

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 21st December, 2012

+ W.P.(C) No.7325/2010

BHEEM SINGH MEENA Petitioner
Through: Mr.R.K. Saini, Adv. with
Mr. Vikas Saini, Adv.

Versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Through: Mr.Ruchi Sindhwani, Adv.
with Ms. Bandana Shukla,
Adv. & Ms. Megha, Adv.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE J.R. MIDHA

GITA MITTAL, J

1. By way of this petition, the writ petitioner prays for quashing of the orders dated 19th November, 2009 and 10th March, 2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi dismissing OA No.3196/2009 and RA No.7/2010 filed by the petitioner.
2. The petitioner hails from village Matasula, Tehsil Todabhim, District Kanauli in the State of Rajasthan and belongs to the reserved category. He undertook the test conducted by the Delhi Subordinate Service Selection Board (hereinafter referred to as 'DSSSB'). Vide a memorandum dated 17th November, 1999 the petitioner was offered the post of Trained Graduate Teacher (Mathematics) ['TGT (Math.)' hereafter] with the respondent. The appointment to the post was effected by an order dated 7th December, 1999 and the petitioner duly took charge of the post on 8th December, 1999.

3. The respondent thereafter required the petitioner to fill up an attestation form for verification of his antecedents. The petitioner filled up the attestation form on 13th December, 1999 which was duly attested by the lecturer of the Government College, Karauli. It is here that the troubles of the petitioner began. At serial no.11(b) of the attestation form, the respondents had required the candidate to answer in 'Yes/No' to the query 'Have you ever been prosecuted?'. The petitioner answered the same in the negative as 'No'.

4. After a long period of five years or so, on the 24th of December, 2005 the petitioner was required to fill up the attestation form afresh. While filling this form, the petitioner states that he had virtually copied out the information which he had given in the earlier attestation form.

5. The attestation form was sent for verification to the district Kharoli, Kanauli, Rajasthan, who, vide letter dated 7th April, 2006, intimated the respondent that a case under Sections 499/93, 147, 332, 353, 427 & 149 IPC was registered and charge-sheet vide letter no.42/94 dated 30th April, 1994 was filed in the court of CJM, Karauli, Rajasthan against the petitioner and that he was acquitted in the case on 2nd November, 1994.

6. At this stage, a memorandum dated 21st June, 2006 was served upon the petitioner including a letter dated 17th June, 2006, calling upon the petitioner to explain as to why he had concealed the fact regarding the case registered under Sections 499/93, 147, 332, 353, 427, 149 IPC and the charge-sheet vide no.42/94 dated 30th April, 1994 in the court of CJM, Karauli, Rajasthan against him.

7. The petitioner replied to the same by the letter dated 23rd June, 2006 stating that he was “innocent and fabricated”; that thereafter he was never asked to appear in the court; that vide the verdict dated 2nd November, 1994, he was acquitted; that he forgot about the incident after the acquittal and the column was “oversighted” while filling the form. The petitioner stated that he was residing in Delhi since July, 1996 and did not have any idea about the status of the case after 1996. He requested that in the light of his ignorance and oversight while filling the form, the petitioner may be forgiven for his mistake.

8. The petitioner enclosed a letter of the SHO with the response dated 23rd June, 2006.

9. The respondents thereafter issued a show cause notice dated 14th May, 2007. The petitioner was informed that he had suppressed factual information in the attestation form which was in violation of the CCS Conduct Rules and that he should explain as to why disciplinary proceedings should not be initiated against him for the said misconduct.

10. In response, the petitioner furnished a copy of the judgment dated 2nd November, 1994 to the respondents under the cover of his letter dated 16th June, 2007. A reply was also sent by the petitioner on 9th August, 2007 wherein the petitioner apologized for the unfortunate event which was not deliberate. It was explained that since the petitioner had been acquitted by the court, he did not deem it important enough to inform about the same at the time of his appointment. The petitioner referred to the same as “*utter negligence*”

and shortsightedness". The petitioner emphasized that he had been foolish but his actions were not deliberate or mala fide.

