



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 6049 OF 2022

Shri Naresh Somaji Ikhare,
Age 40 years, Occ.- Casual Worker,
R/o Shriram Nagar, Bhadrawati,
District – Chandrapur 442 902.

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PETITIONER

VERSUS

- 1) The Union of India,
represented through the Secretary,
Ministry of Defence, South Block,
New Delhi – 110 001.
- 2) The Director General Ordnance
(Coordination & Service) (erstwhile
Ordnance Factory Board), 10-A,
S.K. Bose Road, Kolkata–700 001 (WB).
- 3) The General Manager,
Ordnance Factory Chanda,
(Merged into Munition India Ltd.),
Tahsil – Bhadrawati, District Chandrapur-
442 501 (M.S.).

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RESPONDENTS

Mr. M.G. Burde, Counsel for the petitioner,
Mr. C.J. Dhumne, Counsel for the respondents.

**CORAM : NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.**

DATED : 15th MARCH, 2024

ORAL JUDGMENT : (Per : Abhay J. Mantri, J.)

Heard. **Rule.** Rule is made returnable forthwith.

2. The petitioner being aggrieved by the order dated 14-06-2022 passed by the Central Administrative Tribunal, Nagpur (for short – the “*Tribunal*”) in Original Application No.170/2022, whereby confirmed the order passed by the respondents cancelling/rejecting the candidature/claim of the petitioner for grant of compassionate appointment on the post of Concierge (Darban), has preferred this petition.

3. The facts necessary for deciding the petition are as under :-

(a) The petitioner’s father late Shri Soma Latari Ikhare was working at the Ordnance Factory, Chanda. He expired on 07-06-1999 leaving behind his widow, the petitioner and one daughter. On his demise, the widow i.e. mother of the petitioner Chandrakala had applied on 28-06-1999 with respondent No.3 seeking an appointment for her son i.e. petitioner on compassionate grounds in place of deceased Soma. However, said application remained pending with respondent No.3 till the revision of the guidelines on the compassionate ground was received by them.

(b) On 26-7-2012 respondent No.3 received revised guidelines from the Ministry of Defence. Pursuant to the said guidelines they reopened the closed cases and asked the petitioner to furnish the details in the prescribed format. Accordingly, on 22-12-2015 the petitioner furnished the said proforma along with the affidavits.

(c) Based on the proforma received by respondent No.3, they have prepared a combined merit list and placed the petitioner in the merit list at Sr. No.9 out of 183 candidates for filling up a total of about 50 backlog vacancies on compassionate appointment in the Ordnance Factory. On 26-08-2020 Task Manager of the Ordnance Factory issued a call letter to the petitioner calling upon him for the suitability test for the said post.

(d) Subsequently, on receipt of the complaint, respondent No.3 issued a show cause notice dated 12-03-2021 to the petitioner calling upon him to explain why his candidature should not be cancelled for appointment on compassionate grounds as he suppressed the details of the immovable property. The petitioner submitted his explanation, sought an apology, and candidly stated that he failed to mention the information regarding the family's immovable property in the affidavit. Having considered his explanation, respondent No.3 informed him that his case has been closed and no further correspondence will be entertained in this regard.

Being aggrieved by the said communication, the petitioner had preferred the Original Application before the Tribunal.

(e) The Tribunal after hearing both sides, evaluating the record, and considering the law laid down in *Secretary, AP Social v. Sri Pindiga Sridhar & Ors., AIR 2007 SC 1527* has recorded its finding holding that the petitioner was unable to explain the suppression of the fact, which was admitted by him, that he didn't disclose about the immovable property owned by his family and, therefore, dismissed the said application.

4. Mr. M.G. Burde, learned Counsel for the petitioner has vehemently argued that the Tribunal has not considered the dictum laid down in the case of *Avtar Singh v. Union of India (2016) 8 SCC 471* in its proper perspective and without discussing the law laid down in the said judgment has passed the impugned order. On that ground alone, the petition is liable to be allowed. He further candidly submitted that as per the law laid down in the case of *Avtar Singh* the employer may, at its discretion, ignore the suppression of facts of trivial nature or false information by condoning the lapse. But the Tribunal ignored the dictum laid down by the Three Judge Bench of the Apex Court and erred in relying on the judgment supra. Therefore, he urged that passing of the impugned order and cancellation of the appointment on

compassionate grounds is liable to be set aside. To buttress his submission, he has relied upon the judgments in the case of *Avtar Singh (supra)* and Writ Petition No.2800/2018 (*Union of India and others v. Ganesh Wasudeo Padhal and another*) decided on 30-8-2018 by this Court.

5. Per contra, Mr. C.J. Dusane, learned Counsel for the respondents strongly opposed the petition on the ground that the petitioner had suppressed the information regarding immovable property from respondent No.3 to get an appointment on the compassionate ground. The information submitted by the petitioner was found false, therefore, his candidature was cancelled. In support of his submissions, he has relied upon the judgment of the Apex Court in *State of Odisha and others v. Gobinda Behera, (2021) 14 SCC 445* and *A.P Public Service Commission v. Koneti Venkateswarulu and others, (2005) 7 SCC 177* and urged that in view of the law laid down in the aforesaid authorities, the petitioner is not entitled to claim the relief as prayed. Therefore, he has prayed for confirmation of the impugned order.

6. During the argument, the learned Counsel for the respondents has produced copies of the Policy of the respondents on compassionate employment, on record, and other documents concerning the claim of the petitioner along with pursis dated 12-2-2024.

