

**CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, RANCHI
OA/051/00815/18**

Reserved on: 20.08.2019
Date of Order: 22.08.2019

C O R A M

**HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**

Narsingh Mahanandi, S/o Devanand Mahanandi, aged about 47 years, R/o Village-Gua Upar Dhaura, PO- Gua, PS- Gua, Distt.- West Singhbhum, Jharkhand.

.... **Applicant.**

By Advocate: - Mr. Pankaj Kumar with Mr. A.S. Dayal

-Versus-

1. The State of Bihar through Steel Authority of India Limited Office at Ispat Bhawan, Lodi Road, PO Box- 3049, New Delhi-111003.
2. The General Manager (Mines), SAIL, Raw Material Division, Gua Ore Mines, PO & PS- Gua, Distt.- West Singhbhum, Jharkhand- 833213.
3. The Deputy General Manager (Mines), SAIL, Raw Material Division, Gua Ore Mines, PO & PS- Gua, Distt.- West Singhbhum, Jharkhand- 833213.

.... **Respondents.**

By Advocate: - Mr. V.K. Dubey

O R D E R

Per Dinesh Sharma, A.M:- The case of the applicant is that he has been dismissed from service by an order dated 12.07.2018 and his appeal against this order has been rejected by order dated 25.08.2018. This dismissal, which is on account of his not having disclosed the fact of a pending criminal case against him at the time of his applying for the job, is wrong since the applicant has studied only upto matric and the attestation form (in which he allegedly failed to disclose about the pending criminal case) was totally printed in English. He has also alleged that he has already been acquitted in

the said criminal case and he had brought the fact of his acquittal to the notice of the respondents before he was dismissed. The applicant has also quoted the decision of Hon'ble Supreme Court in the case of **Commissioner of Police and Ors. Vs. Sandeep Kumar** [2011 (2) JLJR 224 (SC)] where the Hon'ble Supreme Court have suggested taking a lenient view even in cases of similar non-disclosure of a pending criminal case probably "out of fear that if he did so he would automatically be disqualified".

2. The respondents have filed their written statement in which they have stated that the entire original application form was in English and it was duly signed by the applicant with an undertaking also in English and therefore the averment by the applicant that he did not understand English is totally wrong. The applicant had himself enclosed the copy of the Court order vide his letter dated 10.02.2018 regarding the dismissal of the case against him and this proves that he was aware of the pending case against him. The attestation form clearly stipulated that if the fact of furnishing of false information or suppression of factual information comes to the notice at any time during the service period the services of the concerned trainee would be liable to be terminated. Since the respondents came to know, on checking of the antecedents of the applicant, that a criminal case was pending against the applicant and since the applicant had not intentionally disclosed this fact his services were terminated by the impugned orders. The respondents also quoted a decision of the Hon'ble Supreme Court in **Daya Shankar Yadav Vs. Union of India** reported in (2010) 14 SCC 103 where the Hon'ble Apex Court found justification in discharging a person

from service for “not being truthful in giving material information regarding his antecedents which were relevant for employment in a uniformed service”.

3. The applicant has filed a rejoinder in which, besides reiterating his arguments in the OA, he has alleged that the FIR was lodged against the applicant under Section 272 & 273 of IPC and under Section 47(a) of the Excise Act on 31.03.2014, and the applicant has been acquitted in the above criminal case by the trial court on 10.08.2017. He has also alleged that the respondents had full knowledge about the antecedent of the applicant on 01.03.2016 (on receipt of a report from ASI, Gua PS) that a case was pending against the applicant but they did not take any action and his dismissal on 12.07.2018 (more than three years after filling up the attestation form) is, therefore, wrong. The respondents also quoted the case of **Avtar Singh Vs. Union of India and Ors.** reported in 2016 (3) JLJR 387(SC) in which the Hon’ble Supreme Court has discussed various earlier decisions on similar matters and laid some guidelines for decisions in such matters.

4. We have gone through the pleadings and heard the arguments of the learned counsels of both the parties. During the course of arguments, the learned counsel for the respondents further cited the case of **Devendra Kumar Vs. State of Uttarakhand** [2013 (3) ESC 543(SC)] in which the Hon’ble Apex Court, in a similar case of non-disclosure of a pending criminal case, has pronounced that “withholding such material information or making false representation itself amounts to moral turpitude and is a separate and distinct matter altogether than what is involved in the criminal case”. He

also cited the decision by CAT, Principal Bench in OA 3196 of 2009 where failure to inform about a criminal case in which the applicant therein was ultimately acquitted, was found to be a material misconduct. The learned counsel for the applicant again brought our attention to the decision of the Hon'ble Supreme Court in **Avtar Singh Vs. Union of India & Ors.** stating again that a dismissal for non-disclosure of information of a criminal case of minor nature, in which the applicant was finally acquitted, that too three years after such disclosure, is not in line with the decision of the Hon'ble Apex Court in the aforementioned case.

5. After going through the pleadings and hearing the learned counsels of both the sides, it is clear that the major issue before us in this case is whether non-disclosure of information about a pending criminal case warranted his dismissal, in the way it was done by the respondents, through the impugned order. Though the applicant has alleged ignorance of English language this does not appear to be a *prima facie* sufficient excuse to exonerate him from his guilt about such non-disclosure. We find that the decision of the Hon'ble Apex Court in the case of Avtar Singh, which has dealt with earlier decisions in similar cases in a very elaborate way [except their decision in the case of Devendra Kumar (supra)], offers very valuable guidelines for deciding this case. The decision itself summarizes the conclusion as follows:-

"(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.

(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.

(3) The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

(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: -

(a) 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.

(b) Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

(c) 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.

(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.

(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.

(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.

(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.

(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.

(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.

(11) Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him."

6. After going through these conclusions, we find that the conclusion mentioned in paragraph-4 (c) above would have been relevant in this case only if the suppression or false information, of involvement in a criminal case **where conviction or acquittal had already been recorded before filing of the application**. Since in this case the acquittal came much after filing of his application, we cannot go into the fact of seriousness or otherwise of the criminal case and also whether the acquittal was clean or not. The other conclusions (from 1 to 11 in para 5 above) also do not help the applicant. In the light of the very clear decision of the Hon'ble Apex court in Devendra Kumar (supra) a dismissal on the ground of non-disclosure of a material information such as a pendency of a criminal case itself amounts to an act of moral turpitude. Since this is not a case of a person having a minor case like shouting slogans or a personal dispute in which the person was acquitted even before filing of his application

(Commissioner of Police Vs. Sandeep Kumar) or where an action has been taken after an inordinately long time (7 years as in **Kamal Nayan Mishra Vs. State of Madhya Pradesh**), we find that the decision to dismiss the applicant does not suffer from any legal infirmity. The OA is, therefore, dismissed.

[Dinesh Sharma]
Administrative Member
Sr.k.

[Jayesh V. Bhairavia]
Judicial Member