

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**  
**CIRCUIT SITTING:INDORE**

**Original Application No.201/00231/2018**

Indore, this Friday, the 30<sup>th</sup> day of August, 2019

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

Kapil Kumar Lodha  
S/o Parmanand Lodha  
Aged 30 years  
Bhaghana, Neemuch (M.P.)  
PIN Code 458441

**-Applicant**

(By Advocate –**Shri A.N. Bhatt with  
Shri C.P. Lashkari**)

**V e r s u s**

Union of India & Others  
Represented by  
1. General Manager  
Western Railway  
Head Quarter Office  
Churchgate Mumbai 400020

2. Divisional Rail Manager  
Western Railway  
Divisional Office  
Do Batti Ratlam 457001

**- Respondents**

(By Advocate –**Shri Surendra Gupta**)

*(Date of reserving the order:27.08.2019)*

## **ORDER**

**By Ramesh Singh Thakur, JM:-**

This Original Application has been filed by the applicant against the order dated 17.12.2017 (Annexure A-1) whereby the case of the applicant for appointment to the post of Assistant Loco Pilot has been rejected.

2. The applicant has prayed for the following reliefs:-

*“8. The letter dated 27-12-2017 through which appointment deny may kindly be quashed.*

*8.2 The respondents may kindly be directed to issue appointment letter to the applicant.*

*8.3 All the consequential benefits may kindly be allowed.*

*8.4 Any other relief deemed fit in the circumstances and in the interest of justice may kindly be allowed.*

*8.5 Cost of this OA may kindly be awarded.”*

3. The case of the applicant is that the applicant was issued an offer of appointment on 20.05.2017 to the post of Assistant Loco Pilot on the basis of order dated 20.03.2015 passed by this Tribunal in O.A. No.855/2013. The applicant has accepted the offer of appointment and submitted all necessary documents to the respondent-

department. On examination of documents including Police Verification it was observed that two cases were registered against the applicant. One Case No.589/2005 was registered which was finalized on 20.05.2006 by imposing penalty of Rs.500/-. Another case No.1803/2012 was registered against the applicant in which he was acquitted from all the charges on 04.04.2013 (Annexure A/4) on the basis of compromise. The respondent No.2 has rejected the claim of applicant for appointment. Hence, this Original Application.

**4.** The respondents have filed their reply to the Original Application. It has been stated by the replying respondents that Annexure A/1 dated 21.12.2017 is not an appointment letter but it is a letter which has been issued after character verification of applicant and prior to appointment. The said letter states that as criminal cases were found against applicant therefore he has not been found eligible for government service. It is further submitted that two criminal cases were found registered against the applicant

during his character verification. One Criminal Case No.859/2005 under Section 323, 294, 506, 34 of IPC and 3(1) 10 of SC/ST Act wherein vide order dated 20.05.2006 he was convicted u/s 323 and fine of Rs.500/- was imposed. Another case registered as Criminal Case No.1803/2012 under Section 323, 294, 506, 34 IPC in which applicant was acquitted by learned Judicial Magistrate First Court Neemuch vide order dated 04.04.2013 on the basis of compromise. It has been submitted by the replying respondents that the post of Assistant Loco Pilot is very sensitive, high security, safety and important post because this post is connected with life safety of general public and economy. Before appointing any person on this post his character verification is necessary because in this post the person with higher integrity is appointed. It has been submitted that Government has issued guidelines for appointment of persons in government services and as per guidelines person having criminal background cannot be appointed in

government service and railway department being central government department is bound to abide by the conditions and guidelines issued in regard to appointment. During character verification cases are found against applicant which shows that applicant is a habitual offender and convict also. Therefore, respondent has rightly not found him suitable for government service. It has been further submitted by the respondents that after being convicted in the year 2005 the applicant again committed an offence in the year 2012 at the age of 25 which seems that the applicant does not hesitate in repeating the same nature of offence. It has been specifically submitted by the respondents that the applicant has relied upon the judgment is not applicable in this case. The applicant has committed offence are grave and of not minor nature.

**5.** The applicant has submitted rejoinder to the reply filed by the respondents in which the applicant has reiterated its earlier stand taken in the Original Application.

6. The respondents have filed additional reply to the rejoinder filed by the respondents wherein it has been submitted that the as per Para 3.1 (C) of Railway Board letter dated 21.04.1983 (Annexure R/1) states that normally a person convicted of an offence involving moral turpitude should be regarded as ineligible for government service. Therefore as per the policy applicant is not entitled for appointment and the same was communicated to him on 27.12.2017 (Annexure A/1). It has been further submitted by the respondent-department that the rulings of Hon'ble Supreme Court is not all applicable in the present case as there is no concealment of facts or wrong declaration but it is a case where applicant has been convicted. It has been submitted that in the year 2005 applicant was 18 years of age and he was a student but no document in regard to age proof and student proof has been filed by applicant.

7. We have heard the learned counsel for both the parties and have also gone through the documents annexed with the pleadings.

