

Central Administrative Tribunal, Principal Bench

Original Application No.2640 of 2002

New Delhi, this the 24th. day of July, 2003

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. Govindan S. Tampi (A)

Vijender Singh
Ex. (Recruit) Constable of Delhi Police,
S/o Shri Sehdev Singh,
R/o V & PO:- Chapprauli, Arya Nagar,
Dist. Bagpat, UP-250617

.... Applicant

(By Advocate: Shri Anil Singal)

Versus

Commissioner of Police
Police Head Quarters
I.P. Estate, New Delhi.

.... Respondent

(By Advocate: Ms. Jasmine Ahmed)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

The applicant Vijender Singh, by virtue of the present application, seeks a direction to set aside the order of 12.11.2001 and to appoint him to the post of Constable in Delhi Police.

2. Facts of the present case are within a narrow compass and can conveniently be delineated. The applicant applied for the post of Constable in Delhi Police in the recruitment that was held in the year 1992. He qualified and was selected. A complaint was filed against him that he had appeared in the High School examination in the year 1992 in place of one of his relatives. On enquiry, the authorities had made a report that the High School and Intermediate certificate issued to the applicant should be cancelled on the ground of impersonation. Simultaneously a First Information Report No.60 with respect to offences

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punishable under Sections 419, 420 and 468 of Indian Penal Code was registered against the applicant on the same allegations. The applicant faced the trial and was acquitted on 3.7.98 by the court of competent jurisdiction.

3. After the applicant was acquitted, he requested the respondent to recruit him as a Constable. However the respondent directed the applicant to obtain his Educational Certificates of having passed the High School and Intermediate examinations. The same were returned to him by the Board which, in turn, were re-submitted. The grievance of the applicant is that his request has been rejected by the respondent which, according to him, is without any valid reasons. Hence the present application.

4. In the reply filed, the application has been contested. The broad facts referred to above are not being disputed. The respondent admit that the applicant had provisionally been selected but when a complaint was received, the facts were verified. A report was received from the Regional Secretary, High Education Council, Regional Office, Meerut that the applicant had appeared in the High School examination in place of his relative Sudhir Kumar. However Sudhir Kumar had also appeared in the said examination as a regular candidate against another roll number. The authorities had thereupon decided to cancel the certificate of High School and Intermediate of the applicant. The respondent contends that the claim of the applicant has been rejected primarily on the ground that

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the court had awarded him benefit of doubt and the acquittal is on technical ground as the main witnesses had not appeared in the court.

5. We have heard the parties counsel.

6. Perusal of the facts which are not in controversy show clearly that the applicant had not been taken as a Constable because of the controversy about his having impersonated himself and taken the test in place of one Sudhir Kumar. A copy of the judgement of the learned Chief Judicial Magistrate, Baghpat has been placed on the record. Perusal of it clearly shows that the learned Chief Judicial Magistrate had acquitted the applicant because there was no evidence produced to show that the applicant in fact had appeared in the test and further the prosecution have not produced any witness including the complainant. The operative part of the judgement reads:

"In my opinion in these circumstances when prosecution has not produced any witness of this incident and even complainant Shri J.P.Dinkar PW-1 has also not been produced in the court for cross-examination and inquiry officer has not also produced by the prosecution, it cannot be denied that accused has been falsely implicated in this case of suspicion.

On the basis of aforesaid consideration and after considering whole of the record, I am of the opinion that the evidence produced by the prosecution does not prove the charges against the accused beyond reasonable doubt. In my opinion case of the prosecution is seriously doubtful and therefore, the accused is liable to be acquitted by giving benefit of doubt."

7. The representation of the applicant had been rejected primarily on the ground that the acquittal is on a

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technical ground. The same reads:

"On 11.1.2000, you had made another representation mentioning therein that the Educational Authorities concerned have withdrawn their earlier decision towards the cancellation of your Educational Certificates. Consequently your case for appointment as Constable (Exe.) in Delhi Police was examined in this Hdqrs. as per rules and the instructions issued on the subject. The orders of Chief Judicial Magistrate, Baghpat was thoroughly examined while considering your case, which clearly shows that the material witnesses did not appear in the Court as a result, the Court by giving benefit of doubt had acquitted you. Therefore, the acquittal is on technical grounds due to non-appearance of material witnesses. This definitely cannot be treated as an honourable acquittal. Therefore, your candidature for the post of Constable (Exe.) in Delhi Police was rightly cancelled on merits."

8. Perusal of the judgement of the learned Chief Judicial Magistrate certainly reveals that it is not on a technical ground. The court had come to the conclusion that relevant evidence had not been produced and charge is not proved. The decision was arrived at on the basis of evidence on record. Whether the charge is substantiated or insufficient is not the question. Once the evidence had been allowed to be produced and is not forthcoming, it would be an acquittal rather than an acquittal on technical ground. In normal parlance, it would be failure on technical grounds if unauthorised person files the complaint or the petition fails before a court, or it fails on a technical aspect say there is no proper sanction, the report has not been lodged by competent authority or any such procedural flaw which may prompt the court to put an end to the prosecution case. Prosecution or the State may still be in a position to come back to the court after removing the said technicality. Position herein is totally

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different. As already referred to above and re-mentioned at the risk of repetition, the learned court took note of the evidence on record and for want of evidence, held that the charge is not proved. This is not an acquittal on technical ground. We have thus no hesitation in rejecting this contention of the respondents.

9. It was not disputed that after the acquittal of the applicant, the certificates of the applicant have since been restored. Therefore he certainly has a right to insist that his claim should be considered to appoint him as a Constable bereft of the abovesaid stand.

10. At this stage, we are conscious of the fact that in the case of Delhi Administration through its Chief Secretary & ors. vs. Sushil Kumar, JT 1996 (10) SC 34, the Supreme Court has categorically held that the authorities can consider the conduct and character of the candidate to be appointed to the service. Regarding this, it is indeed within the domain of the respondents and that is not the controversy as for the present before us.

11. Accordingly, in the absence of any other plea being raised, we quash the impugned order and direct that the claim of the applicant may be considered on its merits. The decision in this regard may be taken preferably within three months from the receipt of the certified copy of the present order and communicated to the applicant. O.A. is disposed of.

(Govindan S. Tampar)
Member (A)

(V.S. Aggarwal)
Chairman

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