

(S)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

OA No. 1970/98

New Delhi, this the 8th day of March 1999

HON'BLE SHRI T.N. BHAT, MEMBER (J)  
HON'BLE SHRI S.P.BISWAS, MEMBER (A)

Sh. Bhagwan Sahai,  
s/o Sh. Sita Ram Sharma,  
R/o 10, Vedvyas Niwas,  
Vanasthali, Vidyapeeth,  
Distt. Tonk (Rajasthan)

Present Address: A-174,  
Dakshin Puri,  
Ambedkar Nagar, Sector V,  
New Delhi. ....Applicant

(By Advocate: Mrs. Meera Chhibber)

Versus

Union of India through:

1. The Commissioner of Police,  
PHQ, MSO Building,  
I.P.Estate, New Delhi.
2. Addl. Commissioner of Police, HQ-II,  
PHQ, MSO Building, I.P.Estate,  
New Delhi.
3. Dy. Commissioner of Police,  
2nd Battalion, DAP, Kingsway Camp,  
Delhi. ....Respondents

(By Advocate: Shri Anoop Bagai through proxy Sh. Anil  
Singal)

O R D E R

delivered by Hon'ble Shri T.N.Bhat, Member (J).

The applicant who belongs to District Tonk (Rajasthan) applied in the prescribed form for the post of Constable in Delhi Police. He is aggrieved by the letter/order dated 4.5.1998 issued by the Deputy Commissioner of Police, 11nd Bn. DAP, Delhi by which the applicant's candidature has been cancelled on the ground that he had concealed the fact that a case in respect of

*Urgent 8.3.99*

offences under Section 147 and 447 IPC has been registered against him and was pending when he applied for the post of Constable. Before the issuance of the aforesaid order the Deputy Commissioner had issued a show cause notice dated 18.12.1997 to the applicant who submitted a detailed reply and on consideration of the same the impugned order dated 4.5.1998 has been passed.

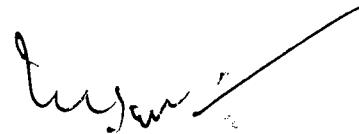
2. As already indicated, the allegation against the applicant is that he had not disclosed in the form filled up by him that a case has been registered with the Police against him. Learned counsel for the applicant has referred to the blank form which the applicant is alleged to have filled in and a perusal of the same reveals that against column 11(3) ~~as regards~~ the information required is as to whether <sup>u</sup> <sup>u</sup> there is any matter pending against the applicant in any court of law. Admittedly the applicant had answered in the affirmative by writing the word 'yes' against the aforesaid column. However, according to the respondents the applicant had not given any information against column 12 which requires the candidates to state as to whether there is any civil case pending against him which would render him ineligible for or disqualified from recruitment in the police department. This particular column has been left blank by the applicant. However, in reply to the show cause notice he has admitted that there was some inadvertence in not mentioning the details of the case was pending against him. It was, however, further stated in the reply to the show cause notice that the applicant had correctly answered the query contained in column 11 by stating that

*W.P.W.*

there was a case pending against him. Thus, according to the applicant, there was no concealment of a relevant fact.

3. During the course of his arguments the learned proxy counsel for the respondents relied upon a judgement of the Apex Court delivered on 4.10.1996 in the case Delhi Administration Delhi vs. Sushil Kumar (Civil Appeal No. 13231 of 1996). Learned counsel for the applicant on the other hand relies upon a judgement of the Apex Court in Commissioner of Police Vs. Dhaval Singh (Civil Appeal No. 2537 of 1998) dated 1.5.1998 in which the earlier judgement in Sushil Kumar's case (supra) has been referred to. The following observations made in Dhaval Singh's case (supra) clearly support the applicant:-

"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.....It is also obvious that the information was conveyed voluntarily .....The cancellation of the candidature under the circumstances was without any proper application of mind and without taking into consideration all relevant material. The Tribunal, therefore, rightly set it aside. We uphold the order of the Tribunal, though for slightly different reasons, as mentioned above"

4. Distinguishing the judgement dated 4.10.1996 in Sushil Kumar's case the Hon'ble Apex Court observed in the last but one para of the judgement in Dhaval Singh's case (supra):-

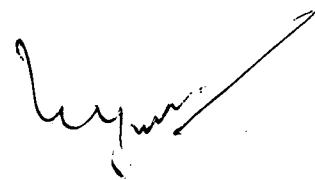
"On the first blush, that judgement seems to support the case of the appellants but there is a material difference between the two cases. Whereas in the instant case, the respondent had conveyed to the appellant that an inadvertent mistake had been committed in not giving the

A handwritten signature in black ink, appearing to read "Lalji", is written over a diagonal line.

information against the relevant column in the Form much before the cancellation of his candidature, in Sushil Kumar's case, no such correction was made at any stage by the respondent. That judgement is, therefore, clearly distinguishable on facts"

5. In the instant case, as already indicated, the applicant had in answer to the query in column 11 of the attestation form replied that there was a case pending against him. Therefore, Dhaval Singh's case (Supra) would squarely apply to this case. We may further state that column 12 of the attestation form relates only to pendency of a civil case. It is not the case of the respondents that there was any civil case pending and further that the pendency of such a civil case would render the applicant ineligible for police service.

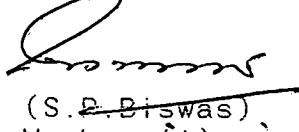
6. The Deputy Commissioner of Police has also failed to apply his mind to the reply given by the applicant to the show cause notice. Although the applicant had admittedly failed to mention the fact of registration of the case in the Application Form against column 11, it is not disputed that he specifically mentioned the fact against the relevant column in the attestation form. All that the respondents state is that the applicant did not give the necessary details of the criminal case. Once the applicant gave answer in the affirmative clearly indicating that there was a criminal case pending against him his candidature could not be cancelled merely on the ground that the details were not



mentioned, as the attestation form does not require all such details to be given. It was open to the respondents to ask the applicant to give the necessary details and only if he failed to do so his candidature could have been cancelled. When the respondents issued a show cause notice the applicant gave all the details of the criminal case in his reply.

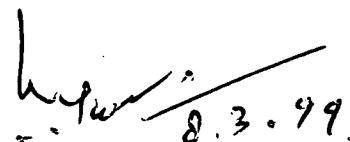
7. In the conspectus of the facts and circumstances discussed above, the impugned order cancelling the applicant's candidature cannot be sustained. This O.A. is accordingly allowed and the respondents are directed to offer appointment to the applicant as Police Constable in Delhi Police and to send him for the training in the next batch. This judgement shall be implemented within one month from the date of receipt of a copy of this order.

8. In the facts and circumstances of the case no order as to costs is made.



(S.P. Biswas),  
Member (A)

naresh

  
8.3.99.

(T.N. Bhat)  
Member (J)