Central Administrative Tribunal
Principal Bench: New Delhi

OA No.3113/2011

Reserved on: 18.07.2016
Pronounced on:17.08.2016

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)

Ved Paul s/o Sh. Randhir Singh
R/o Village Pauli, Tehsil Julana,
Distt. Jind, Haryana. ...Applicant

(By Advocate: Shri R.K. Jain)

Versus

1. Govt. of NCT of Delhi
   Through Commissioner of Police,
   Police Headquarter,
   ITO, New Delhi.

2. The Additional Commissioner of Police,
   Armed Police,
   New Delhi. ...Respondents

(By Advocate: Shri Amit Anand)

O R D E R

By Hon'ble Dr. B.K. Sinha, Member (A):

This is a case which has come in full circle. Admittedly, the facts of the case, in brief, are that the applicant was serving in Boarder Security Force since 21.04.1988. In response to the advertisement issued by the respondent organization i.e. Delhi Police inviting applications for the post of Constable [Executive] [Male], the applicant applied for the same under the 'ex-serviceman' category. As the

applicant was provisionally selected by the respondents against Roll No.551508, he applied for discharge from BSF which request was acceded to and he was discharged on 30.09.2008. Accordingly, the applicant was issued an offer of appointment on 13.04.2009. On 25.02.2010, the respondent no.2 issued a show cause notice to the applicant that he had got himself selected in Delhi Police by misrepresentation and suppression of material facts. However, for the sake of better clarity, relevant part of the show cause notice is being extracted hereunder:-

> *"You, Const. Ved Paul, No.11148/PTC now 6630/DAP (PIS No.28091143) S/o Shri Ramdhir Singh, R/o Village & Post Pauli, Tehsil Julana, Distt. Jind Haryana were applied for the post of Constable (Exe.) Male in Delhi Police during the recruitment held in 2008 under the category of Ex. Serviceman candidate and selected provisionally against Roll No.551508, and joined the Department subject to verification of character and antecedents, medical fitness and final checking of documents. On perusal of Discharge Book produced by you, it ahs been found that you had served in BSF as HC and discharged on 30.9.2008. As per notification and instructions contained in S.O. No.212/2008 (Revised) 'Ex-Serviceman' in Army, Navy or Air Force of Indian Union and who retired from such service after earning his pension. But you got selected as Constable (Exe.) Male in Delhi Police under the category of Ex-Serviceman, by misrepresentations of facts in the Application Form and succeeded to get offer of appointment letter for basic training for the post of Const. whereas you were not covered under the Ex. Serviceman category. You misrepresented yourself as an Ex-serviceman where as you were discharged from a Paramilitary force i.e. BSF.*
>
> *You are hereby called upon to show cause as to why your service should not be terminated under the provision of Rule 5 (i) CCS (Temporary Service) Rules, 1965 for the above misconduct. Your reply, if any in this regard, should reach to the undersigned within 15 days from the date of receipt of this notice, failing which it will be presumed that you have nothing to say in your defence and case will be decided on its merits/ex parte."*

2. The applicant submitted a reply to the aforesaid Show Cause Notice on 18.03.2010 mentioning that he had never misrepresented the facts rather stated all the facts correctly in the application form including his being in service of BSF. Despite filing of reply, the applicant was terminated from service vide order dated 30.03.2010 invoking the provisions of Rule 5(1) of CCS (Temporary Service) Rules, 1965 [hereinafter referred to as Temporary Service Rules, 1965].

3. Aggrieved, the applicant approached this Tribunal by filing OA No.1836/2010. The Tribunal in its order dated 25.02.2011 found fault with the application of Rule 5(1) of the Rules *ibid* as it was a short cut of holding regular enquiry whereas such termination could only be effected for commission of grave misconduct by the applicant. It was further observed that the respondents had the option to either hold a regular departmental enquiry for making a false declaration at the time of appointment or proceed under Rule 5(1) of the Temporary Service Rules, 1965. Therefore, the Tribunal disposed of the OA with the following directions:-

> *"13. In the facts and circumstances of the case, the respondents could have proceeded against the applicant in one of the following three manners, namely, (1) to proceed against him in regular departmental inquiry in case his services are proposed to be terminated for having committed a misconduct rendering him unsuitable in retention in service; (2) to cancel the applicant's appointment on the ground of disqualification under the terms and conditions of*

employment; & (3) under the Civil Service (Temporary Service) Rules, 1965 in case of temporary servant. The respondents have preferred to proceed under sub-rule (1) of Rule 5 of the Civil Service (Temporary Service) Rules, 1965 but in the process have committed serious infirmities as referred to above, which have vitiated their action in law.

