

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00128/2017

Jabalpur, this Tuesday, the 9th day of July, 2019

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

Avinash Kumar Sharma

Age 29 years,

S/o K.K. Sharma

Occupation: Student

R/o H.No.568 Manegao

Champanagar, Westland

Khamria Jabalpur (M.P.) 482011

-Applicant

(By Advocate –**Shri N.S. Ruprah**)

V e r s u s

1. Union of India, Through the Secretary Ministry of
Defence South Block New Delhi 110001

2. Director General of Quality Assurance
Department of Defence Production
Ministry of Defence
Government of India,
New Delhi 110011

3. Controller of Quality Assurance (Weapons)
Ministry of Defence (DGQA) Jabalpur 482011

4. Deputy Controller (ADM) CQAW,
P.O. G.C.F. Jabalpur 482011

- Respondents

(By Advocate –**Shri S.P. Singh**)

(Date of reserving the order:16.11.2018)

ORDER

By Ramesh Singh Thakur, JM:-

This Original Application has been filed by the applicant against the order dated 21.01.2017 (Annexure A-1) passed by Director General of Quality Assurance, New Delhi communicated by Controller of QA(W) Jabalpur (respondent No.2 and 3) whereby the case of the applicant has been rejected.

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

“8. To quash the impugned order, Annexure A-1 dt. 19.01.17/21.01.17 denying the appointment;

8.2 To order the respondents to appoint the applicant on the post of Junior Engineer keeping him in the same seniority position as is given to the others appointed in the same selection giving all benefits like arrears of pay, seniority etc.;

8.3 To pass such other order as it may deem fit under the circumstances of the case.”

3. The case of the applicant is that after being selected the applicant was denied the appointment on the basis of character's verification report received from District Magistrate Jabalpur, (M.P.) and allegation of hiding information about prosecution in attestation form. The

applicant moved to this Tribunal vide O.A. No.200/00223/2016 which was allowed on 13.06.2016 (Annexure A-11) whereby the respondents were directed to offer appointment to the applicant. The Government moved to Hon'ble High Court vide Writ Petition No.18097/2016 which was disposed of on 16.12.2016 (Annexure A/12) and quashed the order of Tribunal "only to the extent it directs for issuing an order of appointment instead remand the matter back to the department concerned with a direction to reconsider the entire matter in the backdrop of the law laid down in the case of Avtar Singh (supra)". The submission of the applicant is that as per direction of the Hon'ble High Court it is clear that the respondents should themselves take a decision to appoint. In these circumstances the applicant file a representation dated 19.12.2016 (Annexure A-13) which has been rejected by way of impugned order dated 19.01.2017/21.01.2017 (Annexure A-1). The submission of the applicant is that however the impugned order dated

19.01.2017 (Annexure A/1) has been passed by respondent No.2 denying the appointment to the applicant on totally extraneous considerations and without considering guidelines given by the Hon'ble Apex Court and by the Hon'ble High Court in this very case. The extraneous material has been made the basis of conclusion of the respondent No.2. It has been submitted by the applicant that the alleged incident is of 10.05.2009 i.e. more than 7 year old. The incident alleged at the time when the applicant was 21 years and 6 months old. Applicant was definitely a very young and innocent boy. The offences alleged are trivial in nature. Section 294 (abusing) and 323 (minor hurt like slapping etc.), both offences alleged against the applicant are bailable and triable by any magistrate. The applicant was honourably acquitted and the complainant withdrew his complaint and matter was compromised and the applicant was never arrested or detained. Further submission that the material not formed part of the record (affidavit) has been relied upon.

