

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD**

Original Application No.020/00987/2017

Date of C.A.V. : 13.02.2018

Date of Order : 03.04.2018

Between :

K.Nagendra Babu, S/o K.Jagannadha Rao,
aged 27 years, Occ : Fireman-II,
(Under the orders of termination),
O/o The Rear Admiral, Chief Staff Officer (P&A),
Head Quarters, Eastern Naval Command,
Naval Base, Visakhapatnam,
R/o 1-141, SC Colony, Thummapala Village & PO,
Anakapalli Mandal,
Visakhapatnam – 531032.

... Applicant

And

1. Union of India, represented by
The Secretary, Ministry of Defence,
Government of India, South Block,
New Delhi.
2. The Flag Officer Commanding-in-Chief,
Head Quarters, Eastern Naval Command,
Naval Base, Visakhapatnam.
3. The Rear Admiral, Chief Staff Officer (P&A),
Head Quarters, Eastern Naval Command,
Naval Base, Visakhapatnam.
4. The General Manager,
Naval Armament Depot,
Sunabeda, Orissa State. ... Respondents

Counsel for the Applicant ... Mr. K.R.K.V.Prasad, Advocate
Counsel for the Respondents ... Mrs.K.Rajitha, Sr.CGSC

CORAM:

Hon'ble Mr.Justice R.Kantha Rao ... ***Member (Judl.)***
Hon'ble Mrs.Minnie Mathew ... ***Member (Admn.)***

ORDER

{ As per Hon'ble Mr.Justice R.Kantha Rao, Member (Judl.) }

The applicant was given offer of appointment to the post of Fireman Grade-II against SC vacancy vide letter dated 27.09.2016 to work under the control of Head Quarters Eastern Naval Command. He was provisionally found eligible for the post of Fireman Grade-II and he was informed to complete the attestation forms and submit them along with the certificate of character in the prescribed format. The applicant filled up all the attestation forms and submitted them along with character certificate. He also submitted a police certificate dated 22.08.2016, issued by the Station House Officer, Anakapalli Town Police Station and based on the said certificate the Sub-Divisional Magistrate issued a certificate of character which he submitted along with the attestation forms and other documents. Col.No.12 (i)(a) of the attestation form required to furnish the information as to whether the applicant has been arrested, prosecuted and detained, etc. The applicant said 'No' to the said column indicating thereby that he had never been arrested, prosecuted or detained.

2. The applicant submits that to his surprise, he was served with an order dated 09.08.2017 terminating his services invoking Sub-rule (1) of Rule 5 of the Central Civil Service (Temporary Service) Rules, 1965. In lieu of one month notice, the respondents have enclosed a cheque dated 01.09.2017 for the sum equivalent to one month salary. The version of the applicant is that what all he stated in the attestation forms is true and that to his knowledge he was not involved in any criminal case, he was never arrested or never prosecuted. He relied on the certificate dated 22.08.2016 issued by the police stating that there are no criminal cases pending against him.

3. It is further submitted by the applicant that after receiving the termination order, he made enquiries and he came to know that in Anakapalli Town Police Station a Crime No.246/2015 was registered on 10.10.2015 against one K.Satyanarayana, K.Abimanu, K.Appa Rao and the applicant, basing on the complaint given by B.Rajamma. The allegation appears to be that K.Satyanarayana attacked the complainant B.Rajamma on 09.10.2015 while the remaining accused encouraged such attack. The applicant submits that he also came to know that he was granted bail by the SHO and thereafter a Charge Sheet was also filed u/s 323 r/w 34 IPC in the Court of V Metropolitan Magistrate at Anakapalli against all the four accused. The version of the applicant seems to be that he was not aware of registering any crime in the police station against him, he was never arrested by the police and he was never released on bail by the

police. According to him either K.Satyanarayana or some of his friends forged his signature on the bail bonds. Subsequently K.Satyanarayana seems to have approached the complainant and got the case compromised. He informed the same to the SHO, Anakapalli Town Police Station. The matter was placed before the Lok Adalat, Anakapalli in Lok Adalat Case No.656/2017 and it was settled in Lok Adalat vide order dated 09.09.2017 referred by the V Metropolitan Magistrate, Anakapalli in C.C.No.656/2017. The complainant compounded the offence punishable under section 324 r/w 34 IPC against all the accused and the accused including the applicant were acquitted.

