

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 6011 OF 2019

Sagar Bhojraj Dhopekar,
 Aged about 39 years,
 ex-employee of Ordnance
 Factory, Ambajhari Nagpur,
 R/o. Ambajhari Tekri,
 Near Baudha Vihar, Gandhinagar,
 Nagpur-440023.

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Petitioner

.. Versus ..

1. Union of India, through,
 The Secretary, Ministry of Defence,
 D (Fy-II), Sena Bhawan,
 New Delhi-110 001.

2. The D.G.O.F./Chairman,
 Ordnance Factory Board,
 10/A, Shaheed K. Bose Road,
 Kolkata-700 001.

3. The General Manager,
 Ordnance Factory, Ambajhari,
 Nagpur-440 021.

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Respondents

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 Shri B. Lahiri, Advocate for the petitioner,
 Ms. Sushma, Advocate for the respondents.

CORAM : A.S. CHANDURKAR AND SMT. M.S. JAWALKAR, JJ.

DATE ON WHICH ARGUMENTS WERE HEARD : 29.03.2022.
DATE ON WHICH JUDGMENT IS PRONOUNCED : 13.04.2022.

JUDGMENT (Per : Smt. M.S. Jawalkar, J.)

Rule. Rule made returnable forthwith. Heard the learned counsel for the parties.

2. The present petition is filed being aggrieved by the judgment and order in Original Application No.12/2017 dated 26.04.2019 passed by the Central Administrative Tribunal, so also seeking a direction to quash and set aside the order of removal from service dated 23.04.2015 passed by the respondent no.3 and appellate order dated 02.02.2016 passed by the respondent no.2 with a prayer for reinstatement to the post of Durwan.

3. The facts in nutshell are as under :

The petitioner came to be appointed by the respondent no.3 on the post of Durwan on compassionate ground by an order dated 15.12.2011. The petitioner submitted details of his family members in prescribed format as per rules. Thereafter, he worked for about three years as a Durwan with fullest satisfaction of his superiors. He was served with a memorandum of charges proposing to hold an enquiry against him under Rule 14 of CCS (CCA) Rules, 1965 on the charge of suppression of information of his marital status and child at the time of application and

verification for compassionate appointment. The petitioner denied the charges and explained the circumstances which led him not to give the name of his wife and child at the first instance. The respondents without granting any opportunity to the petitioner to demonstrate his innocence and without following procedure, through the respondent no.3 issued an order imposing the penalty of removal from service with effect from 23.04.2015. His appeal came to be rejected on the ground that as per the directives issued by DoP&T a married son is not considered eligible for appointment on compassionate grounds.

4. It is submitted by the learned counsel for the petitioner that although the DoPT vide Sr.No.13 of FAQs dated 30.05.2013 answered that married son is not considered dependent on a government servant, had subsequently clarified in SI. No.60 of another FAQ dated 25.02.2015 that a married son can be considered for compassionate appointment if he otherwise fulfills all requirement of the scheme. It is also urged by the learned counsel for the petitioner that the DoPT by a subsequent office memorandum dated 05.09.2016 issued a specific directive that the cases of compassionate appointment rejected solely on the grounds of marital status in terms of FAQ No.13 dated 30.05.2013 during the intervening period i.e. with effect from 30.05.2013 to 25.02.2015 in respect of married son may not be reopened / reconsidered

against the vacancies occurring after issue of this OM. The Central Administrative Tribunal, by order dated 26.04.2019, dismissed the Original Application of the petitioner. The learned counsel for the petitioner submitted that the orders passed by the respondent-Authority as well as the Central Administrative Tribunal are patently illegal and cannot be sustained in the eye of law. In support of his submissions, the learned counsel for the petitioner relied on the following citations :