8. From the pleadings it is clear that the applicant was offered an appointment in the respondent-department and he had submitted all his documents. It is also an admitted fact that the applicant has been acquitted from criminal case No.1803/2012 registered under Section 294, 323, 34 of IPC, on the basis of compromise on 04.04.2013. Section 320 of Criminal Procedure Code under heading Compounding of offences-“causing hurt” under Section 323 is to be compounded by a person to whom the hurt is caused. In the instant case, the compromise has been done by the victim. So, as per Section 320(8), the composition of an offence under this Section shall have the effect of an acquittal of the accused with whom the offence has been compounded. So from this clear position in the criminal law, the applicant has been acquitted for all intents and purposes. In the instant case, the incident is of 2012 when

the applicant was young boy and compromise was done on 04.04.2013 (Annexure A/4). From Annexure P/1, it is clearly mentioned that no case is pending against the applicant at the time when he was offered an appointment on 20.05.2017 (Annexure A/3). Moreover, the applicant is of young age and has acquitted on the basis of compromise with the complainant which the law permits. So, such compromise amounts to acquittal for all intends and purposes under Section 320(8). The applicant has relied upon the judgment passed by Hon'ble High Court of Madhya Pradesh, Bench at Gwalior in the matters of *Usha Narayan vs. State of M.P. and 7 others* M.P.L.J. (1993) 969. In the case of *Commissioner of Police vs. Sandeep Kumar* AIR 2011 SCW 3601 it has been held by the Hon'ble Apex Court that at that age young people often commit indiscretions, and such indiscretions can often been condoned and such minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives. In the instant case, the applicant has

been acquitted by the competent court of law on the basis of compromise done by the complainant. The criminal case related to minor offence and for this it will be wholly unjust to brand the applicant as criminal all his life.

**9.** In the instant case, the applicant was offered an appointment on 20.05.2017 (Annexure A/3) at that point no criminal case was pending as the incidence is of the year 2012 and was compromised on 04.04.2013.

**10.** Regarding the submission of the respondent-department that the post of Assistant Loco Pilot is very sensitive, high security, safety and important post because this post is connected with life safety of general public and economy. Before appointing any person on this post his character verification is necessary because in this post the person with higher integrity is appointed, if the impugned order Annexure A/1 is seen we do not find any plausible reasons whereby the suitability of the applicant has been dealt with by the respondent-department. Suitability of the applicant to the post concern has to be dealt with to the

effect that how the acquittal of the applicant tantamount as unsuitable to the post concern. The relevant para of the judgment of Hon'ble High Court of Madhya Pradesh, Principal Seat at Jabalpur in the matters of **Rakesh Kumar Patel vs. Union of India and others** is as under:-

*“6. In the present case, the criminal case was registered against the petitioner on a report made by Meghraj who, during the trial, compromised the same with him and the offence under section 324/34 of the Indian Penal Code was compounded vide order dated 12.3.2006 passed by the Sessions Judge, Jabalpur. Section 320(8) of the Code of Criminal Procedure 1973 clearly provides that the composition of an offence under the section shall have the effect of acquittal with whom the offence has been compounded. The criminal case related to minor offence and for this it will be wholly unjust to brand the petitioner as criminal all his life. The respondents also, without going into the question regarding suitability of the petitioner for appointment to the post, should not have cancelled his selection solely on the ground that he did not declare in the verification of the fact about his criminal case which was registered against him. Apparently, the Tribunal has not correctly appreciated the decisions Commissioner of Police (supra) and Ram Kumar (supra). We, therefore, find merit in the petition and quash the impugned order dated 12.01.2012 passed by the Tribunal as well as the communication dated 12.10.2008 cancelling the selection of petitioner on the post of Mechanist. The respondents shall appoint the petitioner on the post he was selected within a period of forty five days from today. ”*

**11.** The learned counsel for the applicant has also relied upon the order passed by this Bench in O.A. No.200/898/2013 (**Chandan Thakur vs. Union of India**

*and others*) whereby this Bench while relying upon the judgment passed by the Hon'ble Supreme Court in the case of *Avtar Singh vs. Union of India and others* (2016) 8 SCC 471 and has allowed the said O.A. as the case was of trivial in nature.

12. The Hon'ble Apex Court in the matters of *Avtar Singh* (supra) has laid down the principles 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.”*

**13.** In the instant case as per guidelines given by the Hon'ble Apex Court in *Avtar Singh* (supra) 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 is better placed as the applicant has been acquitted as per law.

**14.** In the instant case, the applicant was already acquitted by the competent court of law, for the offences

under Section 323/34 IPC after going through the procedural aspect u/s 320 Cr.P.C. Offence under Section 323 of IPC is a bailable offence and is trivial in nature. From the impugned order Annexure A/1, we do not find any reasons that how the unsuitability of the applicant has been judged by the respondent-department as the Hon'ble Apex Court has held 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. 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.”*

15. In view of the above, we are of the opinion that the applicant is very young in age and the applicant has been acquitted as per law by the competent court of law and the incident is of 2012 and offer of appointment was issued on 20.05.2017. Furthermore, the offences for which the applicant was acquitted is of trivial in nature and is a bailable offence. Regarding the argument put forth by the respondents that the applicant was convicted under the offence on 20.05.2006 with a fine of Rs.500/-. It has been

specifically submitted mentioned in rejoinder by the applicant that the said offence was not serious in nature and the offence was involved in dispute between the students, which is not grave in nature and not involved in moral turpitude. Moreover it is admitted fact that the said incident of dispute amongst the students has taken place in the year 2006 i.e. before 13 years. The learned counsel for the applicant has relied upon the judgment passed by Hon'ble High Court of Madhya Pradesh, in the matters of *Usha Narayan* (supra) and also in the case of *Sandeep Kumar* (supra) it has been specifically held by the Hon'ble Apex Court that at that age young people often commit indiscretions, and such indiscretions can often be condoned and such minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives. Moreover, the case of the applicant is at better footing to the fact that the applicant has not concealed or made any false declaration while filling up the attestation form. Further, we do not find any reasons

as per settled legal position as discussed above (supra), the said impugned order is illegal and unlawful and is quashed and set aside.

**16.** Resultantly, the Original Application is allowed. Respondents are directed to reconsider the case of the applicant for appointment for the post concern, 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**

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