

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 1998/95

(11)

New Delhi, this the 5th day of April, 1999

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

In the matter of:

Bajrang Lal Meena,
S/o Shri Phoola Ram Meena,
R/o VIII, & P.O. Ghatwa,
Distt. Nagaur (Rajasthan). Applicant
(By Advocate: Sh. M.K.Giri)

Vs.

1. Commissioner of Police,
Delhi Police, Police Headquarters,
I.P.Estate, MSO Building,
New Delhi.
2. The Deputy Commissioner of Police,
Headquarters (I) I.P.Estate,
MSO Building,
New Delhi. Respondents
(By Advocate: Sh. Bhaskar Bhardwaj proxy for
Sh. Arun Bhardwaj)

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

We have heard the learned counsel for the applicant and the learned proxy counsel for the respondents and have also perused the material on record.

2. The applicant who was a candidate for recruitment to the post of Sub-Inspector in Delhi Police in the year 1994 and who had passed the selection, is aggrieved by the order dated 9.2.95 passed by the Deputy Commissioner of Police Headquarters, Delhi by which the applicant's candidature for the post of Sub Inspector of Police has been cancelled. He also impugns the order dated 9.3.95 passed on his representation by which his application for withdrawal of the cancellation letter dated 9.2.95 has been rejected.

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3. The ground on the basis of which the applicant's candidature has been cancelled is that in the attestation/verification form he had replied in the negative against the Column wherein the candidate was asked to state as to whether he had been arrested or was involved in any criminal case. Against the said column the applicant had mentioned 'No'. It was, however, later discovered that the applicant had at one time not only being involved in a criminal case registered under FIR No. 73/83 in respect of offences under Sections 147, 148, 149, 353, 352, 228, 225 and 349 IPC at Police Station Chitawa in Rajasthan State but had also remained in custody for some days in connection with that case.

3. When the Deputy Commissioner got this information he wrote a letter to the applicant on 16.12.94, as at Annexure 'C' to the OA, requesting the applicant to furnish a certified copy of the judgment passed in the aforesaid case by the Judicial Magistrate. The applicant furnished a copy of the judgment and after taking into consideration the contents of the same the Deputy Commissioner passed the impugned order dated 9.2.95.

4. The contention of the applicant is twofold. It is, firstly, contended that since the aforesaid criminal case ended in the acquittal of the applicant and his other co-accused the mere registration of the case against him would not operate as disqualification for his appointment in Delhi Police. Secondly, it is contended that in identical situations the Tribunal had intervened when some affected candidates had approached the Tribunal

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by filing OAs. In this regard the copy of the judgment dated 19.4.95 in OA No.1525/94 (Jagmal Singh vs. Commissioner of Police & Others) has been cited and a copy thereof has been annexed to the OA. It is further contended that the impugned orders contravene Article 14 of the Constitution.

5. During the course of his arguments the learned counsel for the applicant also relied upon the judgment of another Bench of the Tribunal delivered in Shishpal vs. Union of India & others, reported in (1993) 25 ATC 311.

6. The respondents have resisted the applicant's claim on the ground that since the applicant had deliberately concealed an important fact relating to his involvement in a criminal case in the past in which he had also been arrested, the applicant could not claim appointment as a matter of right and that the respondents had validly cancelled his candidature. The respondents have also sought to distinguish the judgment in Jagmal Singh (supra).

7. The learned counsel for the respondents places reliance upon the judgment dated 5.12.97 in OA 1687/97 passed by a Bench of which one of us (Hon'ble Sh. S.P.Biswas) was also a Member. He also relies upon another judgment delivered on 21.5.98 in OA No.1590/97 (Hiral Lal vs. Union of India and others) by a Bench constituting both of us. A combined reading of both the judgments referred to by the learned counsel for the respondents clearly shows that the view expressed in

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Shishpal (supra) and Jagmal Singh (supra) were not followed by the other Benches subsequently. The reason was quite simple. The aforesaid earlier judgments had not taken note of the Apex Court's judgment in Commissioner of Police, Delhi and another vs. Virender Pal Singh (Civil Appeal No. 5510/97) delivered by the Apex Court on 11.8.97. Another judgment which has a bearing on the facts of the instant case and which also had escaped the notice of the Tribunal in the aforesaid cases is the one delivered by the Apex Court in Delhi Administration and others vs. Sushil Kumar (Civil Appeal No. 13231/96) decided in the month of October 1996. In Virender Pal Singh (Supra) it was only in the peculiar circumstances of the case that the Hon'ble Supreme Court dismissed the appeal preferred by the Commissioner of Police against the Tribunal's judgment dated 22.11.96. The Apex Court while dismissing the appeal held that since the Commissioner of Police had selected the applicant in that OA, therefore, in all fairness he should have been given a show cause notice. It was however made clear that this should not be treated as a precedent.