- (i) **Ram Kumar .vs. State of Uttar Pradesh and others, (2013) 2 SCC (L & S) 773.**
- (ii) **Commissioner of Police and others .vs. Sandeep Kumar, (2011) 1 SCC (L & S) 734.**
- (iii) **Chairman-cum-Managing Director, Coal India Limited and another .vs. Mukul Kumar Choudhari and others, (2009) 15 SCC 620.**

5. As against this, the learned counsel for the respondents vehemently submitted that the petitioner was offered an appointment to the post of Durwan on compassionate ground in the office of the respondent no.3 i.e. Ordnance Factory Ambajhari Nagpur as a trainee. His appointment was subject to the conditions mentioned in the appointment order. After joining the service, the petitioner furnished the revised nomination forms for entry in his service record vide letter dated 29.04.2014. After considering all the above listed documents, it was found that the petitioner was already married and was having one

daughter. It is alleged that the petitioner stated that he was unmarried at all times; at the time of assessment for compassionate appointment by the Assistant Labour Welfare Commissioner and, therefore, memorandum of chargesheet under Rule 14 of CCS (CC&A) Rules, 1965 for gross misconduct, suppression of information of his marital status and child at the time of application and verification for compassionate appointment was issued. The reason put forth by the petitioner was that his wife and child left him and started living with her parents due to some misunderstanding and dispute. Hence, the petitioner has not mentioned about the marital status as well as details of his child. The learned counsel for the respondents, in support of her submissions, has relied on following judgments of the Apex Court :

- (i) **Civil Appeal Nos.5743-5744/2021 (Rajasthan Rajya Vidyut Prasaran Nigam Limited and another .vs. Anil Kanwariya)**
- (ii) **Civil Appeal No.1155/2006 (Devendra Kumar .vs. State of Uttaranchal and others)**

In Rajasthan Rajya Vidyut Prasaran Nigam Limited and another (supra), it is held that the question is about the credibility and/or trustworthiness of such an employee who at the initial stage of the employment that is while submitting the declaration/verification and/or applying for a post made false declaration and/or not disclosing and/or suppressing material fact of

having involved in a criminal case. If the correct facts would have been disclosed, the employer might not have appointed him. Such employee cannot claim the appointment and/or continue to be in service as a matter of right. Therefore, the learned counsel for the respondents prayed for dismissal of the petition.

6. The rival contentions now fall for our determination. Admittedly, the petitioner was appointed as Durwan on 15.12.2011 on compassionate ground. After the petitioner submitted information in proforma : Next of Kin, wherein he mentioned the names of his wife and daughter on 29.04.2014, charge-sheet dated 05.07.2014 was served on the petitioner on the ground of gross misconduct i.e. suppression of information of his marital status and child at the time of application and verification for compassionate appointment. It appears that while submitting attestation form on 28.06.2011 he has not mentioned anything against column about the details of wife. There is no column in respect of child.

7. In reply the respondents submitted that the petitioner declared himself as unmarried while filling the personal details form during the joining process in the establishment which portrayed his malafide intention in concealing the fact of his marriage and child. On perusal of

the attestation form it appears that he has not filled in anything against the clause pertaining to details of wife and he has left that column blank. After issuance of chargesheet he has given his explanation, however, without granting any opportunity, he was removed from the service. On perusal of the documents on record, it appears that the scheme of compassionate appointment, the Ministry of Defence clarified relative merit points. These are dated 9.3.2001 in which Clause 3, Sub-Clause (a) reads as under :

“(a) No. of dependent (Para 3 (e) of above ref : This parameter includes only the immediate dependents of the concerned govt servant. The employed sons (both staying together, married or living separately), employed daughters and married daughters are not to be accounted in this parameter. Widow, all minor sons and dependent unemployed major sons, unemployed daughters (minors, unmarried) and dependent widow daughters (unemployed) living together are to be taken into account in this category for allocation of points.”

