will clinch the issue. In

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this case it was held by Hon'ble the Supreme court that;

"False statement made in the Enrolment Form regarding any pendency of criminal case against the officer - Discharge from service on the ground of false statement in the enrolment Form - Order of discharge proper - No ground to interfere."

Likewise, it was held in 2000 (3) ATJ 569 by the Full Bench of Rajasthan High Court that;

"Whether the fact that a candidate was prosecuted or subjected to investigation on a criminal charge is a material fact - Held yes - Suppression of such facts - Employer entitled to deny appointment on this ground - Even ultimate acquittal of a candidate would not condone or wash out the consequences of suppression of the fact that he was prosecuted - A candidate would be disentitled to be appointed in service on account of suppression of such material facts."


8. In view of the above principles, the applicant, in my opinion, is not entitled to any relief. The applicant had initially undertaken vide his undertaking (Ann.F./1) that in case he is found unsuitable for appointment on the verification of character and antecedents, his services would be liable to be terminated, and he is bound <sup>by</sup> the said undertaking. It is also not denied by the applicant that he had filled in the attestation form, as claimed by the respondents.

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Therefore, he cannot escape the liability of suppressing the material information and giving wrong information to his employer.

9. In view of the above discussion, the applicant, in my opinion, is not entitled to any relief.

10. The OA is, therefore, dismissed with no order as to costs.

  
29/11/2001.  
(A.K.MISHRA)

MEMBER (J)