

**Central Administrative Tribunal
Principal Bench**

OA No. 4501/2013

Order Reserved on: 28.09.2016
Order Pronounced on: 09.12.2016

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

Shri Jai Singh Meena,
S/o Sh. Kanhiya Lal Meena,
R/o Village Saisaina,
Post Bhanakpur,
Tehsil Todabhim, Distt. Karauli,
Rajasthan-321610

- Applicant

(By Advocate: Mr. Ajesh Luthra)

VERSUS

1. LRS Institute of Tuberculosis and
Respiratory Diseases,
Through its Director,
Sri Aurbindo Mary,
(Near Qutab Minar)
New Delhi-30
2. Union of India,
Through its Secretary,
Ministry of Health & Family Welfare,
Shastri Bhawan, New Delhi
3. National Institute of Tuberculosis and
Respiratory Diseases,
Through its Director,
Sri Arubindo Marg,
(Near Qutab Minar)
New Delhi-30

- Respondents

(By Advocates: Mr. Vaibhav Kalra with Ms. Neha Bhatnagar)

ORDER

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

In the instant Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant is aggrieved with the order of the respondents' dated 06.06.2013, terminating his services as Wardboy with the respondent no.1 under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965, enclosing a cheque in lieu of one month service. The applicant is also aggrieved with the communication dated 30.09.2013, rejecting his representation dated 26.06.2013 against the aforementioned termination order, dated 06.06.2013.

2. The applicant has sought the following relief vide means of this OA:-

- “(a) quash and set aside the impugned orders placed at Annexure A/1 and Annexure A/2 of the OA and
- (b) direct the respondents to forthwith reinstate the applicant in service with all consequential benefits
- (c) award costs of the proceedings and
- (d) pass any other order/direction which this Hon'ble Tribunal deem fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case.”

3. The facts of the case, in brief, are that the applicant was appointed as Ward Boy with respondent no.1 w.e.f. 26.12.2013 vide order dated 31.12.2012 observing the due procedures of recruitment. However, the services of the applicant were terminated vide the afore impugned order (Annexure A-1) and his representation rejected (Annexure A-2). The applicant submits that while filling up the form for verification of character and antecedents, there were many columns required to be ticked mark. Due to unawareness and oversight, the applicant ticked a rank column. The Criminal Case No. 332/2008, vide FIR No.509/2008 under Section 4/25 Arms Act, had been pending before the Competent Court at Jaipur, the applicant, out of the process of plea bargaining, under Section 12 of the Probation of Offenders Act, 1958 was let off with a fine of Rs.1000/-. Further, the applicant had also been named as accused in the FIR No. 212/2007 dated 06.06.2007 under Sections 147, 148, 149, 188, 283, 379, 436 IPC and had been acquitted by the Court of Ld. Additional Session Judge (FT), Hindon City in Sessions Case No.98/2008 honourably. The applicant being under the impression that since the case had ended in honourable acquittal, there was no necessity to mention the same in the character verification form and as such, he omitted to mention.

4. It is the case of the applicant that the present system of character verification relates to antecedents and not the character. The pendency of the criminal case is not a real determinative of his character, but should extend to other areas as well to be ascertained by means of local inquiry since the case under Section 4/25 Arms Act ended with minor sentence being pronounced, as the consequence of the plea bargaining and the court did not consider the offence grave at all.

5. The applicant further adopted the ground that the earlier Sessions Case No.98/2008 had resulted in honourable acquittal and as such, there was no need to mention the same as per the understanding of the applicant. The applicant has also adopted the ground that no show cause notice had been issued, leading to violation of rights of natural justice and his services could not have been terminated under Rule 5 of CCS (TS) Rules, for the reason that his services rendered had been unblemished.

6. The respondents, on the other hand, have filed a counter affidavit, rebutting the averments in the OA. It has been submitted that certain specific details had been sought from the applicant, including his criminal antecedents for facilitating the verification of his character. It was, during the course of character verification that the

criminal cases against the applicant came to light. The appointing authority arrived at the conclusion that on account of having concealed the instances of these cases, the applicant was unfit to continue in service. It has been provided in the attestation form for character verification that suppression of factual information in the said form would be a disqualification and would render the applicant unfit for appointment. Admittedly, as the applicant had concealed vital information in the attestation form relating to criminal cases being filed against him, his services were termination under Rule 5(1) of the CCS (TS) Rules. The appellate authority, after having given the due consideration to the representation against termination, found his explanation untenable and, therefore, proceeded to reject the same. The pendency of the Criminal Case No. 332/2008 in respect of FIR No.509/2008 under Section 4/25 Arms Act before the Competent Court at Jaipur, make it incumbent upon him to disclose all correct information to the respondents. It is mandatory for every candidate to disclose the details of all cases against him, irrespective of the fact that whether they were pending on the date of filing the attestation form or had been disposed of prior to that. Since the applicant had played a fraud upon the respondents by not disclosing the correct information, he was unworthy of being continued in

service. For the same very reason, his services were liable to be terminated under Rule 5(1) of the CCS (TS) Rules. Plea bargaining is essentially an admission of offence and cannot be equated with acquittal. The respondent no.2 had given due consideration before rejecting the representation of the applicant against termination.

