

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 471 of 2002

Jabalpur, this the 7th day of May, 2004

Hon'ble Shri Madan Mohan, Judicial Member

Bhole Shanker Choudhary, S/o. late
Shyamlal Choudhary, aged about 23 years,
R/o. House No. 76, Badi Madar Tekri,
Jhanda Chowk, PS Hanumantal, P.O.
Hanumantal, Jabalpur (MP). ... Applicant

(By Advocate - Shri S. Paul)

V e r s u s

1. Union of India, through its
Secretary, Ministry of Defence,
New Delhi.
2. Chairman/Director General,
Ordnance Factories Board, 10-A,
Shaheed SK Bose Marg,
Kolkata (WB).
3. Sr. General Manager, Ordnance Factory
Khamaria, Jabalpur. ... Respondents

(By Advocate - Shri Om Namdeo)

O R D E R

By filing this Original Application the applicant
has sought the following main reliefs :

"(b) set aside the order dated 25.8.1999 Annexure
A-1 and order dated 2.5.1999 communicated on
10.5.2002 Annexure A-2,

(c) command the respondents to issue an appointment
order in favour of the applicant in view of his
selection forthwith alongwith consequential benefits"

2. The brief facts of the case are that the applicant's
father late Shri Shyamlal Choudhary was an employee
in the Industry of respondent No. 3 and was working as a
Labour. The applicant's father expired on 27.1.1996. There-
after the applicant preferred an application for providing
him compassionate appointment. The applicant's case was
considered by the screening committee and he was found to
be fit for the post of Durban. The applicant was then
directed to fulfil certain formalities including to fill



up an attestation form. The applicant is not a highly education person. Hence he could not understand the ambiguous terminology of the attestation form. Subsequently a letter dated 25.8.1999 was issued against the applicant, whereby it is mentioned that a criminal case is pending against the applicant which has not been mentioned by him in Column 12 of the attestation form. Because of suppression of this fact in the attestation form, it was held that the applicant is not entitled for compassionate appointment in service. The applicant was falsely implicated in the criminal case bearing case No. 590/1998, and later he was exonerated vide order dated 25.4.1998. Hence it cannot be said that any case was pending against him. The request of the applicant has not been considered and yet another order dated 15.12.1999 was passed, thereby applicant's claim was rejected. He preferred a detailed representation dated 7.4.2000 to the respondent No. 3 but the same could not fetch any result. Thereafter the applicant preferred a representation to the respondent No. 2 by registered post. The applicant made another representation but none of the representations were replied by the respondents. Feeling aggrieved with the inaction of the respondents, the applicant filed OA No. 414/2001, wherein this Tribunal vide order dated 5th March, 2002 directed the applicant to prefer a representation before the respondents and the respondents were directed to pass a speaking order within a period of three months. The applicant preferred a detailed representation on 20.3.2002. However the said representation of the applicant was rejected vide order dated 2.5.2002. Aggrieved by this the applicant has filed this OA claiming the aforesaid reliefs.

3. Heard the learned counsel for the parties and perused the records carefully.



4. It is argued on behalf of the applicant that the applicant had submitted his attestation form on 29.1.1999, in which in its column No. 12(b) he has denied about any prosecution against him in past because in criminal case No. 590/1998 he was acquitted vide judgment dated 25.4.1998 i.e. much earlier before submission of his attestation form i.e. on 29.1.1999. Hence no criminal case was pending on the date of submission of his attestation form while in letter dated 25.3.1999, issued from the respondents, it is mentioned that one criminal case is instituted against the applicant and the same is pending in the competent court while this version of the respondents is absolutely wrong and against the records. On the date of submission of the attestation form and even on the issuance of the letter dated 25.3.1999 (Annexure A-1) no criminal case was pending against the applicant and the applicant was acquitted from the said case vide judgment dated 25.4.1998. The applicant has relied on the judgment of the Hon'ble High Court of Madhya Pradesh in WP No. 18718/2003, passed on 8.3.2004, wherein the Hon'ble High Court has held that "I am of the considered opinion, as the petitioner was under an erroneous impression because of the order of acquittal in his favour, the respondent should not have passed a drastic order of termination against him. I am inclined to hold so as the petitioner belongs to class-IV employee and was involved in the offences which have been indicated hereinabove. Misconception at the behest of the petitioner cannot be totally ignored. That apart, had the petitioner stated the aforesaid fact it would not have affected his continuance in services as fairly stated by the learned counsel appearing for the State. Thus, in view of the aforesaid premises I am inclined to quash the order of termination contained in Annexure A-6. The petitioner will be taken

back in his job within a period of two months from the date of receipt of the order passed today. He shall be entitled for all consequential benefits except backwages."

