

2025:BHC-NAG:8264-DB



Judg.wp.53.2024.odt

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

WRIT PETITION NO. 53 OF 2024

Nitin Sadashiv Khapne

Aged : 48 Years, Occu : Ex-employee,
Ordinance Factory, Chanda, R/o Village
Khapri, Post Ordinance Factory, Chandrapur,
Tahsil Bhadrawati, District Chandrapur.

... PETITIONER

VERSUS

1. Union of India
through Secretary, Ministry of Defence,
Department of Defence Production, New
Delhi – 110011.
2. The Director General Ordnance (C & S),
10/A, Shaheed Khudiram Bose Road,
Kolkata – 700 001.
3. The General Manager
Ordinance Factory, Chanda, Chandrapur.

... RESPONDENTS

Mr. B. Lahiri, Advocate for Petitioner.

Mr. C. J. Dhumane, Advocate for Respondent Nos.1 to 3.

CORAM : SMT. M. S. JAWALKAR AND PRAVIN S. PATIL, JJ.

ARGUMENTS HEARD ON : AUGUST 14, 2025.

PRONOUNCED ON : AUGUST 21, 2025.

JUDGMENT [PER PRAVIN S. PATIL, J.]

. Heard. **Rule.** Rule made returnable forthwith. By consent of the parties, Petition is taken up for final hearing at the stage of admission.

2. By this Petition, the Petitioner takes exception to the Judgment and order dated 19/7/2023 passed by the Central Administrative Tribunal, Mumbai Bench, Camp at Nagpur in O. A. No. 2083/2021 and the termination order dated 9/6/2021 issued by the General Manager, Ordinance Factory, Chanda.

3. In nutshell, the facts of the present Petition can be stated as under :

The Petitioner was appointed on compassionate ground by the Respondent No.3 against the post of Multi-Tasking Staff/Labourer on 16/11/2020. At the time of appointment, an affidavit was sworn by the Petitioner stating that no criminal proceedings are pending against him nor he has been convicted by any competent court of law for any offence. As such, on the basis of this affidavit dated 10/12/2020 Petitioner joined the services in Ordinance Factory, Chanda.

4. During his tenure of service, Respondent No.3, on 9/4/2021, issued a show cause notice to the Petitioner stating therein that Petitioner has suppressed information regarding the offence registered against him at Police Station, Bhadrawati and called his explanation as to why his services should

not be terminated on account of suppression of facts in attestation form. The document obtained from the office of Superintendent of Police, Chandrapur was annexed with the said show cause notice, wherein it is stated that under the provisions of Maharashtra Prevention of Gambling Act the Petitioner was punished under Section 12 of Maharashtra Prevention of Gambling Act (*for short, 'the Gambling Act'*) by awarding punishment Till Rise of Court and fine of Rs.250/- was imposed against him.

5. In response to the show cause notice, Petitioner tendered his explanation to the Respondent No.3 on 26/4/2021. The Petitioner stated that after receipt of the show cause notice, he has approached the Police Station to know about the alleged offence registered against him. He submitted that offence under the provisions of Gambling Act was registered against him, but the same was settled before the Judicial Magistrate First Class, Bhadrawati and fine of Rs.250/- was imposed upon him. He clarified that the said offence was registered while playing Cards for entertainment with his friends. As such, the Petitioner requested that the offence, which was registered against the Petitioner being of trivial nature, it should be considered positively and punishment of termination from the services would be harsh in nature, in the facts and circumstances of the matter.

6. The Respondent No.4, without considering the explanation tendered by the Petitioner, vide impugned order dated 9/6/2021 terminated the services of the Petitioner as Multi-Tasking Staff/Labourer with immediate effect.

7. Against the impugned termination order, he has preferred Original Application No. 2083/2021 before the Central Administrative Tribunal, Mumbai Bench, Camp at Nagpur. It is categorically stated by the Petitioner in his Original Application that offence registered against him is of trivial nature, and therefore, considering the law laid down by the Hon'ble Supreme Court in the case of *Avtar Singh V/s Union of India and Others, (2016) 8 Supreme Court Cases 471*, such trivial offence should be ignored and his services should be restored by quashing and setting aside the impugned termination order.

8. The learned Tribunal, by the impugned order dated 19/7/2023 dismissed the Original Application by holding that the offence registered against the Petitioner under the provisions of Prevention of Gambling Act is a serious offence and as the same was not disclosed while tendering his attestation form as well as affidavit to the Respondent No.3, the decision taken by Respondent No.3 to terminate the services of Petitioner is legal and justified.

