

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.886/96

New Delhi this the 3rd day of February, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman

Hon'ble Mr. R.K. Aahooja, Member (Admnv)

Bhushan

...Applicant

(By Advocate Shri Shankar Raju)

-versus-

Union of India & Anr.

...Respondents

1. To be referred to the Reporters or not? YES

2. To be circulated to other Benches of the Tribunal? No

LM
(V. Rajagopala Reddy)
Vice-Chairman (J)

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Hon'ble Mr. R.K. Ahooja, Member (Admnv)

Bhushan, Roll No.1153,
Son of Sh. Ranvir Singh,
R/o V. & P.O. Lapan Malikpur
Distt. Meerut (U.P.)

...Applicant

(By Advocate Shri Shankar Raju)

-Versus-

1. Union of India/ Lt. Governor of NCT Delhi,
through Commissioner of Police,
Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi.
2. Dy. Commissioner of Police,
3rd Bn. DAP New Police Lines,
Kingsway Campe, Delhi.Respondents

(By Advocate Shri Rajinder Pandita)

O R D E R

By Reddy, J.-

The applicant was provisionally selected for the post of Constable in the Delhi Police by order dated 11.11.95. It came to light on verification of the records, that he was facing trial, in the court in FIR No.538/93 under Section 307 of the Indian Penal Code, on the date when the applicant made the application. Thereupon, by the impugned order dated 28.12.95 the respondents cancelled the provisional selection on the ground that the applicant concealed the fact of the criminal case pending against him, as he did not reveal the same in answers to the question in column 11 of the application/attestation form filled up by him on 30.8.95. It may be mentioned here that the applicant has ultimately been acquitted of the charges levelled against him.



2. It is the case of the applicant that on the date when he filled up the application/attestation form he had no knowledge that a criminal case was filed against him and that in fact, on the said date he was not prosecuted, as no chargesheet was filed. Hence, he did not suppress information in the relevant column 11 of the application form as well as the attestation form.

3. The learned counsel for the applicant Shri Shankar Raju raises two grounds, viz., (i) that the impugned order passed cancelling the selection, without issuing notice is bad in law and (ii) that the applicant had truly answered the questions in relevant column No.11 in the application form/attestation form and that he was not guilty of any suppression of facts.

4. It is the case of the respondents that the applicant was an accused in FIR No.533/93 under Section 307 IPC at PS Barut U.P. though he was subsequently acquitted after trial by the District and Sessions Judge, Meerut on 21.12.95. He did not, however, disclose these facts in the application/attestation form at column No.11 which he filled up on 30.8.95 when the case was pending and he tried to secure employment by deceitful means, concealing the true facts. It is also stated that the applicant has been arrested in the year 1993 soon after the FIR has been registered against him and he was released on bail. The learned counsel for the respondents, therefore, contends that it cannot be said that the applicant was unaware of the pendency of the criminal case registered against him. It is also contended that no notice is necessary before passing

the impugned order as the applicant's selection was only ⁽³⁾ provisional subject to the verification of the certificates and antecedents as to his character. (X)

5. Having considered carefully the arguments advanced by the learned counsel for the applicant and respondents, we fail to see any substance in the pleas of the applicant.

6. The facts are not in dispute in this case and they lie in a short compass. The only question that is involved in this case is whether the applicant had disclosed the information truly to the questions in column 11 of the application/attestation form which he filled up on 30.8.95. Column 11 of the application/attestation form, which is in Hindi and when translated in English, is as under:

- "(a) Whether you were prosecuted in any criminal case, detained, found guilty by any court of law of any offence or whether any Public Service Commission debarred you from participating in any selection for taking part in examination or you have been declared ineligible for any service?
- (b) Whether at the time of filling this attestation form whether any case is pending against you in any court of law?"

7. Five points of information are required of an applicant, in sub columns (a) and (b): (i) whether he has ever been prosecuted, (ii) whether he has been detained, (iii) whether he has been found guilty, (iv) whether any Public Service has debarred him from writing any examination or (v) whether any case was pending in any court? The applicant answered 'No' to all the queries.