11. The respondents did not accept the explanation and issued a charge-sheet dated 28th July, 2007 levelling the following charge against the petitioner:-

"Sh. Bhim Singh Meena, TGT (Maths) at the time of his appointment to Directorate of Education, Govt. of NCT of Delhi as TGT, committed gross misconduct inasmuch as he submitted false information in the Attestation Form given to him by the Department which has resulted in concealment of facts and furnishing of false information and thereby the suppression of material information by him in the Attestation form."

12. The respondent proceeded to appoint an inquiry officer and conduct a disciplinary inquiry under the CCS Conduct Rules against the petitioner. The petitioner has complained that the proceedings commenced and were concluded on 27th November, 2007 itself without recording of any evidence on behalf of the department or the petitioner. The inquiry officer submitted a report dated 30th January, 2008 to the disciplinary authority. The petitioner challenged the same by his letter dated 9th April, 2008.

13. The disciplinary authority passed an order dated 19th June, 2008 accepting the inquiry report and imposed the penalty of removal from the service upon the petitioner.

14. The petitioner's statutory appeal to the appellate authority was dismissed by an order dated 1st June, 2009 which had been challenged on the ground that the same was cryptic, non-speaking & passed without disclosing reasons. The petitioner contends that this order was

passed in violation of the Government of India Decision No.1 below Rule 15 of the CCS (CCA) Rules, 1965.

15. Aggrieved by these proceedings and orders, the petitioner filed OA No.3196/2009 under the Central Administrative Act before the Central Administrative Tribunal, Principal Bench, New Delhi which was dismissed by the judgment dated 19th November, 2009. The petitioner was advised that the Central Administrative Tribunal, has erred in its judgment and there were errors apparent on the face of the record. He consequently filed a review application before the Tribunal which was rejected by the judgment dated 10th March, 2010. The petitioner has filed the present writ petition assailing these orders.

16. In support of the writ petition, the petitioner has placed reliance on the pronouncements reported at **171 (2010) DLT 705 (DB) Govt. of NCT of Delhi & Anr. Vs. Robin Singh; (2011) 4 SCC 644 Commissioner of Police & Ors. Vs. Sandeep Kumar; 178(2011) DLT 263 (DB) Rahul Yadav Vs. CISF & Anr., 179(2011) DLT 59 (DB) Kuldeep Kumar Vs. UOI & Ors. & 2010 (12) SCALE 477 Daya Sankar Yadav Vs. Union of India & Ors.**

17. The writ petition is vehemently opposed by Ms. Ruchi Sindhwani, learned counsel for the respondents who has drawn our attention to the caution contained in the attestation form which notified the candidate that furnishing of false information or suppressing of any material information in the attestation form would be a disqualification and would render the candidate unfit for employment under the Government. The candidate was further cautioned that if false information has been furnished or that any factual information has

been suppressed in the attestation form and it comes to the notice of the Government at any time during the course of service, such service shall be liable to be terminated. The candidates were warned even at the end of the question in column no.11 about the said warnings at the top of the form. It is urged that the petitioner has deliberately concealed the material facts of his implication and prosecution in the criminal case rendering him liable for penalty.

18. Ms. Sindhwani, learned counsel for the respondents has further urged at great length that the petitioner has improved his explanation each time he has given a representation and filed reply. In this regard, our attention has been drawn to the petitioner's communications dated 23rd March, 2006; 9th August, 2007 which were in reply to the memo served upon him and the petitioner's reply dated 9th April, 2008 sent in reply to the respondents' memo dated 25th March, 2008. It has been contended that the orders of the Disciplinary Authority, Appellate Authority and Central Administrative Tribunal are justified. Placing reliance on the Judicial pronouncement reported at **(2003) 3 SCC 437 Kendriya Vidyalaya Sangathan & Ors. Vs. Ram Ratan Yadav**, it is urged that the suppression by the petitioner was of material information and he deliberately made a false statement which has a clear bearing on the character and antecedents of the respondent in relation to his continuance in office. It is contended that consequently the impugned orders are justified.