7. We have considered the pleadings of rival parties as also the documents adduced and have patiently heard the arguments advanced by the learned counsels for the parties.

8. The facts, leading up to the OA being filed, are in factual matrix and have since been accepted. It is an admitted fact that there were cases pending against the applicant in FIR No. 212/2007 dated 06.06.2007 u/S 147, 148, 149, 188, 283, 379, 436 IPC and FIR No.509/2008 u/S 4/25 Arms Act. It is further admitted that the case under Section 4/25 Arms Act resulted in light punishment being given to the applicant. In Sessions Case No.98/2008 in respect of FIR No. 509/2008, the applicant had been acquitted on account of 'benefit of doubt'. Considering the arguments of both the parties – one submitting that the acts had been committed in exuberance of youth and were not considered a disqualification for the applicant to hold a civil post and the other contending that the applicant,

having been given a benefit of doubt in one case, i.e., Sessions Case no.98/2008 and had concealed the same, has to be decided within the strict parameters of law. The applicant has relied upon the judgment in **Commissioner of Police v. Naveen Kumar Mandiwal**, WP(C) No. 7808/2011, dated 02.11.2011. In this case, the respondent had been appointed as a Male Constable in Delhi Police, but had omitted to mention the fact that he had been facing trial in FIR No. 54/2007 u/S143/341/323 IPC. In this case, show cause notice had been issued to the respondent, in response to which he had submitted his reply. However, reply being found unsatisfactory, his services stood terminated. The cases under consideration in the said WP(C) No. 7808/2011, had been compounded. The Hon'ble High Court, relying upon the cases of **Commissioner of Police & Ors. v. Sandeep Kumar** (Civil Appeal No. 1420/2007 decided on 07.03.2011) as well as **Delhi Administration v. Sushil Kumar**, (1996)11 SCC 605, ruled as under:-

“...Taking note of these facts, the learned Tribunal has relied upon the judgment of the Supreme Court in the case of Commissioner of Police and Others v. Sandeep Kumar (Civil Appeal No. 1420/2007 decided on 7.3.2011) as well as Delhi Administration v. Sushil Kumar, (1996)11 SCC 605. In the former judgment which upheld the view taken by this Court emphasizing that the emphasis has now shifted on the seriousness of the offence for which a

person has been alleged to be involved and the matter had to be examined from that angle. The Supreme Court had considered the matter in broader perspective and referred the character of 'Jean Valjean' in Victor Hugo's novel's 'Les Miserables' in which for committing a minor offence of stealing a loaf of bread for his hungry family Jean Valjean was branded as thief for his whole life. Lord Denning in the case of *Morris v. Crown Office*, 1970 2 Queens Bench 114 also referred to the case of Welsh students who had been agitating in support of Welsh language and the Court had opined that pragmatic view had to be taken and it was necessary to have a reformatory approach. When we find that going by these considerations and keeping in view the fact that in the instant case also the respondent was very young when he got entangled with the aforesaid offence of a minor nature in which he was ultimately acquitted as the FIR resulted in compromise, we do not find it to be a case where this Court should interfere in exercise of its power under Article 226 of the Constitution."

An SLP bearing No.9547/2012 against the afore WP(C) No. 7808/2011 was dismissed. In the case of **Manoj v. Union of India & Ors.**, WP(C) No. 11979/2015 decided on 15.07.2016, the petitioner had informed that he was a co-accused in FIR No. 2011, dated 05.07.2008 under Section 323/324/307/120-B/34/IPC and thus, it was not a case of concealment. The Hon'ble High Court had taken note of a number of earlier decisions, including **Jogender Singh vs. UT of Chandigarh & Ors.**, (2015) 2 SCC 377 and **Insp. General of Police vs. S. Samuthiram**, 2013(1) SCC 598 where the Hon'ble Supreme Court had held that the case had been tried, but the prosecution had failed miserably to

prove the charge. The Punjab and Haryana High Court dismissing writ petition filed by Jogender Singh against the decision to deny him employment as a Constable was reversed. The Supreme Court held that the past alleged conduct of Jogender Singh was irrelevant. In **Commissioner of Police New Delhi vs. Mehar Singh** (2013)7 SCC 685 where a decision of the Hon'ble High Court in favour of the Mehar Singh, who was likewise charged for a criminal offence, but acquitted at the trial but was denied employment as a Constable in Delhi Police, was reversed by the Hon'ble Supreme Court as per Paras 25 and 35 of the judgment. In this case, the Hon'ble Supreme Court had held that the decisions in such matters vested with the screening committee. The Hon'ble Supreme Court further divulged a concept of honourable acquittal, as culled out in **S.Samuthiram's** case (supra). The Hon'ble High Court in the case of **Manoj vs. UOI & Ors.** (supra) had thus made the following observations in para 27 and 28:-