14. For the reasons stated above and in the facts and circumstances of the case, the impugned order is quashed and set aside and the respondents are directed to reinstate the applicant forthwith with all consequential benefits. The respondents shall, however, be at liberty to proceed against the applicant, if they so desire after following the due process as per the applicable rules. While doing so, it will be desirable for the respondents to keep in mind the submissions of the applicant in this Application with a view to curtail any avoidable litigation in the matter for it shall be open for the applicant to raise all the submissions afresh in appropriate proceedings as and when occasion arise to do so depending upon the nature of action taken by the respondents in the matter. Accordingly, OA is allowed in the above terms. No order as to cost."

4. The respondents, in compliance with the afore order of the Tribunal, reinstated the applicant in service vide order dated 25.03.2011 with full pay and allowances and treating the termination period as spent on duty for all intents and purposes. Thereafter, the respondents proceeded to terminate the services of the applicant vide order dated 06.04.2011 without stating any reasons for the same, which is being extracted hereunder:-

"In pursuance of the judgment dated 25.02.2011 passed by the Hon'ble CAT in OA No.1836/2010 titled Ved Paul Vs. GNCTD read with PHQ's U.O. No.XII/28(19)/10/1755/Rectt.Cell (AC-VI)/PHQ dated 23.03.11 and as per Proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I, R.K. Sharma, IPS, Addl. CP/AP, Delhi hereby terminate forthwith the services of Constable Ved Paul, No.6630/DAP(PIS No.28094217). He is entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice at the same rates at

which he was drawing before the termination of his service."

5. It is evident that termination was made under Rule 5(1) of Temporary Service Rules, 1965 once again. The applicant challenged this decision of the respondents before this Tribunal in the instant OA, which came to be decided by the Tribunal, vide order 23.11.2012 with the following directives:-

"10. It is relevant to note in this regard that recently at a function organized by Central Industrial Security Force (CISF), the Union Home Minister announced, as reported in Indian Express Newspaper dated 2nd November, 2012 at page 1, that the Government has agreed to grant retired paramilitary and central police forces the status of "ex-central police personnel", on par with the defence forces "ex-servicemen" enabling them to avail of various benefits such as re-employment in Government sector and cheaper and better medical facilities and PM's scholarship scheme for education of their children. Thus besides the CISF, the beneficiaries will include personnel from the Border Security Force(BSF), Central Reserve Police Force (CRPF), Indo Tibetan Border Police (ITBP) and Sashastra Seema Bal (SSB).

11. In the aforesaid premises, the impugned order is quashed and set aside and the respondents are directed to re-instate the applicant forthwith with all consequential benefits. The respondents shall, however, have liberty in terms of para 14 of our order dated 25.2.2011 passed earlier in OA No.1836/2010. It will also be open to the respondents to take such other action as they deem appropriate in the light of the observations made hereinabove.

12. Accordingly the OA is allowed in above terms. No order as to costs."

6. It is evident from para 10 of the afore order of the Tribunal that the appointment to the applicant had been granted on the basis of assurance of the then Union Home

Minister published in Indian Express Newspaper dated 02.11.2012 purporting to agree to grant retired paramilitary and central police forces the status of "ex-central police personnel", on par with the defence forces "ex-servicemen", enabling them to avail of various benefits such as re-employment in Government sectors, cheaper and better medical facilities and PM's scholarship scheme for education of their children. The Tribunal quashed and set aside the impugned termination order dated 06.04.2011 with a direction to the respondents to reinstate the applicant forthwith with all consequential benefits. However, the respondents were given liberty in terms of para 14 of Tribunal's order dated 25.02.2011 passed in earlier OA No.1836/2010 with further liberty that it would be open to the respondents to take such other action as they deem appropriate in the light of the observations made in the order.

7. It is the case of the applicant that instead of complying with the Tribunal's order, the respondents came in review by filing RA No.4/2013 before this Tribunal which was allowed vide order dated 13.01.2016 and the OA was restored to its original position. Relevant part of the order reads thus:-