19. We have given our careful consideration of the above to the rival contentions.

20. Before considering the factual matrix, it would be appropriate to consider the principles laid down in the various judicial pronouncements on the facts similar to those in the present case placed before us. Learned counsel for the respondents has relied upon the pronouncement of the Supreme Court reported at **(2010) 14 SCC 103 Daya Shankar Yadav Vs. Union of India & Ors.** wherein the court was of the view that the purpose of seeking information is to ascertain the character and the antecedents of the candidate so as to assess his suitability for the post and, therefore, the candidate has to answer the questions in the columns truthfully and fully. It was further held that misrepresentation or suppression or false statement therein by itself would demonstrate conduct and character unbecoming for a uniformed security service. It was observed that when there is suppression or non-disclosure of material information bearing on his character, that itself becomes a reason for not employing the declarant.

21. There can be no dispute at all with this proposition which mandates a finding by the court of conscious and willful suppression or non-disclosure of material information having a bearing on the character of the candidate.

22. It is noteworthy that even in **Daya Sankar Yadav Case (Supra)**, the Court agreed with the petitioner that the English version of the questions were involved and confusing. If the queries in 12(a) and (b) in this case had been split into separate questions with instructions, to provide clarity and precision, there would have been no room for controversy. For example, if questions 12(a) and (b) had

been split up into five separate questions with a note as follows, there would have been no confusion or ambiguity: a) Have you ever been arrested or prosecuted or kept under detention? B) Have you ever been bound down or fined or convicted by a court of law for any offence?

The petitioner *Daya Sankar* in this case was, however, disentitled to the benefit of doubt because he had taken a stand that there was ambiguity in the English version of the question. However, the court found that the form contained a Hindi version of the question which showed clear communication of the information which was required to be furnished. In this background, the court concluded that Daya Shankar had clearly suppressed the material fact that he was prosecuted and thereby made a false statement. It was further held that if the object of the query is to ascertain the antecedents and character of the candidate to consider his fitness and suitability for employment, and if the consequence of a wrong answer can be rejection of his application for appointment, or termination from service if already appointed, the least that is expected of the employer is to ensure that the query was clear, specific and unambiguous. Obviously, the employer cannot dismiss/discharge/terminate an employee, for misunderstanding a vague and complex question and giving a wrong answer. But in this case, the appellant is not entitled to any benefit of doubt on the question whether he knew the meaning and purport of question 12(a) and (b). Even assuming that there was ambiguity in the English version of the questions, a reading of the

Hindi version of the questions shows a clear indication of the information that was required to be furnished by the declarant.

23. In the judgment reported at **180 (2011) DLT 640 DB Manoj Kumar Vs. Commissioner of Delhi Police**, also the court was of the opinion that the petitioner was under obligation to state the facts in terms of the questions posed and that when one is obliged under law to speak the truth but conceals the same, tantamounts to suppression of truth and expression of what is false. Reliance was placed by this court on the pronouncement of the Supreme Court in **(1997) 10 SCC 538 Collector of Customs, Calcutta Vs. Tin Plate Co. of India Limited** wherein the Supreme Court had stated that “*suppression*” envisages a “*deliberate*” or “*conscious omission*” to state a fact with the intention of deriving wilful gain. It was observed by the Supreme Court that neither equity nor law comes to the aid of such a person.

24. Applying these principles in **Manoj Kumar’s case (supra)**, it was held that the questions were clear and the petitioner had “*deliberately*” and “*consciously*” answered the queries in the negative only to gain the benefit of appointment. It is noteworthy that in this case the petitioner who had sought appointment to the post of a constable/driver in the Delhi Police force, was a matriculate. Further the court observed that on a perusal of the forms and the warnings, it is luminescent that furnishing of such information was imperative. It is not such a form where one could miss the information required and that it was not a complex one.

25. The pronouncement of this court dated 15th July, 2010 in **WP (C) No.1851/1993 Ashok Kumar Vs. Union of India & Ors.** was also

premised on the conclusion that the petitioner had deliberately concealed a material fact.

26. Again in the judgment dated 22nd March, 2011 passed in **WP (C) No.4060/2004 Abhishek Kumar Vs. CISF & Ors.**, this court had held that the columns in the form were clear and self-explanatory and that the petitioner was duty bound to have made a fair and candid disclosure of the complete information. Furnishing false information at the threshold of entering service, deserves to be seriously viewed.

