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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.663/2000

New Delhi this the 11th day of September, 2001.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Amit Kumar,  
S/o Sh. Khem Chand,  
R/o B-380, Street No.2,  
Gharoli Extn.,  
Delhi-110 096.

-Applicant

(By Advocate Shri Arun Bhardwaj)

-Versus-

1. Union of India through  
its Secretary,  
Ministry of Home Affairs,  
North Block,  
New Delhi.
2. Commissioner of Police,  
Police Headquarter,  
I.P. Estate,  
New Delhi.
3. Deputy Commissioner of Police,  
West District,  
Delhi.
4. Additional Commissioner of Police,  
West District,  
Delhi.

-Respondents

(By Advocate Shri Harvir Singh)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

The applicant, an ex-Constable in Delhi Police has assailed an order dated 26.7.99, whereby his services have been terminated under Rule 5 (i) of the CCS (TS) Rules, 1965 and also the show cause notice dated 16.4.99 and further assailed an order dated 4.1.2000 passed by the Commissioner of Police, rejecting the representation of the applicant.

2. Briefly stated, the applicant having been selected in the year 1998 in Delhi Police as a Constable (Executive) in the Delhi Police was served with a show

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cause noticed, whereby it has been proposed to terminate his services on the ground that he has not revealed the fact of his involvement in the criminal case in the application and attestation form as well as in the undertaking given by him on 23.11.98. The applicant was involved in a case FIR No.105 under Section 25 of the Arms Act registered on 14.3.94 and also DD No.27-A of even date under Section 110 of Cr.P.C. at PS Kalyan Puri, was acquitted by the court of Metropolitan Magistrate by an order dated 9.7.97. The competent authority having regard to the fact that the applicant has adopted deceitful means by concealing the fact of criminal case with malafide intention for getting employment in Delhi Police and after considering the reply of the applicant terminated his services against which the representation has been rejected by the Commissioner of Police, placing reliance on a decision of the Apex Court in Chief Secretary & Ors. v. Sushil Kumar, JT 1996 (10) SC 34.

3. The learned counsel of the applicant stated that the order passed by the respondents is bad in law as grounds taken by him in reply to the show cause notice have not been considered and there has been no concealment of any material fact in the application form as well as undertaking. As the applicant has been acquitted of the charge honourably on 9.7.97 prior to the date of filing of the application form, any stigma attached to the criminal case has been obliterated and otherwise also there is no provision in the Delhi Police Act or the statutory rules which debar a police officer for admission if he was involved in a criminal case but acquitted. It is also stated that there was no malafide intention of the

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applicant by not disclosing the fact of criminal case of which he had already stood exonerated. It is further contended that had the applicant informed the department about the fact of criminal case, it would have made no difference and the applicant would have been appointed in the Delhi Police. It is stated that the termination is resorted to by way of punishment as a substitute for departmental proceedings and without holding an enquiry, the services have been dispensed with, which amounts to stigma and in case the <sup>Vail, by</sup> ~~where~~ is lifted the true nature of the order would come into light. It is also stated that the Constitution of India does not debar employment of persons who are facing criminal cases and no adverse inference can be drawn, if one is acquitted honourably. Placing reliance on a decision of this Court in OA-919/94 dated 7.11.94, Chander Bhan v. Commissioner of Police, it is contended that the issue regarding proforma of the application form was in issue and has been observed to be defective and further it has been held that the concealing should have an element of malafide and as the applicant has already been acquitted from the charge, the termination on concealment without any further allegation of the weak character would not be sustainable. It is lastly contended, taking resort to the decision of the High Court in Pramod Kumar Rastogi v. Union of India, that in case where an ITDC employee has filled up the application form having the same proforma as of Delhi Police and has not disclosed the fact of criminal case where he has already stood acquitted much before the filling up of the form, the High Court was of the opinion that on acquittal a legal inference is to be drawn that the petitioner has never been indicted of any charge and the the factum of criminal case

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would completely obliterate at the time of answering the query regarding character. Therefore, there had not been <sup>be</sup> ~~no~~ concealment and mere withholding of fact would not be construed as concealment. The provisions are to be strictly construed and it has been to be shown that the act complained of was such that the employee should not be entrusted with any responsible job having regard to his propensity to commit crime. The law does not empower the respondents to presume proprio vigore that the concealment would amount to the petitioner having been rendered as unfit. In that case the petitioner was involved in a minor scuffle and was acquitted on account of the death of the complainant and there was no finding of guilt against him. In this backdrop, it is stated that in the instant case also if the applicant had acquitted of the charges on merits, there had not been any malafide intention and concealment would not be construed as suppression of material fact by adopting deceitful means to get employment in Delhi Police.

4. On the other hand, strongly rebutting the contentions of the applicant; the learned counsel of the respondents stated that on verification of the character and antecedents of the applicant it was found that the applicant though involved in the criminal case but acquitted later on. These facts have not been mentioned in the application as well as attestation form as well as he malafidely and deliberately concealed the facts and made wrong and false undertaking by mentioning on an affidavit that he had never been involved, arrested or prosecuted in a criminal case by which he succeeded in joining the department by adopting deceitful means despite a clear

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warning in the attestation form that this would entail disqualification and termination of his services. The applicant was accorded a reasonable opportunity to show cause as well as a personal hearing, but his reply having been found unsatisfactory the termination was resorted to.