4. Thus the applicant pleads ignorance of registration of Crime against him in Anakapalli Town Police Station and the subsequent filing of the charge sheet. His version seems to be that K.Satyanarayana who is the prime accused in the case only must be knowing about the pendency of the crime and he managed to fill up the bail bonds in the police station showing that all the accused were released on bail. In any event the fact remains that after investigation, the police filed Charge Sheet against K.Satyanarayana, the applicant and others. The contention of the applicant is that terminating his services by invoking CCS (Temporary Service) Rules, 1965 is illegal and sub-rule (1) of Rule 5 of CCS (Temporary Service) Rules, 1965 cannot be used to terminate his services without making enquiry and also without issuing him any prior notice of termination.

5. Therefore, he filed the present OA to set aside the proceedings dated 09.08.2017 served on him on 01.09.2017 terminating his services as void in law, illegal, unjust and arbitrary and is in violation of Articles 14, 16, 21 and 311 (2) of the Constitution and to set aside the said proceedings and issue a direction to the respondents to continue the applicant in service by granting all consequential benefits.

6. The respondents in their reply statement contended that the attestation forms and the character certificate filled up and submitted by the applicant were forwarded to the District Collector, Visakhapatnam for verification. The District Collector and Magistrate has verified them and vide letter dated 13.07.2017 intimated that the applicant was involved in a criminal case in Cr. No.236/2015 u/s 324 r/w 34 of IPC of Anakapalli Town Police Station, Visakhapatnam District with C.C.No.981/2015. Therefore, according to the respondents the applicant in his character and antecedent forms which were duly filled up and submitted prior to the issue of offer of appointment has suppressed the information regarding the pendency of criminal case against him u/s 324 r/w 34 of IPC by denying his involvement in the criminal case and subsequently through the letter of the Collector, Visakhapatnam addressed to the respondent authorities it is made known that a criminal case No.236/2016 u/s 324 of IPC was registered against him and a charge sheet was also filed ON 10.10.2015 u/s 324 r/w 34 IPC in the Court of V Metropolitan Magistrate at Anakapalli after his

appointment. The case was compromised in the Lok Adalat on a reference from V Metropolitan Magistrate, Anakapalli and the applicant along with others was acquitted under Section 320 (8) of Cr.P.C. on 09.09.2017. It is submitted by the respondents that the order passed by the Lok Adalat on 09.09.2017 indicates that both parties of the case have agreed for amicable settlement and filed terms of compromise with free volition as per the terms of compromise, the compromise is recorded and the award was issued to the effect that the injured/victim has compounded the offence punishable under section 324 against the accused and the accused were acquitted under section 320 (8) of IPC.

7. Nextly it is submitted by the respondents that as per the terms and conditions of the appointment, the appointment of the applicant or his retention in service is subject to satisfactory verification of character and antecedents. In case, adverse findings are subsequently reported, the services may be terminated under Rule 5 of CCS (Temporary Service) Rules 1965 or under any other relevant service rules as the case may be.

8. Under the aforementioned rules according to the respondents the services may be terminated by giving one month's notice to the individual or the appointing authority reserves the right of terminating the services of an employee forthwith on or before the expiry of the stipulated period of notice by making

payment or such equivalent to the pay and allowances for the period of notice of unexpired portion, as the case may be. The respondents submit that the aforementioned conditions of the appointment were made known to the applicant and therefore it is not open for him to contend that terminating his services having recourse to Rule 5 of CCS (Temporary Service) Rules, 1965 is illegal and arbitrary.

9. Contending as above, the respondents sought to dismiss the OA.

10. Heard Mr.K.R.K.V.Prasad, learned counsel for the applicant and Mrs.K.Rajitha, learned Senior Central Government Standing Counsel for the respondents.

11. One of the contentions urged on behalf of the applicant is that termination simplicitor having recourse to Rule 5 of CCS (Temporary Service) Rules, 1965 ought not to have been resorted against the applicant and the respondents should have initiated disciplinary enquiry against the applicant before passing the termination order.

12. Here is a case wherein the applicant is not confirmed in service. Therefore, the protection under Article 311 (2) of the Constitution of holding departmental enquiry is not available to him. ***Hon'ble High Court of Delhi in Bhagat Singh Paul Vs. Union of India and others in W.P.(C) No.1229/1994 dated 15.10.2004*** held categorically on the very same issue as follows :-

"Furnishing of false information or suppression of any factual information in the verification roll would be a disqualification and is likely to render the candidate for employment under the Government. If the fact that false information has been furnished or that there has been suspension of any factual information in the verification roll comes to notice at any time during the service of a person his services should be liable to be terminated.

