

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00898/2013

Jabalpur, this Monday, the 26th day of February, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Chandan Thakur,
S/o Shri Shri Janardan Thakur
DOB 15.07.1981
R/o H. No.1381
Uday Nagar-2
P.O. Vehicle Factory
Jabalpur
Jabalpur 482009 (M.P.)

-Applicant

(By Advocate –**Shri Vijay Tripathi**)

V e r s u s

1. The Union of India,
Through its Secretary,
Ministry of Defence,
Department of Defence Production
South Block New Delhi 110001

2. The Chairman, Ordnance Factory Board
10-A Saheed Khudiram Bose Marg
Kolkata 700 001

3. The General Manager
Vehicle Factory
Jabalpur 482009 (MP)

- Respondents

(By Advocate –**Shri Manish Chourasia**)

(Date of reserving the order: 30.11.2017)

ORDER

By Ramesh Singh Thakur, JM:-

This Original Application has been filed by the applicant challenging the legality, validity and propriety of the order dated 11.10.2013 (Annexure A-1), whereby the proposal for appointment of the applicant has been rejected by the respondent No.3 on the ground that the applicant has received adverse remark from the District Magistrate. Hence, this Original Application.

2. The applicant in the present Original Application has sought for the following reliefs:-

“8.1 Summon the entire relevant record from the respondents for its kind perusal;

8.2 Set aside the order dated 11.10.2013 (Annexure A-1);

8.3 Direct the respondents to appoint the applicant as Fitter Electrical (Semi Skilled) with all consequential benefits;

8.4 Any other order/orders, direction/directions may also be passed.

8.5 Award cost of the litigation to the applicant.”

3. Briefly the case of the applicant is that the respondent-department has issued an advertisement to fill up the post of Semi Skilled worker in different trades. The applicant is having ITI certificate in the Trade of Electrician from the recognized institution, therefore, being an eligible candidate, submitted his

candidature. The applicant has received call letter (Annexure A-3), whereby the applicant was instructed to participate in the written test which was scheduled on 22.07.2012. Accordingly, the applicant appeared in the written test and performed well. The applicant was found eligible in the written examination held on 22.07.2012, therefore he was called for trade test for the post of Fitter Electric (Semi Skilled) grade vide letter dated 09.08.2012 (Annexure A-4). The applicant appeared for trade test on 04.09.2012.

4. The applicant was found suitable, the respondent-department issued a letter dated 16.10.2012 (Annexure A-5), whereby it was informed that he has been selected for the post of Fitter Electric (Semi Skilled) grade and along with letter dated 16.10.2012, five sets of PVR form were furnished to the applicant. After receiving the PVR form, the applicant has filled up the same and sent it to the competent authority. The applicant has disclosed all the facts in column No.12 of the PVR form. The applicant has submitted an affidavit dated 05.12.2012 (Annexure A-6) wherein he has disclosed that two cases had been registered against him under Section 13 of the Gambling Act in the Police Station Ranjhi, Jabalpur. To avoid trial, the applicant deposited Rs.100/- each fine in both the cases before the Court. This fact has already been

disclosed by the applicant in the PVR form as well as in the affidavit.

5. Thereafter the applicant was expecting his appointment letter. However, the applicant was shocked to receive the order dated 11.10.2013 (Annexure A-1) whereby it was informed to the applicant that the District Magistrate has given adverse remark in the PVR form of the applicant. Therefore, the competent authority has cancelled the proposal of the appointment of the applicant. The applicant has submitted that he has honestly disclosed the offence which was registered against him under Section 13 of the Gambling Act and the fine imposed by the Court in the PVR forms and he was punished with only fine of Rs.100/- which is a minor punishment, this fact is totally ignored by the respondent-department. So the action of the respondents for cancelling his candidature is arbitrary.