4. The respondents have filed their reply to the Original Application. In the preliminary submission, it has been stated by the replying respondents that impugned order dated 19.01.2017 has been issued by the office of respondents after due consideration of Rule position, nature of job and judgment passed by Hon'ble Apex Court. It has been submitted by the replying respondents that the respondent-organization being a Defence Production Unit and the appointment of the applicant is to the post of JE (QA), a sensitive post for which detailed antecedent and character verification is prescribed. So, the applicant has suppressed the material information and there is suspicion on conduct of applicant. Hence applicant is not fit for appointment in the establishment of the respondent in any post and the applicant has no legal right to claim appointment on the post in which he was selected. The further submission of the replying respondents is that the respondent is a DGQA Organization under department of Defence Production, Ministry of Defence and is

primarily engaged in quality assurance of battle field equipments. The respondent-organization discharge sovereign function. The applicant applied for appointment of JE (QA) appeared for the written examination as well as in the interview but he did not find place in the main selection list and his name appeared in the waiting list. Due to non joining of an initially selected candidate, the respondent considered the name of the applicant for appointment from the waiting list.

5. That after selection process, the blank attestation form was issued to the applicant and attestation form submitted by the applicant duly filled in and signed, were forwarded to civil authorities i.e. District Magistrate Jabalpur (MP) and after due verification sent the report vide letter dated 03.06.2015 (Annexure P/2). That CQAW Jabalpur has forwarded the attestation form of the applicant to the concerned District Magistrate for detailed verification. The verification report of the applicant was received from the office of District Magistrate Jabalpur

wherein it was observed that at point No.12(b) of the attestation form, the applicant has replied negatively, whereas in the police verification it was found that a criminal case was registered against the applicant in the Police Station Khamriya, Jabalpur and he was prosecuted in the case under IPC under Section 294, 323 and 34 vide case No.86/09. However, after compromise with complainant, he was acquitted from the court of Judicial Magistrate, Jabalpur on 19.09.2011. The copy of the verification is annexed as Annexure P/2 (07.05.2015). The applicant has submitted an affidavit on 21.03.2015 before the Superintendent of Police, Jabalpur which is annexed Annexure P/4, which has been forwarded by the office of DM, Jabalpur along with police verification report. So the applicant has specifically stated in the affidavit that no criminal case has been registered against the applicant before any police station and no criminal case is pending against him before any court within the country as well as in the State of Madhya Pradesh. So, after considering the

report the Organization cancelled the candidature of the applicant as the applicant was willfully and deliberately suppressed the material information regarding registration of criminal case for gaining employment and while filling the attestation form he has made a false information regarding registration of criminal case against the applicant and the applicant was not found suitable for appointment. Though applicant was acquitted but the acquittal cannot be regarded as honourable acquittal or exoneration on merit and accordingly the candidature of the applicant was cancelled. The competent authority on the basis of principle laid down in the Hon'ble Supreme Court order, considered the case of the applicant keeping in view the nature of post of JE(QA) and the duties to be rendered by the applicant has issued speaking order, stating that the applicant is not suitable candidate for the post of JE(QA).

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

7. From the pleadings itself it is clear that there is no dispute regarding the fact that the applicant is an Engineer having done his B.E. (Mechanical Engineering) and the applicant has done vocational training in Vehicle Factory Jabalpur vide certificate dated 05.07.2008 and 01.08.2009 (Annexure A/4). It is also not in dispute that the applicant was declared successful in the written examination dated 30.06.2013 and also in interview held on 09.09.2013. It is also not in dispute that the applicant was to be given an offer of appointment vide letter dated 05.02.2015 (Annexure A/7). With this letter a blank attestation form which was to be filled up by the applicant. The applicant has filled up the attestation form. The letter dated 12.02.2015 alongwith copy of attestation form which is annexed as Annexure A/8.

8. The respondent department has placed on record the attestation form and as per Column 12(a) the following has been mentioned, which is as under:-

