

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

7

ORDERS OF THE BENCH

Date of Order: 19.07.2012

OA No. 97/2012

None present for the parties even in the second round.

Put up the matter on 27.08.2012.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K. S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

27/08/2012

OA No. 97/2012

Mr. Amit Mathur, counsel for applicant.
Mr. Tanveer Ahmed, counsel for respondents.

Heard.

O.A. is disposed of by a separate
order on the separate sheet for the
reasons recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)

K. S. Rathore
[Justice K.S. Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 27th day of August, 2012

ORIGINAL APPLICATION NO. 97/2012

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Narendra Kumar Chandel son of Daulat Ram Chandel, aged about 30 years, resident of Ward No. 17, Keshavrao Patan, Bundi, District Bundi (Rajasthan). Earlier working as Trainee, Section Engineer.

... Applicant
(By Advocate : Mr. Amit Mathur)

Versus

1. Union of India through the General Manager, West Central Railway, Jabalpur (M.P.).
2. Divisional Railway Manager, West Central Railway, Kota Division, Kota (Rajasthan).
3. Chief Electrical Engineer, West Central Railway, Jabalpur (M.P.).
4. Senior Divisional Electrical Engineer (TRS) (Establishment), West Central Railway, Kota.

... Respondents
(By Advocate : Mr. Tanveer Ahmed)

ORDER (ORAL)

The applicant has filed this OA claiming for the following reliefs:-

- "(i) The Annexure A/1 dated 07.09.2010 and Annexure A/2 may kindly be quashed and set aside and the respondents may be directed to reinstate the applicant in the service with all consequential benefits.
- (ii) any other order or direction which deem fit and proper in the facts and circumstances of the case may also be passed in favour of the applicant.
- (iii) Cost of the original application also may be awarded in favour of the applicant.

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2. Brief facts, as stated by the learned counsel for the applicant, are that an advertisement was issued by the Railway Recruitment Board, Ajmer in the year 2007 for the post of Section Engineer. The applicant appeared in the written examination and on being successful therein, he was given appointment on the post of Section Engineer by respondents. The applicant on 05.04.2008 deposited his attestation form in the office of the Divisional Railway Manager, Kota. In Para No. 12 of the attestation form (Annexure A/3), the applicant was required to give certain information about the pendency of criminal case against him. The aforesaid information includes whether he has been ever arrested, whether he is ever been charged, whether he has ever been imprisoned and whether he has ever been on bail. In the pursuance to the aforesaid information, the applicant filled 'no'.

3. The applicant was sent on 52 weeks training which he successfully completed. The applicant thereafter appeared in selection for confirmation in the department. However, he was declared unsuccessful. The applicant was declared unsuccessful because of malice on the part of the officer.

4. The office of the District Collector, Bundi, on 01.07.2008 sent a report to the DRM West Central Railway, Kota, informing that one criminal case No. 98/2002 under Section 376, 511 and 354 IPC is pending in the Criminal Court of law against the applicant. The aforesaid information was incorrect. Therefore,

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again on 17.08.2010, the office of the Superintendent of Police sent report to the respondents informing that a case was registered against the applicant under 454, 376 and 511 of the IPC and the applicant was allowed anticipatory bail and finally the applicant was acquitted in the criminal case on 20.02.2003. After submission of the report by the SP Bundi, a show cause notice was issued to the applicant on 29.06.2010. In this show cause notice, it was mentioned that a criminal case was pending against the applicant under Section 376, 511 and 357 of the IPC which he did not disclose in the attestation form. The applicant in his reply informed the respondents that the case which has been mentioned in the report has already been decided and the applicant has already been discharged. On the basis of the reply given by the applicant, the matter was re-inquired and the office of the Superintendent of Police, Bundi informed the respondents that the applicant has already been discharged in the year 2003 i.e. five year prior to his appointment. Thereafter the respondents passed the order dated 07.09.2010 whereby the services of the applicant was terminated. He further submitted that the applicant did not mention these facts in the attestation form because he was acquitted much prior to the submission of the attestation form and secondly a communication has been published by the Ministry of Home Affairs on 02.07.1982 in which it has been mentioned that in providing information under Column No. 12 of the attestation form, the employee is required to inform any incident which happens three years back and which is not in continuation. The

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copy of the OM has been enclosed as Annexure A/5. The applicant on the basis of the aforesaid criteria informed the department that no case is pending against him. There was no malafide or ill-intention on the part of the applicant in not disclosing the information about the criminal case. The applicant was acquitted by the Court and there was no appeal/revision by the Government or any other party before the appellate court. Under these circumstances, the applicant mentioned against column no. 12 that there was no criminal case pending against him. Therefore, he prayed that the OA be allowed and to support his averments he referred to the following cases wherein under similar circumstances, the Hon'ble Apex Court and this Tribunal has given the relief:-