5. As regards acquittal is concerned, the learned counsel of the respondents stated that <sup>applicant</sup> ~~he~~ has been acquitted by the court on account of benefit of doubt, as the prosecution has failed to prove the case beyond reasonable doubt. Further it is stated that what matters is the conduct of the applicant which clearly points out towards his malafide and if he had been acquitted he could have disclosed this fact in his application form as well as in the attestation form and as from the very initial stage he adopted deceitful means and despite warning made a false undertaking on an affidavit reflects his malafide intention and he could have mentioned correct fact, including his acquittal. Having furnished wrong information, he is found unfit for the disciplined force. Placing reliance on a decision of the Apex Court in Sushil Kumar's case (supra) wherein the petitioner did not disclose the fact of the criminal case and later on acquitted, the Tribunal has ordered re-instatement, whereas the Apex Court has reversed the same by making a specific observation to the effect that:

"verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was physically found fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable

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to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant to the case is of the antecedents of the candidate. The Appointing Authority, therefore, has rightly focussed this aspect and found him not desirable to appoint him to the service."

6. In this background it is stated that the action of the respondents is perfectly legal and is inconsonance with the principles of natural justice after a reasonable opportunity to show cause has been accorded to him.

7. The applicant has reiterated his pleas taken in the OA by way of filing a rejoinder.

8. I have carefully considered the rival contentions of the parties and perused the material on record. The applicant is not legally entitled for the relief, as claimed by him. There is no legal infirmity in the order of termination passed. The case relied upon by the learned counsel of the applicant in the case of Chander Bhan (supra) would have no application, as apart from column in the application and attestation form an undertaking was also filed by the applicant by way of an affidavit which was not in the selection held in the year 1994. Therefore, the above stated case is also distinguishable as the Apex Court in the subsequent decision has reversed the finding of the Tribunal by taking a contrary view.

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9. As regards the ratio of High Court's decision in Pramod Kumar Rastogi (supra) is concerned, the same is also distinguishable as before the High Court the petitioner was only involved in a minor scuffle and was acquitted on account of the death of the complainant. The concealment therein was construed as without malafide and withholding of the fact of the criminal case was not found to be concealment. Though the decision of the Apex Court in Sushil Kumar's case was referred to by the High Court but the same has been found to be not applicable, as no verification of the antecedents was done in the instant case. Apart from it, the contention of the applicant that there is no statutory provision which debars him for appointment, even after acquittal under the Delhi Police Act, 1978 and subordinate rules as well as in the Constitution of India is concerned, the same is not legally valid. In a disciplined force the antecedents of an incumbent to be appointed are of paramount consideration. Under Rule 25 of the Delhi Police (Recruitment and Appointment) Rules, 1980 unless the character antecedents of the applicant are not found good and there is nothing adverse he would not be appointed to the post. Apart from it, it is a common practice that a person should be appointed to government service only if he is of good character and eligible in all respects. The Apex Court in Sushil Kumar's case (supra) has clearly observed that despite acquittal it is the discretion of the appointing authority to appoint a person who has been involved and acquitted of the criminal charge and if it is not found desirable the view taken cannot be interfered with. What is relevant is the conduct and character of the candidate



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to be appointed to a service and not the actual result thereof. If the applicant was involved in a criminal case pertaining to Arms Act, this would clearly reflect his character and antecedents and if the competent authority has taken a view not to appoint such a person, the same lies within his jurisdiction and cannot be found fault with on the basis of the decision of the Apex Court (supra). The decision in Sushil Kumar's case (supra) would hold the field and would apply mutatis mutandis to the facts and circumstances of the present case.

10. As regards the contention that there has not been a wilful suppression of the fact as the applicant has been acquitted from the charges, this has obliterated any claim of the criminal case and also mere non-furnishing the information regarding the criminal case and had it been mentioned would have not made any difference in appointment is absolutely untenable and is not legally valid. The applicant who was aware about his arrest, prosecution and involvement, though later on acquitted has not disclosed the same in the application form as well as in the attestation form despite warning, it would entail disqualification and consequent termination. The applicant has also gone to the extent of submitting an undertaking by way of an affidavit, where he has declared not to have been involved, arrested, prosecuted in any criminal case, at the time of filling the application form though he was acquitted but the fact remains that he has already been prosecuted, arrested and involved in a criminal case and having failed to disclose the same he has suppressed the material information without any justified reasons, which reflects his malafide intention. Had the applicant





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disclosed this fact, this would have certainly occasioned an assumption by the competent authority as to the desirability of the applicant to be appointed to the post. Moreover, there was a clear warning on the undertaking that in case the declaration is found false, it shall liable the services of the applicant to be terminated and he would not claim any thing for the post of Constable (Executive) in the Delhi Police. In my considered view, the applicant has suppressed the material information regarding the criminal case malafidely and with an intention to conceal it from the department to facilitate his appointment, which cannot be countenanced and is not legally valid.

11. As regards the contention of the applicant that no enquiry has been held and the punitive order has been passed is concerned, I find that the applicant has been accorded a reasonable opportunity to show cause and his contentions have been taken into consideration by the competent authority. Having found the same as not legally tenable the same have been rejected. The order of termination cannot be found fault with for violation of principles of natural justice. The applicant has not been deprived of a reasonable opportunity to defend. Apart from it, the termination has not cast any stigma, as there is no dis-qualification for future employment.

12. In the result and having regard to the discussion made above and reasons recorded, the present OA is found bereft of merit and the same is dismissed, but without any order as to costs.

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S. Raju  
(Shanker Raju)  
Member (J)