

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 575/2013

Reserved on: 08.07.2019
Pronounced on: 14.08.2019

**Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhaya, Member (A)**

Doongar Singh Rawat son of Shri Ladu Singh Rawat, aged about 52 years, resident of Village & Post Kanakhedi, Via Sri Nagar, Ajmer. Last employed as Khallasi under Assistant Mechanical Engineer (P) (Establishment), North Western Railway, Ajmer Division, Ajmer.

...Applicant.

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India, through General Manager, North Western Zone, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur-302006.
2. Chief Mechanical Manager, North Western Zone, North Western Railway, Near Jawahar-Circle, Jagatpura, Jaipur-302006.
3. Divisional Railway Manager, North Western Railway, Ajmer Division, Ajmer.
4. Divisional Assistant Mechanical Engineer (Establishment), North Western Railway, Ajmer Division, Ajmer.
5. Assistant Assistant Mechanical Engineer (P) (Establishment), North Western Railway, Ajmer Division, Ajmer.

...Respondents.

(By Advocate: Shri Indresh Sharma)

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ORDER**Per: A.Mukhopadhaya, Member (A):**

This Original Application, (OA), arises from the termination of the services of the applicant from the respondent Railways vide order dated 05.09.2011, (Annexure A/2), on account of concealment of the fact that a criminal proceeding had been instituted against him in the court of ACJM No.3, Ajmer. In the impugned termination order of 05.09.2011, (Annexure A/2), the respondents referred to the applicant's statement in his attestation form, (Annexure R/1 Item No.12 read with affidavit Annexure R/3 refer), that he had never been prosecuted in any criminal case and that no case was pending against him in any court of law at the time of filling the attestation form. The impugned order refers to a letter received from District Magistrate, Ajmer dated 13.06.2011, (Annexure R/2), in which it is stated that Case No.44/2000 under Section 323 and 341 of IPC was instituted vide charge-sheet No.28/2000 in the court of ACJM No.3, Ajmer against the applicant and that it was pending consideration there. Referring to the applicant's affidavit that no case was pending against him in any court, (Item No.9 at Annexure R/3), and to the fact that he had replied to a question on pending prosecution/cases against him in the negative at Item No.12 of his attestation form, (Annexure R/1), the respondent Railways terminated his services.

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2. Aggrieved by this, the applicant approached this Tribunal vide OA No.254/2013 which was disposed of vide CAT order dated 22.03.2013, (Annexure A/3), with a direction to the respondents to consider and decide the appeal dated 22.03.2012, (Annexure A/9), made by the applicant against his termination and pass a reasoned and speaking order on the same. The applicant states that the respondents finally passed an order on his appeal on 19.07.2013, (Annexure A/1), but that this appeal was wrongly rejected by them without due regard to the true facts and circumstances as well as attendant legal provisions pertinent to his case, as in the interim, the local police had corrected its earlier erroneous report and had now brought on record that the criminal proceedings against the applicant referred to earlier had been decided on the basis of a compromise between the parties vide the ACJM court's order dated 22.07.2000 and that there was no case pending against the applicant; (Annexures A/7 and A/8 dated 23.09.2011 and 26.09.2011 respectively). Aggrieved by this, the applicant has now approached this Tribunal again seeking the following relief:-

- i). That the entire record relating to the case be called for and after perusing the same the respondents be directed to reinstate the applicant in service by quashing letters dated 19/07/2013 and 05.09.2011 (Annexures A/1 and A/2) with all consequential benefits including pay and allowances.
- ii). That the respondents be further directed to take note of correct position as subsequently

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made available by the local police vide Annexures A/7 and A/8 and to reinstate the applicant in service with all consequential benefits.

- iii) Any other order, direction or relief which is deemed fit, just and proper under the facts and circumstances of the case be passed in favour of the applicant

3. In reply, the respondents aver that the non-disclosure/concealment in question is clearly admitted by the applicant in view of the clear warning given at the beginning of the attestation form itself that furnishing false information in the form would invite termination of service; (Annexure R/1 Item No.1 refers). Further, that the applicant himself submitted an affidavit, (Annexure R/3), reiterating that in case any such case was later found to be pending in a court or educational institution, the respondent Railway administration would have the right to remove him without prior notice immediately from service. Thus, they aver, the impugned termination order as well as its continuance is fully justified.