9. Being aggrieved by the said Judgment and order, present Petition has been filed with a prayer that by invoking extraordinary jurisdiction, considering the nature of offence, and the duties, which Petitioner is performing in the office of Respondent No.3, he should be reinstated by quashing and setting aside the order of learned Central Administrative Tribunal.

10. In response to the notices issued by this Court, Respondents filed their reply stating therein that Petitioner has suppressed the fact regarding registration of offence against him and in addition to this, Petitioner has also sworn affidavit, where he has not disclosed that offence under the Gambling Act was registered against him. Hence, on the ground of suppression of facts, they have rightly exercised their discretion and terminated the services of the Petitioner.

11. We have heard the learned Counsel for respective parties and perused the record. We have also gone through the various case laws cited by the Petitioner as well as Respondents.

12. It is an undisputed fact that offence under the provisions of the Gambling Act was registered against the Petitioner at Police Station,

Bhadrawati and by order dated 3/7/2012, punishment till rise of court and fine of Rs.250/- was imposed on him. It is also not disputed that said fact was not disclosed by the Petitioner in the attestation form which was obtained by the Respondent No.3 along with affidavit dated 10/12/2020. However, the question which calls for consideration is, 'whether on the count of non disclosing the fact of registration of offence, termination order issued by the Respondent No.3 is justified in the matter ?

13. For considering the controversy involved in the matter, the Petitioner has relied upon the following Judgments :

- (1) Avtar Singh V/s Union of India and Others, (2016) 8 Supreme Court Cases 471;
- (2) Commissioner of Police and Others V/s Sandeep Kumar, (2011) 4 Supreme Court Cases 644;
- (3) Pawan Kumar V/s Union of India and Another, 2022 SCC OnLine SC 532;
- (4) Ravindra Kumar V/s State of U. P. & Ors. in Civil Appeal No. 5902 of 2012;
- (5) Union of India & Ors. V/s Ganesh Wasudeo Padhal & Anr. in Writ Petition No. 2800 of 2018; and
- (6) Union of India & Ors. V/s Sushma Shekharbabu Wairagade, Writ Petition No. 885/2024.

14. In the case of **Avatar Singh** (*supra*) the Hon'ble Supreme Court observed as under :

“30. The employer is given "discretion" to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an incumbent for services in question. In case the employer comes to the conclusion that suppression is immaterial and even if facts would have been disclosed it would not have adversely affected fitness of an incumbent, for reasons to be recorded, it has power to condone the lapse. However, while doing so employer has to act prudently on due consideration of nature of post and duties to be rendered. For higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However, same standard cannot be applied to each and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed, to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully, the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence, etc. have to be considered. Even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or of dubious character. In case employer comes to conclusion that conviction or ground of acquittal in criminal case would not

affect the fitness for employment, incumbent may be appointed or continued in service.

36. *What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by authorities concerned considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.*

38.4. *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:*

38.4.1. *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.*

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

38.4.3. *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.”*

15. In the case of ***Commissioner of Police*** (*supra*) the Hon'ble Supreme Court observed in paragraph Nos. 8 and 12 as under :

“8. We respectfully agree with the Delhi High Court that the cancellation of his candidature was illegal, but we wish to give our own opinion in the matter. When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often be condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

12. It is true that in the application form the respondent did not mention that he was involved in a criminal case under Sections 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified. At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter.”

As such, in this matter the Hon'ble Supreme Court held that criminal case under Section 325/34 of Indian Penal Code not such a serious offence and accordingly took a lenient view in the matter.

16. In the case of ***Pawan Kumar*** (*supra*), the Hon'ble Supreme Court observed in paragraph No.11 as under :

“11. This cannot be disputed that the candidate who intends to

participate in the selection process is always required to furnish correct information relating to his character and antecedents in the verification/attestation form before and after induction into service. It is also equally true that the person who has suppressed the material information or has made false declaration indeed has no unfettered right of seeking appointment or continuity in service, but at least has a right not to be dealt with arbitrarily and power has to be judiciously exercised by the competent authority in a reasonable manner with objectivity having due regard to the facts of the case on hand. It goes without saying that the yardstick/standard which has to be applied with regard to adjudging suitability of the incumbent always depends upon the nature of post, nature of duties, effect of suppression over suitability to be considered by the authority on due diligence of various aspects but no hard and fast rule of thumb can be laid down in this regard.”

Accordingly it is held that, employee is not to be terminated automatically from service just by a stroke of pen. The employer should take into consideration all relevant facts and circumstances available as to antecedents and keeping in view the objective criteria, while taking appropriate decision. Merely suppression does not mean that employer can arbitrarily terminate the services of employee.

