

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00506/2017

Jabalpur, this Tuesday, the 09th day of July, 2019

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

Anil Kumar Sen
S/o Shri Hemraj Sen,
Aged about 28 years,
R/o 338 Near Sharda Bus Service
Shanti Nagar,
Damoh Naka
Jabalpur (MP) 482002

-Applicant

(By Advocate –**Shri S.K. Mishra**)

V e r s u s

1. Union of India
Through General Manager
Near Indira Market Jabalpur
Madhya Pradesh 482001

2. Sr. DPO/DRM (Personal)
West Central Railway
Habibganj
Bhopal (M.P.) 262024

3. The Chairman
Railway Recruitment Board
East Railway Colony
Bhopal (MP) 462010

- Respondents

(By Advocate –**Shri Ashok Kumar Mishra for respondents No.1 & 2, Shri Arun Soni for respondents Nos.3 & 4**)
(Date of reserving the order:-04.01.2019)

ORDER

By Ramesh Singh Thakur, JM:-

This Original Application has been filed by the applicant challenging the legality, validity and propriety of the order dated 17.03.2017 (Annexure A/12) as well as order dated 30.11.2016 (Annexure A/9), whereby the appointment of the applicant has been denied by the respondents on the ground of prosecution for offence under Section 302/201 and 34 of IPC.

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

“8(i) Quash and set aside the impugned orders dated 17.03.2017 (Annexure A/12) as well as order dated 30.11.2016 (Annexure A/9).

8(ii) Direct the respondents to take back the applicant on duty/appoint the applicant on the post of Assistant Loco Pilot and give all consequential benefits like arrears of salary, seniority etc.

8(iii) Any other suitable order/direction which this Hon’ble Tribunal deems fit and proper may also be granted to the applicant.”

3. Briefly the case of the applicant is that the respondent-department has issued an advertisement to fill up the post of Assistant Loco Pilot vide Centralized Employment Notice No.01/2014 dated 18.01.2014. The applicant being an eligible candidate, submitted his candidature. The applicant appeared in the written test and in the aptitude test. The applicant was provisionally selected for appointment on the said post in West Central Railway, Bhopal (Annexure A/2). The applicant appeared before Medical Board for pre-employment medical examination at Bhopal and was declared medically fit for appointment on the post of Assistant Loco Pilot by the Senior Divisional Medical Officer, WCR Bhopal vide certificate dated 06.04.2016 (Annexure A/3).

4. The applicant thereafter submitted documents/certificates along with attestation form as per direction of the appointing authority. The applicant in the attestation form has disclosed that a Crime No.81/2008 was registered against him at Police Station Gohalpur

Jabalpur for the offence under Section 210, 302, 34 of IPC wherein after trial the applicant has been acquitted on merits by the Court of VI ASJ Jabalpur in Session Trial No.465/2008 vide order dated 30.09.2008. Copy of attestation form and copy of verification report dated 28.09.2016 obtained under Right to Information Act and copy of judgment 30.09.2008 (Annexure A/4, A/5 and A/6 respectively).

5. After selection the applicant was sent for training. He was imparted 4 months initial training prescribed for the post of Assistant Loco Pilot AC during 12.04.2016 to 10.08.2016 by the Railway Department at Bhusawal. The applicant has successfully completed above training and he was granted “outstanding” performance in training as per result dated 01.09.2016 (Annexure A/7). Vide letter dated 30.11.2016 (Annexure A/9), the applicant was intimated that the attestation form submitted by him was forwarded to the concern District Magistrate for character and police verification. The concern authority has informed that a

Crime No.81/2008 for the offence u/s 201, 302, 34 of IPC was registered against him. Charge sheet was filed before the Court and on 30.09.2008 acquitted him as the charges not found proved. The competent authority has considered the applicant as not suitable for appointment in the Rail Service. The applicant thereafter submitted detailed representation dated 15.12.2016 (Annexure A/10), requesting the respondent No.2 to not deprive him the right of employment only for the reason of registration of crime which has been ended into clean acquittal. But no response was received by the applicant. The applicant therefore filed Original Application No.200/00037/2017 which was disposed of with a direction to consider the representation of the applicant. As per direction of this Tribunal, the respondent No.2 passed an order dated 17.03.2017 (Annexure A/12) whereby the claim of the applicant rejected on the ground that the applicant has been prosecuted under Section 302, 201, 34 of IPC vide

Criminal Case No.81/2008. Hence this Original Application.