- (i) Commissioner of Police & Others vs. Sandeep Kumar
2011 STPL (Web) 282 SC
- (ii) Ram Kumar vs. State of U.P. & Others
MANU/SC/0962/2011
- (iii) Kamal Kumar vs. Chief General Manager, BSNL & Another, [OA No. 53/2011 decided on 23.04.2012 by Central Administrative Tribunal, Jaipur Bench]

5. On the contrary, learned counsel for the respondents argued that the applicant got appointment on the post of Section Engineer by concealing the material information and it is the settled position of law that if the appointment is obtained from concealment then the candidate has no right to continue in employment. In this case, it was willful concealment of facts in not providing correct information by the applicant to the employer. Therefore, the action of the respondents in issuing the

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order dated 07.09.2010 does not require interference by this Tribunal. He further argued that applicant on his verification form dated 05.04.2008 in column No. 12 has shown that neither he has ever arrested nor any prosecution is running against him and he has never been in police custody and thereby concealed the material fact and mislead the respondents and obtained the appointment on the basis of such false information. According to the report of the District Magistrate, Bundi, a criminal case was registered against the applicant and charge sheet No. 156 dated 30.06.2000 was filed against him but the applicant concealed this information. A show cause notice was issued to the applicant on 29.06.2010. He submitted his representation to the respondents. On the basis of the representation of the applicant, the case of the applicant was sent for re-inquiry to the Superintendent of Police, Bundi. The Superintendent of Police, Bundi vide letter dated 17.08.2010 informed that in a case No. 98/2002 for offences under 454, 376 and 511 of IPC, the applicant was granted anticipatory bail on 11.04.2002 and after investigation, charge sheet dated 30.06.2002 filed in the court on 18.10.2002. The trial was conducted by the learned ADJ (Fast Track-2) Bundi in which the applicant was acquitted. He further argued that though the applicant was acquitted in the criminal case but the concealment in itself is not condonable and, therefore, the services of the applicant were terminated vide order dated 07.09.2010. Therefore, the OA no merit and should be dismissed with costs.



6. Heard the rival submissions of the parties and perused the relevant documents on record and the judgment referred to and relied upon by the learned counsel for the applicant. In the present OA, the applicant was acquitted by the Learned ADJ (Fast Track-2) on 20.02.2003 that is about five years prior to the date of his appointment. Even if the applicant would have mentioned the fact that he had faced a criminal trial and was on anticipatory bail and was finally acquitted, that could not have made any difference in appointment of the applicant. Moreover, the Office Memo dated 02.07.1982 published by the Ministry of Home Affairs, Department of Personnel & Administrative Reforms provides as under:-

"Participation in any such activities, particularly within 3 years of the date of enquiry, should be considered as evidence that the person is unsuitable for Government employment unless there is, in the interval, positive evidence of a change of attitude."

In view of this provision, the applicant did not mention that he had faced a criminal trial and he was acquitted in 2003. Probably the applicant did not mentioned this fact due to fear that if he did so, he would automatically be disqualified.

7. Learned counsel for the applicant drew our attention to the order of this Tribunal in the case of **Kamal Kumar vs. Chief General Manager, BSNL, Jaipur & Another** [OA No. 53/2011 decided on 23.04.2012]. While passing this order, this Tribunal has also considered the judgment of the Hon'ble Supreme Court in the case of Ram Kumar vs. State of U.P. & Others (supra) and Commissioner of Police & Others vs. Sandeep Kumar (supra).

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The facts of the case of **Kamal Kumar vs. Chief General Manager, BSNL, Jaipur & Another** in OA No. 53/2011 are quite similar to the facts & circumstances of the present case. In the case of **Kamal Kumar vs. Chief General Manager, BSNL, Jaipur & Another (supra)**, the applicant was exonerated from the criminal but in the attestation form (Clause 13), this information was not disclosed by the applicant that he had faced judicial proceeding in a criminal case. This Tribunal has in Para No. 8 & 9 of the order in OA No. 53/2011 has passed the following order:-

“8. Accordingly, in view of the ratio decided by the Hon’ble Supreme Court, the OA is allowed and the impugned order dated 18.2.2010 (Ann.A/1) canceling candidature of the applicant is hereby quashed and set aside. The respondents are directed to give appointment to the applicant to the post of JTO and pass necessary orders in this regard within a period of two months from the date of receipt of a copy of this order. The applicant shall be entitled for all the benefits from the date of joining.

9. With these observations, the OA stands disposed of with no order as to costs.”

8. Since the facts of **Kamal Kumar vs. Chief General Manager, BSNL, Jaipur & Another** in OA No. 53/2011 and the facts of the present case are quite similar, we deemed it proper to allow the OA and quashed and set aside the impugned order dated 07.09.2010 (Annexure A/1) vide the services of the applicant has been terminated with immediate effect. The respondents are directed to reinstate the applicant on the post of Trainee Section Engineer and pass necessary order in this regard expeditiously but not later than a period of two months from the

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date of receipt of a copy of this order. The applicant shall be entitled for all consequential benefits from the date of his joining.

9. With these observations, the OA is disposed of with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

K.S.Rathore
(Justice K.S.Rathore)
Member (J)

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