The service of the petitioner was terminated under the provisions of Rule 5 (1) of the Central Civil Services (Temporary Services) Rules, 1965 read with Government of India instruction No.4 below Rule 5 of CCS (Temporary Services) Rules, 1965 and Rule 16-A of the CRPF Rules, 1965. It is established from the aforesaid provisions that the service of an individual could be terminated without assigning any reasons. Therefore, the present case would come within the ambit of furnishing false information by the petitioner. The action taken by the respondents in terms of the provisions of Rule 5 of CCS (Temporary Services) Rules, 1965 cannot be said to be illegal. The petitioner may, however, collect the salary of one month towards the notice period, which shall be paid by the respondents as and when the petitioner furnished the particulars of his bank account."

13. Even in ***Avtar Singh Vs. Union of India and others (2016) 8 SCC 471***,

the Hon'ble Supreme Court issued certain guidelines after reviewing various judgements on the subject and took the view that in case the employee is confirmed in service, he is entitled for protection under Article 311(2) of Constitution and holding a departmental enquiry would be necessary before passing termination/ removal or dismissal on the ground of suppression or submitting false information in verification form.

14. Much reliance has been placed by the learned counsel appearing for the applicant on ***2000 (5) SCC 152 Chandra Prakash Shahi Vs. State of U.P. and others*** and it has been argued by the learned counsel that as per the ratio laid down in the said case even the services of a temporary employee who was not

confirmed in the post cannot be terminated without holding a departmental enquiry against him and as such in the instant case, the termination of the applicant without conducting regular departmental enquiry against him is illegal and is liable to be set aside.

15. As to the above contention it requires to be noticed that there is no conflict between the ratio laid down in ***Chandra Prakash Shahi Vs. State of U.P. and others (2000) 5 SCC 152 and Avtar Singh Vs. Union of India (2016) 8 SCC 471.*** The facts of the case before the Hon'ble Supreme Court in Chandra Prakash Shahi are entirely different from the facts of the present case. In the said case an enquiry about the misconduct was held behind the back of the employee and an order of termination was passed. The misconduct was that the employee was found involved in an incident of quarrel subsequent to his employment. The Hon'ble Supreme Court has drawn a distinction between termination simpliciter and punitive. In the said case also the Hon'ble Supreme Court has categorically held that the employee has no right to post on which he is placed on probation. His services can therefore be terminated during or at the end of probation on account of his unsuitability in post. If the termination is punitive in nature it must be as per the ratio laid down by the Hon'ble Supreme Court only after issuing a show cause notice to the employee and also holding disciplinary enquiry against him. The Hon'ble Supreme Court in the said case held that the termination does not conform to the procedure prescribed in para 54 (2) of

U.P.Police Regulations. As per the procedure the probationer has to be informed the ground on which his services are proposed to be terminated, he is required to explain his position and thereafter the reply is to be considered by the Superintendent of Police so that if the reply is found to be convincing, he may not be deprived of his services. According to the Hon'ble Supreme Court if the said procedure is followed and the employee is terminated thereafter, it would not amount to punitive action. Therefore, the Hon'ble Supreme Court in view of the facts of the case before it held that the temporary government employee or a probationer is also entitled to protection of Article 311 (2) Constitution of India where the termination relates to misconduct which is punitive in nature.

16. In the instant case the rules governing the service conditions of the applicant provide for termination of his services if it is found that the applicant is guilty of suppression of fact. The case on hand therefore is a case relating to termination simpliciter wherein the applicant is not entitled for protection under 311 (2) of Constitution of India.

17. Here it is again necessary to notice as to what the 3 Judge Bench of the Hon'ble Supreme Court held on the subject of suppression of material fact or furnishing false information in *Avtar Singh*. The Hon'ble Supreme Court in ***Avtar Singh Vs. Union of India (2016) 8 SCC 471*** held as follows :

“33. The fraud and misrepresentation vitiates a transaction and in case employment has been obtained on the basis of forged

documents, as observed in M. Bhaskaran's case (supra), it has also been observed in the reference order that if an appointment was procured fraudulently, the incumbent may be terminated without holding any inquiry, however we add a rider that in case employee is confirmed, holding a civil post and has protection of Article 311(2), due inquiry has to be held before terminating the services. The case of obtaining appointment on the basis of forged documents has the effect on very eligibility of incumbent for the job in question, however, verification of antecedents is different aspect as to his fitness otherwise for the post in question. The fraudulently obtained appointment orders are voidable at the option of employer, however, question has to be determined in the light of the discussion made in this order on impact of suppression or submission of false information.

38.9 In case the employee is confirmed in service, holding Departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form."