- | | | | |
|--------|--------|--|--------------------|
| 12.(a) | (i) | Have you ever been arrested? | Yes /No |
| | (ii) | Have you ever been prosecuted? | Yes /No |
| | (iii) | Have you ever been kept under detention? | Yes /No |
| | (iv) | Have you ever been bound down? | Yes /No |
| | (v) | Have you ever been fined by a Court of Law? | Yes /No |
| | (vi) | Have you ever been convicted by a Court of Law for any offences? | Yes /No |
| | (vii) | Have you ever been debarred from any examination or rusticated by any University, or any other educational authority/Institution? | Yes /No |
| | (viii) | Have you ever been debarred/disqualified by any Public Service Commission/Staff Selection Commission for any of its examination/selection? | Yes /No |
| | (ix) | Is any case pending against you in any University or any other educational Authority/Institution at the time of filling up this Attestation Form? | Yes /No |
| | (x) | Is any case pending against you in any University or any other educational Authority/Institution at the time of filling up this Attestation form? | Yes /No |
| | (xi) | Whether discharged/expelled/withdrawn from any Training Institution under the Government or otherwise? | Yes /No |
| (b) | | If the answer to any of the above mentioned questions is 'Yes' give full particulars of the case/arrest/detention /fine/conviction/sentence/punishment | Not Applicable |

etc. and/ or the nature of the case pending in the Court/University/ Educational Authority etc. at the time of filling up of this form.

Note:- (i) Please also see the 'warning' at the top of this Attestation Form.

(ii) Specific answers to each of the question should be given by striking out 'Yes' or 'No' as the case may be."

9. From this attestation form, it is clear that question 12(a)(ii) which answer is written as 'No'. Regarding that 'have you ever been prosecuted?' And secondly as per Column 12 (a) (ix) the answer is 'No'. In the question to the fact that 'is any case pending against you in any Court of Law at the time of filling up this Attestation Form?' The main reason given for cancellation of candidature of the applicant is that the applicant has willfully and deliberately suppressed the material information regarding registration of criminal case against the applicant for gaining employment and while filling up the attestation form the applicant has filled false information regarding registration of the case.

10. It is relevant to mention that this attestation form has been filled up on 12.02.2015 and the applicant has been acquitted from criminal case No.86/2009 registered under Section 294, 323, 34 of IPC, on the basis of compromise on 19.09.2011. 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 intends and purposes. In the instant case, the incident is of 11.05.2009 when the applicant was young boy and compromise was done on 12.09.2011 (Annexure A/9). It is admitted fact that the attestation form has been filled in 12.02.2015. From Annexure P/1, it is clearly mentioned that no case is pending against the

applicant at the time of filling up of this attestation form. But from this annexure as per Column 12(a) (ii) the answer 'No' has been indicated regarding that 'have you ever been prosecuted?' But as the attestation form has been filled up 12.02.2015 and the compromise has been done on 12.09.2011 and acquitted on 19.09.2011. 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, Principal Seat at Jabalpur in the mattes of ***Rakesh Kumar Patel vs. Union of India and others*** whereby the Hon'ble High Court has clearly held that the criminal case against the candidate was admittedly compromised amounts to acquittal of all the charges. In this judgment the Hon'ble High Court had also observed that the candidate had been acquitted in the criminal case and he, being a youth, cannot be expected to

behave as older people. 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 be 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. Similarly the applicant has also relied upon the judgment passed by the Hon'ble High Court of Madhya Pradesh in Writ Petition No.8854/2012 (***Rakesh Kumar Patel***) (supra) wherein the Hon'ble High Court has clearly held that the matter which has been compromised and procedure has been followed under Section 320 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.

11. In the instant case, as per Annexure P/1 attestation form in column 12 (a) which has been filled up on 12.02.2015, at that point no criminal case was pending as the incidence is of the year 2009 and was compromised on 12.09.2011. In the reply, the respondent-department has submitted that the applicant was acquitted but cannot recorded as honourable acquittal on merit. The said reply filed by the respondent-department cannot be believed in view of the specific provision in Section 320(8) of the Code of Criminal Procedure, specifically as has been held by the Hon'ble High Court of Madhya Pradesh in the matter of *Rakesh Kumar Patel* (supra).

12. Regarding the submission of the respondent-department that the respondent-department is an organization under Department of Defence Production, Ministry of Defence and is engaged in quality assurance of battle field equipment, 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 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. ”

13. 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.

14. 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."

15. 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.

16. In the instant case at the time of filling up the verification form, 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.”

17. 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 2009 and verification form has been filled up in 12.02.2015. Furthermore, the offences for which the applicant was acquitted is of trivial in nature and is a bailable offence. 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.

18. 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