8. The judgment of the Apex Court in Sushil Kumar's case (supra) is more specific and to the point. It was held in that judgment that verification of the character and antecedents being one of the important criteria to test whether the selected candidate is suitable to a post under the State, the appointing authority would be acting within its bounds to hold the candidate unsuitable and his appointment as a Constable to the disciplined force as undesirable if the appointing authority on the basis of the antecedent record of the

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candidate found him to be so. Setting aside the order of the Tribunal by which the order cancelling the candidature of the applicant in that OA was quashed the Apex Court held that the order of the Tribunal was wholly unjustified in giving a direction to the competent authority for reconsideration of the case. It was further held that though the candidate in that case had been discharged or acquitted of the criminal offences the same had nothing to do with the question as to whether the character and conduct of the candidate was such as to make him unsuitable for entry in the Police service. In that case also it had been discovered by the appointing authority that the candidate had at one time in the past been involved in the criminal case though he was eventually acquitted. The Apex Court held that the consideration relevant to the case is of the antecedents of the candidate and that the appointing authority had, therefore, rightly focussed this aspect and had found it not desirable to appoint him to the Police service.

9. In another case (Managing Director, ECIL, Hyderabad vs. B.Karunakar) the Hon'ble Supreme Court in its judgment reported in JT 1993 (6) SC 1 held that the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights and that those principles are not incantations to be invoked nor rites to be performed on all and sundry occasions. The Apex Court went on to observe that where even after following the principles of natural justice no different conclusion would follow it would be perversion of justice to permit the employee to resume duty and to get all the consequential benefits till

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a show cause notice be given to him and the matter be finally decided and that this would amount to rewarding the dishonest and the guilty and thus to stretch the concept of justice to illogical and exasperating limits.

10. In view of the above clear pronouncements by the Apex Court we cannot agree with the contention of the learned counsel for the applicants that the judgments of the Tribunal in OA 166/97 and 1590/97 are not good law as the earlier judgments of coordinate Benches in Shishpal (supra) and other cases ought to have been followed in the aforesaid subsequent judgments.

11. The applicant has also sought to press into aid some observations made by the Apex Court in A.R.Antulay's case, reported in 1988 (2) SCC 602. In that case the Apex Court had observed that where some directions had been given by the Court oblivious of the relevant provisions of law and the decision in an earlier case the Court would be within its rights to hold that the earlier directions were legally wrong. We do not find anything wrong in the judgments of the Tribunal in Subodh Kumar (supra) and Hira Lal (supra) as these judgments are based upon the important observations made by the Apex Court in some earlier cases. Both the benches of the Tribunal held that the appointing authority would be perfectly justified in cancelling the candidature of a candidate who had concealed the fact of his involvement in a criminal case in the past even though the criminal case might have ended in his acquittal.

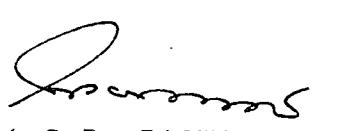
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12. On going through the judgment of the Criminal Court in the case in which the applicant was one of the accused, we find that the applicant and his co-accused were not fully exonerated but have been acquitted only "on the ground of doubt". Thus, it was only on being given the benefit of doubt that the applicant and his co-accused were acquitted by the Criminal Court. Thus, there is no merit in the applicant's assertion that he was "fully exonerated" by the Criminal Court. We may further mention that the applicant does not dispute the correctness of the allegation that he had remained in custody for some time in that criminal case. The applicant ought therefore to have given the necessary information against the relevant column in the attestation/verification certificate. On the contrary, he gave an answer in the negative.

13. We also do not find any merit in the contention that the respondents have acted arbitrarily in the matter and have thereby contravened the provisions of Article 14 of the Constitution. As already mentioned, there were justifiable and adequate grounds on the basis of which the impugned orders were passed. No question of arbitrary exercise of power therefore arises.

14. In view of all that has been held and discussed above we find no merit in this OA which is accordingly dismissed, but without any order as to costs.


(S.P. BISWAS)
Member (A)

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(T.N. BHAT)
Member (J)