17. This Court, while dealing with the somewhat identical matter decided on 30/8/2018 in Writ Petition No. 2800/2018 (*Union of India & Ors. V/s Ganesh Wasudeo Padhal & Anr.*), where offences were registered under Section 323, 447 and 506 read with Section 34 of Indian Penal Code, but

matter has been compromised between the parties, this Court observed in paragraph Nos.14 and 19 as under :

*“14. From the judgment in the case of **Avtar Singh ..Vrs.. Union of India and others** (Supra), it is clear that the suppression of material facts lead to their cancellation, termination etc. but the suppression in respect of minor offences not sufficient for cancellation, termination of service by the employer, though it is the discretion of the employer but the discretion should be utilised judiciously.*

*19. Both the respondents were selected for the post of Danger Building Worker (semi skilled). The post was not so higher or having any responsible authority. In the cited Judgment the Hon'ble Apex Court in the case of **Avtar Singh ..Vrs.. Union of India and others** the Hon'ble Apex Court has held that employer has to consider the gravity of the offence in comparison to the post of employee. Both the respondents were selected for the post of Danger Building Worker (semi skilled). Those posts are not having any responsible authority. Looking to the gravity of the offences alleged against them those offences were not so serious in respect of the posts for which they were selected.”*

18. In Writ Petition No. 885/2024 (*Union of India & Ors. V/s Sushma Shekharbabu Wairagade*) decided on 17/4/2024 this Court held in paragraph Nos.11 and 12 as under :

“11. It is the case of the respondent that while completing the formalities for getting compassionate appointment in the year 2020, she did not disclose the fact about her prosecution for the

offence punishable under Sections 498-A and 34 of the Indian Penal Code, 1860 since she was acquitted way back on July 04, 2011. At the outset, this Court has to be sensitive to the fact that on the date of securing employment, there was no offence pending for being investigated against the respondent. It was almost ten years prior to her securing the employment that she was acquitted of the offence punishable under Sections 498-A and 34 of the Indian Penal Code. As such, the respondent's claim that it was not necessary for her to provide such information appears to some extent justified as her prosecution and acquittal was in prior point of time to that of her application for securing the employment on compassionate ground. Apart from above, the fact remains that the offence for which the respondent was required to face the prosecution was not at all of serious nature and was a routine matrimonial dispute, when infact, she was already married and was residing separately with her husband.

12. *In the aforesaid background, it can be gathered that the Tribunal while considering the rival claims has rightly so inferred that the offence against the respondent cannot be said to be a serious one which prompts the exercise of powers of termination of services. The offence which was faced by the respondent was neither heinous nor violent. The same appears to be the outcome of the matrimonial discord between the respondent's brother Amol and his wife. In that view of the matter, the action of the Tribunal in interfering with the order of termination of services of the respondent cannot be said to be unjustified."*

19. In the background of above said legal position and considering the facts of the present Petition, it is clear that the Petitioner was punished under Section 12 of the Gambling Act and awarded punishment till rise of court and

fine of Rs.250/- for playing Cards (gambling). According to us, the offence, for which fine was imposed against the Petitioner, is neither serious nor heinous offence, the same falls in category of trivial offence. Furthermore, punishment was inflicted long back eight years before the date of appointment. As such, according to settled principles of law, it was necessary for Respondent No.3 to give thoughtful consideration to all these material facts. But same is not reflected from the impugned order.

20. It is further pertinent to note that the nature of work of the Petitioner is of Class-IV employee, coupled with the fact that Petitioner has been appointed on compassionate ground in the department, and therefore, whole family is dependent on him. Hence, considering the overall factual position, we are of the opinion that though the Petitioner has not disclosed about registration of the offence under the provisions of the Gambling Act against him in his attestation form, his removal from service would be a harsh punishment, and therefore, it is a fit case where we can exercise discretion to meet the ends of justice. Resultantly, the following order is passed.

ORDER

(1) Writ Petition is partly allowed.

- (2) The impugned order dated 19/7/2023 passed by the Central Administrative Tribunal, Mumbai Bench, Camp at Nagpur in O. A. No. 2083/2021 is hereby quashed and set aside.
- (3) The termination order dated 9/6/2021 issued by the Respondent No.3/General Manager, Ordinance Factory, Chanda is also quashed and set aside.
- (4) The Respondents are directed to reinstate the Petitioner on his former post as Multi-Tasking Staff/Labourer without back wages from the date of termination till the date of reinstatement, but with continuity of service and consequential benefits of service, within a period of thirty days.

21. Rule is made absolute in above terms. No order as to costs.

[PRAVIN S. PATIL, J.]

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

vijaya