6. The respondent-department has filed short reply. In the reply the respondents had admitted the fact regarding advertisement issued by the department in various trades in Vehicle Factory Jabalpur (Annexure R-1). It has been admitted by the replying respondents that the applicant submitted his application for the post of Fitter Electric (Semi-Skilled) grade. The applicant had qualified in the written examination and trade test and was finally selected

for the post of 'Fitter Electric' (Semi Skilled). However, before the appointment of selected candidates verification of character and antecedents of the candidates is required to be carried out by Civil Authorities. Therefore, the applicant was issued blank attestation forms. The applicant submitted his attestation form which was forwarded to the District Magistrate Jabalpur vide letter dated 23.11.2012. The District Magistrate vide letter dated 04.02.2013 (Annexure R-2) has intimated that as per information received from Police Station Ranjhi a criminal case No.701/2005 was registered under Section 13 of the Gambling Act and challan was put up before the competent court and vide order dated 08.11.2005 Rs.100/- has been imposed as punishment. Secondly, Criminal Case No.359/2008 under Section 13 of the Gambling Act was registered before the competent court and vide order dated 18.06.2008 again the applicant was imposed Rs.100 as punishment.

7. The appointing authority has decided that "as person is convicted and not honourably acquitted, therefore he is not fit for Government service". So the applicant was informed vide letter dated 11.10.2013 (Annexure A-1).

8. The applicant has filed rejoinder to the reply filed by the respondents. The applicant has reiterated the stand as already been taken in the Original Application.

9. We have heard the learned counsel for the parties and also perused the annexures annexed with the pleadings.

10. There is no dispute regarding the advertisement whereby the applications were called for the post of Semi Skilled grade. It is also admitted that the applicant appeared in the written examination and thereafter he has qualified the trade test and also finally selected in the post of Fitter Electric (Semi Skilled). It is also not in dispute that the PVR form was issued by respondent-department to the applicant and he has submitted the same along with affidavit. As per affidavit dated 05.12.2012 (Annexure A-6) wherein it has been specifically stated by the applicant that two cases were there against him in Police Station, Ranjhi, Jabalpur which has been finally disposed of and at present there is no case against him pending in District Magistrate, Jabalpur or in any other Police Station in Jabalpur or in India. It has been further stated by applicant in this affidavit that no case is pending before any Court of law in India. It is clear that respondent-department also does not disputed regarding concealment of any fact or pendency of any criminal case before any Court of law. Only reason given by the replying respondents in their reply is that the applicant has been convicted and not honourably acquitted. So, the applicant is not fit for Government service and the candidature of the applicant was

rejected. So the applicant cannot be appointed in the Semi Skilled post.

11. The applicant has relied upon the judgment of Hon'ble Supreme Court in the matter of **Commissioner of Police and Others** vs. **Sandeep Kumar** reported in (2011) 4 SCC 644. The relevant Paras are as under:

“8. We respectfully agree with the Delhi High Court that the cancellation of his candidature was illegal, but we wish to give our own opinion in the matter. When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often been condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

9. In this connection, we may refer to the character 'Jean Valjean' in Victor Hugo's novel 'Les Miserables', in which for committing a minor offence of stealing a loaf of bread for his hungry family Jean Valjean was branded as a thief for his whole life. The modern approach should be to reform a person instead of branding him as a criminal all his life.

10. We may also here refer to the case of Welsh students mentioned by Lord Denning in his book 'Due Process of Law'. It appears that some students of Wales were very enthusiastic about the Welsh language and they were upset because the radio programmes were being broadcast in the English language and not in Welsh. Then came up to London and invaded the High Court. They were found guilty of contempt of court and sentenced to prison for three months by the High Court Judge. They filed an appeal before the Court of Appeals. Allowing the appeal, Lord Denning observed :-

"I come now to Mr. Watkin Powell's third point. He says that the sentences were excessive. I do not think they were excessive, at the time they were given and in the circumstances then existing. Here was a deliberate interference with the course of justice in a case which was no concern of theirs. It was necessary for the judge to show - and to show to all students everywhere - that this kind of thing cannot be tolerated. Let students demonstrate, if they please, for the causes in which they believe. Let them make their protests as they will. But they must do it by lawful means and not by unlawful. If they strike at the course of justice in this land - and I speak both for England and Wales - they strike at the roots of society itself, and they bring down that which protects them. It is only by the maintenance of law and order that they are privileged to be students and to study and live in peace. So let them support the law and not strike it down.