> *"5. The review applicants have relied on the judgment of Hon'ble High Court of Punjab & Haryana in the case of Jai Parkash Vs. State of Haryana and Others (Civil Writ Petition No. 3801/2007) dated 06.07.2009 to say*

that reservation would be rendered meaningless if a candidate appearing in one category is allowed to compete in different categories. While we do not see how the judgment relied upon is relevant in this case, we find merit in the submission of the review applicants that the order in question was passed primarily relying upon a newspaper report published on 02.11.2012. This is evident from the order itself, which has been extracted above. We agree with the review applicants that no rights can accrue to anyone on the basis of newspapers report till a Notification of the Government is issued. Even the O.M. dated 23.11.2012 issued by the Ministry of Home Affairs pursuant to the announcement of Hon'ble Home Minister published in the Indian Express shows that retired personnel of Central Armed Police Force have not been treated as ex-servicemen but only as an Ex-Central Armed Police Force Personnel. We are, therefore, convinced that an error apparent on the face of the record has crept into our judgment dated 23.11.2012. Accordingly, we allow this Review Application, set aside the Tribunal's order dated 23.11.2012 and restore the OA for fresh hearing. The O.A. may be listed for hearing on 15.02.2016."

The OA has been accordingly heard afresh and reserved for orders on 18.07.2016.

8. The principle ground adopted by the applicant is that he had never concealed anything in his application form and clearly indicated that he was serving with BSF. Yet he was selected under the 'ex-serviceman' category and a provisional offer of appointment to join Delhi Police as Constable (Executive) (Male) was issued to him. Consequently, the applicant had taken discharge from BSF, which is not subject to restoration now. The applicant, therefore, contends that he cannot be blamed for his selection which had been made by the respondents being fully aware of the factual matrix. The applicant further submits that there

have been a number of cases of such types of appointments taking place from BSF/CRPF/CISF etc. The applicant reiterates that though he is not at fault, yet he has been rendered unemployed on this count.

9. Matrix of the facts remaining uncontroverted, the respondents have fairly admitted that the applicant had been selected as Constable (Exe.) (Male) in Delhi Police under the category of 'ex-serviceman' by misrepresentation of the facts mentioned by him in his application form and due to slack/lax checking of documents, the applicant succeeded in getting offer of appointment letter for basic training for the post of Constable whereas he was not covered under the 'ex-serviceman' category. It is a factual position that the applicant did not have the eligibility for appointment at the time of submission of application form for the post in question. A show cause notice was accordingly served upon him proposing to terminate his services vide communication dated 25.02.2010. The applicant submitted his reply and after careful consideration of which the respondents terminated his services vide order dated 30.03.2010 on the ground that he did not fit into the category of 'ex-serviceman' as according to Notification and instructions contained in SO No.212/08 (Revised), "Ex-serviceman" means a person who had served in any rank

whether as combatant or non combatant in Army, Navy or Air Force of Indian Union and who retired from such service after earning his pension. The respondents, therefore, reiterate that the applicant was not entitled to be appointed under the ex-serviceman category. The respondents further submitted that the applicant had ticked mark in the column of ex-serviceman while he was not an ex-serviceman and, therefore, he could not have been appointed for want of eligibility and the action taken by the respondents to terminate his service was as per law.

10. We have carefully considered the pleadings of both the parties as also the documents adduced and decisions cited. We have also patiently heard the arguments advanced by the learned counsel for the parties.

11. It is an admitted fact that the respondents, through advertisement, invited applications for the post of Constable (Executive) (Male) from different categories of staff including 'ex-serviceman, which is defined in para 4.3 of the reply that 'ex-serviceman' means a person, who has served in any rank whether as a combatant or non combatant in Army, Navy, Air Force of the Indian Union. It is further the case of the respondents that the applicant had indicated in his application form that he was serving in BSF and had not represented that he was serving in the Army. Nevertheless,

he had, however, tick marked the 'ex-serviceman' category. The fact remains that the applicant was ineligible for appointment under the 'ex-serviceman' category, yet he was given the offer of appointment. It is also an admitted position of the respondents that a mistake had been committed by them for the reasons that (i) the column of 'ex-serviceman' had been ticked by the applicant which had not been carefully examined by the respondents; relied on the newspaper clipping appeared in Indian Express Newspaper dated 02.11.2012 holding that Hon'ble Minister in a passing out parade had promised facilities similar to the 'ex-serviceman' to the former members of the armed forces; (iii) believed the version of the applicant that he had not furnished any false certificate and had taken discharge from BSF upon his selection; and (iv) Service Certificates from BSF authorities submitted by the applicant was not examined thoroughly by the respondents. Hence, the respondents have admitted their own fault committed while scrutinizing the documents so submitted by the applicant.

