

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00830/2012

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

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

Pramod Kumar Gound,
S/o Shri Lakhi Chand Gound
Date of birth 20.05.1983
R/o Village Maripar Buzurg
P.O. Badhara Distt. Deoria (UP) 274001 **-Applicant**

(By Advocate –**Shri Vijay Tripathi**)

V e r s u s

1. Union of India,
Through its Secretary
Ministry of Defence
(Defence Production)
South Block
New Delhi 110011

2. The Chairman
Ordnance Factory Board
10-A Shahid Khudi Ram Bose Marg
Kolkata 700001

3. The Sr. General Manager
Ordnance Factory Khamaria
Jabalpur 482005

- Respondents

(By Advocate –Shri S.K. Mishra)

(Date of reserving the order: 15.01.2019)

O R D E R

By Ramesh Singh Thakur, JM:-

This Original Application has been filed by the applicant challenging the order dated 29.05.2008 (Annexure A/1), whereby his services were terminated w.e.f. 30.05.2008. The applicant has also challenged the order dated 25.06.2012 (Annexure A/2), whereby his appeal against the termination order has been rejected without application of mind.

2. The applicant in the present Original Application has sought for the following reliefs:-

“8.1 Summon the entire relevant record from the respondents for its kind perusal;

8.2 Set aside the order dated 29.05.2008 (Annexure A-1) and 25.06.2012 (Annexure A-2);

8.3 Direct the respondents to reinstate the applicant will all consequential benefits.

8.4 Any other order/orders, direction/directions may also be passed.

8.5 Award cost of the litigation to the applicant.”

3. Briefly the case of the applicant is that the applicant is an ex-trade apprentice of Ordnance Factory Khamaria. The applicant participated in the Trade Apprentice Training from 05.11.2001 to 4.11.2004 in the trade of 'Machinist Grinder'. The applicant was declared pass after participating in the trade test and was issued a certificate by National Council for Vocation Training (NCVT). The respondent-department has issued a call letter dated 28.09.2007 (Annexure A/5) for recruitment of Ex-Trade Apprentice in Semi-Skilled grade of IEs Cadre whereby the applicant was intimated that trade test for the post of Danger Building Worker in Semi Skilled will be conducted. Accordingly, the applicant appeared and was found suitable. The applicant was sent for medical examination and was found fit. Three sets of P.V.R. form was given to the applicant. After filling the P.V.R. form the applicant was issued an offer of appointment letter dated 08.12.2007 (Annexure A/7) on the post of Danger Building Worker (Semi Skilled). Accordingly, the

applicant joined in the Ordnance Factory Khamaria, Jabalpur.

4. The applicant submitted that a criminal complaint under Section 200 and 202 of the Cr. P.C. was lodged against the applicant by one Shri Vinod Kumar before the Chief Judicial Magistrate Deorai and a case was registered under Section 323/34, 504, 506 of IPC which was finally decided and the applicant was exonerated on 25.03.2008. Shri Vinod Kumar has sent a complaint to the respondent-department alleging that the applicant has obtained employment by suppressing the information of criminal case. The respondent-department sought clarification from the applicant and issued an order dated 29.05.2008 (Annexure A/1) whereby the services of the applicant was terminated w.e.f.30.05.2008 on the ground that the applicant has suppressed the information in Column No.12 of the attestation form. Thereafter the applicant preferred an appeal dated 19.06.2008 (Annexure A-9) whereby the

appellate authority has rejected the appeal on 25.06.2012.

Hence this Original Application.

5. The respondent-department has filed short reply. In the reply the respondents submitted that a complaint dated 04.01.2008 was received at Ordnance Factory Khamaria Jabalpur against the applicant that he has obtained employment by suppressing information regarding his arrest and pendency of criminal case against him in the PVR form and giving wrong information to the respondent-department and wrongly getting the PVR form duly verified. The applicant was issued a show cause notice dated 14.01.2008 asking his clarification regarding the said suppression of information in the PVR. The applicant replied vide letter dated 19.02.2008. The respondent-department requested S.P. Deoria to intimate about the case pending against the applicant in court of Chief Judicial Magistrate vide letter dated 19.02.2008. Thereafter the applicant submitted his representation dated 23.02.2008 to the respondent-department stating that Shri

Vinod Kumar has misled him and inspite of assurance of withdrawal of case he had lodged compliant. Respondents further submitted that at the time of submission of PVR a criminal case was lodged against the applicant but he did not disclose it. It was for the applicant to furnish true and correct information in the PVR form, but he furnished incorrect and misleading information in the PVR. The applicant was terminated vide order dated 29.05.2008 considering his character antecedent unsuitable for retention in Government servant.

