

IN THE CENTRAL ADMINISTRATION TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No.1421/2000

This the 5th day of August, 2001

HON'BLE SHRI KULDIP SINGH, MEMBER (J)

Shri Ashwani Kumar Yadav
S/o Shri Ram Kumar Yadav
R/o Village Majari Khurd,
Majari Kalan, Police Station
Mandan, Distt. Alwar, Rajasthan.

..... Applicant

(By Advocate: Mrs. Avnish Ahlawat)

VERSUS

1. Lt. Governor of Delhi
Through Commissioner of Police,
M.S.O. Buliding, I.P. Estate,
Police Headquarter, Delhi Police,
New Delhi.

2. Addl. Deputy Commissioner of Police,
South District,
Hauz Khas, New Delhi.

..... Respondents

(By Advocate: Mrs. Sumedah Sharma)

ORDER

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicant by filing this OA has assailed an order passed by the respondents on 5.10.99 whereby the services of the applicant had been terminated. He has also assailed an order dated 19.1.2000 vide which his appeal against the termination order has been dismissed. Both these orders are annexed at Annexures A and B respectively.

2. Facts, as alleged by the applicant, are that the applicant was selected for the post of Constable in Delhi Police and before joining the department he had filed an attestation form with regard to verification of his character antecedents. In the attestation form he did not disclose that he was involved in a criminal case

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under FIR No.3/97 of Police Station Mandan under Section 341/323/34 IPC. However, he claims that subsequently he had informed that he was involved in a criminal case.

3. He further claims that no challan was filed in the court and in fact the matter was taken up by the Judicial Magistrate, which was even compromised. However, when the attestation form was filled up by the applicant which was in a questionnaire form, the applicant was supposed to answer if he had been tried in any case, arrested in any case or convicted by any court in any offence or deprived by any public service commission for appearing in the examination or declared disqualified. The applicant answered these questions in negative by simply stating 'no'. But later on when the verification report was received, the department learnt that the applicant was involved in criminal case vide FIR No.3/97 under Sections 341/323/34 IPC so the department issued a show cause notice stating that on receipt of the report with regard to the verification from the authorities concerned, it is found that the applicant was involved in a criminal case which was pending trial in the court but the applicant had not disclosed these facts about his involvement in the said criminal case and he had also given an undertaking that he had not concealed any facts so he was called upon to show cause why his services should not be terminated.

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4. Thereafter the applicant submitted a reply to the said show cause notice but after considering the same the impugned order of termination of service was passed. An appeal was taken up before the appellate authority which was also dismissed.

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5. To challenge the impugned orders, the applicant has stated that though show cause notice has been issued but the reply submitted by the applicant has not been considered on merits and the authorities had decided the case in a routine manner treating it that they have done their duty by issuing the show cause notice. The issuing of show cause notice was observed as a mere formality and terminated the services of applicants without applying mind.

6. It is also stated that the show cause notice alleges that the case is still pending against the applicant whereas the fact is that there is no case pending against him and the applicant insists that he had correctly said no against Col. 11 since the applicant had neither been tried in any criminal case, nor deprived by any public service commission examination nor court of law nor he has been arrested but the show cause notice alleges that the criminal case is still pending against the applicant.

7. It is further stated that neither the disciplinary authority nor the appellate authority had discussed the merits of the case. It is also stated that in similar circumstances where individuals are involved in cases before their appointment or if terminated after

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their appointment, they have been reinstated in appeal. The applicant further submits that a number of cases where in such like circumstances applicants have been allowed to continue in service.

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8. The respondents are contesting the OA. The respondents pleaded that the applicant was allowed to join service subject to verification of character and antecedents. An undertaking was also obtained in anticipation of their verification that if anything is found to be false his service is liable to be dismissed/terminated and on receipt of his character antecedents report it was found that the applicant was involved in a criminal case and since the applicant had not disclosed this fact in the application form or the attestation form filled by him on different occasions, so the service of the applicant was terminated after serving on him a show cause notice in accordance with the rules.

9. The respondents also pleaded that in a case of Delhi Administration Vs. Sushil Kumar the Apex Court has ruled that it is for the appointing authority to see whether the person of a particular record is suitable to be posted as Constable or not. What had actually happened to the criminal case that is not material, rather it is the conduct or character of a candidate which is relevant for the purpose of an appointment so on that basis the department tried to justify its order and submitted that since the applicant was not found suitable on the basis of his report of character verification so his services had been rightly terminated.

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10. I have heard the learned counsel for the parties and gone through the record.

