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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.500/2002

New Delhi this the 28th day of November, 2002.

HON'BLE MR. S.A.T. RIZVI, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Ghanshyam Singh,
S/o Sh. Rattan Lal,
R/o Village and Post Office
Ratta Kalan,
Tehsil Narnaul,
District Mahendergarh,
Haryana.

-Applicant

(By Advocate Shri Shyam Babu)

-Versus-

1. Govt. of NCT of Delhi,
through its Chief Secretary,
Players Building,
I.P. Estate,
New Delhi.

2. Lt. Commissioner of Police (HQ),
Police Headquarters,
I.P. Estate,
New Delhi.

3. Dy. Commissioner of Police,
2nd Battalion,
Delhi Armed Police,
Kingsway Camp,
Delhi.

-Respondents

(By Advocate Shri Ajay Gupta)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

Applicant impugns respondents' orders dated 17.4.2001 and 15.1.2002, whereby his candidature for the post of Constable (Executive) has been cancelled and the representation filed against it was also rejected. He seeks appointment in Delhi Police as Constable (Executive) with all consequential benefits.

2. Applicant was implicated in case FIR No.178 dated 14.7.97 under Sections 148/149/452/423 IPC at Narnaul. In pursuance of notification for the post of Constable (Executive) in Delhi Police applicant filled up

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the application form wherein column 11-A which deals with whether any prosecution has been launched against him, applicant stated "yes" and in the particulars he has stated "Ladai-Jhagra".

3. Applicant was called on 1.12.98 for joining the department after his selection. He appeared before the DCP on 12.1.2000 and had given all the particulars of his criminal case while filling up the attestation form also he has stated that the case is pending against him.

4. A show cause notice was served upon applicant on 30.1.2001 proposing cancellation of his candidature for the post of Constable (Executive) on the ground that he suppressed the fact of criminal case and tried to seek appointment by adopting deceitful means. Applicant replied to the same.

5. On reply the DCP found applicant not suitable for the post of Constable (Executive), hence his candidature was cancelled on the ground that he has suppressed the fact of involvement in the criminal case and despite acquittal from the criminal charge he is not fit to be appointed in Delhi Police.

6. Applicant preferred a representation against the aforesaid order, which was rejected by an order dated 17.1.2001.

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7. Applicant was also acquitted of the criminal charge by a judgment delivered by the Judicial Magistrate Ist Class on 16.4.99 and as no evidence has come-forth on record and the prosecution has miserably failed to proved his case applicant was acquitted.

8. Learned counsel for applicant Sh. Shyam Babu states that although there was no malafide intention of applicant to suppress the material fact of his criminal case as in reply to the relevant column in application as well as attestation form he has disclosed the fact of his being proceeded in a criminal case and in the particulars he has stated 'Ladai-Jhagra' as a case was registered under Sections 148/149/452/423, on the verification report a case was found to be pending against him in the criminal case. Shri Shyam Babu states that applicant has not concealed any material information and as he has been acquitted of the criminal charge his candidature has been cancelled arbitrarily on the ground of suppression of material information which is not well founded and is contrary to law.

9. It is further stated that the decision of Apex Court in SLP No.5340/96 in Delhi Admn. v. Sushil Kumar would not apply to his case and rather the decision of the Apex Court where decision in Sushil Kumar's case (supra) was distinguished in Commissioner of Police v. Dhaval Singh, (1999) 1 SCC 246 would apply.

10. Moreover, referring to Rule 6 of Delhi Police (Appointment & Recruitment) Rules, 1980 it is contended that mere involvement in a criminal case is not a

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disqualification for appointment in Delhi Police and as his character verification has been found good mere pendency of case in which he stood acquitted would not a bar for appointment. To substantiate his plea learned counsel relies upon the decision in OA-1970/98 dated 8.3.99 in Bhaqwan Sahai v. Union of India where in an identical situation the impugned orders have been set aside wherein applicant, a Constable has disclosed the fact in the relevant application and attestation forms. It is stated that on all four this case covers the present OA, which is liable to be allowed.

11. On the other hand, respondents' counsel Shri Ajay Gupta vehemently opposed the contentions of applicant and stated that in pursuance of directions pertaining to verification of character and antecedent applicant was called on 21.1.90 but he did not appear and on receipt of the character and antecedent he was found to be involved in FIR No.178 ibid. Trial was pending in the court. On scrutiny of his form it was found that though he has written "No" in response to column No.11 in the application form but stated "Yes" to the pendency of the case and only stated "Ladai-Jhagra", the complete particulars of the criminal case have not been described by the applicant. Placing reliance on decision in Sushil Kumar's case (supra) it is stated that subsequent acquittal would not affect the outcome and what is relevant is the conduct and character of the candidate to be appointed, as such his candidature was cancelled and representation was rejected, which does not suffer from any legal infirmity.