7. We have appreciated the rival submissions of the parties. Perused the record, impugned order, and the authorities cited by both parties.

8. On perusal of the impugned order and record, it reveals that the petitioner in support of his claim has relied upon the authority in the case of ***Avtar Singh*** (supra). The Tribunal though has referred to the same in the submissions of the learned Counsel for the petitioner but failed to consider the dictum laid down in the said authority while deciding the Original Application. But only deliberate over the judgment in the case of ***The Secretary, A.P. Social*** (supra), and passed the impugned order. The said facts prompt this court to interfere in the impugned order.

9. Having considered the rival submissions of the parties, we would like to reproduce the ratio laid down in the case of Three Judge Bench judgment of the Hon'ble Apex Court in the case of ***Avtar Singh*** (supra) as under :

“38.4.1 In a case trivial in nature in which conviction had been recorded, such as shouting slogans at a young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for the post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.”

10. Bare perusal of the aforesaid paragraph reveals that the suppression of the material facts leads to their cancellation, termination, etc. but the suppression in respect of the minor offences is not sufficient for cancellation/termination of services by the employer, though it is the discretion of the employer, the discretion should be utilized judiciously.

11. In the case at hand, the candidature of the petitioner for the appointment was rejected solely on the ground that he had not furnished the details of the immovable property in the proforma. It is pertinent to note that while submitting the explanation the petitioner candidly admitted that he failed to disclose the information about the house possessed by their family and for that, he also sought an apology assuming that he failed to furnish the information about the immovable property. Having considered the said facts, it is evident that due to the non-furnishing of the information under the head of the immovable property, 7 to 8 marks would be reduced, in that case, he would be placed appropriately between serial numbers 25 and 35. In such an eventuality also, he would be eligible to seek appointment on compassionate grounds and, therefore, in our view, it would not be proper to reject the candidature of the petitioner for grant of compassionate appointment.

12. It is to be noted that in Writ Petition No.2800/2018 the respondents had applied for the post of Danger Building Worker (Semi-Skilled) in Ordnance Factory, Chanda. In the said case, the respondents suppressed the information about the registration of the criminal case against them, and therefore, their candidature was rejected. They challenged the same before the Tribunal. The Tribunal allowed the said application. The petitioners had preferred a writ petition before the Coordinate Bench of this Court challenging the order passed by the Tribunal. After considering the law laid down in the case of ***Avtar Singh*** (*supra*) the Coordinate Bench of this Court dismissed the petition holding that the post was not so high or having any responsible authority and looking at the gravity of the offence the Coordinate Bench of this Court has dismissed the petition.

13. In the case at hand, the petitioner failed to disclose the information about the immovable property. However, while submitting the explanation to show cause notice, he candidly admitted the said fact, therefore, it cannot be said that the act of the petitioner is serious in nature or he intentionally suppressed the said fact. Likewise, the petitioner received a call letter for an appointment on the post of Concierge (Darban). The said post does not have higher responsibility and, therefore, it cannot be said that he was not suitable for the said post as he had not disclosed the information about immovable

property. Thus, it appears that the case of the petitioner is covered by the law laid down in the case of ***Avtar Singh*** and *Writ Petition No. 2800/2018*.

14. Perused the authority in the case of *Gobinda Dehera (supra)* relied on by the learned Counsel for the respondents wherein the facts were that the respondent was selected for the post of Constable. His duties were responsible, bearing intrinsically on law and order and with consequences for the personal liberty of the citizens, suppression of the information about his involvement in criminal cases cannot be termed as a trivial nature and, therefore, the Apex Court after considering the judgment in the case of *Avtar Singh (supra)* observed that “*the case against the respondent cannot be regarded as being trivial nature and, therefore, suppression of the said fact by him while applying for the post of Constable in the State Police, he would not be entitled to claim the appointment.*” However, in the case at hand, facts are different than the aforesaid authority and, therefore, the dictum laid down in the said case is not helpful for the respondents in support of their defence. Besides, the judgment in the *Avtar Singh (supra)* case has had a binding effect on the judgment in the case of *The Secretary, AP Social (supra)* so the observations made in the said case are not helpful to the respondents in support of their defence.

15. To sum up the aforesaid discussions, it is evident that the non-disclosure of the information about the immovable property can be regarded as being trivial in nature and, therefore, as per the law laid down in the case of ***Avtar Singh*** (*supra*), the non-disclosure of the immovable property would not have rendered petitioner unfit or could not be said as an embargo to appoint petitioner for the post of Concierge (Darban). Consequently, in our opinion, the Tribunal erred in dismissing the application without considering the law laid down in the case of *Avtar Singh* (*supra*) as well as the respondents authority committed a mistake in rejecting the application of the petitioner for compassionate appointment. The findings recorded by the Tribunal are not sustainable in the eyes of Law. Therefore, the same is liable to be set aside in this petition.

16. That being so, we deem it appropriate that the petitioner is entitled to claim an appointment on compassionate grounds. Consequently, we pass the following order.

- (a) The impugned order dated 14-6-2022 passed by the Central Administrative Tribunal, Nagpur in Original Application No.170/2022 is hereby quashed and set aside.
- (b) As a sequel of the above, issuance of the communication dated 10-4-2021 by respondent No.3 in favour of the petitioner closing his case/rejection of his application for

appointment on compassionate grounds is hereby quashed and set aside.

- (c) Needless to clarify, the respondents shall act in pursuance of the call letter dated 26-08-2020 and consider his candidature for appointment as a Concierge (Darban) in accordance with the prescribed rules.

17. Rule is made absolute in the aforesaid terms.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