27. The pronouncement in **WP (C) No.117/1993 Joice Michael Vs. Union of India** dated 13th July, 2010, was to the same effect. This court had concluded that the petitioner had deliberately and knowingly concealed the material information in his attestation and verification form.

28. Our attention has been drawn to the pronouncement of the Supreme Court reported at **(2003) 3 SCC 437 Kendriya Vidyalaya Sangathan & Ors. Vs. Ram Ratan Yadav** wherein the facts of this case disclosed that the respondent's contention that he had not correctly understood the contents of column 12 & 13 was rejected. In this background, the termination of his services on the ground of suppression of factual information in the attestation form was sustained.

29. In the judgment dated 23rd March, 2010 passed in **WP (C) No.8507/2009 Rajesh Kumar Vs. Union of India & Ors.**, the Division Bench of this court of which one of us (Gita Mittal, J) was a member, considered similar facts. The petitioner had been tried by the juvenile court and acquitted without any examination of witnesses or

cross-examination when he was barely of eight years of age. This court held that in view of the tender age of the petitioner, the registration of the FIR and the petitioner's acquittal could not have been possibly recollected by him after passage of more than twelve years. This court had also observed that the petitioner had received just twelve years of education and was semi-literate. In these circumstance, it was held that the failure to disclose the result of the criminal case could not be construed as an act of wilful suppression on his part.

30. Again in the judgment dated 27th July, 2010 passed in **WP (C) No.2417/2010 Municipal Corporation of Delhi Vs. Ram Niwas**, a Division Bench of this court examined the legality of the show cause notice issued by the Municipal Corporation of Delhi against the driver-respondent for suppressing the fact that two FIRs were registered against him. The Tribunal had accepted the respondent's contention that it was not a case of misrepresentation and concealment but was a case of mistaken impression.

31. Given the nature of the query in the attestation form, this court had further observed that the respondent having been acquitted in both the cases which pertain to offence not involving moral turpitude and considering the fact that the respondent had been working as a driver since 1989 with a clear service record, the challenge by the Municipal Corporation of Delhi was rejected and reinstatement of the respondent had been directed.

Placing reliance on the judgment reported at **171 (2010) Delhi Law Times 705 (DB) Govt. of NCT of Delhi & Anr. Vs. Robin**

Singh, the court held that every wrong information may not necessarily be deception. A person may be wrong, but under bona fide belief that he is right, if he furnishes the information. This would not be deception.

32. In the case reported at **179 (2011) Delhi Law Times 59 (DB) Kuldeep Kumar Vs. UOI & Ors.** wherein the petitioner was acquitted of the charges punishable under Sections 452/323/504/506 of IPC, but did not disclose the same while filling up a verification roll, while seeking employment in ITBP, the court held that the petitioner filled up the form in the year 2009, eight years after the incident and six years after being acquitted. It was, therefore, apparent that the petitioner had only hazy memories in his mind coupled with the fact that the information sought was worded in a complex manner. Therefore, the petitioner was entitled to the benefit of doubt of not deliberately furnishing false information.

33. It is clear from the above that every case has to be considered in the factual matrix laid down before the court. In order to sustain dismissal from service on account of wrong information being furnished in the attestation form, it is well settled that the authorities and the court are first required to conclude that there was deliberate and conscious suppression of material facts with the intent to secure employment.

34. Let us see the query which the petitioner was required to answer in the case in hand. An examination of the attestation form in the instant case would show that the candidate was required to answer the

following query: ‘Have you ever been PROSECUTED?’ A candidate was therefore requested to give information about prosecution, if any.

35. The expression ‘prosecution’ has different hues and colours. Its scope and ambit varies. The **Black’s Law Dictionary** defines “prosecute” and “prosecution” thus:-

*“Prosecute- 1. To commence and carry out a legal action. 2. To institute and pursue a criminal action against (a person).
Prosecution 1. The commencement and carrying out of any action or scheme 2. A criminal proceeding in which an accused person is tried.”*

36. The **Oxford Dictionary** defines “prosecute” as follows:-

*“Prosecute- To follow up, pursue; to persevere or persist in, follow out, go on with (some action, undertaking, or purpose) with a view to completing or attaining it.
To institute legal proceedings against (a person) for some offence; to arraign before a court of justice for some crime or wrong.”*

37. In the **Advanced Law Lexicon Dictionary** the expression “prosecute” is defined as “to institute legal proceedings against (a person) for some offence.”

