

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

**M.A. No.60/658/2018
O.A. No.060/371/2018**

Date of decision: 08.4.2019

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MRS. P. GOPINATH, MEMBER (A).**

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Ashok aged about 32 years, son of Sh. Bhim Singh, resident of village Bajana Khurd, Tehsil Ganaur, District Sonepat.

**... APPLICANT
VERSUS**

1. Union of India through the Secretary, Ministry of Communication and Information Technology, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Director General of Postal Services, Department of Post (Recruitment Division) Dak Bhawan, Sansad Marg, New Delhi.
3. The Superintendent of Post Offices, Ambala Division-133001.
4. The Superintendent of Post Offices, Sonepat Division, District Sonepat-131001.

... RESPONDENT

PRESENT: Sh. Vishal Yadav, counsel for the applicant.
Sh. Sanjay Goyal, counsel for the respondents.

ORDER (Oral)

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SANJEEV KAUSHIK, MEMBER (J):-

1. Present O.A. has been filed wherein the applicant has impugned order dated 29.9.2015 (Annexure A-8), whereby respondents have rejected his claim for appointment on furnishing false information and not disclosing that a criminal case was pending against him when he submitted documentation for verification. Along with the O.A., applicant has also moved M.A. No.60/658/2018 seeking condonation of delay of 572 days in filing the accompanying O.A.
2. This Court at the first instance issued notice in M.A. for condonation of delay to which the respondents have filed reply.
3. We have heard learned counsel for the parties.
4. We had also directed the respondents to produce original record.

5. Learned counsel appearing on behalf of the applicant vehemently argued that present selection arises out of notification, issued by the department on 21.2.2014 to fill up posts of Postal Assistant/Sorting Assistant/Postal Assistant (Saving Bank Control and Organization), Postal Assistant (Foreign Post of Organization). When said selection was annulled by respondents, then persons who were offered appointment approached Court of law which ultimately travelled upto Hon'ble Supreme Court in the case of **Monu Tomar vs. UOI & Ors.** (Civil Appeal No.10513 of 2016) decided on 13.7.2017. It is thereafter, considering the fact that selection has been restored, applicant moved present O.A. He further admitted that his candidature has been cancelled on 29.9.2015 (Annexure A-8) as he did not disclose the true facts and concealed information that on the date of submitting application form as well as attestation form, an FIR was pending against him. Learned counsel for the applicant submitted that since selection has been restored in the year 2017, therefore, delay may be condoned and the impugned order cancelling candidature of the applicant be quashed and set aside. He also submitted that inadvertently he has mentioned in reply to column No.11 in two of the forms that no criminal matter is pending against him whereas in one attestation form, he has disclosed that criminal matter is pending and he was also arrested. Therefore, he submitted that on this account respondents cannot cancel his candidature.

6. Learned counsel for the respondents vehemently opposed prayer to condone delay of 572 days. He submitted that applicant has not given plausible reasons to condone delay, therefore, the O.A. may be dismissed without going into the merit of the case. He submitted that

since applicant has furnished wrong information and has concealed material fact of his involvement in a criminal case, therefore, rightly his candidature has been rejected.

7. We have given our thoughtful consideration to the entire matter.

8. Admittedly, candidature of the applicant was rejected vide order dated 29.9.2015 (A-8) due to furnishing of false information. It was already notified in the advertisement that if any person furnishes wrong information, it may lead to disqualification of candidature. Despite rejection of his candidature in the year 2015, applicant did not approach Court of law. Other persons who were offered appointment, and their appointment was cancelled, approached Court of law. Thus, it can be said that applicant was not vigilant at that time. Even order of the Hon'ble Supreme Court dated 13.7.2017 comes in the way of the applicant for grant of benefit where Lordships said that benefit of judgment will be available to those who were offered appointment and since applicant was not offered appointment, therefore, this judgment does not apply to him. Issue also stands clinches by this very Bench in O.A. No.60/1228/2017 **Satish Kumar vs. U.O.I & Ors.** decided on 8.2.2019. Paras 10 to 12 are reproduced as under:-

10. The question that looms large before us is whether a candidate, who concealed the information by not filling in the requisite column of pendency of a criminal case, can seek invalidation of action of respondents in cancelling his candidature or not ?

11. The question is not whether the applicant is suitable for the post or not. The case pending against a person might not involve moral turpitude, but suppressing this information itself amounts to moral turpitude. In fact, the information sought for by the employer if not disclosed by the employee/candidate, as required in the application form, would definite amount to suppression of material information. In that eventuality, the service of the employee is liable to be terminated even if he stands acquitted/discharged later on. In

such circumstances, the Court should not perpetuate the fraudulent entry of such persons. The Lordships in the case of **Avtar Singh versus Union of India** (2016(8) S.C.C. Page 471 thrashed out the entire law on this issue. A Division Bench of the Hon'ble Apex Court in the case of **Jainendra Singh versus State of Uttar Pradesh & Ors.** (2012(8) S.C.C. Page 748) has referred the matter to the Larger Bench, when faced with the diversion views on the issue, and the matter was placed before the Hon'ble Three Judges in the above noted case and the reference reads as under:-

"29. As noted by us, all the above decisions were rendered by a Division Bench of this Court consisting of two Judges and having bestowed our serious consideration to the issue, we consider that while dealing with such an issue, the Court will have to bear in mind the various cardinal principles before granting any relief to the aggrieved party, namely:

29.1. Fraudulently obtained orders of appointment could be legitimately treated as voidable at the option of the employer or could be recalled by the employer and in such cases merely because the respondent employee has continued in service for a number of years, on the basis of such fraudulently obtained employment, cannot get any equity in his favour or any estoppel against the employer.

29.2. Verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to the post under the State and on account of his antecedents, the appointing authority if find not desirable to appoint a person to a disciplined force can it be said to be unwarranted.

29.3. When appointment was procured by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer and, therefore, it would create no equity in his favour or any estoppel against the employer while resorting to termination without holding any inquiry.

29.4. A candidate having suppressed material information and/or giving false information cannot claim right to continue in service and the employer, having regard to the nature of employment as well as other aspects, has the discretion to terminate his services.

29.5. Purpose of calling for information regarding involvement in any criminal case or detention or conviction is for the purpose of verification of the character/antecedents at the time of recruitment and suppression of such material information will have clear bearing on the character and antecedents of the candidate in relation to his continuity in service.

29.6. The person who suppressed the material information and/or gives false information cannot claim any right for appointment or continuity in service.

29.7. The standard expected of a person intended to serve in uniformed service is quite distinct from other services and, therefore, any deliberate statement or omission regarding a vital information can be seriously viewed and the ultimate decision of the appointing authority cannot be faulted.

29.8. An employee on probation can be discharged from service or may be refused employment on the ground of suppression of material information or making false statement relating to his involvement in the criminal case, conviction or detention, even if ultimately he was acquitted of the said case, inasmuch as such a situation would make a person undesirable or unsuitable for the post.

29.9. An employee in the uniformed service presupposes a higher level of integrity as such a person is expected to uphold the law and on the contrary, such a service born in deceit and subterfuge cannot be tolerated.

29.10. The authorities entrusted with the responsibility of appointing Constables, are under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of a Constable and so long as the candidate has not been acquitted in the criminal case, he cannot be held to be suitable for appointment to the post of Constable.

30. When we consider the above principles laid down in majority of the decisions, the question that looms large before us is when consideration of such claim by the candidates who deliberately suppressed information at the time of recruitment, can there be different yardsticks applied in the matter of grant of relief.

31. Though there are very many decisions in support of the various points culled out in the above paragraphs, inasmuch as we have noted certain other decisions taking different view of coordinate Benches, we feel it appropriate to refer the above mentioned issues to a larger Bench of this Court for an authoritative pronouncement so that there will be no conflict of views and which will enable the Courts to apply the law uniformly while dealing with such issues."

While penning-down the judgment, the Lordships have travelled through various judgments rendered by the Hon'ble Supreme Court or by the various courts on the issue and have taken a very serious note that if a person conceals material information, then he renders himself debarred from such appointment. In paras 29, 32, 34 & 35, the Lordships have recorded reasoning and importance of verification of antecedents, which reads as under:-

"29. The verification of antecedents is necessary to find out fitness of incumbent, in the process if a declarant is found to be of good moral character on due verification of antecedents, merely by suppression of involvement in trivial offence which was not pending on date of filling attestation form, whether he may be deprived of employment? There may be case of involving moral turpitude/serious offence in which employee has been acquitted but due to technical reasons or giving benefit of doubt. There may be situation when person has been convicted of an offence before filling verification form or case is pending and information regarding it has been suppressed, whether employer should wait till outcome of pending criminal case to take a decision or in case when action has been initiated there is already conclusion of criminal case resulting in conviction/acquittal as the case may be. The situation may arise for consideration of various aspects in a case where disclosure has been made truthfully of required information, then also authority is required to consider and verify fitness for appointment. Similarly in case of suppression also, if in the process of verification of information, certain information comes to notice then also employer is required to take a decision considering various aspects before holding incumbent as unfit. If on verification of antecedents a person is found fit at the same time authority has to consider effect of suppression of a fact that he was tried for trivial offence which does not render him unfit, what importance to be attached to such non-disclosure. Can there be single yardstick to deal with all kind of cases?

32. No doubt about it that once verification form requires certain information to be furnished, declarant is duty-bound to furnish it correctly and any suppression of material facts or submitting false information, may by itself lead to termination of his services or cancellation of candidature in an appropriate case. However, in a criminal case incumbent has not been acquitted and case is pending trial, employer may well be justified in not appointing such an incumbent or in terminating the services as conviction ultimately may render him unsuitable for job and employer is not supposed to wait till outcome of criminal case. In such a case non disclosure or submitting false information would assume significance and that by itself may be ground for employer to cancel candidature or to terminate services.

Xx xx xx

34. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.

35. Suppression of 'material' information presupposes that what is suppressed that 'matters' not every technical or trivial matter. The employer has to act on due consideration of rules/instructions if any in exercise of powers in order to cancel

candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.