11. The learned counsel appearing for the applicant submitted that the Col.11 against which the applicant had answered "no" it is not properly drafted as it in one goes say that whether the applicant had been tried, convicted in any offence or not and since the applicant has neither been arrested nor he had been tried or convicted so in common parlance, as he understood the question, he has answered in negative and to support his contention the counsel for the applicant has referred to a judgment of this Tribunal in OA 919/94 entitled as Chander Bhan Vs. The commissioner of Police and Others and stated that the court had held "that this Col.11 is ambiguous as it covers the 4 types of antecedents of a selected candidate. A casual reading of Col.11 goes to show that it covers only those cases where a person has been involved in a criminal case, detained and found guilty by the court of law on an offence and it excluded those cases where a person who at the time of applying for the post of Constable was not involved in a criminal case and before filling the Attestation Form he has been honourably acquitted by the Criminal Court. Where concealment of a fact attributed to the applicant of not disclosing the fact that after applying for the post he was involved in a case u/s 294 IPC would amount to such concealment which will debar him from appointment to the post.

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12. The counsel for the applicant then also referred to another judgment reported in 1996 (2) SLJ SCC page 96 wherein it was held as follows:-

" Indian Penal Code, Section 294-Code of Criminal Procedure, Section 260-Discharge-Petty Offences-Appellant an ad hoc employee was convicted in a summary trial for an offence u/s 294 of IPC-Relief-Discharge-Petty Offences-Appellant an ad hoc employee was convicted in a summary trial for an offence u/s 294 of IPC on his entering upon plea of guilt for which he was ordered to pay a fine of Rs.20/-. Not regularised and discharged from service on account of his conviction u/s 294 of IPC-Relief-Discharge order held not proper and as such quashed. Further petty offences which are mostly committed by youngsters and experiences persons for which they have to appear before the summary courts and pay fine of a small amounts cannot be treated as a conviction for the purpose of entry into and retention in Government service."

13. The main crux of the arguments of the learned counsel for the applicant is that there is no concealment on the part of the applicant because at the time of the filling of the attestation form the case had already been decided by the Learned Judicial Magistrate and the applicant have been acquitted on the basis of a compromise. The applicant has also placed on record copy of the order passed by the Learned Judicial Magistrate. Thus the applicant's counsel submitted that there was, in fact, no concealment in filling the col.11 of the attestation form and since col.11 is quite vague as only an intelligent person can answer in specific terms but man of ordinary prudence has to draw a meaning that if a candidate has been actually put under arrest, tried in a criminal case and then held guilty and convicted.

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14. The counsel for the applicant also submitted that since it was a petty quarrel between two neighbours so the offence for which a challan was filed against the accused did not relate to any kind of moral turpitude so the respondents should not have terminated his service and the authorities concerned have not applied any mind in proper prospective so the services of the applicant could not be terminated. 16

15. In reply to this the learned counsel appearing for the respondents submitted that the concealment of the facts by a candidate who is seeking appointment in Delhi Police itself is sufficient to refuse the appointment. The learned counsel for the respondents submitted that even at the time of filling up of application form the candidates are asked whether they are involved in any criminal case and it is on the filling of attestation form when in specific terms as per Col.11 of the attestation form a candidate is asked whether he has ever been tried, convicted or involved in any criminal case so on all these occasions the applicant had answered in negative.

16. The counsel for the respondents further submitted that what is the result of the criminal case that is not significant but it is the fact which had been concealed by the applicant which is more important rather than the result of the criminal case. The appointing authority has to view the case of a particular candidate in this perspective and to take a decision whether the candidate is fit to be retained in service or not. In order to substantiate his contention the counsel for the

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respondents referred to a judgment in Ram Saha Vs. Indo
Tibetan Boarder Force, 200 (83) Delhi Law Times page
149:—

" Constitution of India, 1950-Art.
226-Termination: Pendency of Criminal
Proceedings: Information in Required Form not
Given-Petitioner applied for appointment as
Constable in Indo Tibetan Border Police-While
filling up form called 'Verification Roll' he
answered in 'No' meaning no proceedings pending
against him on date of filling up of
form-Whereas on investigation cases under
Section 147, 148, 144, 452, 325, 504, 506 IPC
found registered against petitioner-Petitioner
tried to give some explanation to get out of
situation-Petitioner was bound to give
information and he had not given correct
information in required form-Action taken by
respondents fully justified.

Held: The question whether no
criminal proceeding was pending against the
petitioner on the date of the furnishing of
information on the required form is clear from
the report of the Inspector Incharge, Police
Station Iglas, District Aligarh. The petitioner
has tried to give some explanation to get out of
the situation. The petitioner must have been
aware of the fact that he was seeking
appointment in a Police Force as Constable and a
policeman ought to have been truthful and if
really the parties who were involving themselves
in some altercation had ironed out their
differences, he could have reported the same and
when he was appointed or he could have mentioned
the same in his application. After the
information had been adhered by the first
respondent in February, 1996, the petitioner had
swung into action and had tried to get the case
disposed of. On these facts, I am not able to
accept the submissions of Mr. B.S. Charya, the
learned counsel for the petitioner, that there
was no case pending against the petitioner on
the date of the filling up of the required form.