The expression “prosecution” therefore, may encompass registration of a case or mean facing trial. It may require conviction and/or punishment.

38. “Prosecution” when used in the context of “malicious prosecution” has been the subject of voluminous discussion in judicial pronouncements as well as legal debates. Even today we often find that challenges/defences to actions for malicious prosecution are premised on objections that the plaintiff was never “prosecuted” as he

was not convicted underscoring the interpretations of the expression that are pressed by legally trained minds in courts.

39. The above narration shows that the expression '*prosecute*' as used in the attestation form does not clarify as to whether mere registration of the FIR against a candidate would amount to prosecution or whether a charge-sheet has to be placed before a competent court which could be treated as a prosecution. It does not state as to whether the expression means having stood a trial or suffering a conviction. For a layman, especially someone who is not conversant with legal terms and not familiar with the finer nuances of the English language, the word '*prosecuted*' may be synonymous with imposition of punishment.

40. It has to be borne in mind that the expression "*prosecuted*" is being construed in the context of a candidate filling the attestation form. Such person even if is educated, is not a legally trained mind.

41. Coming to the query raised at serial no.11 in the attestation form we find it is not possible to discern from the query as to what is the exact nature of the information which is to be provided.

42. The petitioner has pointed out the several disadvantages which he is facing. These are not disputed. The petitioner who was born on 15th June, 1973, hails from rural background and as per the annexures on record is a member of a scheduled tribe. He is stated to have undergone his education in the Hindi medium. It is urged that the petitioner is not fluent with the English language. The test conducted by the DSSSB was also undertaken by the petitioner in Hindi medium.

43. It is noteworthy that unlike attestation forms of other organizations, the form was only in the English language.

44. The petitioner has stated that he had appeared before the court only in the year 1994 to explain his innocence and was never called to appear before the court. He further stated that he was living in Delhi since July, 1996 and had no idea about the status of the case. His acquittal vide the judgment dated 2nd November, 1999 was before he joined the service on 8th December, 1999. The petitioner stated that after his one appearance in the court, he had forgotten the incident.

45. The petitioner has also stated that he has never undergone any police or judicial custody or court appearance. He states that he has never been sentenced with fine or imprisonment. He has therefore never been detained or arrested. The petitioner has stated that upon his acquittal by the competent court by the judgment dated 2nd December, 1999, he believed that the case against him became “non-est” in the eyes of law and did not amount to a prosecution. It was in this “bona fide” understanding and ignorance that the petitioner “bona fide” answered the query at serial no.11(b) in the negative. These facts are not challenged before us.

46. Ms. Ruchi Sindhwani, learned counsel for the respondents has urged at great length that the petitioner at different places has given contradictory explanations. It is urged that in his explanation in the letter dated 23rd June, 2006, the petitioner has pleaded “ignorance and oversight”. In the reply to the show cause notice dated 9th August, 2007, the petitioner has stated that it was not deemed important enough. In the reply to the memo dated 25th March, 2008 while

admitting the mistake, the petitioner has stated that it was on account of “naivety & imprudence”.

47. The reference to these expressions in the communications from the petitioner cannot be made in isolation but the entire gamut of facts and circumstances have to be considered while construing the petitioner’s conduct as well as his statements made in the afore-noticed communications. A bare perusal of these communications written from the side of the petitioner as compared to the available handwriting on the attestation form, would show that these communications, though signed by the petitioner, have not been written by him. The ignorance referred to in the letter dated 23rd June, 2006 relates to the ignorance with regard to the meaning of the expression “prosecuted”.

48. The expressions “oversight”, “not deemed as important enough” and “naivety and imprudence” all refer to the failure to disclose the case which was registered against the petitioner and, contextually point towards the petitioner’s contention that he could not comprehend the nuances of the expression in the query which he had to answer.