But now what is to be done? The law has been vindicated by the sentences which the judge passed on Wednesday of last week. He has shown that law and order must be maintained, and will be maintained. But on this appeal, things are changed. These students here no longer defy the law. They have appealed to this court and shown respect for it. They have already served a week in prison. I do not think it necessary to keep them inside it any longer. These young people are no ordinary criminals. There is no violence, dishonesty or vice in them. On the contrary, there was much that we should applaud. They wish to do all they can to preserve the Welsh language. Well may they be proud of it. It is the language of the bards - of the poets and the singers - more melodious by far than our rough English tongue. On high authority, it should be equal in Wales with English. They have done wrong- very wrong - in going to the extreme they did. But, that having been shown, I think we can, and should, show mercy on them. We should permit them to go back to their studies, to their parents and continue the good course which they have so wrongly disturbed."[Vide : Morris Vs. Crown Office, (1970) 2 Q.B.125C-H]

In our opinion, we should display the same wisdom as displayed by Lord Denning.

11. As already observed above, youth often commit indiscretions, which are often condoned.”

12. The applicant has also relied upon the judgment passed by the Hon’ble High Court of Gujarat in the matters of Balubhai Amidas Khristi vs. State of Gujarat and others 1978 (2) SLR 815.

The relevant para is as under:-

“18. Let me compare the situation. I even a Judge can buy a ticket of State lottery and if lucky enough on my ticket being drawn winner on sheer luck no skill being involved not only I get rupees lac or more on a pure gambling chance but that it is being given wide publicity and till recently no tax was payable on this windfall. Larger prizes are offered on lottery with more attractive advertisements. It is inciting, instigating, provoking gambling instinct lying dormant, in every man to gamble. This peon rather than staking rupee one in the state lottery where he does not commit offence stupidly albeit unfortunately staked it in Varii Matka. But it is said that profit earned by lottery activities are utilised for State developmental activities such as education, cultural advancement etc. which is not true of Varii Matka. This peon merely committed an error in choosing Varii Matka stake holder rather than buying a State lottery ticket and he has in the process been sent to jail for one month and deprived of his very livelihood. Had he waited for some time he could as well have gone to casino to be set up by Maharashtra Government, and no misfortune would have be fallen him. I am afraid, what was one a high moral principle namely not to indulge in gambling can now be styled as taboo only. I can describe the situation in a much more decorative language. I would rather stop here by saying that in the context of the present day society where the State not only indulges into gambling activity but by advertisement incites the citizens' gambling instinct in human beings to subscribe to this once condemned activity, it would be too much to say that this peon who was found giving stake to a Varli Matka stake holder has been guilty of such conduct as would

involve moral turpitude so as to be dismissed from service. Conceding that it is not conviction that is the foundation for taking disciplinary action but the conduct which led to the conviction is the foundation, I must say that conduct herein disclosed is the same conduct which every purchaser of a State lottery ticket undertakes. While one may claim to be considered progressive forward looking individual enriching State coffers the other fellow loses his job and goes to jail. I have no grievance this man being sent to jail but that conduct cannot lead to deprivation of his livelihood. Therefore, viewed from all angles, I must reluctantly come to the conclusion that the order dismissing the petitioner from service is bad on all counts and deserves to be quashed and set aside.

13. The applicant has also relied upon the judgment passed by the Hon'ble High Court of Madhya Pradesh, Principal Seat at Jabalpur in Writ Petition No.8854/2012 titled as ***Rakesh Kumar Patel vs. Union of India and others.*** The relevant portion Para 4 is as under:-

“4. In the case of Commissioner of Police (supra) the candidate had failed to disclose his true antecedents in the application form for appointment regarding his prosecution in a criminal case as a result of which his candidature was cancelled. The criminal case against the candidate was admittedly compromised and he was acquitted of the charges. Aggrieved, the candidate filed a petition before the Tribunal which was dismissed. He then filed a writ petition before the Delhi High Court. The Delhi High Court allowed the writ petition and quashed the order of cancellation of selection of the candidate. In an appeal filed by the Commissioner of Police, the Supreme Court upheld the order of the Delhi High Court and rejected the submission regarding justification of the cancellation of candidature that the candidate should have disclosed the fact of his involvement in the criminal case even if he had been acquitted. The Supreme Court observed that the candidate had been acquitted in the criminal case and he, being a youth, cannot be expected to behave as older people. It also

observed that, at young age, people often commit indiscretions and such indiscretion should be condoned instead of branding young people as criminals for the rest of their lives. The Supreme Court even condoned the act of a candidate of not mentioning in the application form about his involvement in a criminal case under Section 325/34 at the Indian Penal Code by holding that he might have done so out of fear of getting disqualified automatically.”

