

(2014) 12 J&K CK 0036

In the Jammu And Kashmir High Court

Case No : SWP No. 593 Of 2012 and CMA No. 921 Of 2012

Tarsem Lal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 10-12-2014

Acts Referred:

Citation : (2015) 2 JKJ 12

Hon'ble Judges : M.M. Kumar, CJ;Tashi Rabstan, J

Bench : Division Bench

Advocate : Nirmal Kotwal, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

M.M. Kumar, C.J.â?"This writ petition preferred by the original applicant is directed against order dated 22.09.2011 rendered by the Central

Administrative Tribunal Chandigarh Bench (Circuit Bench at Jammu) (for brevity, the Tribunal). The petitioner was appointed as Mazdoor on

03.08.2004 and he was facing charges in FIR No. 281/2000 lodged by one Subash Chander. It has come on record that the verification report

received by Colonel Commander, HQ 135 Works Engineers C/O 56 APO revealed that he was facing charges under Sections 307/326/34

R.P.C. and 4/25 Arms Act. The petitioner also presented a character certificate dated 10.08.2004 which was obtained from SDPO, Aknoor. A

regular enquiry was conducted by the Colonel Commander-respondent No. 3 into the irregularities committed by the petitioner in securing

appointment in Military Engineering Service. Thereafter the Presiding Officer and Member were appointed as Enquiry Committee under Rule 11 of

CCS (CC&A) Rules, 1965 (for brevity, 1965 Rules). The stand taken by the

respondents is that a government is service or had furnished false information or produced false certificate in order to secure appointment, should not be retained in service. If he is a probationer or temporary government servant then he should be discharged or his services should be terminated. If he has become permanent government servant then enquiry in terms of Rule 14 of 1965 Rules has to be held and if the charges are proved then he should be removed or dismissed from service. It is the further stand of the respondents that the petitioner was appointed on temporary basis, which is evident from his order of appointment on the post of Mazdoor and in case he was to be made permanent then his claim for permanent absorption was to be considered in accordance with the Rules. There was no order passed in his favour and he continued to be a temporary employee. The petitioner has actually failed to disclose the fact of his involvement in case FIR No. 281/2000 registered under Sections 307/326/34 R.P.C and 4/25 Arms Act. The Tribunal after noticing the aforesaid fact had concluded as under:--

6. The fact that the applicant had earlier been involved in a criminal case came to light when the papers regarding character and police verification were received back by the Respondents with the said information. It is an admitted fact that the applicant did not disclose this at the time of his appointment and in fact, produced a Character Certificate from the Sub Divisional Police Officer, Akhnoor saying that there was nothing adverse against him in the police record so far. This Character Certificate is dated 10.08.2004. The incident on the basis of which the FIR had been registered against certain persons, of which one such person was the applicant, had occurred on 20.11.2000. From this it is obvious that this incident had occurred prior to the date of issuance of the Character Certificate. It is, therefore, obvious that the fact of the Criminal case had been suppressed in the issuance of the Character Certificate and in the absence of any such enquiry being made, the fact cannot be ruled out that this Character Certificate might be fake one. Getting a clean chit on the basis of a police verification is one of the conditions precedent to appointment in Government service. Since it came to be known on the basis of the police verification report that the applicant had been involved in a Criminal case, and that he had concealed this fact from his employers, is justifiable

ground for the Respondents to have taken the action that they did. As far as the status of the applicant is concerned, it is very clear from the appointment letter that he had been appointed against a temporary post on temporary basis and therefore services could have been terminated as in the case of a temporary employee. The applicants had constituted a Board of Enquiry, which heard the applicant and thereafter have its report, in which the charge was proved against him that he had concealed this vital fact at the time of being appointed in the Respondent-Department. Therefore, we find that the action of the Respondents in terminating the applicant from service is perfectly legal and valid and the applicant has failed to make out a case in his favour.

It is settled proposition of law that when the recruitment is made to sensitive organizations like Military Engineering Service then the person employed in such an organization has to prove his character antecedents. In order to verify his antecedents a verification report was received by the appointing authority from the Senior Superintendent of Police, District Police Headquarter, Jammu on 21.01.2005, which revealed pendency of the above stated criminal case. This led to the passing of order of termination on 31.01.2009. The question before this Court is "whether concealment of his involvement in a criminal case would be sufficient to deny him appointment on the post of Mazdoor." In a catena of judgments Hon'ble the Supreme Court has taken the view that such a course is wholly justified. In that regard reliance may be placed on the observations made in the case of Delhi Administration through its Chief Secretary and Others Vs. Sushil Kumar, . Rejecting the argument that the employee was later acquitted of the criminal case in para 3 of the judgment Hon'ble Supreme Court observed as under:--

..."It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was found physically fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly

unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant to the case is of the antecedents of the candidate. Appointing authority, therefore, has rightly focused this aspect and found it not desirable to appoint him to the service.

It is thus clear that even acquittal earned from the Criminal Court would not condone the act of concealment at the time of seeking recruitment to service. Similar view has been taken in the case of *Daya Shankar Yadav Vs. Union of India (UOI) and Others*, . In similar facts and circumstances

Hon'ble the Supreme Court in para 9 has observed as under:--

9. When an employee or a prospective employee declares in a verification form, answers to the queries relating to character and antecedents, the verification thereof can therefore lead to any of the following consequences:--

(a) If the declarant has answered the questions in the affirmative and furnished the details of any criminal case (wherein he was convicted or

acquitted by giving benefit of doubt for want of evidence), the employer may refuse to offer him employment (or if already employed on probation,

discharge him from service), if he is found to be unfit having regard to the nature and gravity of the offence/crime in which he was involved.

(b) On the other hand, if the employer finds that the criminal case disclosed by the declarant related to offences which were technical, or of a

nature that would not affect the declarant's fitness for employment, or where the declarant had been honorably acquitted and exonerated, the

employer may ignore the fact that the declarant had been prosecuted in a criminal case & proceed to appoint him or continue him in employment.

(c) Where the declarant has answered the questions in the negative and on verification it is found that the answers were false, the employer may

refuse to employ the declarant (or discharge him, if already employed), even if the declarant had been cleared of the charges or is acquitted. This is

because when there is suppression or non- disclosure of material information bearing on his character, that itself becomes a reason for not

employing the declarant.

(d) Where the attestation form or verification form does not contain proper or adequate queries requiring the declarant to disclose his involvement

in any criminal proceedings, or where the candidate was unaware of initiation of criminal proceedings when he gave the declarations in the

verification roll/attestation form, then the candidate cannot be found fault with, for not furnishing the relevant information. But if the employer by

other means (say police verification or complaints etc.) learns about the involvement of the declarant, the employer can have recourse to courses

(a) or (b) above.

In the aforesaid judgment a reference has been made to a large number of earlier judgments rendered by the Hon'ble the Supreme Court including

State of Haryana and Others Vs. Dinesh Kumar, and Union of India (UOI) and Others Vs. Bipad Bhanjan Gayen, .

2. When the principles laid down in the aforesaid judgments are applied to the facts of the present case it is crystal clear to us that a person, who

seeks employment by concealing material fact of pendency of criminal case, would not be entitled to appointment particularly in an organization like

Military Engineering Service. If such a person has secured appointment by producing a false Character Certificate as conveyed by the verification

report then such an employee can be lawfully removed from service by discharging him or by terminating him by an order simplicitor. There is, thus

no merit in the petition hence same is dismissed along with accompanying CMA.