

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 18th day of December, 2008

ORIGINAL APPLICATION No.211/2006

CORAM:

HON'BLE MR. M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L.KHATRI, ADMINISTRATIVE MEMBER

Bhanwar Lala Bhambi,
s/o Shri Hagama Lal,
r/o Village & Post Dilwara,
via Nasirabad,
Distt. Ajmer.

..Applicant

(By Advocate: Shri Vinod Goyal, proxy counsel to Shri
Virendra Lodha)

Versus

1. The Union of India through
General Manager,
North Western Railway,
Jaipur.
2. Divisional Railway Manager,
North Western Railway,
Ajmer.

.. Respondents

(By Advocate: Mr. Anupam Agarwal)

O R D E R (ORAL)

The applicant has challenged the order dated
24.4.2006 (Ann.A1) whereby the applicant was informed
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that he cannot be engaged as substitute worker in the railways as he has been found guilty under Section 323 of IPC.

2. Briefly stated, facts of the case are that the applicant was selected as Group-D (Electricity) in the Railways in the scale of Rs. 2550-3200 and he was given offer of appointment vide letter dated 30.1.2006 (Ann.A2) which was subject to the condition stipulated therein including verification of character and antecedents by District Magistrate. The applicant was asked to appear alongwith documents mention in the letter dated 30.1.2006 and report to the Divisional Railway Manager, Ajmer on 10.2.2006. From the material placed on record, it is also evident that before joining of the applicant the applicant was also required to fill the attestation form, inter alia, containing questions if he had ever been prosecuted or convicted by the court for any offence and if any case was pending against him in any court at the time of filling up of attestation form. Copy of the attestation form which was duly filled by the applicant on 5.2.2006 has been placed on record by the respondents as Ann.R1. As can be seen from this document, the applicant replied the aforesaid question in negative and also certified that information given by him was correct to the best of his knowledge and belief. Although facts remain that the applicant was

convicted for offence under Section 323 IPC but instead of awarding sentence he was released on probation. It may also be stated here that there was a warning contained in the attestation form to the effect that furnishing of false information and suppression of any factual information in the attestation form would be a disqualification and is likely to render a candidate unfit for employment. The attestation form was submitted to the District Magistrate for verification who submitted his report dated 9.3.2006 in which it has been stated that a case No.248/97 under Section 341 and 323 IPC was registered against the applicant and the applicant has been released on probation vide order dated 12.10.2001. It may be stated here that the applicant was not permitted to join his duty pursuant to conditional appointment letter dated 30.1.2006 and subsequently vide impugned order dated 24.4.2006, the applicant was informed that he is not entitled to Government service in view of his conviction under Section 323 of IPC. It is this order which is under challenge before this Tribunal. The main contention raised by the applicant is that since he was released on probation by the Civil Judge vide order dated 12.10.2001, as such, he cannot be debarred from Government service on this ground. It is further stated that he has not suppressed the material fact while filling the

attestation form but the applicant was released on probation by the Civil Judge, Nasirabad.

3. Notice of this application was given to the respondents. Alongwith the reply, the respondents have placed the attestation form on record. It is stated that perusal of this attestation form reveals that the applicant has suppressed the material fact regarding his conviction by the Trial Court and releasing him on probation. Thus contention of the applicant that he has not suppressed material fact cannot be accepted on the face of the attestation form (Ann.R1).

4. The applicant has filed rejoinder thereby reiterating the submissions made in the OA.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

6. The sole question which requires our consideration is whether simply because the applicant was provisionally selected and he was given offer of appointment subject to various conditions including that his selection was subject to verification of character and antecedents has got any legal right to compel the authorities to give him appointment on the ground that he has been released on probation. For that purpose, the learned counsel for the applicant has

placed reliance on the decision of the Delhi High Court in the case of Iqbal Singh vs. Inspector General of Police and others, AIR 1970 Delhi 240. That was a case where the petitioner who was appointed as Constable and subsequently promoted as Head Constable was convicted under Section 337 of Indian Panel Code, but he was given the benefit of provisions of Section 4 of the Probation of Offenders Act, 1958. However, subsequently he was dismissed from service. That order of dismissal was challenged before the Delhi High Court and the Hon'ble High Court after taking into consideration provisions of Section 12 of the probation of offenders Act, held that Section 12 protects a person from suffering disqualifications, as such, he cannot be dismissed from service on account of his conviction.