In fact, the letter dated 23rd June, 2006; reply to the show cause notice dated 9th August, 2007 and the reply to the memo dated 25th March, 2008 show the candour of the petitioner who immediately on the facts being brought to his notice; did not attempt to avoid his mistake and gave the afore-noticed explanation for the same. We are therefore unable to hold that there is contradiction in the afore-noticed expressions. His contention that he believed that the case against

him became *non-est* upon the judgment of acquittal, appears to be *bona fide*.

49. The expression “prosecuted” is certainly capable of confusion as discussed above. The query is only in the English language. Given the disadvantaged position of the petitioner and the background in which he has received education, the explanation of the petitioner that in this background he could not correctly understand the meaning and spirit of the word ‘prosecuted’ is plausible. There is every possibility that the petitioner in good faith did not mention the case which had been registered against him.

50. Our attention has also been drawn to the judgment dated 2nd November, 1999 passed by Shri Murari Lal Sharma, Chief Judicial Magistrate, Karoli, Rajasthan in the miscellaneous Criminal Case No.18/94 whereby the appellant was acquitted in the afore-noticed criminal case. The Trial Judge has clearly noticed that the appellant was not named in the police complaint. The injured who had given the name of the persons who had assaulted him, did not name the appellant. There is no evidence at all which would suggest that the appellant was involved in the incident in question. The appellant was acquitted for this reason.

51. The petitioner had informed the respondents that he had never called even to the police station or convicted or sentenced in the matter. These facts have not been challenged by the respondents.

52. Yet another aspect of this case is that the form was required to be filled by the letter year 24th December, 2005 more than eleven years after the incident in the year 1993 and more than six years after

the acquittal in 1999. It is not disputed by the respondents that the petitioner appeared in court only once. It is human nature to suppress an unpleasant occurrence in the deep recesses of the mind. There would be no reason to disbelieve the petitioner when he states that he had even forgotten the incident. In the instant case, given the facts and circumstances noticed above, it is not possible to definitely conclude that the filling up of the form was a conscious and deliberate act of suppression on the part of the petitioner.

53. After 1999, till his discharge, the petitioner has admittedly continued to perform his duties competently, with sincerity and devotion. The petitioner was posted at the Government Boys Secondary School, J.J. Colony, Raghbir Nagar, Delhi. The petitioner has placed reliance on letter dated 12th December, 2006 of appreciation given to him by the employer. The petitioner showed 97% result in academic session 2006-2007. By the letter dated 12th December, 2006, the Deputy Director of Education congratulated the petitioner on his success stating that the department was *"making new records because of teachers like you who are improving their performance"*. It is noteworthy that while in service, the petitioner had shown good conduct from the 8th of December, 1999 till 19th of June, 2005 for a period of eight and a half years.

54. So far as the challenge to the disciplinary proceedings is concerned, the petitioner has assailed the same contending that it was incumbent upon the inquiry officer to advise the petitioner regarding services of a defence assistant. It is not disputed that the inquiry officer did not advise the petitioner about the same. The petitioner

has complained that he was, therefore, denied reasonable opportunity to avail the services of a defence assistant who would have assisted him in framing his defence and submitting his reply to the defence in the inquiry proceedings.

55. Our attention is drawn to the letter dated 31st October, 2007 sent by the inquiry officer to the petitioner informing him that the preliminary hearing of the case would be held by him on 15th November, 2007 with direction to the officer to attend hearing with defence assistant, if any. The communication clearly stated that the purpose of the preliminary hearing was to sort out preliminaries and to lay down a time schedule for inspection of the listed documents and submission of the list of additional documents and defence witnesses. The inquiry officer further informed the petitioner that no witnesses would be examined on the said date.

56. The inquiry officer was unable to attend the hearing and the preliminary hearing was adjourned to 19th November, 2007. On 19th November, 2007, the charged officer admitted that he had not given the information regarding the FIR due to negligence and that this was not deliberate and had apologized for the same. This stand was taken by him in the written statement as well. It is on record that during the inquiry proceedings, the inquiry officer has not given any opportunity to the petitioner to engage the services of a defence assistant. It is also a fact that the petitioner has nowhere admitted that he had failed to give the information with any intention of concealing the same or with any mala fide intention or had deliberately concealed facts or

furnished false information or suppressed material information in the attestation form.