And while summing up the findings, the Lordships have recorded findings in para 38, which reads 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."

In case of **Devendra Kumar versus State of Uttarakhand & Ors.** (2013(9) S.C.C. Page 363, the Hon'ble Apex Court has considered the similar proposition with regard to a candidate who had applied for the post of constable in state of Uttarakhand and did not disclose pendency of criminal case and also filed affidavit stating contrary and subsequently when it was found that he was involved in a criminal case, the department cancelled his appointment as he had suppressed the material fact that he was involved in a criminal case involving moral turpitude. Court did not find any ground for sympathy with him and after analyzing law on the subject recorded its finding in para 26 which reads as under:

"26. The courts below have recorded a finding of fact that the appellant suppressed material information sought by the employer as to whether he had ever been involved in a criminal case. Suppression of material information sought by the employer or furnishing false information itself amounts to moral turpitude and is separate and distinct from the involvement in a criminal case. In view of the above, the appeal is devoid of merit and is accordingly dismissed."

In the light of the above judicial pronouncements, it can safely be concluded that if an aspirant applies for employment and furnishes incorrect information or suppresses material

information, which is required for verification of antecedents, then he can be non-suited for appointment. Suppression of material information presupposes that what is suppressed that "matters" not every technical or trivial matter. The employer has to act on due consideration of rules/instructions, if any, in exercise of powers in order to cancel candidature or for terminating the services of an employee. Therefore, a single yardstick cannot be taken as a measure to deal with all cases. But suppression of an information and not filling up the requisite columns which are mandatory, rendered an aspirant to declare him unfit for the post whether his offence is minor or major which will be decided after the decision by the criminal court. It is necessary to reproduce para 12(a) & 12(b) of the attestation form and the warning given at the top of the attestation form:-

" 12 (a) Have you ever been arrested, prosecuted, kept under detention or bound down find convicted by a Court of law for any offence, or debarred/disqualified by any public service Commission from appearing at its examination/selection or debarred from any examination rusticated by any University or any authority/Institution?
 (b) In any case pending against you in any court of law, University or any other education authority/institution at the time of failing up this attestation form:-

(if the answer to (a) or (b) is "Yes' full conviction sentence etc. and the nature of the case pending in the Court/University/educational authority etc. at the time of filling up this form should be given).

Warning: The furnishing of false information or suppression of any factual information in the attestation form should be disqualification, and is likely to be render the candidate unfit for employment under the Government.

2. If detained, convicted, debarred etc. subsequent to the completion and submission of this form the details should be communicated immediately to the Union Public Service Commission or the authority to whom the attestation form has been sent earlier, as the case may be, failing which it will be deemed to be a suppression of a factual information.
3. If the fact that false information has been furnished or that there has been suppression of any factual information in the attestation form comes to notice, at any time, during the service or a person, his services would be liable to be terminated".

A perusal of the above mentioned extracted portion makes it clear that a warning has already been made viral to the candidates not to furnish false information or suppress any information in the attestation form which if done will be a disqualification and is likely to render a person unfit for any government service. Column 12(b) makes it clear that a candidate has to inform, whether a case is pending against him or not. In the present case, when the applicant submitted attestation form, he did not disclose that an FIR No.302 dated 17.5.2013 under sections 323, 325, 34 of IPC was pending against him at Police Station Sadar, Bahadurgarh, in which subsequently, he was acquitted by order dated 25.2.2015. But fact remains that on the date when the applicant submitted his attestation form, he did not disclose the factum of pendency of

criminal case. This fact came to the notice of the department only when they forwarded the form of the applicant for verification of antecedents to Deputy Commissioner, Jhajjar, who after obtaining the police report informed the department that in fact a criminal case was pending against him. Based upon the information received from the Deputy Commissioner, the respondents issued a show cause notice and thereafter rejected his candidature by removing his name from the merit list for the post in question.

12. In view of above discussion, we are of the considered view that since the applicant has concealed the material information from the respondents of registration of an FIR against him, while submitting his attestation form, though he was acquitted in the criminal case at a later stage, but the fact remains that he knowing fully has withheld the information which/is important and mandatory for the employer to form a view that whether they will employment to such candidate or not. Withholding of material information sought by the employer or furnishing false information itself amounts to moral turpitude and is separate and distinct from the involvement in a criminal case. Dishonesty should not be permitted to bear the fruit and benefit those persons who have frauded or misrepresented themselves. It is equally settled by the Lordships that sympathy have no role to play while discharging judicial functions. Thus, the applicant deserves no sympathy and the ratio of law laid down by the Hon'ble Apex Court in the pointed cases applies on all fours to the facts and circumstances of the instant OA. Accordingly, the OA is found to be bereft of any merit and the same is dismissed, leaving the parties to bear their own costs.

9. In terms of clause of the advertisement respondents have rejected his candidature, therefore, we do not find any fault in the impugned order and do not find reason to condone huge delay of 572 days. Accordingly, the M.A. as well are O.A. is dismissed.

(P. GOPINATH)
MEMBER (A)

Date: 08.4.2019.
Place: Chandigarh.

‘KR’

(SANJEEV KAUSHIK)
MEMBER (J)