12. The issue, therefore, remains that whether the case of the applicant, who had served for a period of ten months on account of this error in decision on part of the respondents and having taken discharge from BSF he has been left hanging in a limbo, is to be governed by application of Rules

of promissory estoppels. In this regard, the applicant has relied upon the decision of the Tribunal in *H.C. Durgesh Kumar Vs. Union of India & Ors.* [OA No.88/2007 decided on 12.09.2007], decision of Hon'ble High Court of Delhi in case of *Javed Akhtar and Another Vs. Jamia Hamdard & Anr.* [WP(C) No.15257-58/2006 decided on 5.12.2006] and *Santosh Kumar Meena & Ors. Vs. GNCTD* [WP(C) No.1343/2010 & connected matters decided on 7.9.2010].

13. In *H.C. Durgesh Kumar's* case (supra), this Tribunal was confronted with a similar issue. The applicant in that case had been appointed as Constable in Delhi Police on 03.10.1988 and was promoted as Head Constable on 10.06.1990. He had already undergone training required for promotion to the post of Assistant Sub Inspector (ASI) and was awaiting promotion when he was reverted vide order dated 16.06.2006 on the basis of a show cause issued to him. In a scrutiny of the service record, it was found recorded that "Caste category shown as 'SC' in the seniority list supplied by your branch, but as per caste certificate appended in the Character Roll H.C. belongs to 'Gaderia' O.B.C., which is required to be clarified". The applicant by way of reply submitted that he belongs to Gaderia caste and he had never submitted otherwise. It was the case of the applicant that he had correctly filled in his caste as Gaderia

and it was the mistake on part of the respondents who had recorded otherwise.

14. We find that the Tribunal took into account its earlier decision in *Laxman Singh Bisht v. Union of India & Ors.* [OA NO.2031/2006 decided on 05.06.2007] wherein the applicant had been wrongly listed as ST in place of general category but he continued to remain silent without making efforts to get the same corrected. In another decision in case of *Ramesh Bhardwaj vs. Director General, CSIR & Others* [OA No.875/2006 decided on 23.08.2006], the applicant had correctly mentioned his date of birth but it was wrongly recorded by the respondents. The Tribunal ruled that he had correctly recorded his particulars including that of age and the respondents were estopped from cancelling his appointment. Similar was the case of *Head Constable Asha Ram* where he was wrongly mentioned as ST and the order was recorded in terms of FR 31-A. Ultimately, the Tribunal in *HC Durgesh*'s case (supra) held as under:-

> *"14. Having given our thoughtful consideration to the issue, we find the solution to the problem would lie in giving same treatment to the applicant as was thought proper even by the department in an absolutely identical case. That being so, while setting aside the impugned orders, we would order that the applicant be treated to have passed the examination required for promotion to the post Head Constable held immediately after the examination in which the applicant had appeared and passed the test, and he be treated as the last candidate having passed the said examination in the said year, and his seniority be accordingly fixed. The applicant shall also be entitled to consequential reliefs that may accrue to him on*

account of fixation of his seniority in the manner referred to above. In view of the peculiar facts of this case, costs are made easy."

15. In *Javed Akhtar's case* (supra), the Hon'ble High Court of Delhi held as under:-

"35. There are so many students who apply for admission every year, at times knowing that they may not be eligible to get admission in terms of the eligibility criteria provided under the prospectus but they apply thinking that they might have a chance and relaxation may be granted to them. The onus is, thereafter, on the university / authorities to select only those candidates who are eligible for admission by scrutinizing the application form properly and carefully. If after scrutinizing the application form the student is admitted to a particular course by the University, fees is accepted from him and he is Page 0195 allowed to attend the classes after the completion of all the necessary formalities, then the authorities are estopped from canceling the admission of such an student on the ground that he did not fulfilll the eligibility criteria clearly specified in the prospectus. For the lapse on the part of the authorities a student cannot be made to suffer who is challenging the eligibility criteria of maximum age limit. Had it been the case that there was suppression or misrepresentation of a material fact which the student was suppose to provide in the application form and which the authorities came across later on then the university's act of canceling the admission could have been justified.

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37. In Miss Sangeeta Srivastava v. Prof. U.N. Singh, where the petitioner having secured less than the minimum marks required for admission to the M.A. history course in the said university applied for registration to the M.A. course and correctly gave the particulars of marks and the percentage obtained by her in the application. The petitioner was declared successful in the entrance examination and obtained admission and attended classes regularly and paid the fees and other dues up to the commencement of the examination when she was informed that her admission had been cancelled. The Division bench observing that normally the question of eligibility for admission to University are matters which are pre-eminently fit to be decided by the University authorities and Court should not interfere held that the principle of equitable estoppel will be applicable and that the University can not refuse the petitioner from appearing in the examination when the candidate had

placed all the facts before the University and had not committed any fraud or misrepresentation. The Court observed as under:

