

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

28.05.2013

OA No. 425/2012

Mr. J.K. Yogi, Counsel for applicant.
Mr. Hawa Singh, Counsel for respondents.

Heard learned counsel for the parties.

The OA is disposed of by a separate order.

Anil Kumar
(Anil Kumar)
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Tuesday, this the 28th day of May, 2013

Original Application No.425/2012

CORAM:

HON'BLE SHRI ANIL KUMAR, MEMBER (ADMV.)

Vikas Kumar Meena
s/o Late Shri Ghasi Lal Meena,
aged about 31 years,
r/o Village Kotari, Post Tulsa,
Tehsil and District Baran (Rajasthan),
Last working as Primary Teacher at
Kendriya Vidyalaya, Dahod (Gujarat).

.. Applicant

(By Advocate: Shri Jai Kishan Yogi)

Versus

1. Union of India
through the Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.
2. Deputy Commissioner,
Kendriya Vidyalaya Sangathan
(Ahmedabad Region),
Gyandep, Sector-30,
Gandhi Nagar (Gujarat)
3. Principal,
Kendriya Vidyalaya,
Free Land Gunj,
Near Parsi Colony,
Dahod (Gujarat)

.. Respondents

(By Advocate: Shri Hawa Singh)

ORDER (ORAL)

The applicant has filed the present OA being aggrieved by his termination order dated 02.02.2012 (Ann.A/1).

2. Brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was appointed on the post of Primary Teacher in the Kendriya Vidyalaya Sangathan. An Attestation Form was also sent to the applicant along with the appointment order dated 2.12.2010. The applicant submitted Attestation Form to the respondents. The applicant asserted 'No' in column 12 regarding conviction by any Court of Law on 7.12.2010 (Ann.A/3).

3. After police verification, it was known that an FIR under Arms Act was registered at Police Station, Mahaveer Nagar, Kota against the applicant and a copy of the Office Memorandum dated 22.12.2011 was given to the applicant and he was directed to give a copy of the FIR, charge sheet and judgment of the case to the Principal, Kendriya Vidyalaya, Dahod (Ann.A/4).

4. The applicant submitted copy of the FIR, charge sheet and judgment dated 27.10.2010 passed by the Court to the respondents.

Anil Kumar

The learned counsel for the applicant submitted that vide judgment dated 27.10.2010, the applicant was convicted for the offence under section 4/25, Arms Act and was given the benefit of probation under the provisions of Section 4 of Probation Act and in the judgment it was specifically noted that this conviction would not adversely affect in any Government service of the applicant. A copy of the judgment is filed at Ann.A/5.

5. The learned counsel for the applicant submitted that the applicant has not misled in any manner because he was given the benefit of Probation of Offenders Act much prior to the selection of the applicant on the post of Primary Teacher in Kendriya Vidyalaya Sangathan.

6. The applicant himself submitted a representation to the respondents for review of the termination order dated 02.02.2012 because there was no bad intention of the applicant to mislead the respondents. He has mentioned 'No' in column 12 of the Attestation Form because it was specifically made clear by the learned Court that this conviction shall not adversely affect in Government service of the applicant. The respondents have seriously erred in passing the impugned termination order without giving any opportunity of hearing to the applicant. No show-cause notice was given to the applicant and no inquiry has been conducted by the department in

Anil Kumar

the present matter. Hence, the impugned order dated 02.02.2012 (Ann.A/1) deserves to be quashed and set-aside.

7. On the other hand, the learned counsel for the respondents submitted that Article 46 of the Education Code states that "If any declaration given or information furnished by the appointee is proved to be false or he is found to be willfully suppressed any material information, he will be liable to be removed from service and such other action as the Appointing Authority may deem necessary (Ann.R/1)".

8. He further submitted that on inquiry by the respondents, the District Magistrate, Baran (Rajasthan) vide letter dated 29.11.2011 informed the Principal, Kendriya Vidyalaya, Dahod that the applicant was convicted under Section 4/25 of the Arms Act and the applicant was proved guilty and was kept on probation for one year vide order dated 27.10.2010 (Ann.R/2). On receipt of the information from the District Magistrate, Baran (Rajasthan), respondent No.2, the appointing authority, terminated services of the applicant vide order dated 02.02.2012 (Ann.A/1) pursuant to provisions of sub-rule (1) of Rule 5 of the Central Civil Service (Temporary Service) Rules, 1965 and he was relieved vide order dated 04.02.2012 (Ann.A/6). In support of his averments, the learned counsel for the respondents referred to the judgment of the Hon'ble Supreme Court in Civil

Anil Kumar,

Appeal No.6110 of 2008, Union of India and Others vs. Sukhen Chandra Das dated 15.10.2008 as reported in (2008) 17 SCC 125.

9. Learned counsel for the respondents further submitted that at Sl.No. 12(i)(a) of the Attestation Form (Ann.A/3) against the question "Have you ever been arrested?", the applicant tick marked 'No' whereas the fact is that the applicant was arrested on 25.07.2004 and kept in police custody for 5 days. Similarly, at Sl.No.12(i)(b) of the Attestation Form, against the question "Have you ever been prosecuted?", the applicant tick marked 'No' whereas he was prosecuted under Section 4/25 of the Arms Act in case No.290/2004. At Sl.No.12(i)(c) of the Attestation Form against the question "Have you ever been kept under detention", the applicant tick marked 'No', whereas the fact is that the applicant remained in detention for 5 days vide judgment dated 27.10.2010. Further at Sl.No.12(i)(f) of the Attestation Form against the question "Have you ever been convicted by a Court of Law for any offence?", the applicant tick marked 'No' whereas the applicant was convicted guilty under Section 4/25 of the Arms Act vide order/judgment dated 27.10.2010 passed by the Additional Chief Judicial Magistrate, No.6, Kota.