Held further: I am of the view that
the petitioner was bound to give the information
and he had not given the correct information in
the required form. Therefore, the action taken
by the respondents was fully justified.
Accordingly, the Writ Petition is dismissed.

17. The counsel for the respondents has also
referred to a judgment of the Principal Bench in OA
No.1684/99 wherein also similar question was involved and

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the OA was dismissed. Similarly OA No. 2437/97 was also dismissed.

18. After considering the rival contention of the parties the only question which requires consideration is whether the Col.11 has been properly worded or not and a man of common prudence ordinarily cannot understand the same since the applicant has argued and has also referred to a judgment of the Tribunal in OA 991 of 1994 Chaman Lal (Supra). In that context I may mention that this Col.11 had been a subject matter of all these judgments which have been cited by both the parties. To my mind this contention of the counsel for the applicant has no merits because if we read col.11 as it has been reproduced by the applicant in his OA it raises so many questions and even a man of ordinary prudence can well understand that the question relates about the involvement of a person in some criminal case or not, though in technical terms he may not be able to understand the terms 'tried', 'arrested' or 'convicted' but even a man of average understanding can always draw an inference that the query is about a candidates involvement in some criminal case. So understanding the same and then answering in an objective manner whether a candidate is involved in some criminal case or not and thereafter answering the same in narrative form, if he is involved in any case. The one word answer 'no' can be given if the candidate is not involved in any criminal case in the past.

19. The latest judgment of the Hon'ble Delhi High Court relied upon by the respondent in Ram Sahay (Supra) also shows that the applicant in his OA has reproduced the Col.11 in part whereas the judgment records the

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Col.11 in full and it also shows that if the answer to A or B is 'yes' then the full particulars of the case, arrest, detention, line, conviction, sentence, etc. and the nature of the case pending in the court/University/Education Authority, etc. should be given in the attestation form. Thus the Note reproduced in the judgment shows that the authorities are also calling upon the applicant to give details if there is any involvement in the criminal case. Considering this position of law, I hold that arguments of the counsel for the applicant that col.11 is not properly worded, has no merits.

20. The next contention of the applicant is that while passing the impugned order by the disciplinary authority and the appellate order by the appellate authority both of them had not applied their mind, I may mention that on going through these orders at Annexure A-1 the disciplinary authority had particularly mentioned that the matter to be considered, and issue is that he concealed the facts of his involvement in a criminal case at the time of submissions of his attestation form as such the issue before the disciplinary authority was the concealment of facts and not the result of the criminal proceedings in which the applicant was involved and the appellate authority also rejected the appeal on consideration of the judgement of the Hon'ble Supreme Court in the case of Sushil Kumar (Supra) and confirmed the order passed by the disciplinary authority. Both these order show that the respondents had terminated the services of the applicant because the respondents found that the applicant had concealed the facts and concealment of facts is itself sufficient to terminate

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the services as per the judgment of the Hon'ble High Court.

21. The applicant has also tried to built up a case that after the submission of the attestation form the applicant informed the department that he was falsely convicted in one FIR at Police Station Mandan and in that case no challan was filed. To buttress his contention the counsel for the applicant has also referred to the appeal preferred by the applicant wherein he had mentioned that he had informed the department under postal certificates which letters were sent to the department several times so the counsel submitted that this aspect that he had informed the respondents about his involvement has not been denied by the respondents, so on that score also it should not have been held as if he had concealed the facts. To my mind this contention of the applicant is of no avail to the applicant because there is no authentic proof if he had ever informed the department about his involvement subsequent to the filling of the attestation form.

22. The counsel for the applicant has also submitted that in Sushil Kumar (Supra) the Hon'ble Supreme Court has emphasised that the termination should not be without issuing the show cause notice but the respondents had treated the show cause notice as a mere formality and without considering the reply, they have passed the termination order. The extract of the judgment which has been quoted by the respondents in their reply show that it is the conduct or character of a candidate to be appointed to a service which is relevant and not the actual result thereof. If the actual result happened to be in a particular way, the law will take

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care of the consequences. The consideration relevant to the case is of the antecedent of the candidate and the appointing authority, therefore, has rightly focussed on this aspect and found him not desirable to be appointed to the service. In this case also it is the conduct of the applicant which is more important and not the result of the criminal proceedings which had ended in favour of the applicant and the impugned order specifically states that the termination order is being passed on the basis of the facts that the applicant had concealed the facts about his involvement in a criminal case as he did not disclose the facts of his involvement in a criminal case.

23. Thus from whatever angle the case may be examined the fact that at the time of filling of the attestation form the applicant had concealed the facts with regard to his involvement in a criminal case is not denied and while exercising the power of judicial review this court should not interfere and quash the impugned orders.

24. In view of the above, nothing survives in the OA which is accordingly dismissed. No costs.


(KULDIP SINGH)
MEMBER (JUDL)

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