

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

WRIT PETITION NO.2923 OF 2018

Swapnil Parab

... Petitioner

Vs

The Director,
Bhabha Atomic Research Center & Ors.

... Respondent

Mr.Mayur Agarwal i/b SSPA Law Firm for the Petitioner

Mr.Neel Helekar with Mr.Prasanjit Khosla for the Respondent –
Union of India

**CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

DATED: JULY 24, 2019

P.C.:

1. This petition is filed by the original applicant of Original Application No.382 of 2018 which came to be dismissed by Central Administrative Tribunal, Mumbai, by impugned judgment dated 25.6.2018.

2. Brief facts are as under:

The respondent – organisation i.e., Bhabha Atomic Research Center (for short, 'BARC') issued public advertisement inviting

applications from eligible candidates for the post of Hospital Work Assistant. The petitioner was eligible for such post. He had applied and was selected by the respondents for the post in question. Before appointing the petitioner, he was required to make a declaration which is titled as "Pre Recruitment Formalities". He had to make necessary declarations which would include his character antecedents. The preamble to this attestation form put the petitioner to guard that any false declaration may result in cancellation of his appointment. The relevant portion of this attestation form reads as under:

- "1. The furnishing of false information or suppression of any factual information in the Attestation Form would be a disqualification; and is likely to render the candidate unfit for employment under the Government.
2. If detained, arrested, prosecuted, bound down, fined, convicted, debarred, acquitted etc. subsequent to the completion and submission of this form, the details should be communicated immediately to the authorities to whom the attestation form has been sent earlier, failing which it will be deemed to be a suppression of factual information.
3. If the fact that false information has been furnished or that there has been suppression of any factual information in the attestation form comes to notice at any time during the service of a person his services would be liable to be terminated."

3. In the attestation form, the employer had asked the petitioner to make a declaration whether he has ever been arrested / prosecuted / kept under detention. He was also asked to declare if he was charged before the Court with any offence for which he was convicted, conditionally discharged, placed on probation or bound down or acquitted. To all these questions, he had answered in the negative.

4. The admitted position, however, is that C.R. No.189 of 2012 was lodged against the petitioner before the concerned police station alleging offences punishable under sections 323, 324, 504 r/w 34 of the Indian Penal Code on the date of making the said declaration which happened to be in January, 2016. Admittedly, this criminal case was pending against him. He was later on acquitted by judgment dated 8.6.2016. However, the fact remains that on the date of filing of attestation, he was facing a criminal case which he did not disclose.

5. The respondents having come to know about the same, issued a show-cause notice dated 25.10.2016. The petitioner was confronted with the filing of the said criminal complaint and the fact that he was arrested pursuant to the complaint and also that he

had not disclosed the same in his attestation. He was given 10 days' time to reply why his candidature should not be cancelled for suppression of such material information.

6. In response to the show-cause notice, the petitioner replied under communication dated 3.11.2016. This is a brief answer in which he had stated that he did not disclose the factum of the criminal case because he had not committed any offence and that he was acquitted.

7. The Respondents did not accept such explanation and instead by the impugned communication dated 27.2.2018 cancelled his candidature. This order reads as under:

“Sir,

This has reference to your selection for the post of Hospital Work Assistant/A in BARC. You were instructed vide letter No.PD/2(6)/2012-R-II/1164 dated 28/01/2016 to fill in the Attestation and SSQ forms. During the Character & Antecedents verification by Police authorities, it was intimated by them that you were arrested by Govandi police station under Section 323, 324, 504 Indian Penal Code, Cr.No.189/2012

You were asked to show-cause why your candidature should not be cancelled through this office letter No.PD/2(6)/2012-R-II/11707 dated 25-10-2016.

Your reply was examined in detail and it was noted that you had filled up the Attestation and SSQ forms in the month of March 2016 whereas the court had passed its orders on June 8, 2016. It is evidence that at the time of filling up of

forms, you were aware that you have been arrested by the Police under above mentioned orders, but you failed to mention the same in the Attestation form (Sl.No.12(a-c, e, f and I) and SSQ form (Sl. No.15 (a-d) and Sl. No.16). This amounts to suppression of information.

In view of the above, the Competent Authority has cancelled your candidature for the post of Hospital Work Assistant/A in this Research Centre. No further communication will be entertained in this regard.”

8. The petitioner thereupon filed Original Application and challenged the said action of the respondents before the Central Administrative Tribunal. The Tribunal by the impugned judgment dismissed his Original Application upon which the present petition has been filed.

9. The learned Counsel for the petitioner submitted that the non-disclosure of the pending criminal case would not automatically result into cancellation of candidature. The case did not involve any serious allegations. The petitioner was subsequently acquitted of all the charges. The respondents ought to have taken into consideration such factors and accepted the petitioner’s explanation. The Counsel relied on the decision of the Supreme Court in the case of **Ram Kumar vs. State of Uttar Pradesh and Others**¹. He fairly brought to our notice the later

¹ (2011) 14 SCC 709

decision of 3-Judge Bench of the Supreme Court in the case of **Avtar Singh vs. Union of India & ors.**²

10. On the other hand, the learned Counsel for the respondents opposed the petition contending that the petitioner had made a false declaration. The attestation form itself contained a clause that any false declaration will lead to cancellation of candidature. The allegations against the petitioner in the FIR are of trivial nature. His subsequent acquittal would not cure his false declaration. The Counsel relied on the decision of the Supreme Court in the case of **State of Madhya Pradesh and others vs. Abhijit Singh Pawar**³.

