



CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1742/99

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Shri Govindan S. Tampi, Member(A)

New Delhi, this the 1st day of August, 2000

Shri Mahesh Sabarwal
s/o Shri Roop Chand
aged about 32 years
r/o House No.583
Village & P.O.-Pooth Kalan
Delhi - 41. Applicant

(By Shri Shanker Raju, Advocate)

Vs.

1. Union of India
through its Secretary
Ministry of Home Affairs
North Block
New Delhi.
2. Commissioner of Police
Police Head Quarters
I.P.Estate
M.S.O. Building
New Delhi.
3. Dy. Commissioner of Police
Provisioning Lines
5, Raj Pur Road
Delhi. Respondents

(By Shri Ajesh Luthra, Advocate)

O R D E R (Oral)

By Justice Rajagopala Reddy:

The applicant applied for the post of Constable in Delhi Police in the year 1995 and in the application, he disclosed the pendency of Criminal Case in FIR No.172/90 under Section No.308/34 I.P.C. registered against him. The applicant was thereupon, having found suitable was selected for the post of Constable on 11.2.1995. His appointment was however kept in abeyance till the finalisation of the criminal trial pending against him, by the order dated 29.3.1996. Subsequently, the impugned show-cause notice dated 13.4.1998 was served upon him to show

OR

cause why his candidature should not be cancelled. It was stated in the impugned notice that it was not known when the case would be finalised in the criminal Court and that as per the Judgement of the Supreme Court in Delhi Administration & Others Vs. Shri Sushil Kumar, JT 1996(10) SC 34, the discharge or acquittal of the criminal offence has nothing to do with the selection and what would be relevant was the conduct or character of the candidate to be appointed to the service and not the actual result of the criminal case. The applicant submitted his representation. Thereupon, the Deputy Commissioner of Police issued the impugned order dated 6.8.1998 confirming the show cause notice and cancelling the candidature of the applicant. These orders are under challenge in this OA.

2. The learned counsel for the applicant submits that the applicant having been once selected after finding him suitable inspite of his involvement in the Criminal Case and without finding any other material adverse to the applicant's conduct or character, it would be impermissible to review the order of selection. It is further contended that the Deputy Commissioner of Police is not competent to cancel the order of selection in view of the order passed by the Commissioner of Police to keep the selection alive till the criminal case was finalised, by order dated 24.10.1996.

3. The learned counsel for the respondents submits that the judgement in Sushil Kumar's case, is squarely applicable in the instant case, hence the



acquittal in the criminal case is irrelevant for considering the selection of the candidature. Considering the conduct and character of the applicant, as he was not found suitable, his candidature was cancelled.

4. We have given careful consideration to the above contentions. It is not in dispute that the applicant had mentioned his involvement in a criminal case in the FIR No.172/90, in his application for appointment as Constable. Hence, the said fact did not come in the way of his selection, but his selection was kept in abeyance till the finalisation of the criminal case. The only reason given in the impugned order for cancellation of the applicant's candidature was that he was involved in a criminal case in a very serious offence, hence he was not eligible to be appointed as Constable in the Police Force. In our view this order appears to be in the nature of review of their own selection made by the same authority. It is not as if the authority was unaware at the time of the selection of the applicant that he was involved in a serious offence. Thus having been selected, to cancel his selection appears to be arbitrary. In addition to the above, it is not shown that the applicant was involved any other case or that his antecedents and character are not upto the mark. To a point questioned by us, the learned counsel for the respondents is not able to point out whether any other instances were brought to the notice of the department regarding the character and antecedents of the applicant. reliance on the Judgement of the Supreme Court in Sushil Kumar's case



is wholly misconceived. In the above case, only on verification it was found that the respondent's (therein) it was found that in view of his antecedents his appointment to the post of Constable was not desirable, accordingly his name was not included in the list of selected candidates. When the respondent therein approached the Tribunal, the Tribunal has taken the view that since the applicant was subsequently discharged by the criminal court he could not have denied the appointment under the state. The question before the Supreme Court was whether the view taken by the Tribunal was in accordance with law. The Supreme Court holding that the character and antecedents were the important factors for consideration of the appointment as Constable, the mere fact of discharge or acquittal by the Criminal Court would not make any difference, for consideration for appointment, set-aside the order of Tribunal. Thus, it is clear that in the above case only on verification it was found that the antecedents were found not suitable. The applicant in that case did not disclose about his involvement, earlier to his appointment, in a criminal case. In the present case however, the applicant himself disclosed about his involvement in criminal case and fully aware of the said fact he was selected and on the same ground the impugned order is now sought to be passed without finding anything adverse to the applicant. The Supreme Court in the Commissioner of Police, Delhi & Anr. Vs. Dhaval Singh (Civil Appeal No.2537/98 dated 1.5.1998) considered the said Sushil Kumar's case. In that case without noticing the fact that the applicant revealed about the involvement in a criminal case, the

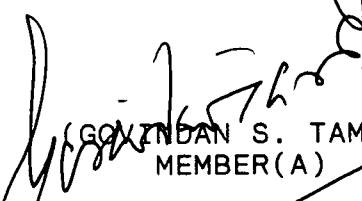


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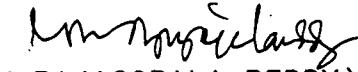
applicant's candidature was cancelled. When the matter came up before the Tribunal, the Tribunal held that the view taken by the department was wrong as the applicant had himself revealed his involvement in the criminal case. The Supreme Court affirmed the view taken by the Tribunal and thus distinguished the Sushil Kumar's case. It is therefore clear that Shri Sushil Kumar's case is distinguishable on facts.

5. The OA succeeds and is accordingly allowed. The impugned orders dated 6.8.1998 and 30.11.1998 are quashed. As it is now brought to our notice that the applicant is acquitted in the criminal case, the respondents are directed to consider the case of the applicant for appointment as Constable in terms of the Judgement in the Criminal Case. In the circumstances, we order costs of Rs.3000/- on the respondents.

/RAO/



(GOKULAN S. TAMPI)
MEMBER(A)



(V. RAJAGOPALA REDDY)
VICE CHAIRMAN(J)