8. After reading the same, it would be clear that dependent includes “married son” provided he is unemployed. Revised procedures for selection are issued on 22.01.2010. In this regard Annexures-8 and 9 produced on record by the petitioner are relevant to decide the issue. Annexure-8 is the FAQs answer by the Department of Personnel and Training, wherein at Sr.No.13 FAQ was asked, “whether married son can be considered for compassionate appointment?”. It was answered in the

negative. However, on 25.02.2015, Department of Personnel and Training, in reply to Question No.60 that whether married son can be considered for compassionate appointment.? The answer is as under :

“Yes, if he otherwise fulfills all the other requirements of the Scheme i.e. he is otherwise eligible and fulfills the criteria laid down in this Department’s O.M. dated 16th January, 2013. This would be effective from the date of the issue of the FAQ viz. 25th February, 2015 and the cases of compassionate appointment already settled w.r.t. the FAQs dated 30th May, 2013, may not be reopened.

Sr. No. 13 of the FAQs dated 30th May, 2013 may be deemed to have been modified to this extent.”

9. In view of this answer/clarification to compassionate appointment already settled, may not be re-opened. In view of the scheme of compassionate appointment, Clause 3 Sub Clause (a), even unemployed married son is included in the definition of dependent. Therefore, non-mention of details of wife at initial attestation would not have any bearing to get the appointment on compassionate ground. Even if the petitioner would have given the details of his wife, there was no bar for appointing a married person. It is not the charge that in spite of being in employment he applied for compassionate appointment. So far as reliance is placed by the respondents in **Rajasthan Rajya Vidyut Prasaran Nigam Limited and another** (supra), it is distinguishable on facts. In the said matter, the employee while submitting the declaration applying for a

post made false declaration and suppressed material fact of being involved in a criminal case. If the correct fact would have disclosed, the employer may not have appointed him. However, in the present case, the petitioner has not filled in the details of his wife against the column meant for it. However, he has not anywhere portrayed as alleged by the respondents that he is unmarried. Even if this information was given that would not be a bar for considering him to be appointed on compassionate ground. Even in the judgments cited by the petitioner i.e. (i) **Ram Kumar .vs. State of Uttar Pradesh and others (supra)** and (ii) **Commissioner of Police and others .vs. Sandeep Kumar (supra)**, in spite of criminal cases culminating into acquittal, the Hon'ble Apex Court directed to reinstate the appellant, considering the allegations for removal, which are not material. The petitioner also submitted that the penalty imposed is very harsh and disproportionate. He has given explanation for not mentioning the details of his wife. He has not claimed anywhere that he is unmarried. In **Chairman-cum-Managing Director, Coal India Limited and another .vs. Mukul Kumar Choudhari and others, (supra)**, it is held that :

“19. The doctrine of proportionality is, thus, well-recognised concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision-maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a

manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.

20. One of the tests to be applied while dealing with the question of quantum of punishment would be: would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment.”

10. The information which has no bearing for getting appointment on compassionate ground, even if not filled in makes no material difference. In other words, there is no suppression of any material information. Marital status of a dependant son is not relevant while considering grant of compassionate appointment. Hence the order of removal cannot be justified, as no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only disproportionate to the allegations but also unduly harsh. To meet the ends of justice, the following order is passed :

ORDER

(1) The order dated 26.04.2019 in Original Application No.12/2017 passed by the Central Administrative Tribunal, Mumbai Bench at Nagpur, so also the order dated 23.04.2015 passed by the respondent no.3 – General Manager, Ordnance Factory, Ambajhari,

Nagpur and the order dated 02.02.2016 passed by the respondent no.2– D.G.O.F./Chairman, Ordnance Factory Board, Kolkatta are hereby quashed and set aside.

(2) The respondent no.3 is hereby directed to reinstate the petitioner forthwith. However, the petitioner will not be entitled to any back-wages from the date of removal until reinstatement. However, said period from the date of removal till reinstatement will be considered for all purposes including continuity and pensionary benefits.

(3) Rule is made in aforesaid terms. No costs.

[SMT. M.S. JAWALKAR, J.]

[A.S. CHANDURKAR, J.]

Gulande