11. The facts are not seriously in dispute. The petitioner was facing a criminal case at the time he made a declaration that he was never arrested or charged with any offence in the past. This declaration thus was false and falls to his knowledge. In fact, pursuant to the said FIR, he was also arrested. He did not disclose any of these facts to his prospective employer. The attestation form contained clear warning to the declarant that any false declaration may result in cancellation of his candidature. The

² 2016 5 SLR 270

³ 2019 (2) SLR 1 (SC)

petitioner's only defence was that he had not committed any offence and that subsequently he was acquitted of all charges. Neither of these two grounds would be sufficient to absolve the petitioner of a false declaration on a material fact. His own perception that he had not committed an offence could not be sufficient. He had to make a declaration and leave it to the employer to judge the effect of a pending criminal case on his future employment. His subsequent acquittal by itself would not wash out his misdeed.

12. It is not as if the respondents have not taken into consideration the relevant factors before cancelling the candidature of the petitioner. They have not proceeded merely on the warning clauses contained in the attestation form, or else it was not necessary for the respondents to issue show-cause notice to the petitioner calling upon his response. The respondents have considered all the relevant aspects of the matter. The allegations against the petitioner contained in the FIR cannot be trivialised. We have perused the judgment of acquittal. The judgment records that there were counter criminal cases and the parties had settled the disputes and requested for compounding the offences. Both

the cases involved offences which were not compoundable. The Court had, therefore, asked the parties to lead evidence. The witnesses had turned hostile. The petitioner was thereupon acquitted. Thus, clearly this was not an honourable and clean acquittal. The acquittal of the petitioner was based on compromise and the complainant not pressing the charge, though same may have come in the manner of recording evidence since the offenses alleged were non-compoundable.

13. In the case of **Ram Kumar (supra)**, the 2–Judge Bench of the Supreme Court merely expressed an opinion that non-disclosure of an FIR would not automatically lead to cancellation of the candidature. Subsequently, the 3–Judge Bench of the Supreme Court in the case of **Avtar Singh (supra)**, on reference, laid down certain broad propositions which read as under:

“30. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

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.

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. The employer shall take into consideration the Government orders/instructions/rules,

applicable to the employee, at the time of taking the decision.

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 : -

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.

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

14. The 3 – Judge Bench of the Supreme Court in the case of **State of Madhya Pradesh vs. Abhijit Singh Pawar (supra)**, once again had an occasion to consider a similar question. The decision in the case of **Avtar Singh (supra)** was referred to and relied upon. The Court held and observed thus:

“15. In the present case, as on the date when the respondent had applied, a criminal case was pending against him. Compromise was entered into only after an affidavit disclosing such pendency was filed. On the issue of compounding of offences and the effect of acquittal under Section 320 (8) of Cr.P.C., the law declared by this Court in Mehar Singh (supra), specially in paragraphs 34 and 35 completely concludes the issue. Even after the disclosure is made by a candidate, the employer would be well within his rights to consider the antecedents and the suitability of the candidate. While so considering, the employer can certainly take into account the job profile for which the selection is undertaken, the severity of the charges levelled against the candidate and whether the acquittal in question was an honourable acquittal or was merely on the ground of benefit of doubt or as a result of composition.

16. The reliance placed by Mr. Dave, learned Amicus Curiae on the decision of this Court in Mohammed Imran (supra) is not quite correct and said decision cannot be of any assistance to the respondent. In para 5 of said decision, this Court had found that the only allegation against the appellant therein was that he was travelling in an auto-rickshaw which was following the auto-rickshaw in which the prime accused, who was charged under Section 376 IPC, was travelling with the prosecutrix in question and that all the accused were acquitted as the prosecutrix did not support the allegation. The decision in Mohammed Imran (supra) thus turned on individual facts and cannot in any way be said to have departed from the line of decisions rendered by this Court in Mehar Singh (supra), Parvez Khan (supra) and Pradeep Kumar (supra).

17. We must observe at this stage that there is nothing on record to suggest that the decision taken by the concerned authorities in rejecting the candidature of the respondent was in any way actuated by mala fides or

suffered on any other count. The decision on the question of suitability of the respondent, in our considered view, was absolutely correct and did not call for any interference. We, therefore, allow this appeal, set aside the decisions rendered by the Single Judge as well as by the Division Bench and dismiss Writ Petition No.9412 of 2013 preferred by the respondent. No costs.”

15. In the result, we do not find any error in the view of the Tribunal. The petition is dismissed.

(S.J. KATHAWALLA, J.)

(AKIL KURESHI, J.)