

**IN THE HIGH COURT OF JUDICATURE FOR MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE ARUN KUMAR SHARMA

ON THE 23rd OF JUNE, 2022

REVIEW PETITION No.809 OF 2021

Between:-

**SACHIN MEHRA, S/o SHRI DEEN DAYAL
MEHRA, AGED ABOUT 37 YEARS,
OCCUPATION: PVT. JOB, R/O H.No.1597,
NEW BASTI SARRAPIPAL NEAR R.K.
WELDING SHOP, P.O. KHAMARIA,
RANJHI, JABALPUR, DISTRICT
JABALPUR (M.P.)**

.....PETITIONER

(BY SHRI RAHUL RAWAT, ADVOCATE)

AND

- 1. THE UNION OF INDIA THROUGH ITS
SECRETARY, MINISTRY OF DEFENCE,
DEPARTMENT OF DEFENCE
PRODUCTION, SOUTH BLOCK, NEW
DELHI 110 001.**

2. **THE CHAIRMAN ORDNANCE FACTORY BOARD, 10-A, SAHEED KHUDIRAM BOSE MARG, KOLKATA 700001.**
3. **THE GENERAL MANAGER, VEHICLE FACTORY, JABALPUR 482009 (M.P.)**

....RESPONDENTS

(BY SHRI J.K. JAIN, ASSISTANT SOLICITOR GENERAL)

This petition coming on for admission this day, Sheel Nagu, J., passed the following:

ORDER

The present petition seeks review of the final order dated 30.11.2019 passed in M.P. No.4837/2018 whereby the Coordinate Bench has allowed the petition of the Union of India and its functionaries setting aside the order of Central Administrative Tribunal, Bench at Jabalpur dated 23.07.2018 passed in O.A. No.200/925/2013.

2. The Tribunal in O.A. No.200/925/2013 was testing the legality, validity and propriety of the order dated 11.10.2013 by which the petitioner was informed that his candidate for the post of Semi Skilled worker in Vehicle Factory Jabalpur stands cancelled based on adverse criminal antecedents report submitted by the District Magistrate, Jabalpur.
3. Learned counsel for petitioner – Shri Rahul Rawat raises a solitary ground that the employer while passing the order dated 11.10.2013 did not

apply its mind independently and instead blindly followed the report regarding criminal antecedents submitted by the District Magistrate by treating the same to be adverse. It is further submitted that if the report of the District Magistrate is seen, it is revealed that it was conveyed to the employer that Crime No.338/2008 u/S 324 read with Section 34 of IPC was registered against petitioner at Police Station Ranjhi, District Jabalpur in which petitioner had been acquitted by the trial Court on 18.03.2010 by way of compounding of the offence (Rajinama). While so informing, the District Magistrate asked the employer to take its own independent decision on the said criminal antecedents report.

3.1 On the basis of the aforesaid information, the employer taking the said report of District Magistrate to be adverse without independent application of mind as regards the nature of the offence, the extent of involvement of petitioner, the factum of the petitioner having been acquitted by compounding and whether the act of indulging in the offence would render the petitioner to be unfit to hold the post of semi skilled worker, which is not a uniformed service.

3.2 Learned counsel for petitioner submits that the Coordinate Bench of this Court while allowing the petition of the employer did not appreciate the fact that no independent application of mind by the employer had taken place especially to the aspect as to whether the report of District Magistrate would have any adverse effect over the candidature of the petitioner for appointment to the post of semi skilled worker.

3.3 Thus, it is submitted that the decision rendered by the Co-ordinate Bench in the order under review suffers from palpable error visible on the face of the record.

4. We have gone through the record, the pleadings and the findings rendered by the Tribunal as well as the Coordinate Bench of this Court .

