

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

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**ORIGINAL APPLICATION NO.290/00396/2015
WITH MISC. APPLICATION NO.290/00201/2015**

RESERVED ON

: 26.03.2018

DATE OF DECISION: 04.04.2018

CORAM:

HON'BLE MR. SURESH KUMAR MONGA, MEMBER (J)

AMIT PANWAR S/O LATE SH. GHAN SHYAM AGED ABOUT 25 YEARS, R/O HOUSE NO. 2/137, MUKTA PRASAD NAGAR, BIKANER, WARD OF LATE SH. GHAN SHYAM TECH II IN THE OFFICE OF SENIOR SECTION ENGINEER TL WORK SHOP BIKANER.

...APPLICANT

(BY ADVOCATE: SHRI S.K.MALIK)

VERSUS

1. UNION OF INDIA THROUGH THE GENERAL MANAGER, NORTH WESTERN RAILWAY, JAIPUR (RAJ.)

2. THE GENERAL MANAGER (P), NORTH WESTERN RAILWAY, HQ OFFICE, JAIPUR

3. CHIEF WORKSHOP MANAGER, WORKSHOP, NORTH WESTERN RAILWAY, BIKANER.

...RESPONDENTS

(BY ADVOCATE: MR. SALIL TRIVEDI)

ORDER

THE PLEADED CASE OF THE APPLICANT HEREIN IS THAT HIS FATHER LATE SHRI GHANSHYAM WAS DECLARED MEDICALLY DE-CATEGORISED BY THE MEDICAL BOARD, WHILE HE WAS IN SERVICE OF THE RESPONDENTS AND HOLDING THE POST OF TECHNICIAN-II. WHILE DECLARING HIM MEDICALLY DE-CATEGORISED, A RECOMMENDATION WAS MADE FOR AN ALTERNATIVE EMPLOYMENT IN MEDICAL CATEGORY

CEY-ONE WHERE HE WAS NOT REQUIRED TO DO WORK LIKE LONG BRISK WALKING AND CARRYING HEAVY WEIGHT ETC. ANOTHER OPTION WAS ALSO GIVEN TO HIM TO SEEK VOLUNTARY RETIREMENT AND APPOINTMENT OF HIS WARD ON A SUITABLE POST ON COMPASSIONATE GROUNDS WITHIN A PERIOD OF TWO MONTHS. THE RESPONDENTS ISSUED A LETTER IN THIS REGARD TO APPLICANT'S FATHER ON 19.1.2012. PURSUANT THERETO, THE APPLICANT'S FATHER GAVE HIS OPTION FOR VOLUNTARY RETIREMENT AND ACCORDINGLY, HE STOOD RETIRED FROM THE SERVICES ON 24.1.2012. SIMULTANEOUSLY, THE APPLICANT ALSO MOVED AN APPLICATION FOR APPOINTMENT ON COMPASSIONATE GROUNDS BEING WARD OF MEDICALLY DE-CATEGORISED EMPLOYEE OF THE RAILWAYS. ON THE ASKING OF THE RESPONDENTS, THE APPLICANT HAD UNDERGONE MEDICAL TEST AND HE WAS DECLARED MEDICALLY FIT VIDE CERTIFICATE DATED 25.6.2012. THE RESPONDENTS APPROVED THE APPOINTMENT OF THE APPLICANT ON COMPASSIONATE GROUND BEING WARD OF A MEDICALLY DE-CATEGORISED EMPLOYEE. THEREAFTER, THE APPLICANT WAS ASKED TO FILL UP A PROFORMA DIVULGING VARIOUS FACTS ENABLING THE RESPONDENTS TO VERIFY HIS CHARACTER ANTECEDENT. DURING THE PROCESS OF VERIFICATION OF CHARACTER ANTECEDENT, IT WAS FOUND THAT A CASE U/S 148, 341, 451, 323 READ WITH SECTION 149 OF IPC WAS REGISTERED AGAINST HIM AT POLICE STATION, NAYA SAHAR, BIKANER AND IN THE SAID CASE HE WAS ACQUITTED ON 19.4.2010. AFTER COMING TO KNOW ABOUT THE SAID FACT, THE RESPONDENT NO.3 VIDE ORDER DATED 17.1.2017 (ANN.A/1) DECLARED HIM INELIGIBLE FOR COMPASSIONATE APPOINTMENT AS HE CONCEALED THE MATERIAL FACT. AGAINST THE SAID ORDER, THE APPLICANT PREFERRED AN APPEAL BEFORE RESPONDENT NO.1 WHICH WAS ALSO DECLINED VIDE ORDER DATED 27.5.2012 (ANN.A/2). AGGRIEVED BY THE SAID ORDERS, THE APPLICANT PREFERRED THE INSTANT OA U/S 19 OF THE ADMINISTRATIVE TRIBUNALS ACT, 1985. AN APPLICATION FOR CONDONATION OF DELAY IN FILING THE OA HAS ALSO BEEN FILED ALONG WITH THE OA.

