

Central Administrative Tribunal,
Principal Bench

O.A. No.1604/2002

New Delhi this the 31st day of January, 2003

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. Shankar Prasad, Member (A)

Jitendra Singh (Roll No.212584)
S/o Shri Meer Singh,
Village - Basera, Post Office: Palsera,
District: Aligarh (U.P.) Applicant

(By Advocate : Shri D.N. Sharma)

Versus

1. Union of India, through
The Secretary,
Ministry of Home Affairs,
North Block, New Delhi
2. The Commissioner of Police,
Headquarters Delhi Police,
M.S.O. Building,
I.P. Estate, New Delhi
3. The Deputy Commissioner of Police,
IIInd Battalion, Delhi Armed Police,
Kingsway Camp, Delhi Respondents

(By Advocate : Ms. Chetna Rao, proxy for Ms. Rashmi Chopra)

O R D E R (Oral)

Justice V.S. Aggarwal:-

The applicant Jitender Singh had applied for the post of Constable in Delhi Police. He was selected as a Constable (Executive) in Delhi Police in the recruitment held in the year 1998. Subsequently the selection had been cancelled vide the order of the Deputy Commissioner of Police dated 27.9.2001 who had informed the applicant that he had concealed the fact about his involvement in a criminal case in the relevant column of the application form.

VS Ag

2. By virtue of the present application, the applicant seeks quashing of the order of the Deputy Commissioner of Police, Delhi Police and that a direction should be given that he should be appointed as a Constable (Executive) in Delhi Police.

3. Needless to state that in the reply filed, the application has been contested. As per the respondents, in the year 1998, an advertisement had been issued to fill up 1643 vacancies of Constable (Executive). The applicant had also applied for the post. He was put through physical measurement and endurance test, written test, interview and was provisionally declared to have been selected subject to medical fitness, verification of character and antecedents besides final checking of documents. The applicant was medically examined and he was declared fit. His character and antecedents were got verified which revealed that the applicant was involved in criminal case First Information Report No. 28/1993 with respect to offences punishable under Section 323 of the Indian Penal Code read with Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. On scrutiny of the application form as well as the attestation form which the applicant had filled up, it transpires that he had not disclosed the fact about his involvement in a criminal case. Though the applicant had been acquitted but it had nothing to do with the filling up

18 Ag

of the correct particulars. He had concealed the material facts deliberately and tried to seek appointment in Delhi Police. Keeping in view the same, a show cause notice was issued to the applicant proposing to cancel his candidature for the post of Constable (Executive). He had submitted his reply. On consideration of the same, he was found not suitable to be appointed as Constable (Executive). His appeal was dismissed by the Commissioner of Police. In this process, the order was justified.

4. The learned counsel for the applicant had contended that the applicant indeed was one of the accused in the case that was tried by the Additional Session Judge Aligarh but he had been acquitted by the said court on 22.7.1998. It was a false case and consequently it was urged that there was no ground thus to recall the order that had been so passed. He has drawn our attention to the two decisions of this Tribunal in case of **Shish Pal v. Union of India and Ors.**, OA No.2170/1992 decided on 7.4.1993 and **Yoginder Singh v. Union of India & Anr.** in OA No.758/1995 decided on 5.2.1996.

5. In the case of Shish Pal (supra), the applicant had applied for the post of Constable in Delhi Police. He had been selected. He had concealed in his application form certain facts about his involvement in a criminal case. This Tribunal had

M Ag

held that ultimately the applicant had not been stigmatised. Merely because there is some report lodged at a Police Station under a particular section will not attach any stigma. It is the ultimate result of any such proceedings which of course will stand to characterize that person whether he is an offender or innocent person. Same logic and reasoning had prevailed with this Tribunal in the case of Yoginder Singh (supra).

6. Fact is not in controversy that in the application form though it was specifically mentioned that correct particulars should be given and in case there is any suppression of facts, it may tantamount to cancellation of the candidature still the applicant had not mentioned the fact of his earlier involvement in a criminal case and even about his having been acquitted.

7. The two decisions of this Tribunal will not hold much water because of the decision of the Supreme Court in this regard. Not only they were confined to the peculiar facts of those cases but once the Apex Court had considered and opined that has become the law of the land. The principle of law is well-settled as in the case of **Delhi Administration Through its Chief Secretary and others v. Sushil Kumar**, (1996) 11 SCC 605 that verification of the

18 Ag

character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post or not. In the cited case, though Shri Sushil Kumar had been acquitted, still the Supreme Court deemed it not necessary to interfere because it was held that what is relevant is the conduct and character of the candidate. It was observed:-

"It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was found physically fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant to the case is of the antecedents of the candidate. Appointing authority, therefore, has rightly focussed this aspect and found it not desirable to appoint him to the service."

In the face of this authoritative pronouncement, we find no reason as to why the discretion so exercised should be interfered with.

8. Our attention has been drawn towards a

MS Ag

decision of the Supreme Court in the case of **Commissioner of Police, Delhi and Anr. v. Dhaval Singh**, (1999) 1 SCC 246. In the cited case, the application form had been filled up and Dhaval Singh had provisionally been selected. The Supreme Court noted that there was an omission on the part of Dhaval Singh to give the information and on realising his mistake, he had written to the Deputy Commissioner of Police before hand. In paragraph 5, the following findings had been arrived at:-

"5. That there was an omission on the part of the respondent to give information against the relevant column in the Application Form about the pendency of the criminal case, is not in dispute. The respondent, however, voluntarily conveyed it on 15.11.1995 to the appellant that he had inadvertently failed to mention in the appropriate column regarding the pendency of the criminal case against him and that his letter may be treated as "information". Despite receipt of this communication, the candidature of the respondent was cancelled. A perusal of the order of the Deputy Commissioner of Police cancelling the candidature on 20.11.1995 shows that the information conveyed by the respondent on 15.11.1995 was not taken note of. It was obligatory on the part of the appellant to have considered that application and apply its mind to the stand of the respondent that he had made an inadvertent mistake before passing the order. That, however, was not done. It is not as if information was given by the respondent regarding the inadvertent mistake committed by him after he had been acquitted by the trial court- it was much before that. It is also obvious that the information was conveyed voluntarily. In vain, have we searched through the order of the Deputy Commissioner of Police and the other record for any observation relating to the information conveyed by the respondent on 15.11.1995 and whether that application could not be treated as curing the defect which had occurred in the Form."

18 Ag

14

It is obvious from the decision in the case of Dhaval Singh (supra) that if there was an inadvertent mistake and the same is realised before any adverse order was to be passed, the same should be considered. This is not so in the present case.

9. The net result, therefore, would be that it is a fact that the applicant had suppressed a material fact. Thereupon it for the authorities concerned to consider as to whether keeping in view the suppression of fact he was a fit person to be retained in a disciplined force like the police. Discretion unless arbitrary ordinarily not to be interfered with. Once the applicant had suppressed the fact and it is found that he should not be appointed in Delhi Police, we find no reason to interfere with the said decision.

10. Resultantly, the application fails and is dismissed. No costs.

Announced.

Shankar Prasad
(Shankar Prasad)

Member (A)

V.S. Aggarwal
(V.S. Aggarwal)
Chairman

/sns/