10. Therefore, the learned counsel for the respondents argued that on the face of record, the applicant kept the Kendriya Vidyalaya Sangathan in dark with regard to character and antecedents and

Anil Kumar

suppressed factual information and hence the action of the respondents in terminating services of the applicant is legal.

11. He further drew my attention to the judgment of the Additional Chief Judicial Magistrate, Kota (Ann.A/5) In which it has been stated by the learned counsel of the applicant before the Court that the applicant is an employee of the Kendriya Vidyalaya, whereas the applicant was not employee of the Kendriya Vidyalaya on 27.10.2010 i.e. on the date of order/judgment of the Additional Chief Judicial Magistrate. Thus, the applicant even misled the Court. Therefore, the learned counsel for the respondents submitted that there is no element of illegality in the decision making process on the part of the respondents and the OA has no merit and it should be dismissed with costs.

12. Heard the learned counsel for the parties, perused the documents on record and the case law referred to by the learned counsel for the respondents. From perusal of the Attestation Form (Ann.A/3), it is clear that the applicant under Column 12(i) (a),(b),(c),(d),(e) and (f) has indicated 'No' . The learned counsel for the applicant stated that the applicant has filled 'No' against column 12(i)(f) because in the judgment of the Additional Chief Judicial Magistrate, it has been clearly mentioned that this order will not debar the applicant from any Government service. Therefore, the applicant was under the impression that there was no need to

Anil Kumar

state 'Yes' against column 12(i)(f). However, I am not inclined to agree with the averment made by the learned counsel for the applicant on this point. The applicant knew very well that he has been convicted by the Court of Law. It is a different matter that the conviction was of such a nature that it would not debar the applicant from Government job.

13. Moreover, the applicant has also filled 'No' against column 12(i)(a),(b),(c) and (d) which is again factually wrong information. The respondents in their reply have categorically stated that the applicant was arrested on 25.7.2004. The applicant knew very well before filling up the Attestation Form that he was arrested by the police, therefore, it was the duty of the applicant to give correct information to the respondents in the Attestation Form. Similarly, at Sl.No. 12(i)(b) the applicant has given wrong information. It is not disputed that the applicant was prosecuted under Section 4/25 of the Arms Act. Similarly, while answering the question at Sl.No. 12(i)(c), the applicant has given wrong information as it is not in dispute that the applicant remained in detention for 5 days. Further, the applicant has given wrong information even to the Court wherein it has been stated on behalf of the applicant that the applicant is employee of the Kendriya Vidyalaya (Ann.A/5) whereas he was not an employee of Kendriya Vidyalaya on the date of order i.e. 27.10.2010 passed by the Additional Chief Judicial Magistrate. Thus, the applicant even misled the Court.

Anil Kumar

14. The services of the applicant have been terminated under the provisions of sub-rule (i) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 and para 5 of the appointment order dated 02.12.2010. I have carefully gone through the provisions of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 regarding termination of temporary service and I am of the opinion that the order passed by the respondents on 02.02.2010 terminating services of the applicant is perfectly legal and I find no infirmity in the order dated 02.02.2012 passed by the competent authority.

15. I have also gone through the offer of appointment to the post of Primary Teacher dated 02.12.2010 (Ann.A/2). Condition No.5 of the appointment order clearly provides that during the probation and thereafter, until he/she is confirmed, the services of the appointee are terminable by one month notice on either side without any reason being assigned, thereof. The appointing authority, however, reserves the right to terminate the services of the appointee before expiry of the stipulated period of notice by making payment of such equivalent to the pay and allowances for the period of notice of the unexpired portion thereof.

16. Further, a perusal of the Attestation Form (Ann.A/3) it reveals that at the beginning of the Attestation Form itself there is a warning to the effect that furnishing of false information or suppression of any actual information in the Attestation Form would be a disqualification

Anil Sehgal

and is likely to render the candidate unfit for employment under the Kendriya Vidyalaya Sangathan. Thus, in my opinion, it was the responsibility of the applicant to correctly fill the Attestation Form.

17. I have also gone through the order passed by this Tribunal in OA No.44/2001, Sagar Nath vs. Union of India dated 29th February, 2012 which was referred by the learned counsel for the applicant. However, I am of the view that under the facts and circumstances of the present case, the ratio decided by this Tribunal in OA No.44/2011 would not be applicable. In the case of Sagar Nath (supra), the applicant therein was removed from service after an inquiry by way of punishment, but the termination in the present OA is termination simplicitor. Here in the present case, the applicant not only filled wrong information in the Attestation Form but also misled the Court of Additional Chief Judicial Magistrate stating that he was employee of the Kendriya Vidyalaya whereas he was not employee of the Kendriya Vidyalaya on the date of the judgment. Thus, it appears that the applicant is in the habit of misleading.

18. Moreover, I have gone through the judgment of the Hon'ble Supreme Court in the case of Sukhen Chandra Das (supra). The ratio decided by the Hon'ble Supreme Court in the above case is squarely applicable to the present case. Therefore, I am of the opinion that the applicant is not entitled to any relief in the present OA.

Anil Kumar

19. Consequently, the OA being devoid of merit is dismissed with no order as to costs.

Anil Kumar
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ADMV. MEMBER

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