> *(7) We may emphasise that it is after a great deal of anxious consideration that we are interfering in this matter because we feel that normally the question of eligibility for the admission to the university are matters which are pre-eminently fit to be decided by the university authorities. Normally this Court would be very reluctant to interfere in these matters because we have no doubt that the academic discipline will be preserved best by all concerned including the Executive and even the courts excepting in the rarest of cases whereas in the present not to interfere will perpetuate injustice and cause irreparable in- jury to a young student, leading to bitterness); abstaining from encroaching upon the autonomy Page 0196 and internal discipline within the portals of university and academic institutions after all they are temples of learning. We feel somewhat assured at our interference when we find that the standing committee of the Academic Council and the principal of the college were of the view that in the circumstances of the case and considering all the circumstances, this was a case where relaxation should be given by the Academic Council. We regret that this matter had to be voted upon and the Academic Council felt unable to grant relaxation. We very much wish that the Academic Council had exercised its power in granting relaxation in which case this Court would have been spared the not so very pleasant task of quashing the order of the university. We also notice that the petitioner in the admission test had obtained second place in the second list, apparently indicating that she was a serious student and it was not a case where had the Academic Council exercised its power in favor of relaxation, it would have permitted an underserving candidate to get admission. Be that as it may, the Academic Council did not so exercise its power. We have therefore no option but to give our decision on merits."*

Needless to say that appointment of the petitioner Javed Akhtar was also substantiated on this basis.

16. Again in case of *Santosh Kumar & Others* (supra), petitioners' result had not been declared by cut off date though they had competed in the examination and were

selected. The Hon'ble High Court in the said case held that every appointment is a matter of contract for the reason the employer issues a letter of offer to the employee. Where the employer is the Government, the appointment is regulated by a Statute. Relying upon Section 20 of the Indian Contract Act, 1872 which provides that where both the parties to an agreement are under a mistake to a matter of fact essential to the agreement, the said agreement is void, the High Court did not find application of promissory estoppels. In this regard, we extract from the order as under:-

> *"19. Promissory estoppel would also not apply in the instant case, for the reason, in the case of promissory estoppel the promise which is sought to be later on withdrawn and in respect of which withdrawal an estoppel is claimed is a valid promise and not a promise based on a mistake of facts. This court knows of no decision, and indeed none was cited, where promissory estoppel was applied in respect of a promise which was found to be void. The closest we could find on facts is a decision of the Allahabad High Court dated 16.09.2004 deciding second Appeal No.2556/1987 UOI & Ors. Vs. Kumari Mukta Jain in which Kumari Mukta Jain was wrongly given appointment by the Kendriya Vidayalaya and later on it was found that she was not eligible for appointment. The appointment was withdrawn. Kumari Mukta Jain sought a declaration that the order withdrawing her appointment was illegal. With reference to the decision of the Supreme Court in M.Tripura Sunderi Devi's case (supra), it was held that an appointment of an ineligible person can be terminated and merely because she had worked for some time would create no equity in favour of Kumari Mukta Jain."*

17. Applying the ratio of above decisions and careful consideration of the pleadings available on record, we are of the considered opinion that the applicant had never concealed the fact that he was working with BSF and had

clearly so indicated in his application form. It appears that the respondents had been misled by a newspaper item in which the Hon'ble Home Minister had promised to give facilities to the employees of paramilitary force at par with 'ex-servicemen'. The applicant, consequent upon his appointment, relinquished his post in BSF and was not holding any lien on the same. This is a matter of conflict between justice and law. If we were to go purely by law, there was no eligibility of the applicant and, hence, the appointment made out of ignorance or incorrect appreciation of the facts, is void *ab initio*. This is the side of law. On the other hand, we also take note of the fact that it was a mistake on part of the respondents who had given the applicant an offer of appointment despite the fact that he had mentioned the facts correctly. The applicant would be left high and dry as he has already relinquished the post in his previous organisation i.e. BSF.

18. In view of the above discussion, we allow the instant OA with the following directives:-

(i) In terms of what had been passed in the case of HC Asha Ram (supra) and H.C. Durgesh Kumar (supra) under FR 31-A, the impugned order dated 06.04.2011 terminating the services of the

applicant is hereby quashed being against the law of equity.

(ii) The respondents are directed to reinstate the applicant in service with all consequential benefits. However, the applicant will be placed at the bottom of the list of employees of that year.

(iii) The applicant will not be entitled to any wages for the period for which he was out of service.

(iv) Parties are left free to bear their own costs.

(Dr. B.K. Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

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