4.1 We find that in the order under review, the Co-ordinate Bench of this Court relying upon **2018 (1) SCC 797 (*Union Territory, Chandigarh Administration Vs. Pradeep Kumar*)**, **2018 (2) MPLJ 419 (*Ashutosh Pawar Vs. High Court of Madhya Pradesh*)**, **2018 (18) SCC 733 (*State of Madhya Pradesh Vs. Abhijit Singh Pawar*)** and **2019 SCC Online SC 430 (*State of Madhya Pradesh Vs. Buntty*)**, allowed the claim of the employer by holding that in the given facts and circumstances, the employer could have denied appointment since the employer is vested with discretion to assess the suitability of a particular candidate to hold a post in the backdrop of criminal antecedents. The order under review held that the said discretion cannot be denied to the employer irrespective to the criminal antecedents having ended in acquittal.

5. After having heard learned counsel for rival parties and on perusal of the record, this Court is of the considered view that the order under review suffers from palpable error which needs to be corrected by exercise of review jurisdiction for the reasons infra.

(i) In all the decisions of the Apex Court relied upon while rendering the order under review, it is revealed that the common thread which runs in the verdicts is that the employer cannot be denied the discretion to assess the

suitability/fitness of a particular candidate to appoint on a particular post in the backdrop of criminal antecedents. All these verdicts also reveal that while exercising discretion, the employer is well within its jurisdictional purview to go into various aspects i.e. the nature of offence committed by the candidate, the role of the candidate in the said offence, the outcome of the prosecution, whether the outcome of the prosecution is on merits or not, whether in case of acquittal not on merit, then can the appointment be still denied looking to the nature of the duties and responsibilities attached to the post and also appointment of such candidate would be against public interest. These are some of the illustrative grounds (not exhausted) which the employer needs to contemplate upon before arriving at a decision of finding the candidate having criminal antecedents to be /fit/suitable or not for any public service.

(ii) A bare perusal of the impugned order dated 11.10.2013 by which the candidature was rejected by the employer it is obvious that the report regarding criminal antecedents was straightway treated to be adverse without the employer contemplating on various aspect on the matter as narrated above, by applying independent mind and then coming to a conclusion.

(iii) The employer branded the criminal antecedents report to be adverse without realising that the report of the District Magistrate merely mention registration of offence under Section 324 read with Section 34 IPC against the petitioner which ended in acquittal by compounding. Thus, the employer could not have treated this report adverse *per se* unless it considered all relevant factors as mentioned above before coming to the conclusion of the petitioner being unfit/unsuitable for appointment to the post.

(iv) It is a clear case where the employer has failed to exercise its discretion vested in it and has abdicated its all important functions by treating the District Magistrate's report to be adverse without assigning reasons as to why and how and under what circumstances, the report is adverse.

(v) While dealing with a candidature of a person which was otherwise being found fit for public employment, the employer is vested with onerous responsibility which needs to be discharged in the responsible manner by passing order which in the least so application over the relevant facts and after taking into account the law relevant to the subject matter.

6. The Tribunal while allowing the Original Application of the petitioner has rightly done so by finding that the employer jumped into a conclusion of the criminal antecedents report to be adverse without discharging its duties of application of mind and the relevant factor. This is lapse on the part of the employer renders its decision in the letter dated 11.10.2013 to be vitiated in law. The Tribunal rightly noticed the said illegality but it seen that the said illegality missed the attention of the Coordinate Bench of this Court while passing the order under review.

7. The order under review was assailed in the Apex Court in Petition (s) for Special Leave in Appeal (C)No.6644/2020 which was dismissed in limini by observing that the Apex Court is not inclined to entertain the SLP on 09.07.2020. Since the SLP was dismissed in limine, the merger of the order under review did not take place with the order of the Apex Court and, therefore, it is open for the review petitioner to seek review for this Court to adjudicate the same.

8. If the illegality of the employer for not considering relevant factors and for not assigning proper reasons suffers from palpable error visible on the face of record which renders the order suffering from palpable error which needs to be rectified by exercising the review jurisdiction.

9. In view of the above, the order under review dated 30.11.2019 passed in M.P. No.4837/2018 deserves to be and is hereby recalled.

10. M.P. No.4837/2018 is restored to its original number to be heard on its own, Review Petition stands **allowed**.

(SHEEL NAGU)
JUDGE

(ARUN KUMAR SHARMA)
JUDGE