4. Learned counsels for the parties were heard and the material available on record was perused.

5. In his arguments, while reiterating the above mentioned facts of the case, learned counsel for the applicant also cited the order dated 03.03.2016 of the Hon'ble Rajasthan High Court in the case of **Varun Kumar Karwasra** versus **The Union of India & Others**; (D.B.Civil Writ Petition No.7101/2015). The

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applicant's counsel pointed out that as in the cited case, here also no trial had commenced as the criminal proceedings in question had ended on the basis of a compromise arrived at between the parties before charges were framed by the trial court. Noting that the term "**prosecution**" is nowhere defined in the criminal code and that the offence in this case, as in the cited case was both bailable and compoundable, the High Court had held in the cited case that where a trial court passed an order of acquittal based on a compromise between the parties, **"it may not be altogether expected from a layman and man of ordinary prudence to construe its legal meaning that he has ever been prosecuted by the court of law"** and further that **"it may not be appropriate to expect from a layman of ordinary prudence to construe that in the facts and circumstances of the case he has been prosecuted"**.

Learned counsel for the applicant pointed out that the cited case related to a challan under Sections 323, 324 and 341 of IPC whereas the present case also relates to a challan under Sections 323 and 341 of IPC and stated that as in the cited case the benefit of a mistaken impression should always be given to the incumbent concerned as the non-disclosure of proceedings could not be considered as suppression of material information with any kind of malafide intent. The applicant's counsel also referred to the representation made by the applicant to the respondents dated 05.09.2011, (Annexure A/5), in which he had clearly

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pointed out that the case in question was around 10 years old and since it had ended on the basis of a compromise at that time itself without any adverse judicial consequences, his non-disclosure of the details of the same was a bonafide error. Further, the applicant had clearly stated in this representation dated 05.09.2011, (Annexure A/5 Item No.4) that even disclosure of the details of this case should not have rendered his application for employment with the respondents invalid and therefore, (by implication), he had nothing to gain by concealing this fact. Finally, applicant's counsel reiterated the fact that at the time of filling in the attestation form for employment, (Annexure R/1), the undisputed factual position was that there were no criminal proceedings of any kind pending against the applicant in any court of law.

6. *Per contra*, learned counsel for the respondents argued that the question in the attestation form **"Have you ever been prosecuted"** is very clear and that the applicant had therefore deliberately lied by replying in the negative to the same. He also contended that an acquittal obtained as a result of the acceptance of a compromise by a court did not amount to being an unconditional one in that acceptance of the compromise was in effect a recognition of the veracity of the events referred to in the compromise as well as the applicant's less than correct role in the same. Thus, he argued that the conclusions arrived at in the impugned orders at Annexures A/1 and A/2 are borne out by the

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facts and circumstances of the case. Since the applicant has admitted the non-disclosure of the facts in question, the adverse consequences by way of termination of service visited upon him are eminently justified.

7. While non-disclosure of a criminal proceeding instituted against him in the year 2000 is not disputed by the applicant in this case, the matter has to be looked into with regard to the particular facts and circumstances of the case. In this particular case, the available record, (page 34 of the paper book), shows that the criminal proceedings in question related to a dispute of 11.06.2000 which was resolved by compromise on 13.06.2000, i.e. two days later. Further, Annexures A/7 and A/8 indicate that based on this compromise, the criminal proceedings initiated in the interim through FIR No.44/2000 dated 12.06.2000 in Police Station Srinagar, Ajmer District and later challaned vide chargesheet No.28/2000 dated 19.06.2000 in the court of ACJM No.3, Ajmer on 26.06.2000, were ended vide that court's decision accepting the earlier mentioned compromise which was produced in court on 22.07.2000. The authenticity of these events has not been challenged by the respondents. In the circumstances and in the light of the judgment of the Hon'ble Rajasthan High Court in the case of **Varun Kumar Karwasra**, (supra), it cannot but be held that as in the cited case, in this case also, there has been no deliberate misrepresentation or non-disclosure which amounts to suppression of material information by the applicant. The

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applicant on the contrary appears to have approached the respondents in this matter with clean hands in a demonstrably transparent manner in his representation of 05.09.2011 at Annexure A/5 and again in his appeal dated 22.03.2012 at Annexure A/9. In the facts and circumstances of the entire matter, continuing with the termination order of 05.09.2011, (Annexure A/2), vide the respondents' order dated 19.07.2013, (Annexure A/1), appears to be clearly unjustified.

8. In the result, the instant OA succeeds and is hereby allowed. The respondents' order of 05.09.2011, (Annexure A/2), and 19.07.2013, (Annexure A/1), are set aside and the applicant is ordered to be reinstated in service by the respondents within a period of one month from the date of receipt of a certified copy of this order. However, he would be entitled only to the notional benefits of such reinstatement and be entitled to the actual consequential benefits only from the date of reinstatement in service.

9. There will be no order on costs.

(A.Mukhopadhaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

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