

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 840 of 1998

Jabalpur, this the 14th day of August, 2003.

Hon'ble Mr. J.K. Kaushik, Judicial Member
Hon'ble Mr. Anand Kumar Bhatt, Administrative Member

Mahesh Kumar Kori,
aged about 32 years,
son of Shri Late J.L. Kori,
R/o 189, Tulsi Mohalla,
Bai ka Bagicha, Jabalpur (MP)

APPLICANT

(By Advocate - Shri P.K. Mishra)

VERSUS

1. Union of India,
through its Secretary,
Ministry of Defence
New Delhi.

2. Commandant,
506 Army Base Workshop
PB No. 41, Jabalpur-482 005

RESPONDENTS

(By Advocate - S.A. Dharmadhikari)

ORDER

By J.K. Kaushik, Judicial Member -

Mahesh Kumar Kori has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 and has sought the following main reliefs:

"(ii) That the order dt. 11.8.98 passed by the non-applicant no. 2 denying the opportunity to the applicant and declare him unfit for government job be quashed/set aside and the non-applicant no. 2 be commanded to consider the case of the applicant afresh by giving him due opportunity for rendering the service as he was duly selected."

2. The applicant belongs to scheduled caste category and has passed 8th standard. He was registered with the Employment Exchange. He was subjected to a selection for the post of Labour in the year 1994. After passing the requisite test and also interview he was declared as selected vide communication dated 13.5.1997.

He was directed to fill up a form on 29.5.1997 with the assistance of the clerk in the office. In column 12, he did not know as to whether 'No' has been written on the particulars of the cases pending against him in the Criminal Court registered in the year 1993 was mentioned. He faced the trial and was acquitted on 8.9.1997.

3. The further facts of the case are that a police verification was got done on the attestation form and a statement was given regarding pendency of the criminal case by the Police. The applicant submitted a representation to the SHO of the concerned Police Station regarding the factum of his acquittal in the said criminal case. The applicant has been informed vide letter dated 11.8.1998 that in view of the information given in column 12 of the attestation form he was informed for employment in Government job. It is also averred that after the acquittal there was no difficulty in giving him the appointment and one would be disqualified only if there is a conviction. It is also submitted that the applicant is not well versed in English and the attestation form was in English and he could not understand the consequences of his slightest mistake. Therefore, the impugned order dated 11.8.1998 (Annexure-A-9) deserves to be quashed.

4. On the other hand the respondents have contested the matter and also placed on record complete material relating to the entries which have been filled in, in the attestation form. It has been averred in the reply that the applicant has concealed the material information regarding his involvement in the criminal case and he also furnished false information in the attestation form. Though he was professionally selected but on account of his suppression of material information regarding his involvement in criminal case, the competent authority did not find him desirable to appoint him in defence installation. Hence the Original Application deserves to be dismissed.

5. A detailed rejoinder has been filed wherein the

facts mentioned in the reply have been controverted in general and it has been reiterated that in column 12 the applicant did not disclose the pendency of any case and this was on the dictate of some of the employees whose help was sought for filling up the form. However, the offence did not involve the offence of moral turpitude. The respondents have also filed another counter reply to the rejoinder and repeated their stand of defence.

6. We have heard the learned counsel of parties at a considerable length and have carefully perused the records of this case.

7. The learned counsel of the applicant has reiterated the facts and grounds raised in the Original Application and he has submitted that the applicant did not deliberately or intentionally withheld the information from the respondents while filling up the attestation form. It has happened due to the dictate of the person who was asked to help the applicant. In any case, he has been acquitted and there would have been no obstruction in giving him the appointment. He otherwise also belongs to reserved community and special consideration would have been given to the applicant for his inadvertence.

8. On the other hand the learned counsel of the respondents has countered the arguments raised on behalf of the applicant and has submitted that there is a specific warning in the very attestation form that if any wrong information is given one would not be entitled for the appointment and suppression of any factual information in the attestation form which may come to the notice at any time during the service one would be liable to be terminated and since there was a concealment of the information as well as furnishing of wrong information inasmuch as the applicant has not disclosed the pendency of the criminal case against him, the action has been taken as per the undertaking which has been given by the applicant while

submitting the attestation form. He has also submitted that it cannot be believed that the applicant acted on the dictate of someone else and hence he has signed the attestation form, the plea of ignorance is an after-thought.

9. We have considered the rival contentions in the matter. As far as the facts of the case are concerned, there is absolutely no quarrel except that filling of the form and furnishing the information at the dictate of someone else, inadvertently cannot be accepted. The warning mentioned in the attestation form itself also makes a clear assertion that one would be liable to termination.

10. As far as the law position is concerned, a similar controversy came for adjudication before the Full Bench of Rajasthan High Court in Dharam Pal Singh and others Vs. State of Rajasthan and others, 2000 Lab.IC 1580 wherein following three questions were referred to the Full Bench for decision-

"(1) Whether the fact that a candidate was prosecuted or subjected to investigation on a criminal charge is a material fact, suppression of which would entitle an employer to deny employment to a candidate on that ground?

(2) Whether the ultimate acquittal of a candidate who was prosecuted on a criminal charge would condone or wash out the consequences of suppression of the fact that he was prosecuted?

(3) Whether the suppression of the material fact would not by itself disentitle a candidate from being appointed in service?

These questions have been answered by the Full Bench in the following terms:-

"Question No.1

123. The fact that if a candidate was prosecuted on a criminal charge, is a material fact, suppression of which would entitle an employer to deny employment to the candidate on the ground that such suppression of fact, is an index of such character as is not suitable for appointment, provided there is no valid explanation for committing "suppressio veri"....."

Question No.2

124. Question No.2 is answered in the negative. Ultimate acquittal of a candidate who was prosecuted on a criminal charge, would not be sufficient to condone or wash out the consequences of omission to respond to the questions put by the employer or the suppression of material facts or making of false statement regarding any material fact.

Question No.3

125. Normally suppression of material fact would

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Contd...

by itself be sufficient to disentitle a candidate from being appointed in the service, on the ground that such suppression of material fact, with or without making of a false statement about a material fact, is an index of such deficiency in character as disentitles him for appointment provided that if the alleged suppression of fact, is unintentional, or in exercise of right to silence duly pleaded and established or is motivated by fear of invasion of another person's right to privacy or norms of public decency or for any other good cause, the suppression is shown to be justified, then suppression of fact would not by itself be sufficient to disentitle the candidate for appointment."

11. Now, examining the present case by applying the aforesaid statement of law it is beyond any pale of doubt that the applicant has concealed the factum regarding the pendency of the criminal case and his character has been taken into consideration while considering his suitability for the appointment by the competent authority. It has also been held that acquittal subsequently to the filling of the attestation form would not make any difference and thirdly we do not find that there is any special reason for not disclosing the correct facts or for giving the wrong information. Thus, we do not find that there is any infirmity in the action of the respondents in not appointing him. Therefore, no interference is called for from this Tribunal.

12. In the result, the Original Application is devoid of any merit and substance. The same fails and stands dismissed. However, in the peculiar facts and circumstances of the case, we direct the parties to bear their own costs.

(Anand Kumar Bhatt)
Administrative Member

Dr Kaushik
(J.K.Kaushik)
Judicial Member.

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