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8. It is now necessary to get at the essential facts of the case as gathered from the pleadings. It is the admitted case of the applicant that he was an accused in the case in which FIR was registered as 538/93 under Section 307 IPC, he obtained bail in the case on 9.9.93 and the case was put up to trial and ultimately he was acquitted by judgment dated 21.12.95. It is, however, the case of the applicant that he came to know of the case when he first appeared before the court on 23.11.95. This case of the applicant appears to be unbelievable and false for the following reasons: Soon after the Judicial Magistrate has taken cognizance of the offence, a challan case must have been registered by him and in due course the case was referred to the District and Sessions Judge for trial, who after trial acquitted the applicant. It is not the case of the applicant that he was not aware when the chargesheet was filed nor that no charge was filed till 23.11.95. ~~That he was not aware of the case~~ assertion was denied by the respondents in the counter. In the representation filed by the applicant to the impugned order, it was not his case that he was not aware of the criminal case till 23.11.95. His specific case was that as he was falsely implicated due to enmity he did not mention about the pendency of the criminal case. He also stated that after a prolonged trial he was acquitted. The above facts clearly reveal that the applicant was fully aware of his prosecution under Section 307 IPC and that his statement that he was aware of the case only on 23.11.95 is false.

9. In the counter-affidavit a categorical statement was made that the applicant has been arrested in the year 1993 itself ~~in the above FIR~~ and he was released on bail. It must be noticed that the serious charge of attempt to commit murder under Section 307/IPC being a cognizable

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offence being also non-bailable, the applicant must have obtained the bail only after his arrest. Thus, it is clear that the applicant having been detained by way of arrest by the police has given a false information that he was not detained.

10. The learned counsel for the applicant places strong reliance upon Shri Yoginder Singh v. Union of India & Ors., 1996 (3) SLJ 226 (CAT). In this case a FIR was registered in 1993 against the applicant therein under Sections 147, 148, 149, 452 and 307. The attestation form was signed by him on 19.1.94 and he answered 'No' to column 11 (a). The Tribunal found thus:-

"From the pleadings and documents on record, there is nothing to show that the applicant was either prosecuted, detained or found guilty by any Court of any offence on the date on which he signed attestation form. Though the FIR was registered in the year 1993 much before the applicant had signed the attestation form that does not amount to either prosecution or detention. The applicant was granted bail and there is no allegation that he was detained."

11. Thus, in view of the above facts the Tribunal found that the applicant has not concealed any information to the question in column 11 (a). In the instant case the facts are different and on the facts we are convinced that the applicant was aware of his prosecution even in 1993 itself. The applicant has been arrested even in 1993 itself for the charge under Section 307 and he was enlarged on bail till he was acquitted in 1995. The above case is, therefore, distinguishable on facts.

12. As regards the next contention regarding want of notice before passing the impugned order in cancelling the selection of the applicant it has to be noticed that the applicant has not been appointed as such as a Constable by

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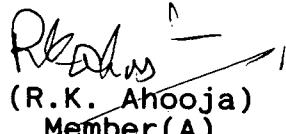
the respondents. It was made clear in the letter written by the respondents in the proceedings dated 11.11.96 that even the selection of the applicant was provisional and that it was subject to receipt of a clean polite character and antecedents verification about it from the local police and if the report was found adverse his selection would be cancelled without assigning any reason. Even in the impugned order it is made clear that his selection was subject to the above conditions. Unless the respondents were satisfied on the verification of the character and antecedents then only the applicant would have been considered for appointment. Till the order of appointment was issued to the applicant, he cannot be said to have accrued any rights. The learned counsel for the applicant relies upon Purshottam Singh vs. Delhi Admn. & Others (OA No.1312/89) where the Principal Bench in its order dated 2.7.91 set aside the order of termination of the applicant therein on the ground that the applicant's civil rights have been violated. It must be noted that in the above case the applicant has been given temporary appointment. Subsequently on the receipt of the report from the police revealing his involvement in the criminal case his services were terminated on the ground that he has suppressed the information. In the instant case, however, only an information has been sent to the applicant stating that the applicant had been selected subject to the conclusions of the antecedent of the applicant on receipt of the police report. No order of appointment as such has been communicated and the applicant admittedly has not been admitted. In the circumstances the above case is clearly distinguishable on facts. In D.K. Yadav v. J.M.A. Industries Ltd., 1993 (L&S) SCC 723 the appellant therein was appointed under the certified standing orders. The

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standing order stipulated automatic termination of service (7) when the employee was absent for more than 8 days beyond the period of sanctioned leave. The court held that the termination of the appellant under the above standing orders without holding any domestic enquiry or affording any opportunity to the delinquent was violative of the principles of natural justice. As seen supra in the instant case as there is no order of appointment the applicant cannot make any grievance of violation of the principles of natural justice or Articles 14 and 16 of the Constitution. The above case has no application to the facts.

13. In view of the foregoing discussion we are of the view that there is no warrant to interfere with the impugned order. There are no merits in the OA. The O.A. is accordingly dismissed with costs of Rs.1,000/- (Rupees one thousand only).


(R.K. Ahoja)
Member (A)

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(V. Rajagopala Reddy)
Vice-Chairman (J)