

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1418/90
T.A. No.

199

DATE OF DECISION _____

Shri Chela Ram

Petitioner

Shri C.N. Sree Kumar

Advocate for the Petitioner(s)

Versus

Commissioner of Police & Ors. RespondentMrs. Avnish Ahlawat

Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN (J).

The Hon'ble Mr. B.N. DHOUNDIYAL, MEMBER (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT(of the Bench delivered by
Hon'ble Member Shri B.N. Dheundiyal)

This OA has been filed by Shri Chela Ram against cancellation of his selection as a Constable (Driver) in the Delhi Police.

2. The applicant applied for recruitment to the post of Constable (Driver) in Delhi Police on 16.06.1989 and was selected on 27.06.1989. He was medically examined and declared fit for the post. However, during the verification of the character and antecedents, SHO/ Kanjhawala reported that he was involved in a criminal case, FIR No.149, dated 29.07.1982 under Section 24, 54, 59 Arms Act P.S.Narula and was acquitted by giving him the Br

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the benefit of doubt on 05.05.1986. He concealed these facts at the time of applying for the post of Constable and hence his appointment order was cancelled via Deputy Commissioner of Police letter No.5340/SIP/P&L dated 06.06.1990. The applicant has stated that he sent a representation to the Commissioner of Police on 01.09.1989, in which he mentioned the fact that he had been involved in a criminal case. The respondents issued a letter on 24.01.1990 directing the applicant to report immediately for filling up of the forms for appointment. However, on 06.06.1990, he received the impugned order cancelling his candidature on the ground of ^{Concealment of BN} _A material fact at the time of filling up the application. He has challenged this order on the ground that no hearing was given to him, and that he had already been acquitted in the criminal case, that the call for appointment was issued by the respondents even after this fact was brought to their notice by his representation dated 01.09.1989 and that in many such cases, the candidates have been allowed to join their duties.

3. The respondents while admitting the above facts have contended that his candidature was cancelled due to concealment of facts, in accordance with the Government of India instruction No.GOI/MHA/OM No.5/1/65-Estt.(P), dated 30.04.1965 under Rule-11 of the CCS(CCA)Rules.

4. We have gone through the records of the case and have heard the learned counsel for both the parties. The respondents have heavily relied on the aforesaid instructions
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issued by the Government as well as on the Judgement of the Principal Bench of this Tribunal in the case of Shri Kamesh Singh (O.A.836/86) decided on 22.1.87, in which a similar application was dismissed. It was held that such suppression of the material facts renders the appointment liable to cancellation and that the action of the respondents could not be called arbitrary.

5. The learned counsel for the applicant has drawn our attention to the later judgements of this Tribunal in case of Girish Bhardwaj Vs. Union of India and Others (1990(13) ATC.178) and N.V. Prasannan Vs. U.O.I. and Others (1990(1) SLJ(CAT) 670, in both of which, one of us (Shri P.K. Kartha) was a party. It was held in the case of Girish Bhardwaj that even though he was involved in a dowry case, he could not be deprived of the chance to serve the Government solely on this ground, and till the criminal court actually found him guilty, presumption of innocence would apply. The young age of the applicant and the fact that he would later become ineligible for Government service, were also taken into consideration. In case of Shri N.V. Prasannan, it was held that it is not necessary that for all non-disclosures of particulars, one should be terminated from service. It was also held that in such cases, the principles of natural justice require an opportunity to be given to the person concerned before terminating his service. The applicant has relied upon the Judgement of the High Court of Delhi in Civil Writ Petition No.304/1984 (Constable Yeshpal Singh Vs. UOI)

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and the decision of the Supreme Court in case of Sridhar Vs. Nagar Palika Jaunpur, (1990(suppl)SCC.158) where it has been held that "It is a elementary principle of natural justice that no person should be condemned without hearing. Order of appointment conferred vested right in the appointee to hold the post. That right cannot be taken away without affording opportunity of hearing to him. Any order passed in violation of principles of natural justice is rendered void".

6. In the instant case, no such opportunity was given to the applicant and the impugned order has been passed in violation of the principles of natural justice. It is also a fact that the offence for which the applicant was prosecuted in the criminal court did not involve moral turpitude. Another point that has to be considered such is that in a number of cases, the suppression of/information has been condoned and the persons concerned have been allowed to join the service. Denial of such benefit would result in hostile discrimination against the applicant.

7. In the light of the foregoing, we are of the opinion that the applicant should be given a chance to prove his worth by appointing him as a Constable. We, therefore, order and direct as follows:

- (1) The impugned order No.5340/SIP/DCP/P&L, Delhi, dated 06.06.1990 passed by the Deputy Commissioner of Police, Prov. & Lines, Delhi, whereby, the appointment of the applicant as Constable (Driver) was terminated is hereby set aside and quashed.
- (2) The respondents are directed to appoint him in service as Constable (Driver).
- (3) The offer of appointment should be sent to him within a period of one month from the date of communication of this order.
- (4) Under the circumstances, we do not direct the respondents for payment of back wages. He would, however be entitled to all other consequential benefits, including seniority.

8. There will be no order as to costs.

B.N. DHOUNDIYAL
(B.N. DHOUNDIYAL)
MEMBER (A) 10/07/91

P.K. KARTHA
(P.K. KARTHA) 10/07/91
VICE CHAIRMAN (J)