

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 8205 of 2018

Omprakash Singh S/o Late Shri Trilok Singh Rajput, Aged About 33 Years, R/o Mukunda Bhawan Road, Bajnath Para, Rishabha Road, Durg, Police Station, Durg, District Durg (C.G.).

---Petitioner

Versus

1. State of Chhattisgarh, Through its Principal Secretary, Department of Home (Jail), Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur (C.G.).
2. The Jail Superintendent, Central Jail, Durg, District Durg (C.G.).
3. The Deputy Jail Superintendent, Central Jail Durg, District Durg (C.G.).

---Respondents

For petitioner	:	Shri Sunil Pillai, Advocate.
For State	:	Shri Ratan Pusty, Government Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

12/12/2018

1. The challenge in the present Writ Petition is to the order Annexure-P/4 dated 13/11/2018 whereby the respondents have rejected the claim of the petitioner for taking the assistance of an Ex-Police Personel - Virendra Sinha as Defence Assistant.
2. The counsel for the petitioner submits that, the petitioner has been prosecuted by the respondents in a disciplinary proceedings for alleged misconduct of remaining unauthorizedly absent and the department has ordered for conducting a departmental enquiry. The petitioner moved an application for engagement of Defence Assistant. The petitioner had suggested the name of Shri Virendra Sinha - an Ex-Constable for being appointed as

Defence Assistant. It is this application which stands rejected vide the impugned order Annexure-P/4 dated 13/11/2018.

3. Perusal of record would show that the only reason for refusal of the request of the petitioner was that, the said Shri Virendra Sinha was a dismissed constable and had a criminal background having undergone 10 years of imprisonment. The order Annexure-P/4 itself in paragraph 2 clearly reflect that the respondents do not dispute the fact that the employee is entitled for taking the assistance of a retired employee of the department as Defence Assistant. A person who has been requested to appoint as Defence Assistant is also an Ex-constable of the police department.

4. The record would show that the same person Shri Virendra Sinha has in another case being appointed as Defence Assistant in respect of one Constable Suresh Dhruv who is working in the police department whereas the petitioner is working in the Jail Department that is the only difference.

5. Given the said facts and circumstances of the case and also taking note of the fact that the rules does not debar a person with criminal background from being appointed as Defence Assistant in spite of the fact that he happens to be an Ex-Constable in the police department.

6. Given the said facts this Court is of the opinion that rejection of the application of the petitioner for engagement of Shri Virendra Sinha as Defence Assistant is not justified.

7. Moreover, what is primarily also to be considered is that providing the services of Shri Virendra Sinha as Defence Assistant to the petitioner would

not in any manner adversely affect the interest of the respondents in conducting the departmental enquiry.

8. Thus, the impugned order deserve to be and is accordingly set-aside/quashed directing the disciplinary authority to permit the petitioner to engage services of Shri Virendra Sinha as Defence Assistant and proceed further with the departmental enquiry in accordance with law.

9. The Writ Petition accordingly stands disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit