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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :16.06.2021

PRONOUNCED ON :12.07.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.No.336 of 2011

and

M.P.No.1of 2011

The Senior Regional Manager,  
Air India Ltd.,  
No.19, Marshalls Road, Egmore,  
Chennai-600 008

...Appellant

-vs-

1. Oggu Peter Bose,

2. The Presiding Officer,  
Central Government Industrial Tribunal,  
Cum Labour Court,  
I Floor, 'B' Wing, 'Shastri Bhavan',  
26, Haddows Road,  
Chennai- 600 006

...Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 13.12.2010 passed in W.P.No.1952 of 2008.

Prayer in W.P.No.1952 of 2008 : Petition under Article 226 of the Constitution of India praying for issue of a writ of certiorarified Mandamus to call for the records from the file of the 2nd respondent in I.D.No.290 of 2004 and quash the order dt 25.2.2005 and direct the 1st respondent to reinstate the petitioner into service with attendant benefits including back wages and promotion.

For Appellant : Mr.K.Srinivasa Murthy  
For R1 : Mr.Rajendrakumar  
for M/s Norton & Grant

For R2 : Labour Court



## JUDGMENT

V.SIVAGNANAM, J.

This Writ Appeal has been preferred against the order dated 13.12.2010 passed in W.P.No.1952 of 2008 to set aside the order of the learned Single Judge of this Court.

2.The facts leading to the filing of the Writ appeal are stated below:

2.1The first respondent initially joined the Indian Army as a Sepoy in Corps of Military Police, on 20.04.1976 and was discharged from Military Service on 13.02.1985 in terms of Rules 13(iii) (v) of Army Rules, 1964 on the ground that his services were no longer required. After his Military Service, he had applied to Air India on 02.06.1990, then and he was appointed as Security guard on 06.09.1990, then he had joined duty on probationary basis in Air India Airport, Meenambakkam, Chennai. At the time of application to Air India, he filed a pre-employment application form on 02.06.1990. Prior to his appointment at Air India, he was arrested on 02.04.1987 in connection with a case registered under Section 363 IPC in Nuzvid Police as he eloped with one Vijayasree. Subsequently, he had married the said Vijayasree, so that the case was closed on 20.11.1987. After this case, he was arrested and prosecuted in C.C.No.149 of 1985 Nuzvid Town Police Station under Section 419 I.P.C and the Trial Court sentenced him to pay a fine of Rs.2000/-, in default, to undergo simple imprisonment for a period of two months. In criminal appeal, he was acquitted by an order dated 26.10.1988. He was appointed for the post of Security guard on 06.09.1990. Since he failed to disclose the arrest and prosecution of criminal cases, after finding the same, on 13.11.1992, a show cause notice was issued to him as that while filling up the attestation form dated 02.06.1990 he had suppressed the fact of having involved in a criminal case. Since the reply submitted by him was found not satisfactory, a charge sheet dated 06.01.1994 was issued. For the charges, framed against him, he submitted an explanation. Since the same was found not satisfactory, an enquiry committee was constituted to conduct an enquiry. He participated in the enquiry proceedings and he was given full and fair opportunity to defend himself.

2.2. The Enquiry Committee submitted its report on 16.11.1994 holding that the charges framed against him were proved. On the basis of the findings of the Enquiry Committee, he was issued with a second show cause notice on 16.12.1994 proposing to impose the punishment of 'dismissal from service' and was called upon to submit his reply to the same. On 30.01.1995, he submitted his reply to the proceedings dated



16.12.1994. After considering the reply submitted by him and after taking into consideration the report of the enquiry Committee, the competent authority passed an order dismissing from service by an order dated 20.03.1995. Aggrieved by the same, he preferred an appeal to the Appellate authority and the said authority also confirmed the order of punishment imposed vide order dated 14.06.1995.

2.3. Subsequently, an Approval Application was filed as required under Section 33(2) (b) of the Industrial Disputes Act 1947 before the National Industrial Tribunal, Mumbai and the Tribunal, upon considering the various contentions of the first respondent accorded approval for the order of punishment of dismissal from service by order dated 15.04.1999.

2.4. Aggrieved by the order of dismissal, the first respondent raised an Industrial dispute in ID.No.290/2004 before the second respondent labour Court during the year 2003. On 25.02.2005, the second respondent passed an Award dismissing the claim of the first respondent. Aggrieved by the same, the first respondent has approached this Court after a period of three years by filing the W.P.No.1952 of 2008.

2.5. The learned Single Judge of this Court took a view that decision rendered by the learned Labour Court is not justified and set aside the impugned order passed by the learned Labour Court. The Writ Petition was allowed with a direction to the appellant to re-instate the first respondent in service with all consequential benefits. Aggrieved by this order, this Writ appeal is filed.

3. Learned counsel for the appellant submitted that on 06.09.1990, the first respondent was appointed as a Security Guard on probationary basis and joined duty at Air India Airport, Meenampakkam, Chennai. At the time of filing free employment application form on 02.06.1990, he suppressed the fact of having involved in criminal cases while filling up the attestation form dated 02.06.1990 and therefore, a show cause notice was issued to the first respondent on 13.11.1992,. Since the reply submitted by the first respondent was not satisfactory, charge sheet was issued and enquiry was conducted by the Enquiry Committee. After considering the reply submitted by the first respondent and materials on record, the competent authority passed an order dated 20.03.1995 dismissing him from service. Aggrieved by the said order, he has filed an appeal which was confirmed on 14.06.1995. Thereafter, the Approval Application was filed as required under Section 33(2)(b) of the ID ACT 1947 before the National Industrial Tribunal, Mumbai. The Tribunal approved the punishment of dismissal from service, by an order dated 15.04.1999. Thereafter, the first respondent



filed ID.No. 290/2004 before the second respondent/Labour Court, which was dismissed on 25.02.2005. Aggreived by the same, the first respondent filed the above Writ Petition. The learned Single Judge allowed the Writ Petition which was contrary to the material on record and law. Further, the learned Single Judge failed to see the attestation form, wherein it has been clearly mentioned as follows:

''WARNING

The furnishing of false information or suppression of any factual information in the attestation form would be a disqualification and he is render the candidate unfit for employment in Air India.

In fact that the false information has been furnished or that there has been suppression of any factual information in the Attestation Form come to notice at any time during the service of a person, his services would be liable to be teminated.''

4.Learned Single judge failed to see that closing of the crminal case regarding the kidnapping of his neighbour's daughter as a mistake of fact cannot absolve the first respondent from the charge of suppressing the material fact, in the attestation form. Equally, first respondent's acquittal by the II Additional Sessions Judge, Vijayawada for the charge that the first respondent has promised to get a job for a person posing himself as an officer of Research Analysis Wing (RAW) of the Government of India, cannot absolve the first respondent from the charge that he had suppressed the material fact in the attestation form.

5.Learned Single Judge erred in holding that the attestation form contained only Yes/No answer and did not call for the details, though in the attestation form, the details were specifically sought for and the first respondent had deliberately failed to furnish those details. The learned Judge failed to see that the first respondent has filled up ''No'' to the following questions in the attestation form

''Have you ever been arrested?

Have you ever been prosecuted?

Have you ever been kept under detention?



Have you ever been bound down?

Have you ever been fined by court of law?

Have you ever been convicted by a Court of law for any offence?''

If the answer to any of the above mentioned questions is "Yes" give full particulars of the case /arrest /detention /in /conviction /sentence /punishment etc.,

6.Learned Single Judge failed to see that closing of the Criminal Case regarding kidnapping as a mistake of fact and the acquittal in the cheating case in Appeal would not absolve the first respondent from the charge of suppressing the details regarding these cases in the attestation form. Therefore, he was liable for the consequences as per the warning, specifically mentioned in the Attestation form itself, namely, termination.

7.Learned Single Judge failed to see that regarding kidnapping of neighbour's daughter on 28.03.1987, a criminal case had been lodged against the first respondent and at that time, the girl had not completed 18 years of age, which she would complete only on 17.08.1987 and on her saying that she agreed to marry the accused, the Superintendent of police, decided to close the criminal case and therefore, the Magistrate has also closed the case on 20.11.1987. All these came to be known only when the antecedents of the first respondent were verified after the appellant organisation had put him on probation, whereas the first respondent was expected to disclose on his own in the attestation form.

8.Equally, regarding the charge that on 7.10.1985, Nuzvid police Station had registered a case against the first respondent under Section 419 of Indian Penal Code because he had promised to get a job posing himself as an officer of RAW by showing an ID card, the first respondent had been convicted by the trial Court and sentenced for 2 months simple imprisonment and Rs.2000/- as fine. But the first respondent failed to mention the same in the attestation form, which came to be known on enquiry. All these facts came to know on verification of his antecedents by the Appellant Airlines only when the antecedents of the first respondent were verified after the appellant's organisation had put him on probation, whereas the first respondent was expected to disclose on his own in the attestation form.

9.Regarding the charge that the first respondent in his attestation form had mentioned that he had left Army service on



his own, learned counsel for the appellant submitted that it was admittedly incorrect because as per the reply from the Sena Police Corps Abhllekh karyalaya Corps of Military Police Records dated 16.04.1991 the first respondent was discharged from the service on the ground that his services were no longer required, which is totally different. The said reply reads as under:

'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 in AIR-INDIA.

If the fact that the false information has been furnished or that there has been suppression of any factual information in the Attestation Form comes to notice in any state during the service of a person, his services would be liable to be terminated.'

10.The above facts would show that the learned Single Judge failed to see that the job the first respondent had applied for, was in the Security Department as Security Guard, whereas the Appellant was in Airlines, where the risk factor was involved and such suppression of facts would be detrimental to the safety of the passenger and the security of the Airline itself, the learned Single Judge should have confirmed the Award, it was pleaded.

11.Learned counsle for the appellant reiterating other grounds raised in the grounds of appeal further submitted that the Hon'ble Supreme Court in the case of Avthar Singh vs Union of India and others reported in (2016)8 SCC 471 has categorically held that the whole idea of verification of character and antecedents is for the purpose of appointing a suitable person for the post in question. It is one of the important criteria which is necessary to be fulfilled before appointment is made. An incumbent should not have antecedents of such a nature which may adjudge him unsuitable for the post. The verification of antecedents is necessary to find out fitness of incumbent. Information has to be given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case. In the instant case, the first respondent suppressed his arrest. Hence, dismissal from service is legally sustainable and thus, the learned counsel for the appellant pleaded to set aside the order of the learned Single Judge by allowing the Writ Appeal.

12.Learned counsel for the first respondent supporting the



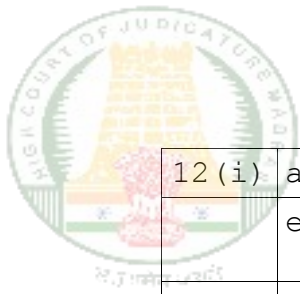
order of the learned Single Judge, submitted that the first respondent was acquitted from the case on the date of entering into service. Since he had no criminal case on the date of entering into service, non disclosure of the previous happening cannot be taken as a serious issue. While imposing punishment, doctrine of proportionality has to be applied keeping in mind the seriousness of the proved charges and the punishment. But, in the instant case, the appellant imposed punishment of dismissal from service. Therefore, the learned Single Judge rightly set aside the impugned order passed by the Labour Court and ordered to reinstate the first respondent into service. Thus learned counsel for the first respondent thus pleaded that there is no valid reason to interfere with the order of the learned Single Judge and thus pleaded to dismiss the Writ Appeal.

13.We have considered the submissions of the learned counsel for both the parties and perused the materials available on record.

14.The facts which are borne on record show that on 06.09.1990, the first respondent was appointed and joined duty as a Security guard in Air India Airport, Meenambakkam, Chennai. When the show cause notice was issued by the appellant on 13.11.1992 for suppressing the fact of his arrest and criminal prosecution in the attestation form dated 02.06.1990, he gave his explanation. Not being satisfied with his explanation, charge sheet was issued on 06.01.1994, for which the first respondent gave his explanation dated 27.01.1994. Based on the same, an Enquiry committee conducted the enquiry and gave a report, dated 08.02.1994 and based on that report the first respondent given his further explanation with regard to punishment on 30.01.1995, punishment of dismissal was imposed by order dated 20.03.1995, and the punishment of dismissal was sent for approval, which was approved by the Industrial Tribunal, Mumbai on 15.04.1999. Thereafter, the first respondent filed ID.No. 290/2004 before the Labour Court. The Second respondent/Labour Court by an award dated 25.02.2005 dismissed the claim of the first respondent.

15.We have carefully perused the attestation form given by the first respondent while joining in Air India which reads as follows:

|       |   |                                         |    |
|-------|---|-----------------------------------------|----|
| 12(i) | a | Have you ever been arrested             | No |
|       | b | Have you ever been prosecuted           | No |
|       | c | Have you ever been kept under detention | No |
|       | d | Have you ever been bound down           | No |



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|       |   |                                                                 |    |
|-------|---|-----------------------------------------------------------------|----|
| 12(i) | a | Have you ever been arrested                                     | No |
|       | e | Have you ever been fined by a Court of law?                     | No |
|       | f | Have you ever been convicted by a Court of law for any offence? | No |

16.By reading the above declaration form given by the first respondent, we could see that the first respondent made a wrong/false statement while furnishing the 12<sup>th</sup> column with regard to specific question about the arrest and prosecution and in all columns, he said 'No'. Besides the Labour Court also rightly while considering the ID. No. 209/2004 found that the first respondent gave a false statement with regard to his particulars in column No.12 and such a suppression is so grave.

17.It is well settled legal position that employees are required to furnish correct information relating to their character and antecedents in the verification form before or after entering the service. It is also well settled principle that once an employer comes to know that when appointment was procured by the workmen on the basis of false declaration, it would amount to mis-representation and fraud on the part of an employee for which disciplinary proceedings can be initiated against such employee for such misconduct.

18.The Supreme Court in a reported judgement in (2016) 8 SCC 471 in the case of Avtar singh vs. Union of India and others while analyzing the grounds of termination for furnishing incorrect information observed as follows:

'We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussions, we summarise 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 service 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.



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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 recourses 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, it is not trivial in nature, the 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 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.

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 he cannot be compelled to appoint the candidate.

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.

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.

If criminal case was pending but not known to the candidate at the time of filling the



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form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

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.

For determining suppression or false information attestation/verification form has to be specific, not vague. Only such informations which were required to be specifically mentioned have 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 the basis of suppression or submitting false information as to a fact which was not even asked for.

Before a person is held guilty of suppression or suggestion false, knowledge of the fact must be attributable to him.

We answer the reference accordingly. Let the matters be placed before appropriate Bench for consideration, on merits''.

19. In the instant case, as we highlighted above the first respondent was appointed as a Security Guard in Air India Airport, Meenampakkam, Chennai on 06.09.1990. Admittedly, he was arrested and detained in connection with two criminal cases. He was arrested on 02.04.1987 for kidnapping one Vijayasree. That case was closed for the reasons found supra. In yet another case, he was again arrested in Crime No.171 of 1985 for the offence under Sections 419 & 420 of IPC and he was convicted and sentenced by paying of Rs.2000/- on 10.12.1987. Subsequently, on appeal the case was ended in acquittal. But, in the details of verification of the question, i.e., have he ever been prosecuted, have he ever been kept in detention, he stated ''No''. It exposes the fact that the first respondent made a wrong/false declaration and statement. The verification of antecedents is to find out the character of the person and fitness of the incumbent. Therefore, the information must be true and there should be no suppression or falsely mentioned information. But in this case, the first respondent wilfully suppressed his arrest and detention which is very much required for verification of his character and antecedents for the post of Security Guard. In the departmental enquiry, all the charges were proved against the first respondent. The mis-conduct of the



first respondent was clearly established in the finding of fact reached by the Labour Court. But the same was not properly considered by the learned Single Judge. An error in law, which is apparent on the face of the record, can be corrected by the Writ Court. Without considering the fact that the first respondent wantonly suppressed information of his arrest in two criminal cases the learned Single Judge erroneously overlooked the same. Further, the learned Single Judge carried away by letter dated 04.05.1995, in which the British Airways appreciated the first respondent for having found a pouch containing U K € 540 and some VS\$ and handing over the same to the concerned authorities, has shown misplaced sympathy to the first respondent. Therefore, we find it difficult to accept the view of the learned Single Judge for taking into consideration the letter dated 04.05.1995, when the main issue of suppression of information by the first respondent in the declaration form was overlooked and finally left unanswered. For the reasons mentioned above we are inclined to set aside the impugned order Judge and restore the order of the Labour Court in ID .No.290/2004 dated 25.02.2005.

20. Accordingly, the result, the order of the learned Single Judge is set aside and award of the Labour Court in ID.No.290/2004 dated 25.02.2005 is restored back to file. With the above observations, the Writ Appeal is allowed. No order as to cost. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vsn

To

1. The Presiding Officer,  
Central Government Industrial Tribunal,  
Cum Labour Court,  
I Floor, 'B' Wing,  
'Shastri Bhavan',  
26, Haddows Road,  
Chennai- 600 006



2. The Senior Regional Manager,  
Air India Ltd.,  
No.19, Marshalls Road,  
Egmore, Chennai - 8.

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+1cc to M/s.Norton & Grant, Advocate, S.R.No.32405

+1cc to Mr.N.G.R.Prasad, Advocate, S.R.No.32475

W.A.No.336 of 2011  
and  
M.P.No.1 of 2011

AK-II (CO)  
RGA (24/09/2021)