“27. It is unfortunate that in India, the Government does not come out with white papers of the deliberations at various seminars, but we find a reference made to the ‘All India Seminar on Correctional Service’ held at New Delhi in March 1969, to consider and lay guidelines pertaining to the problem of rehabilitation of ex-convicts, with emphasis on the need for their employment under the government. Vide OM dated 2.2.1973, No.6857-GSI-72-2755, the State of Haryana has listed the penal

offences which have been treated as grave, serious and involving moral turpitude. The said OM lists the under-noted penal offences as grave, serious and involving moral turpitude, disentitling the convict to public employment; the offences are:-Sections 120-A, 121-A, 122 to 124, 161, 161-1A, 165, 167, 181, 182, 193 to 201, 205, 209, 293, 302, 304, 307, 354, 359, 362, 363 to 366, 366-A, 366-B, 367 to 373, 376, 377, 379, 380, 391, 392, 398-400, 403, 404, 406 to 409, 417 to 421, 449, 450, 453 to 458, 465 to 468, 471 to 476, 477-A, 489-A, 489-B, 489-C, 489-D, 489-E, 493 to 498 of the Penal Code.

28. We are a little surprised at the list as it excludes offences such as promoting enmity or doing acts prejudicial to maintenance of harmony i.e. offences punishable under Section 153-A IPC. It excludes offences pertaining to mutiny and its abetment i.e. offences under Sections 131 to 136 IPC. But we do not comment. However, what we find is, the common thread of including all offences against women and such offences which are punishable with imprisonment for life as also imprisonment for a term exceeding three years and above. We get a clue. Offences which do not carry a mandatory sentence of imprisonment and it to be imprisoned the terms is less than 3 years and the offender can be let off with payment of fine, are not included in the said list. It is an undisputed fact that there are no rules to guide the authorities in Delhi Police as to in what cases despite acquittal, the person can be kept out of service or can be deprived of employment.”

9. The Hon’ble High Court further held in para 32 and 32 as under:-

“32. In a growing democracy, where the systems are failing and the weak and the downtrodden are hardly given the opportunity to sharpen their intellect thereby diminishing the ability of their consciousness to act as a mirror to their acts and actions, it is high time that the executive brings into place a policy where summary/ordinary conviction should not be treated as a conviction for entry or retention in government service.

33. Till then, it would be the duty of the Court to interpret the law by harmonizing human sufferings and human wants, delinquencies and criminal tendencies; conscious of the fact that passengers on Spaceship Earth are the rich and the poor, the needy and the well-off, the hungry and the well-fed, the educated and the uneducated. The need of the hour is to understand that criminals are not born and are not irredeemable brutes. Crime may be a disease but not the criminal, who are a kind of psychic patients and to understand, that anti-social maladies are mostly the result of social imbalances. It must be remembered that on the one hand, social stresses, for various reasons, explosively mount in the real world's hard environs and the harsh remedy of heartless incarceration and ouster from society deepens the criminality. The swing of the pendulum to the humanist side requires respect for the worth of personhood and the right of every man and woman in its residual human essence.

10. While setting aside the impugned order in that case, the Hon'ble High Court had held as under:-

"37. The impugned order dated February 23, 2015 is set aside and a direction is issued that the petitioner be inducted into service as a Constable with CISF. The petitioner would be entitled to all benefits of seniority and continuity into service with effect from the date the person immediately beneath the petitioner in the empanelled list was made to join. Arrears of salary need not be paid."

11. In the case of **Daya Shanker Yadav vs. Union of India & Ors.** MANU/SC/0987/2010, the appellant had been selected and appointed as a Constable in the Central Reserve Police Force, but had answered the relevant questions in the negative by writing 'Nahin'(i.e.'no'), thereby conveying the impression that no case was ever registered

against him. The Hon'ble Supreme Court held in this case that the appellant had misled the respondents into believing that there was no case against him and had obtained appointment by means of misrepresentation. Therefore, the Hon'ble Supreme Court held as under:-

“16. We are satisfied that the appellant had knowingly made a false statement that he was not prosecuted in any criminal case. Therefore, the employer (CRPF) was justified in dispensing with his services for not being truthful in giving material information regarding his antecedents which were relevant for employment in an uniformed service, and that itself justified his discharge from service. Consequently, we dismiss this appeal as having no merit.”

12. In the instant case also, the applicant had obtained employment by means of misrepresentation. Had the facts been given, the appointment, in all probability, would not have been taken place. We are also swayed by the fact that in the Sessions Case No. 98/2008 in respect of FIR No. 212/07, the applicant was charged with offences which come within the category of serious offences. We were quite prepared to turn a blind eye to the misdeeds of the applicant committed earlier. Had he truthfully stated the same and expressed regret for his conduct, this would have been taken as a mitigating factor and as such, we would have been perfectly willing to rule in his favour. However, we echo in the sentiment of **Daya Shanker Yadav vs.**

Union of India & Ors. (supra), which is a comparatively recent pronouncement made under Article 141 of the Constitution. Therefore, the OA is dismissed without costs.

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

(V. Ajay Kumar)
Member (J)

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