

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00770/2017

Jabalpur, this Friday, the 26th day of April, 2019

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

Upendra Singh Bundela, S/o Shri Santosh Singh *alias* Jitendra Singh, presently aged about 34 years, R/o Village Kadoha, Post-Ganj, PS Bamitha, District Chhatarpur (M.P.) PIN – 471105

-Applicant

(By Advocate – Shri Sriharsh Nahush Bundela)

V e r s u s

1. General Manager, West Central Railway, Bhopal (MP).
2. The Divisional Railway Manager, West Central Railway, Jabalpur, Dist. Jabalpur, M.P., 482001.
3. Divisional Railway Manager (Personal Branch), West Central Railway, Habibganj, Bhopal (MP) – 462024

- Respondents

(By Advocate – Shri Arun Soni)

(Date of reserving order : 20.11.2018)

ORDER

By Ramesh Singh Thakur, JM.

The applicant is aggrieved by communications dated 15.05.2017 (Annexure A-1) and 17.07.2017 (Annexure A-2),

whereby he has been informed about rejection of his candidature for appointment under the Railways.

2. Aggrieved by the same, the applicant has sought for the following reliefs:

“8.1) Direct the Respondent No. 3 to recall the order/letter dated 15.05.2017 A/1 and 17.07.2017 A/2 and issue directions towards immediate appointment of the Applicant, with retrospective effect since date of Notification issued by Respondent No.2 being 17.12.2013, as the land acquisition of the family of the Applicant was completed prior to the same as manifested by the Award dated 14.11.2012, with all service benefits including salary, to the post of APM in Traffic Department, as per the pay scale indicated in letter dated 16.12.2016 (Annexure A-19) and in compliance with the Notification dated 17.12.2013 (Annexure A-16) issued by the Headquarter, West Central Railway, Jabalpur vide Notification No.WCR/O-HQ/Recruitment/122) Land Acquisition, in the interest of justice;

And

8.2) Direct Respondents herein for implementing the “National Rehabilitation and Re-settlement policy, 2007” framed under section 20 (O) of “The Indian Railway Act, 1989”;

8.3) Set aside the order/letter dated 15.05.2017 and 17.07.2017 passed by Respondent No.3 in the interest of justice; And

8.4) Any other writ, direction or order as may be deemed fit in the facts and circumstances of the case may also be issued together with awarding cost of these proceedings.”

3. Brief facts of the case that the respondents issued notification dated 17.12.2013 (Annexure A-16) for appointment to one family member whose land was acquired by the Railways. The applicant, vide letter dated 16.12.2016 (Annexure A-19), was asked for screening on 29.12.2016 alongwith testimonials for appointment in PB-1 in the scale of Rs.5200-20200 + Grade Pay Rs.1800/-. He was found fit for appointment on the post of APM in Traffic Department and was directed to complete certain formalities for his joining.

4. The applicant was provided with an Attestation Form (Annexure A-23) and was directed to fill the same. In reply to column No.12 (a) of the Attestation Form regarding arresting, prosecution or conviction etc., the applicant answered in 'Yes'. He has submitted copy of the judgment passed by the Judicial Magistrate First Class (JMFC), Chhatarpur dated 13.11.2007 in Criminal Case No.692/01 (Annexure A-13), whereby the applicant was acquitted from the charges registered under Section 323, 294, 341 34 and 506 (B) of the IPC. However, vide order dated 15.05.2017 (Annexure A-1), the respondents have rejected his candidature on account of his past prosecution in the aforesaid cases.

5. The applicant submitted a representation dated 28.06.2017 (Annexure A-25), wherein he has clarified that he was fully acquitted by the Court. However, the same was rejected vide order dated 17.07.2017 (Annexure A-2).

6. Learned counsel for the applicant submits that the impugned order has been passed without application of mind, as the respondents have failed to notice that acquittal of the applicant was not on compromise and he was honorably acquitted from the charges. The applicant did not conceal any fact in the Attestation Form and promptly disclosed his prosecution by submitting copy of the judgment dated 13.11.2007.

7. The respondents, in their reply, have submitted that as per Rule 101 of IREM Vol-I (Annexure R-1), the appointing authority, before issuing appointment orders to a person, should satisfy himself that the character and antecedents of a person are such as to do not render him unsuitable for appointment under the Railways. Therefore, after considering upon such satisfaction, the competent authority has passed the impugned orders (Annexure A-1 & A-2), as the applicant was prosecuted under grave sections of IPC i.e. 341, 294, 323, 34 and 506 (B) of the IPC and was acquitted on compromise.