14. The Hon’ble Apex Court in the case titled as ***Avtar Singh vs. Union of India and others*** (2016) 8 SCC 471 has settled issues regarding information given by the parties before entering the Government service. The principles have been laid down in Para 38 of the judgment which is as under:-

“38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

38.1 Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2 While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3 The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4 In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to

knowledge of employer, any of the following recourse appropriate to the case may be adopted : -

38.4.1 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.

38.4.2 Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6 In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.

38.7 In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8 If criminal case was 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.

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.

38.10 For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11 Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him."

15. The Hon'ble Apex Court in Para 38.4.1 has clearly mentioned that 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. The case of the applicant falls under 38.4.1. The applicant has not concealed the facts and it has been specifically submitted by the applicant that two cases were pending against the applicant and it has been finally decided.

16. In the reply filed by the respondents, it is also clear from letter dated 04.02.2013 that the District Magistrate Jabalpur has

intimated the replying respondent that fine of Rs.100/- were imposed upon the applicant for the offence under Section 13 of the Gambling Act by orders dated 08.06.2005 and 08.11.2005. It is true that the applicant has been convicted and fine of Rs.100/- has been imposed upon the applicant. But it is also clear that these offences are petty offences and are bailable offence. The applicant has clearly submitted that two criminal trials on the advice of his lawyer, the applicant has accepted the guilt and was imposed fine on him. The applicant has accepted the guilt due to ignorance without visualizing the seriousness of his acceptance.

17. In the impugned order dated 11.10.2013 (Annexure A-1) the reason is given that District Magistrate, Jabalpur has given the adverse report. It is pertinent to mention that the applicant is quite young in age and was involved in a petty offence under Gambling Act, which is the bailable offence and the Hon'ble Apex Court has clearly held that in a case trivial in nature in which conviction had been recorded for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question. In the impugned order (Annexure A-1), we do not find such reasons in the impugned order itself. It has been further held by the Hon'ble Apex Court that the employer has to act prudently on due consideration of nature of post and duties to be rendered. For

higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However, same standard cannot be applied to each and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence etc. have to be considered. Even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or dubious character. In case employer comes to conclusion that conviction or ground of acquittal in criminal case would not affect the fitness for employment incumbent may be appointed or continued in service. The relevant portion in the judgment of Avatar Singh (supra) reads as under:-

“The employer is given ‘discretion’ to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact

*of suppression or false information are taken into consideration while adjudging suitability of an incumbent for services in question. In case the employer come to the conclusion that suppression is immaterial and even if facts would have been disclosed would not have affected adversely fitness of an incumbent, for reasons to be recorded, it has power to condone the lapse. However, while doing so employer has to act prudently on due consideration of nature of post and duties to be rendered. For higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However same standard cannot be applied to each and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed to terminate services of such incumbent on due consideration of various aspects. **Even if disclosure has been made truthfully the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence etc. have to be considered.** Even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or dubious character. In case employer comes to conclusion that conviction or ground of acquittal in criminal case would not affect the fitness for employment incumbent may be appointed or continued in service.”*

18. In view of the above, we are of the opinion that the applicant is very young in age and the matter regarding his conviction under Section 13 of the Gambling Act is a trivial and petty offence and is a bailable offence that too for the year 2005-2008. In the impugned order dated 11.10.2013 (Annexure A-1), we did not find any reasons as per settled legal position as discussed above (supra), the said impugned order is illegal and unlawful.

19. Resultantly, the Original Application is allowed. Impugned order dated 11.10.2013 (Annexure A-1) is quashed and set aside. In view of our findings, the respondents are directed to reconsider the case of the applicant in respect of the employment for the post of Fitter Electric (Semi Skilled), within a period of 90 days from the date of receipt of certified copy of this order. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

kc