6. The respondents Nos.1 & 2 have filed their reply. In the reply the respondents have submitted that the respondents have passed the speaking and reasoned order dated 17.03.2017 (Annexure A/12), as per the direction of this Tribunal passed in O.A. No.200/00037/2017 on 19.01.2017 (Annexure A-11). In the said speaking order dated 17.03.2017, the respondents have submitted that the applicant was prosecuted under Section 302 (Punishment for murder), 201 (Causing disappearance of evidence of offence, or giving false information to screen offender) and 34 (Acts done by several persons in furtherance of common intention) of Indian Penal Code 1860 vide Criminal Case No.81/2008 before the VIth Additional Session Judge, Jabalpur. It has been further submitted by the respondents that as per Rule 101 of Indian Railway Establishment Manual Volume-I (Revised Edition 1989) (Annexure R/1) “the appointing authority should satisfy

itself that the character and antecedents of the person to be appointed are such as do not render him unsuitable for appointment to Government service in accordance with the instructions issued by the Railway Board to Railway Administrations from time to time. On the basis the said provisions the applicant was not found suitable for appointment on Railway Services for the post of Assistant Loco Pilot by the competent authority on account of his antecedent Criminal record. It has been specifically submitted by the respondents that the post of Assistant Loco Pilot in Railway Department shoulders the great responsibility of transportation of passengers and Goods and people repose great faith and confidence in it. The respondent No.3 has also filed reply. In the reply the respondent No.3 had admitted the fact regarding advertisement issued by the department for various posts of Assistant Loco Pilot and Technicians for all participating RRBs including Railway Recruitment Board Bhopal. It has been admitted by the replying respondents

that the applicant after qualifying written examination was held on 15.06.2014 called for Aptitude Test and found suitable. Thereafter the applicant was called for documents and candidature verification held during 05.10.2015 to 17.12.2015 and his name was recommended to Chief Personnel Officer, West Central Railway Jabalpur for appointment if otherwise found suitable. That so far the role of the answering respondents is concerned, after the examination, the name of the applicant was recommended for an appointment to Chief Personnel Officer West Central Railway, Jabalpur. Therefore, answering respondent has no legal angle in this case and wrongly impleaded as a party.

7. The applicant has filed rejoinder to the reply filed by the respondents. The applicant has reiterated the stand as already been taken in the Original Application.

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

9. There is no dispute regarding the advertisement whereby the applications were called for the post of Assistant Loco Pilot. It is also admitted that the applicant appeared in the written examination and thereafter he has qualified the same and also finally selected in the post of Assistant Loco Pilot. It is also not in dispute that the attestation form was issued by respondent-department to the applicant and he has submitted the same. In the said attestation form dated 28.03.2016 (Annexure A/4) wherein in column 12(a) "Have you ever been arrested, prosecuted, kept under detention, or bound down/fined, convicted by a Court of Law of any offence or debarred/disqualified by any Railway or Public Service Commission from appearing at its examinations/selections or debarred from taking any examinations/rusticated by any University or any other Educational Authority/Institution? The applicant has given his answer 'Yes'. In the column 12(c) it has been specifically stated by the applicant that Criminal Case No.81/2008 had been registered under Section 302, 201

and the applicant has been acquitted from the charges by Additional Sessions Judge vide order dated 30.09.2008. It is clear that respondent-department does not dispute the facts regarding non-concealment of any fact or pendency of any criminal case before any Court of law. The reason given by the replying respondents in their reply is that the applicant was prosecuted under Section 302, 201 and 34 of IPC and was not found suitable for the said post. So, the applicant is not fit for Railway Services and the appointment of the applicant was rejected.

10. The applicant has relied upon the judgment of Hon'ble Supreme Court in the matter of ***Joginder Singh vs. Union Territory of Chandigarh and others*** reported in (2015) 1 SCC (L&S) 490, (2015) 2 SCC 377 . The relevant Paras are as under:

*“18. The learned counsel has rightly placed reliance upon the decision of this Court in **Inspector General of Police v. S. Samuthiram** of which relevant paragraph is extracted as under: (SCC p. 609, para 24)*

*“24. The meaning of the expression ‘honourable acquittal’ came up for consideration before this Court in RBI v. Bhopal Singh Panchal. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions ‘honourable acquittal’, ‘acquitted of blame’, ‘fully exonerated’ are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression ‘honourably acquitted’. **When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.**”*

(emphasis supplied)

19. Further, an acquittal of the appellant is an “honourable” acquittal in every sense and purpose. Therefore, the appellant should not be deprived from being appointed to the post, in the public employment, by declaring him as unsuitable to the post even though he was honourably acquitted in the criminal case registered against him.

20. Further, undisputedly, there has been no allegation of concealment of the fact that a criminal case was registered against him by the appellant. Thus, the appellant has honestly disclosed in his

verification application submitted to the selection authority that there was a criminal case registered against him and that it ended in an acquittal on account of compromise between the parties involved in the criminal case, he cannot be denied an opportunity to qualify for any post including the post of a Constable.