6. Respondents further submitted that the applicant was on probation, the termination was not by way of punishment hence provisions contained under Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short CCS(CCA) Rules) were not followed while terminating the services. The appeal filed by the applicant has been rejected as such no appeal lies under Rule 23 of the CCS(CCA) Rules, 1965 against the termination of service during probation. The respondents

have also submitted that this Original Application has not been filed within the stipulated period of limitation. The respondents submitted that the applicant's appeal was examined and has been observed that as per clause (viii) (a) of the CCS(CCA) Rules, the termination of service of the applicant is not covered within purview of penalty and no appeal lies against such termination under Rule 23 of the CCS(CCA) Rules. Therefore, the applicant's appeal was not entertained on merit.

7. As per Government instruction wherever a Government Servant who was not qualified or eligible in terms of the recruitment rules etc. for initial recruitment in service and furnished false information or produced false certificate in order to secure appointment, he should not be retained in service. If he is a probationer or a temporary Government servant, he should be discharge or his service should be terminated. If he has become permanent Government servant, an enquiry as prescribed in the Rule 14 of the CCS(CCA) Rules, 1965 may be held and if the

charges are proved, the Government servant should be removed or dismissed from service. In no circumstance should any other penalty be imposed. The applicant was on probation he had not become permanent employee hence charge sheet rule 14 of CCS(CCA) Rules, and detailed enquiry was not necessary.

8. Learned counsel for the respondents further submitted that in various judgments it has been held that the concealment of vital information is an act of fraud. No employer will like to keep an employee who has committed fraud. In the case of Vinoy Kumar vs. Commissioner of Police, 2006 (10) ATJ 31 the Hon'ble Delhi High Court has also held that omission to mention about the petitioner involvement in the original case in the attestation form cannot be said to be an inadvertent mistake and therefore the authorities rightly concluded that the applicant was not a desirable person to be appointed. The Hon'ble Supreme Court has also clearly held that the existence of Suppersio Vary and Suggestio Falsi is

incontrovertible and a person obtaining employment by false pretence does not deserve any public employment by false pretence does not deserve any public employment. In the decision rendered by the Hon'ble Supreme Court in 2003 SCC (L&S) 306, Kendriya Vidyalay vs. Ram Ratan Yadav, while dealing with effect of suppression of material information observed that the employer is the ultimate judge. It is not open to the candidate to sit on judgment about the relevance of information called for and to supply it or not.

9. We have heard the learned counsel for the parties and also perused the annexures annexed with the pleadings.

10. The applicant has relied upon the judgment of Hon'ble Supreme Court in the matter of ***Commissioner of Police and Others vs. Sandeep Kumar*** reported in (2011) 4 SCC 644. The relevant Paras are 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.*

10. *We may also here refer to the case of Welsh students mentioned by Lord Denning in his book 'Due Process of Law'. It appears that some students of Wales were very enthusiastic about the Welsh language and they were upset because the radio programmes were being broadcast in the English language and not in Welsh. Then came up to London and invaded the High Court. They were found guilty of contempt of court and sentenced to prison for three months by the High Court Judge. They filed an appeal before the Court of Appeals. Allowing the appeal, Lord Denning observed :-*

"I come now to Mr. Watkin Powell's third point. He says that the sentences were excessive. I do not think they were excessive, at the time they were given and in the circumstances then existing. Here was a deliberate interference with the course of justice in a case which was no concern of theirs. It was necessary for the judge to show - and to show to all students everywhere - that this kind of thing cannot be tolerated. Let students demonstrate, if they please, for the causes in which they believe. Let them make their protests as they will. But they must do it by lawful means and not by unlawful. If they strike at the course of justice in this land - and I speak both for England and Wales - they strike at the roots of society itself, and they bring

down that which protects them. It is only by the maintenance of law and order that they are privileged to be students and to study and live in peace. So let them support the law and not strike it down.

But now what is to be done? The law has been vindicated by the sentences which the judge passed on Wednesday of last week. He has shown that law and order must be maintained, and will be maintained. But on this appeal, things are changed. These students here no longer defy the law. They have appealed to this court and shown respect for it. They have already served a week in prison. I do not think it necessary to keep them inside it any longer. These young people are no ordinary criminals. There is no violence, dishonesty or vice in them. On the contrary, there was much that we should applaud. They wish to do all they can to preserve the Welsh language. Well may they be proud of it. It is the language of the bards - of the poets and the singers - more melodious by far than our rough English tongue. On high authority, it should be equal in Wales with English. They have done wrong- very wrong - in going to the extreme they did. But, that having been shown, I think we can, and should, show mercy on them. We should permit them to go back to their studies, to their parents and continue the good course which they have so wrongly disturbed." [Vide : Morris Vs. Crown Office, (1970) 2 Q.B.125C-H]

In our opinion, we should display the same wisdom as displayed by Lord Denning.