5. It is argued on behalf of the respondents that the applicant had intentionally suppressed the factual/vital information regarding the Criminal case pending against him and he has mentioned in the attestation form at para 12(b) that he was never prosecuted for a criminal charge in past, but he should have disclosed this fact that he was prosecuted for a criminal charge but later on he was acquitted from the same. In support of his claim the learned counsel for the respondents has relied on the judgment of the Hon'ble Supreme Court in the case of Kendriya Vidyalaya Sangathan & Others Vs. Ram Ratan Yadav, (2003) 3 SCC 437 and the judgment of the Hon'ble High Court in the case of Ten Singh Vs. Gas Authority of India Limited, 2002(4) MPHT 231.

6. I have given careful consideration to the rival contentions made on behalf of the parties and I find that the applicant had submitted his attestation form dated 29.1.1999 and in which he has mentioned that he was never prosecuted earlier while actually he was prosecuted in a criminal case according to his own admission in criminal case No. 590/1998 under Section 25 of the Arms Act, but he was acquitted on 25.4.1998 from the above referred criminal case i.e. much before the submission of his attestation form. In the judgment cited by the respondents of the Hon'ble Supreme Court in the case of Ram Ratan Yadav the Hon'ble Supreme Court has held that "Service Law - Dismissal - Suppression of material information relating to character and antecedents - Considered a major offence for which punishment may extend to dismissal from service, as

(Signature)

per terms of offer of appointment - Attestation form, which was required to be duly filled and submitted by appointee, inter alia containing questions if he ever had been prosecuted or convicted by court of any offence and if any case was pending against him in any court at the time of filling up the attestation form - Respondent appointee replying both the questions in the negative and also certifying that the information given by him was correct and complete to the best of his knowledge, although a criminal case against him was pending at that time - Held, it amounted to suppression of material information and making false statement which has a clear bearing on the character and antecedents of respondent in relation to his continuance in ser vice - Object of seeking the information being to verify the character and antecedents, the nature or gravity of the offence and ultimate result of the criminal case are not relevant considerations - Contention of respondent (who possessed BA, BEd and MEd degrees) that he having received education in Hindi medium, could not understand the meaning of words prosecution and conviction and as such answered the question on misconceived notion, on facts, not acceptable." In the other judgment cited by respondents of the Hon'ble High Court in the case of Ten Singh (supra) the Hon'ble High Court has held that "Service Law - Termination - Services of the petitioner terminated on the ground that he has given false information while filling up the Attestation Form - Against it, this writ petition - Before appointment, petitioner was facing criminal trial for the offence of very serious nature - He suppressed facts and submitted false information in the Attestation Form despite specific warning noted at the top of the Form - Held - His termination was not because of involvement in the criminal case but it was because of



concealment of vital information - It is an act of fraud - Petitioner himself responsible for the same - A person who is employed should first of all win the confidence of the employer - No employer will like to keep an employee who has committed fraud - He is not entitled to any relief - Petition dismissed." Thus the judgment relied upon by the learned counsel for the applicant can be distinguished by the aforesaid two judgments of the Hon'ble Supreme Court and the Hon'ble High Court respectively.

7. In this case the applicant has suppressed the factual information and submitted false information in the ~~specific~~ attestation form, despite warning noted at the top of the Form. The applicant's termination was not because of involvement in criminal case but it was because of concealment of vital information. It is an act of fraud, and the applicant himself is responsible for the same. The person who is employed should first of all win the confidence of the employer and no employer will like to keep an employee who has committed fraud. Thus the applicant is not entitled for any reliefs as claimed by him. The object of seeking the information through the attestation form is to verify the character and antecedents of the employee and the gravity of the offence and ultimate result of the criminal case are not relevant considerations.

8. Hence relying on the judgments of the Hon'ble Supreme Court as well as the Hon'ble High Court referred to by the respondents, I am of the considered opinion that the applicant has failed to prove his case and the Original Application is liable to be dismissed as having no merits. Accordingly, the Original Application is dismissed. No costs


(Madan Mohan)
Judicial Member