57. The department had served a list of witnesses along with article of charge upon the petitioner by which they were going to prove the charge. Instead of proceeding in the matter, no evidence was recorded in the departmental inquiry. The petitioner was given no opportunity to prove that the omission or negligence was not deliberate or willful and or to establish his bona fide. Despite the above, the inquiry officer submitted a report dated 29th December, 2007 finding the petitioner guilty of the charges leveled against him. The petitioner submitted a representation dated 9th April, 2008 against the same. However, by an order dated 19th June, 2008, the Director of Education as disciplinary authority, accepted the recommendations of the inquiry officer finding the petitioner guilty of the charge and imposed the penalty of removal from service upon the petitioner with immediate effect. The petitioner submitted an appeal dated 16th July, 2008 to the appellate authority which was also rejected by an order dated 1st June, 2009.

58. It is noteworthy that in ***Daya Sankar Yadav (supra)*** heavily relied upon by the respondents, the Supreme Court had recorded its decision that the appellant had knowingly made a false statement with regard to the criminal case and, therefore, had held that the order of suspension of his service was justified. In the instant case, it is not so.

59. In ***Daya Sankar Yadav Vs. Union of India & Ors. (Supra)***,

the Supreme Court has observed in para 7 that where non-furnishing of a material information is due to absence of clarifying the question or due to the candidate not being aware of the said information, it cannot be said that he had suppressed material information or made false statements.

60. In **2008 (3) SCC 222 State of Haryana Vs. Dinesh Kumar** the Supreme Court had considered the case of an employee who had answered “No” to a query whether he was arrested. It was found that subsequent to registration of FIR, he had voluntarily appeared before the magistrate, without being taken into formal custody and was granted bail and was ultimately acquitted. It was held that in such circumstances, even if what transpired may technically amount to arrest, the benefit of a mistaken impression rather than the consequences of a deliberate and willful misrepresentation and concealment of facts, should be extended to the employee.

61. The above narration would show that the only admission by the petitioner is to the effect that he had not stated about the criminal case on the form. At the same time, he had clearly explained the reasons for the omission. The respondents were bound to have given him an opportunity to prove his explanation. An act or omission per se may not be dishonest or mala fide. The judicial pronouncements noticed hereinabove have held that there must be deliberation or willfulness in the conduct of a person filling the form in either giving wrong information or suppressing factual information. There was no evidence at all of willfulness or deliberation or dishonesty in the omission of the petitioner. We may also note that the petitioner has

been denied the assistance of a defence assistant which the inquiry officer was bound to have given. The statement on the communication intimating the date is grossly insufficient inasmuch as appointment of the defence assistant requires appropriate action and assignment by the employer. In the circumstances of the case, it would appear that the disciplinary inquiry was not in accordance with law and violated principles of natural justice. The order of the disciplinary authority dated 19th June, 2008 and order dated 1st June, 2009 of the appellate authority would, therefore, not be legally sustainable.

62. We find that the Central Administrative Tribunal also agreed with the disciplinary authority and the appellate authority in holding that the petitioner had admitted concealment and, therefore, nothing more was required to be established. However, this is not as per applicable law laid down by the Supreme Court of India or by this court in various judicial pronouncements notice heretofore.

63. In view of the above discussion, it has to be held that the order dated 19th June, 2008 of the disciplinary authority; the order dated 1st June, 2009 of the appellate authority; as well as the orders dated 19th November, 2009 in OA No.3196/2009 and the order dated 10th March, 2010 in RA No.7/2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, are not sustainable and hereby set aside and quashed.

64. As a result, the petitioner would stand reinstated in service in accordance with law. The petitioner would also be entitled to notional

seniority and any other consequential benefits. However, the petitioner will not be entitled to back wages. Appropriate orders in this behalf shall be passed in six weeks.

This writ petition is allowed in the above terms.

(GITA MITTAL)
JUDGE

(J.R. MIDHA)
JUDGE

DECEMBER 21st , 2012
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