8. Learned counsel for the respondents placed reliance on a decision of Hon'ble High Court of Madhya Pradesh at Jabalpur in W.P. No.9899 of 2013 (**M/s. Satkar Caterers and others vs. Union of India and another**) decided on 10.06.2013 and submitted that the candidature of the applicant was rejected in terms of Rule 101 of IREM Vol-I, which has not been challenged in this O.A.

9. The applicant has filed his rejoinder and reiterated his earlier stand. It has been submitted that the respondents have misinterpreted that the acquittal of the applicant was based on compromise, whereas he was cleanly acquitted by the competent Court.

10. We have heard the learned counsel for the parties and perused the pleadings and the documents available on record.

11. Conjunctive perusal of pleadings makes it clear that applicant was offered appointment on account of acquisition of his land. He was directed to submit Attestation Form (Annexure A-23). Perusal of the same, makes it very clear that there was specific clauses under clause 12 where the respondents have sought for information regarding prosecution, detention, conviction or any

fine being imposed by the court of law from selected candidate, which the applicant has answered 'Yes'. In column (c) of clause 12, the applicant has mentioned that the case registered in the year 2001 was ended in compromise in November, 2007. A copy of the order had also been annexed by him with the Attestation Form.

12. The reason for rejecting the case of the applicant is that his acquittal was on compromised basis, which cannot said to be a clean/honourable acquittal. No other reasons have been assigned by the respondents in the impugned orders at Annexure A-1 & A-2. The respondents have not at all considered the judgment passed by the learned JMFC, Chhatarpur in a criminal case, whereby the applicant was acquitted from all the charges and did not arrive at any conclusion that whether his appointment will bring bad name to the organisation and whether for a petty offence, when he was young, will make him entitle, throughout his life, being criminal. To our mind, the applicant cannot be put in the slot of a person having 'criminal antecedents' or depravity of character.

13. The incidence for which the applicant was prosecuted under Section 341, 294, 323, 34 and 506 (B) of the IPC, is of 2001, when the applicant was 20 years of age. There were three complainants namely; Dharmendra, Devendra and Shailendra, who were

contesting the case against the applicant and three others accused. Meanwhile, a compromise was made between the two complainants Dharmendra and Devender and the accused and the case was under trial in respect of Shailendra (complainant) and the accused. The learned JMFC adjudicated upon the issue and after appreciating the entire matter in its proper perspective, has acquitted all the four accused from the charges levelled against them, vide judgment dated 13.11.2007 (Annexure A-13).

14. This court at the end of the day is a court of equity. Constitutional application may demand examination of facts case by case, role by role while dealing with criminal law interfacing with service jurisprudence. In the present case, our conscious does not allow on the principle of proportionality, as the respondents have ignored that fact that the applicant was only 20 years old when he was allegedly involved in the said incidence and also not arrived at any conclusion that whether prior acquittal of the applicant will render him unsuitable for appointment.

15. The issue of condonation of minor indiscretion of youth was dealt with by the Hon'ble Apex Court in the case of **Commissioner of Police and others vs. Sandeep Kumar, (2011)**

4 SCC 644. The Hon'ble Apex Court in Para 8 & 9 of the judgment has held 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 be 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.”

Though the case before the Hon'ble Apex Court was regarding the concealment/suppression of involvement in criminal case, whereas there is no such dispute in the instant case, however, the Hon'ble Apex Court has taken a view that there should be reformatory approach by the authorities while dealing with the cases of the minor indiscretions made by young people, which admittedly, has been ignored by the authorities while rejecting the candidature of the applicant.

16. The learned counsel for the respondents argued that Rule 101 of IREM Vol-I empowers the appointing authority to satisfy himself that the character and antecedents of a person are such as to do not render him unsuitable for appointment under the Railways before issuing appointment orders to a person and unless the said Rule is struck down, no relief can be granted to the applicant. Obviously, the appointing authority is the sole authority to adjudge the suitability of a person before issuing appointment order. However, the same shall not be in a mechanical manner. In the present case, the action of the applicant in rejecting the candidature of the applicant by stating that the applicant was not acquitted cleanly, is not sustainable in the eyes of law as the respondents have not spelt out in the impugned order that how and in what manner, the prior acquittal of the applicant has rendered him unfit for appointment. Moreover, the offence for which the applicant is alleged to have committed pertains to 2001, which resulted in acquittal in 2007.

17. In view of the above, the impugned orders dated 15.05.2017 (Annexure A-1) and 17.07.2017 are quashed and set aside. The respondents are directed to consider the candidature of the applicant for appointment to the post of APM in Traffic

Department, if otherwise eligible, within a period of two months from the date of receipt of a certified copy of this order.

18. The O.A is allowed accordingly. There shall be no order as to costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

am/-