2. THE RESPONDENTS BY WAY OF FILING A JOINT REPLY HAVE JOINED THE DEFENCE AND OPPOSED THE CAUSE OF THE APPLICANT. IT HAS BEEN PLEADED BY THE RESPONDENTS THAT THE APPLICANT WHILE SUBMITTING THE ATTESTATION FORM SEEKING APPOINTMENT ON COMPASSIONATE GROUNDS DID NOT DISCLOSE THE TRUE AND CORRECT FACT DELIBERATELY IN COLUMN NO.11 REGARDING PENDENCY OF A CRIMINAL CASE. IT HAS FURTHER BEEN PLEADED THAT THE APPLICANT WITH AN INTENT TO DECEIVE THE RESPONDENTS ANSWERED THE QUERY POSED IN COLUMN-11 IN NEGATIVE AND ACCORDINGLY, HE HAS BEEN RIGHTLY DISQUALIFIED FOR EMPLOYMENT.

3. HEARD THE LEARNED COUNSEL FOR THE PARTIES.

4. SHRI S.K.MALIK, LEARNED COUNSEL FOR THE APPLICANT CONTENDED THAT THE OFFENCE FOR WHICH THE APPLICANT WAS PROSECUTED WAS TRIVIAL IN NATURE. YOUNG BOYS WHILE PLAYING IN

A STREET HAD LITTLE FIGHT AND AN FIR U/S 458, 451,323,341,147,149 IPC WAS REGISTERED AGAINST THE APPLICANT. WITH AN INTERVENTION OF THE RESPECTABLES IN THE SOCIETY, A COMPROMISE WAS ARRIVED AT BETWEEN THE COMPLAINANT AND THE APPLICANT HEREIN AND ACCORDINGLY HE WAS ACQUITTED VIDE ORDER DATED 19.4.2010 BY THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE, BIKANER. LEARNED COUNSEL WHILE PLACING RELIANCE UPON A JUDGMENT OF THE HON'BLE SUPREME COURT IN AVTAR SINGH VS. UNION OF INDIA AND ORS., (2016) 8 SCC 471 CONTENDED THAT IN VIEW OF THE PRINCIPLES LAID DOWN THEREIN, THE RESPONDENTS COULD CONDONE THE LAPSE AND OUGHT TO HAVE OFFERED HIM APPOINTMENT IN VIEW OF THE POLICY GUIDELINES AS HIS FATHER WAS MEDICALLY DE-CATEGORISED WHILE IN SERVICE.

5. PER CONTRA, LEARNED COUNSEL FOR THE RESPONDENTS CONTENDED THAT THE APPLICANT HAD SUPPRESSED MATERIAL FACT WITH REGARD TO HIS PROSECUTION WHILE SUBMITTING HIS ATTESTATION FORM, IN ORDER TO SEEK APPOINTMENT ON COMPASSIONATE GROUNDS. THE DELIBERATE CONCEALMENT OF THE SAID FACT AMOUNTS TO MORAL TURPITUDE AND, THEREFORE, THE RESPONDENTS ARE WITHIN THEIR RIGHT TO DECLINE APPOINTMENT TO THE APPLICANT. IN ORDER TO SUBSTANTIATE HIS ARGUMENTS, HE RELIED UPON A JUDGMENT OF THE HON'BLE SUPREME COURT IN THE CASE OF DEVENDRA KUMAR VS. STATE OF UTTRANCHAL AND ORS., (2013) 9 SCC 363.