7. According to us, the decision rendered by the Hon'ble High Court cannot be said to be a good law in view of the decision rendered by the Apex Court in the case of Union of India and ors. vs. Bakshi Ram, 1990 SCC (L&S) 288. That was also a case where a Constable of the Central Reserve Police Force at Devli in Rajasthan was tried for an offence under Section 10 (n) of the Central Reserve Police Force Act, 1949. Ultimately, he was sentenced for 4 months RI by the First Class Magistrate. In view of his conviction and sentence, the department by way of disciplinary action

dismissed him from service. Such action was taken when appeal against conviction was pending before the Session Judge. However, the learned judge upheld the conviction but released him under Probation of Offenders Act. The applicant challenged his conviction before the High Court and the Hon'ble high Court while interpreting Section 12 of the Probation of Offenders Act held that there was no disqualification for the petition to continue in service. The matter went to the Supreme Court. The Apex Court after taking into consideration its earlier decision in the case of Divisional Personnel Officer, Southern Railway vs. T.R.Chellappan, 1976 SCC (L&S) 398 and also taking into consideration other decisions has held that in criminal trial the conviction is one thing and sentence is another. The departmental punishment for misconduct is third one. The court while invoking the provisions of Probation of Offenders Act does not deal with the conviction, it only deals with the sentence which the offender has to undergo. Instead of sentencing the offender, the court releases him on probation for good conduct. The conviction, however, remains untouched and the stigma of conviction is not obliterated. Section 12 of the Act does not preclude the department from taking action for misconduct leading to the offence or to his conviction thereon as per law. The section was not intended to exonerate the person from the departmental punishment. Thus, in view

of the decision rendered by the Apex Court in the case of Bakshi Ram (supra) the judgment of the Delhi High Court cannot be said to be a good law. Thus, the applicant cannot draw any assistance from that judgment.

8. That apart, the facts of this case are entirely different. In this case the applicant has not been allowed to join. He was only provisionally selected and given provisional offer of appointment. Thus, he cannot be said to a railway servant so long as he does not join pursuant to his provisional offer of appointment. Before the applicant could join, the impugned order Ann. Al was passed. Thus, it is not a case where a railway servant has been removed from service but it is a case where the applicant though selected was not permitted to join service on account of his antecedents.

9. As already stated above, the question which requires our consideration is whether the appointing authority was right in not appointing the applicant in service. The matter on this point is no longer res-integra and the same stands settled by the decision of the Apex Court in the case of Delhi Administration through Chief Secretary and ors. vs. Sushil Kumar, 1997 SCC (O&S) 492. That was a case where the respondents before the Apex Court was selected

provisional as Constable which selection was subject to verification of character and antecedents. On verification it was found that his antecedents were such that his appointment to the post of Constable was not desirable. Accordingly his name was rejected. Aggrieved by such action, the applicant filed OA before the Central Administrative Tribunal. The Tribunal in the impugned order allowed the application on the ground that since respondent has been discharged and/or acquitted of the offence punishable under Section 304, 324 read with Section 34 and 324 IPC, as such he cannot be denied right of appointment to the post under the State. The question which was posed before the Apex Court was whether the view taken by the Tribunal is correct in law. The Apex Court held that verification of character and antecedents is one of the material criteria to test whether the selected candidate is suitable to a post under the State. Though the respondent was found 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 in 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 offence, the same has nothing to do with the question. What would be relevant to is the conduct or character of the candidate to be appointed in 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.

10. As can be seen from the observations made above, the respondents before the Apex Court was acquitted by the Court, even then the Apex Court held that denial of appointment to such person on the ground of undesirability thereof was not improper. In the instant case, facts remain that the applicant has been convicted but he has not been awarded sentence and released on probation. As noticed above, the Apex Court in the case of Bakshi Ram (supra) specifically held that conviction does not prelude the department from taking action for misconduct leading of the offence or to his conviction. Thus, according to us, the applicant is not entitled to any relief and we seen no infirmity in the action of the respondents while passing the impugned order Ann.A1.

11. Yet for another reason, the applicant is not entitled to any relief. It may be stated here that the applicant has suppressed material information relating to character and antecedents while filling up the

attestation form (Ann.R1). The Apex Court in the case of Kendriya Vidyalaya Sangathan and others VS vs. Ram Ratan Yadav, 2003 SCC (L&S) 306 while examining almost identical issue has held that suppression of material information and making false statement has clear bearing on the character and antecedents of the respondent in relation to his continuance in service. Thus, action of terminating the service was upheld and the judgment and order of the High Court was set-aside. Even on this ground, the applicant is not entitled to any relief.

12. Viewing the matter from any angle, we are of the view that the applicant has not made out any case for our interference. Accordingly, the OA is dismissed with no order as to costs.


(B.L. KHATRI)

Admv. Member


(M.L. CHAUHAN)

Judl. Member

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