

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 7/2002

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J.D.

New Delhi this the 8th day of November, 2002.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI M.P.SINGH, MEMBER (A)

Shri Hasmuddin
S/O Shri Jarru
R/O Vill.& PO Bisru, Teh. Punhana
Distt. Gurgaon.
Haryana.

...Applicant

(By Shri Shyam Babu, Advocate)

-versus-

1. Govt. of NCT of Delhi
Through Chief Secretary,
Delhi Sachivalaya, I.P.Estate
New Delhi.
2. Commissioner of Police
Delhi
Police Headquarters
I.P.Estate
New Delhi.
3. Dy.Commissioner of Police
Headquarter-I
Police Headquarter, I.P.Estate
New Delhi. ... Respondents

(By Shri Ajesh Luthra, Advocate)

O R D E R

JUSTICE V.S.AGGARWAL:-

Applicant (Hasmuddin) had applied for the post of Constable (Driver) in Delhi Police. He filled up the attestation form in which he gave the information required. Admittedly, a criminal case had been registered against him on 31.5.1997 (First Information Report No.208/1997) with respect to offences

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punishable under Sections 148/149/323/324/34 of the Indian Penal Code in District Gurgaon. He had been acquitted with respect to the same on 27.1.1998. Another First Information Report had been registered against him (No.288/1997) with respect to offences punishable under Sections 148/146/286/353 and 427 of the Indian Penal Code. He had also been acquitted in the said trial on 21.12.2000. The applicant informed the respondents about his acquittal pertaining to the aforesaid matters vide his letter of 9.1.2001.

2. A show cause notice had been issued to the applicant on 25.1.2001 that he had not mentioned his involvement in First Information Report No.208/1997, referred to above and had concealed this fact in the application form submitted for the post. The applicant submitted a reply stating that he had not concealed any facts when he deposited the application form at the relevant time. The request of the applicant that he had not concealed any information was rejected and his candidature for the post of Constable (Driver) was cancelled.

3. By virtue of the present application, the applicant seeks that the order so passed should be set aside and he should be directed to be appointed to the post of Constable (Driver) with retrospective effect when his batchmates were so appointed.

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4. In the reply filed, the application has been contested. It has been pointed that the closing date for submitting the application forms was 18.1.1999. The applicant had submitted the application form for the post of Constable (Driver). He was provisionally declared to be selected subject to the satisfactory verification of his character and antecedents besides medical fitness. The character and antecedents of the applicant were got verified. As per verification report of 6.10.2000, the applicant was found to have been involved in two matters referred to above. On receipt of the said report, the case of the applicant was examined and a show cause notice was issued to him. The applicant had submitted a reply and on consideration of the same, it was found that the applicant had submitted particulars which were false. The facts were found to be incorrect and he had not disclosed about his involvement in the earlier case. Therefore, the impugned order had been passed.

5. The short question which comes up for consideration in the present scenario is as to whether the impugned order which recites that the applicant had not disclosed the basic facts about his involvement in a criminal case is valid or not. During the course of submissions, the verification form of the applicant had been produced for our perusal. Though the applicant at that time was insisting that had given the correct particulars about

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both the cases, a perusal of the said form submitted by him clearly reveals that he had not mentioned about his involvement in the first case in which he has since been acquitted. It is not in controversy. In column 11 of the application form, it is necessary to mention as to whether at any time there was any case against the person concerned or not. The applicant had given the answer in the negative. It is, therefore, established beyond any tale of controversy that the applicant had suppressed the fact that he was involved in a case in which he has since been acquitted.

6. The learned counsel for the applicant, however, contended that the applicant had submitted even before the show cause notice was served, the correct facts and in that view of the matter, the impugned order should be set aside. He strongly relied upon a 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 have 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,

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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."

It is obvious from a perusal of 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 by the disciplinary authority when correct facts are brought to its notice.

7. Almost identical was the situation in the case of **Kirpal Singh vs. Union of India & Ors.** in Civil Writ No.3084/2001 decided on 21.9.2001. In the cited case also Shri Kirpal Singh had applied for the post of Constable in Delhi Police on 20.12.1989. Meanwhile, a First Information Report was registered against him on 29.12.1990. While all this was going on, Shri Kirpal Singh was selected for the post of

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Constable but he failed to disclose the fact of his arrest and pendency of criminal case against him. It was in this backdrop that the adverse order that had been passed was quashed because later on he had since been acquitted. It is clear from narration of the facts that this too was confined to the peculiar facts of a particular case.

8. This Tribunal in the case of **Ex. Constable Satish Kumar vs. Union of India and anr.** in OA No.13/2001 decided on 7.1.2002 was concerned with a similar situation. The fact of pendency of a case against him had been suppressed and this Tribunal dismissed the application holding:-

"No explanation, leave alone acceptable explanation has been given by the applicant as to why such a delay has occurred after he had filled up the application form for the post of Constable (Driver) on 12.1.1999, wherein he had categorically stated that he had not been prosecuted or there was any criminal case pending against him on the relevant date. In this view of the matter, the action of the respondents in cancelling his candidature, especially when in the application form it is clearly mentioned that any wrong information or concealment of true facts would be a disqualification and would render the candidate ineligible for employment, has been clearly printed which was within the knowledge of the applicant."

9. At this stage, one can conveniently refer to the decision rendered by the Supreme Court in the case of **Delhi Administration Through Its Chief Secretary and Others v. Sushil Kumar**, (1996) 11 SCC 605. The Supreme Court held that verification of the character and antecedents is a necessary ingredient. It is for

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the appropriate authority to consider whether the candidature is to be cancelled or not. Even if the person has been acquitted, it does not ipso facto mean that his character and antecedents must be taken to be approved for the service. The Supreme Court held:-

"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."

10. From the aforesaid facts, it is clear that there is no hard and fast rule that can be laid down as a principle applicable to all cases. Facts of each case have to be determined as to whether there has been a suppression of facts or an inadvertent mistake. The concerned authority has to apply its mind and determine whether there is an inadvertent mistake or conscious suppression of facts.

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11. With this backdrop, one can revert back to the facts of the present case. As already pointed above, the applicant was aware of the pending First Information Report in which he was acquitted but he informed the department that he was never involved in such matter. On verification in October, 2000, it transpired that the information given was not correct. The learned counsel for the respondents was right in pointing that on coming to know that it has come to the notice of the authorities, the applicant immediately in January 2001, wrote to the authorities that he had been involved in such a case in which he was acquitted. The fact remained that the applicant had suppressed the material fact. It also cannot be denied that he was not aware of it. It cannot be termed to be an inadvertent mistake. Once there was a conscious omission for which the authority would be well within its rights to conclude that the applicant's candidature should be withdrawn. We find nothing illegal in this regard to interfere.

12. For these reasons, the original application being without merit must fail and is dismissed. No costs.

MPS
(M.P.SINGH)
MEMBER (A)

/sns/

VSA
(V.S.AGGARWAL)
CHAIRMAN