6. CONSIDERED THE RIVAL CONTENTIONS OF THE LEARNED COUNSEL FOR THE PARTIES AND PERUSED THE RECORD.

7 IT IS NOT DISPUTED THAT THE RESPONDENTS HAD APPROVED THE APPOINTMENT OF THE APPLICANT ON COMPASSIONATE GROUNDS IN VIEW OF THE POLICY GUIDELINES OF THE RAILWAYS, AS HIS FATHER WAS MEDICALLY DE-CATEGORISED WHILE IN SERVICE. IT IS ALSO NOT IN DISPUTE THAT WHILE SUBMITTING ATTESTATION FORM, THE APPLICANT DID NOT DISCLOSE THE FACT WITH REGARD TO A CRIMINAL CASE IN WHICH HE WAS ACQUITTED ON 19.4.2010. THOUGH IN VIEW OF THE PRINCIPLES ENUNCIATED IN DEVENDRA KUMAR'S CASE (SUPRA) BY THE HON'BLE SUPREME COURT, SUPPRESSION OF MATERIAL FACT BY A CANDIDATE AMOUNTS TO MORAL TURPITUDE AND DISENTITLES HIM FROM PUBLIC EMPLOYMENT. BUT IN VIEW OF THE LATEST JUDGMENT OF THE HON'BLE SUPREME COURT IN AVTAR SINGH'S CASE (SUPRA), IT BECOMES INCUMBENT UPON AN EMPLOYER BEFORE PASSING AN ORDER DIS-ENTITLING A CANDIDATE FROM EMPLOYMENT, TO ARRIVE AT A CONCLUSION AS TO WHETHER THE OFFENCE IN WHICH THE SAID CANDIDATE WAS INVOLVED WAS TRIVIAL IN NATURE AND THE SAME COULD BE CONDONED OR NOT, IN THE GIVEN SET OF FACTS AND CIRCUMSTANCES. A PERUSAL OF THE ORDERS ANN.A/1 AND A/2 DIVULGE THAT SUCH AN EXERCISE HAS NOT BEEN UNDERTAKEN BY THE RESPONDENTS BEFORE ISSUING THOSE ORDERS. AFTER COMING TO KNOW ABOUT THE CRIMINAL CASE AGAINST THE APPLICANT AND HIS

ACQUITTAL VIDE ORDER DATED 19.4.2010, IT WAS INCUMBENT UPON THE RESPONDENTS TO APPLY THEIR MIND OVER THE FACTS AND CIRCUMSTANCES OF THE CASE AND THEN TO ARRIVE AT A CONCLUSION THAT AS TO WHETHER THE LAPSE ON THE PART OF THE APPLICANT SUPPRESSING THE AFORESAID FACT COULD BE CONDONED OR NOT.

8. IN THE FACTS AND CIRCUMSTANCES OF THE CASE, I AM OF THE CONSIDERED VIEW THAT BEFORE PASSING THE IMPUGNED ORDERS, THE RESPONDENTS SHOULD HAVE CONSIDERED THE APPLICANT'S CASE ON THE PRINCIPLES ENUNCIATED BY THE HON'BLE SUPREME COURT IN AVTAR SINGH'S CASE (SUPRA).

9. ACCORDINGLY, THE INSTANT OA IS ALLOWED. THE ORDERS DATED 17.1.2013 (ANN.A/1) AND 27.5.2013 (ANN.A/2) ARE HEREBY QUASHED. THE RESPONDENTS ARE DIRECTED TO RECONSIDER THE APPLICANT'S CASE IN THE LIGHT OF THE PRINCIPLES LAID DOWN BY THE HON'BLE SUPREME COURT IN AVTAR SINGH'S CASE (SUPRA). IN CASE THE APPLICANT IS ABLE TO ESTABLISH BEFORE THE COMPETENT AUTHORITY THAT THE LAPSE ON HIS PART WAS UNINTENTIONAL AND THE OFFENCE FOR WHICH HE WAS CONVICTED WAS TRIVIAL IN NATURE, THEN THE RESPONDENTS SHALL ISSUE OFFER OF APPOINTMENT TO THE APPLICANT IN VIEW OF THE POLICY GUIDELINES OF THE RAILWAYS. THE RESPONDENTS ARE FURTHER DIRECTED TO UNDERTAKE THE WHOLE EXERCISE WITHIN A PERIOD OF TWO MONTHS FROM THE DATE OF RECEIPT OF A COPY OF THIS ORDER. IN THE FACTS AND CIRCUMSTANCES OF THE CASE, THE DELAY IN FILING THE OA IS ALSO CONDONED.

10. THE OA STANDS DISPOSED OF IN ABOVE TERMS WITH NO ORDER AS TO COSTS.

(SURESH KUMAR

MONGA)

MEMBER (J)

R/