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26. *Thus, we are of the opinion that the alleged past conduct of the appellant in relation to the criminal case will not debar or disqualify him for the post of the Constable for which he was successfully selected after qualifying the written test, medical test and the interview conducted by the selection authority. Further, as stated by us earlier, there has been no concealment of any relevant fact from the respondents by the appellant. The respondents were thus not justified in denying the said post to the appellant. The conclusion arrived at by them is not cogent and lacks proper application of mind.*

27. *We, therefore, hold that the High Court has committed a grave error both on facts and in law and it has failed to follow the legal principles laid down by this Court in the cases referred to supra and uphold the decision of CAT. For the foregoing reasons both the appeals succeed and are allowed.*

28. *Since we have upheld the judgment and order of CAT, the respondents are directed to comply with the same by issuing appointment letter to the appellant within four weeks from the date of receipt of the copy of this order. There shall be no order as to costs."*

11. The applicant has also relied upon the judgment passed by the Hon'ble Supreme Court in the matters of ***Mohammed Imran vs. State of Maharashtra and others*** in Civil Appeal No.10571/2018. The relevant para is as under:-

“10. In the present proceedings, on 23.03.2018, this Court had called for a confidential report of the character verification as also the antecedents of the appellant as on this date. The report received reveals that except for the criminal case under reference in which he has been acquitted, the appellant has a clean record and there is no adverse material against him to deny him the fruits of his academic labour in a competitive selection for the post of a judicial officer. In our opinion, no reasonable person on the basis of the materials placed before us can come to the conclusion that the antecedents and character of the appellant are such that he is unfit to be appointed as a judicial officer.

An alleged single misadventure or misdemeanour of the present nature, if it can be considered to be so, cannot be sufficient to deny appointment to the appellant when he has on all other aspects and parameters been found to be fit for appointment. The Law is well settled in this regard in Avtar Singh vs. Union of India and others, (2016) 8 7 SCC 471. If empanelment creates no right to appointment, equally there can be no arbitrary denial of appointment after empanelment.

11. In the entirety of the facts and circumstances of the case, we are of the considered opinion that the

consideration of the candidature of the appellant and its rejection are afflicted by a myopic vision, blurred by the spectacle of what has been described as moral turpitude, reflecting inadequate appreciation and application of facts also, as justice may demand.

12. We, therefore, consider the present a fit case to set aside the order dated 04.06.2010 and the impugned order dismissing the writ petition, and direct the respondents to reconsider the candidature of the appellant. Let such fresh consideration be done and an appropriate decision be taken in light of the present discussion, preferably within a maximum period of eight weeks from the date of receipt and production of the copy of the present order. In order to avoid any future litigation on seniority or otherwise, we make it clear that in the event of appointment, the appellant shall not be entitled to any other reliefs.

13. The appeal is allowed as above.”

12. 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.”

13. The Hon’ble Apex Court in Para 38.4.3 in the judgment of *Avtar Singh* (supra) has laid down the principle and the instant case is better than that principle. In the said principle it is reflected that 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. But in the instant case the applicant has been

acquitted by the competent court of law and the charges against the applicant has not been proved beyond reasonable doubt. So, from this there is a clear cut acquittal of the applicant from the charges under Section 201, 302/34 of IPC. So, the applicant has been honourably acquitted from the charges leveled against him. Moreover, as per attestation form the applicant has not concealed anything from the respondent-department and it has been indicated by the case that he has been acquitted from charges under Section 201, 302 IPC.

14. In the impugned order dated 17.03.2017 (Annexure A-12) the reason is given by the respondent-department that the applicant was prosecuted under Section 302 (Punishment for murder), 201 (Causing disappearance of evidence of offence, or giving false information to screen offender) of Indian Penal Code 1860 vide Criminal Case No.81/2008 before the Additional Session Judge, Jabalpur. In this context, the applicant has already been acquitted from all the charges vide order dated 03.09.2008. It is

pertinent to mention that the applicant is quite young in age and there has been no allegation of concealment of the fact that a criminal case was registered against the applicant. Thus, the applicant has honestly disclosed in his verification application submitted to the respondent-authority that there was a criminal case registered against him and that it ended in an acquittal by the competent court of law as charges not proved. Therefore, he cannot be denied an opportunity of appointment. So, from the alleged past conduct of the applicant in relation to the criminal case will not debar or disqualify him for the post of the Assistant Loco Pilot for which he was successfully selected after qualifying the written test, medical test and the interview conducted by the selection authority. Further, as stated by us earlier, there has been no concealment of any relevant fact from the respondents by the applicant. The respondents were thus not justified in denying the appointment to the said post to the applicant. The

conclusion arrived at by them is not cogent and lacks proper application of mind.

15. In the impugned order (Annexure A-1), we do not find plausible reasons in the impugned order itself. It has been further held by the Hon'ble Apex Court 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. 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. 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.”*

16. In view of the above, we are of the opinion that the applicant is very young in age and the applicant was acquitted from all the charges leveled against him by Additional Sessions Judge vide order dated 30.09.2008. It is pertinent to mention that the applicant was acquitted in the year 2008 as charges not proved and the applicant has filled up the attestation form in the year 2016. The applicant has not concealed any information. Therefore, in

the impugned orders dated 17.03.2017 (Annexure A/12) and 30.11.2016 (Annexure A/9), we did not find any reasons as per settled legal position as discussed above (supra), the said impugned order is illegal and unlawful.

17. Resultantly, the Original Application is allowed. Impugned orders dated 17.03.2017 and 30.11.2016 (Annexure A/12 and A/9 respectively) are quashed and set aside. In view of our findings, the respondents are directed to reconsider the case of the applicant in respect of the employment for the post of Assistant Loco Pilot, 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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