11. As already observed above, youth often commit indiscretions, which are often condoned."

11. The applicant has also relied upon the judgment passed by the Hon'ble High Court of Gujarat in the

matters of Balubhai Amidas Khristi vs. State of Gujarat and others 1978 (2) SLR 815. The relevant para is as under:-

“18. Let me compare the situation. I even a Judge can buy a ticket of State lottery and if lucky enough on my ticket being drawn winner on sheer luck no skill being involved not only I get rupees lac or more on a pure gambling chance but that it is being given wide publicity and till recently no tax was payable on this windfall. Larger prizes are offered on lottery with more attractive advertisements. It is inciting, instigating, provoking gambling instinct lying dormant, in every man to gamble. This peon rather than staking rupee one in the state lottery where he does not commit offence stupidly albeit unfortunately staked it in Varii Matka. But it is said that profit earned by lottery activities are utilised for State developmental activities such as education, cultural advancement etc. which is not true of Varii Matka. This peon merely committed an error in choosing Varii Matka stake holder rather than buying a State lottery ticket and he has in the process been sent to jail for one month and deprived of his very livelihood. Had he waited for some time he could as well have gone to casino to be set up by Maharashtra Government, and no misfortune would have befallen him. I am afraid, what was one a high moral principle namely not to indulge in gambling can now be styled as taboo only. I can describe the situation in a much more decorative language. I would rather stop here by saying that in the context of the present day society where the State not only indulges into gambling activity but by advertisement incites the citizens' gambling instinct in human beings to subscribe to this once condemned activity, it would

be too much to say that this peon who was found giving stake to a Varli Matka stake holder has been guilty of such conduct as would involve moral turpitude so as to be dismissed from service. Conceding that it is not conviction that is the foundation for taking disciplinary action but the conduct which led to the conviction is the foundation, I must say that conduct herein disclosed is the same conduct which every purchaser of a State lottery ticket undertakes. While one may claim to be considered progressive forward looking individual enriching State coffers the other fellow loses his job and goes to jail. I have no grievance this man being sent to jail but that conduct cannot lead to deprivation of his livelihood. Therefore, viewed from all angles, I must reluctantly come to the conclusion that the order dismissing the petitioner from service is bad on all counts and deserves to be quashed and set aside".

12. The applicant has also relied upon the judgment passed by the Hon'ble High Court of Madhya Pradesh, Principal Seat at Jabalpur in Writ Petition No.8854/2012 titled as ***Rakesh Kumar Patel vs. Union of India and others.*** The relevant portion Para 4 is as under:-

"4. In the case of Commissioner of Police (supra) the candidate had failed to disclose his true antecedents in the application form for appointment regarding his prosecution in a criminal case as a result of which his candidature was cancelled. The criminal case against the candidate was admittedly compromised and he was acquitted of the charges. Aggrieved, the candidate filed a petition before the

Tribunal which was dismissed. He then filed a writ petition before the Delhi High Court. The Delhi High Court allowed the writ petition and quashed the order of cancellation of selection of the candidate. In an appeal filed by the Commissioner of Police, the Supreme Court upheld the order of the Delhi High Court and rejected the submission regarding justification of the cancellation of candidature that the candidate should have disclosed the fact of his involvement in the criminal case even if he had been acquitted. The Supreme Court observed that the candidate had been acquitted in the criminal case and he, being a youth, cannot be expected to behave as older people. It also observed that, at young age, people often commit indiscretions and such indiscretion should be condoned instead of branding young people as criminals for the rest of their lives. The Supreme Court even condoned the act of a candidate of not mentioning in the application form about his involvement in a criminal case under Section 325/34 at the Indian Penal Code by holding that he might have done so out of fear of getting disqualified automatically.”

13. The Hon’ble Apex Court in the case titled as *Avtar Singh vs. Union of India and others* (2016) 8 SCC 471 has settled issues regarding information given by the parties before entering the Government service. The principles have been laid down 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.”

14. 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 the instant case, the applicant was prosecuted under section 323/34, 504, 506 IPC and the incidence is of 18.02.2005. The applicant was acquitted from the alleged offences on 25.03.2008 by the competent court of law. The learned judicial magistrate has acquitted the applicant as

the charges not proved. Moreover, the offence pertains to year 2005 and the attestation form has filled in 24.10.2007.

At the time of incidence the applicant was of young age and as per judgment of the Hon'ble Apex Court in the matter of *Sandeep Kumar* (supra). It has been held by the Hon'ble Apex Court that at age young people often commit indiscretions, and such indiscretions can often be condoned. Moreover, the applicant has been acquitted by the competent court of law as the offences alleged are not proved. As per impugned order dated 29.05.2008 (Annexure A/1), the respondent-department has not given the reasons regarding the suitability of the applicant of the post under consideration i.e. Danger Building Worker (Semi Skilled). As per judgment passed by the Hon'ble Apex Court in the matter of *Avtar Singh* (supra) it has been clearly held that 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. But as per Annexure A/1 despite the fact that the applicant has been acquitted by competent court of law and do not find any reason that the criminal case in which the applicant was involved was effecting the fitness of employment.

16. Resultantly, the Original Application is allowed. Impugned order dated 29.05.2008 (Annexure A-1) and 25.06.2012 (Annexure A/2) are quashed and set aside. In view of our findings, the respondents are directed to reinstate the applicant for the post of Danger Building Worker (Semi Skilled), 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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