18. Thus Avtar Singh cited supra deals directly with the impact of suppression or submission of false information. In the instant case according to the respondents the applicant obtained the appointment by suppressing the material fact of his involvement in a criminal case. Moreover the judgement rendered by the Hon'ble Supreme Court in Avtar Singh (supra) was on a reference in relation to the very same issue of suppression or submitting false information and is rendered by a 3 Judge Bench. Since Avtar Singh is later in point of time and a recent one we have to necessarily understand that the ratio laid down by the Hon'ble Supreme Court in its earlier case of Chandra Prakash Shahi was well within their knowledge while rendering the judgement in Avtar Singh. The ratio laid down by the Hon'ble Supreme Court in Avtar Singh is binding on the Tribunal. In fact the said ratio has been followed by the Hon'ble Supreme Court in its

judgements subsequent to Avtar Singh and also by various High Courts in their judgements.

19. In the instant case the probation of the applicant has not been approved by the respondents and his services are purely temporary. Since he was not confirmed in the post of Fireman Gr-II, terminating his services invoking sub-rule (1) of Rule 5 of CCS (Temporary Service) Rules, 1965 cannot be said to be illegal.

20. Now coming to the crucial issue whether the applicant has suppressed the factual information, if so, what would be the effect of the suppression of facts on his employment, we have to necessarily go through the principles laid down in Avtar Singh case cited supra. The Hon'ble Supreme Court in Avtar Singh case issued various guidelines in dealing with the cases of suppression. The following would be necessary for the purpose of the present case.

21. In case there is suppression or false information of involvement in a criminal case, where conviction or acquittal had already been recorded before filing of the application / verification form and such fact later comes to the knowledge of the employer, any of the following recourses appropriate to the case may be adopted. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed

would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse. If criminal case is pending, but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

22. From the judgement of Avtar Singh, one of the factors that the appointing authority has to take into consideration is to examine the nature of the offence even if there is suppression of material facts. The appointing authority also has to take into consideration the impact of suppression on the conduct of the employee even in case where it is found that the employee suppressed his involvement in a criminal case.

23. Before arriving at a decision on the issue involved in the case on hand, it is necessary to refer to the following judgement of the Hon'ble Supreme Court rendered on identical facts.

Union of India and others Vs. Amit Singh (2018) 1 SLR 164 (S.C.) The case before the Hon'ble Supreme Court relates to trivial issue between the friends in a cricket match and the same was compounded by the learned Magistrate. The incident in the case happened much prior to the filing of the application for appointment. The employee therein however suppressed the factum of

involvement in the criminal case. The Hon'ble Supreme Court having regard to the facts and circumstances of the case, permitted the employee to file a representation before the appropriate authority and directed the appropriate authority to pass a speaking order on the representation after affording an opportunity of hearing to the employee in the light of the judgement of Avtar Singh within a period of four months.

24. Coming to the facts of the present case the contention of the applicant is that he is not aware of the registering of First Information Report against him and also the subsequent filing of Charge Sheet. It is contended on behalf of the applicant that he was never involved in the said case, but he was falsely implicated by the defacto complainant. It is also his submission that he was never called to the police station and that he never signed on the bail bond. According to him everything was managed by K.Satyanarayana, the first accused. From the facts of the case there is also a possibility of the applicant not knowing about the registration of the crime against him in the police station initially. However, subsequent to his termination, the case was compromised in the Lok Adalat and he was acquitted of the charge along with the other accused. As already said even if the appointing authority considered that the employee suppressed the fact still a duty is cast on the appointing authority to examine the nature of the offence. If the offence is of trivial nature and the involvement of the applicant is doubtful, in our view much weightage cannot be attached to the

alleged suppression. In the present case even according to the prosecution the applicant did not beat the defacto complainant. He was there along with three others. The respondent authorities in our view did not consider the nature of offence and the role ascribed to the applicant in the commission of offence while passing the termination order against him. Therefore, this is a case wherein the respondent authorities are required to re-visit the termination order passed against the applicant.

25. In view of what all stated herein before, the termination order dated 09.08.2017 is set aside. The respondents are directed to reconsider the proceedings where under the applicant was terminated in the light of the judgement of Hon'ble Supreme Court in ***Avtar Singh (2016) 8 SCC 471*** and consider his case for continuing him in service by passing appropriate speaking order within a period of four months.

26. The OA is accordingly allowed to the extent indicated above. There shall be no order as to costs.

(MINNIE MATHEW)
MEMBER (ADMN.)

(JUSTICE R.KANTHA RAO)
MEMBER (JUDL.)

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