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12. We have carefully considered the rival contentions of the parties and perused the material on record. In the present case the candidature of applicant has been cancelled for suppressing the material information about the criminal case. From the perusal of the application as well as attestation form, it transpires that although applicant has acknowledged by writing 'yes' in the relevant column as to pendency of the criminal case and in the particulars written he has stated that the case relates to 'Ladai-Jhagra' and from the perusal of FIR it is apparent that the case indeed was registered under Sections 148/149/452 IPC. We do not find any malafide intention of suppression of material fact on the part of applicant and moreover no deceitful means have been adopted by applicant while seeking appointment in Delhi Police. Moreover, as per Rule 6 ibid mere involvement is not an impediment for appointment to Delhi Police.

13. However, we find that decision in Bhagwan Sahai's case (supra) in all four covers the case of applicant wherein applicant himself disclosed the fact of involvement in criminal case but in reply to the show cause notice it has been stated that inadvertently applicant has not disclosed the fact. We find that Apex Court in Dhaval Singh's case (supra) has made the following observations:

"6. Learned counsel for the appellants has drawn our attention to a judgment rendered by a Bench of this Court on 4.10.1996 in Delhi Admn. v. Sushil Kumar. On the first blush that judgment seems to support the case of the appellants but there is a material difference between the two cases. Whereas in the instant case the respondent has conveyed to the appellants that an inadvertent mistake had been committed in not giving the information against the relevant column in the Form much before the cancellation of his candidature, in Sushil

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Kumar case no such correction was made at any stage by the respondent. The judgment, is therefore, clearly distinguishable on facts."

14. We also find the following observations made by the Apex Court in State of M.P. v. Ramashanker Radhuvanshi & Anr. 1983 SCC (L&S) 263:

"....Is Government servant such a heaven that only angels should seek entry into it? We do not have the slightest doubt that the whole business of seeking police report about the political faith, belief and association and the past political activity of a candidate for police employment is repugnant to the basic right guaranteed by the Constitution and entirely misplaced in a democratic republic dedicated to the ideals setforth in the Preamble of the Constitution. We think it offends the Fundamental Rights guaranteed by Articles 14 and 16 of the Constitution to deny employment to an individual because of his past political affinities, unless such affinities considered likely to affect the integrity and efficiency of the individual's service..."

15. The High Court of Delhi in CWP No.3091/96 decided on 20.4.1998 in Ravinder Singh v. Union of India & Others, also held as under:

"6. The action in this case of the respondents in weeding the petitioner out of service without there being any material on record that the petitioner had notice of the criminal case on the date of application is clearly arbitrary. The object of ascertaining information from an intending applicant for enrolment in the Security Force is that no man who is guilty of an offence could be entrusted with a task of policing the State. For, any reason who had been found guilty of an offence, in the nature of things will have the propensity of committing offences and that trait in a criminal would not dissipate however much he is put in any training for reformation. The object of the rule was if at the time of the enrolment there was a criminal case pending than the person involved cannot be said to have committed any offence unless a competent court comes to the conclusion that the individual is guilty. Suppose a criminal case was pending on the date of enrolment and the person is convicted by a competent court then the person who is convicted under an offence cannot be continued in service. That being the object,

the respondents are bound in law to see whether any criminal case before a competent court was pending against the petitioner on the date of enrolment."

16. If one has regard to the settled principles of law we find that in the present case there was no malafide intention on the part of applicant to suppress the information regarding criminal case and he himself disclosed in the relevant form. Though, complete particulars have not been given but the intention was not to keep the respondents in dark about the criminal case. However, we find that subsequently applicant has been acquitted from the criminal charges on merits, as such the involvement in criminal case stood obliterated by the order. As he himself disclosed the fact of criminal case in the relevant column of application and attestation forms, decision in Sushil Kumar's case (supra) would not apply and rather the ratio laid down in Dhaval Singh's case would hold the field. As the respondents have wrongly construed the disclosure as suppression of the material fact the orders are not legally sustainable.

17. In the result, OA is allowed. Impugned orders are quashed and set aside. The respondents are directed to consider applicant for appointment from the date his batchmates/juniors have been appointed. In that event, he would be entitled to all consequential benefits except back wages. These directions shall have to be complied with by the respondents within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

S. A. T. Rizvi
Member (A)