

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 2096/2004

New Delhi this the 4th day of March, 2005

Hon'ble Mrs. Meera Chibber, Member (J)

Ex-Recc/Ct.Sunil Kumar

Applicant

(By Advocate Shri Ram Singh Soni)

VERSUS

The Commissioner of Police and Ors.

Respondents

(By Advocate Shri Ram Kawar)

1. To be referred to the Reporters or not? Yes.
2. To be circulated to other Benches of the Tribunal or not? No.

B
(Mrs. Meera Chibber)
Member (J)

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New Delhi this the 4th day of March, 2005

Hon'ble Mrs. Meera Chhibber, Member (J)

Ex-Rectt/Ct. Sunil Kumar,
No. 8003/PCR (Roll No. 404635),
C/o Sh. Ran Singh,
H.No. 95, G-28, Sector-3, Rohini,
Delhi-110085.

.... **Applicant.**

(By Advocate Shri Ram Singh Soni)

Versus

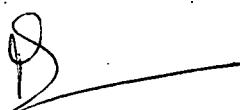
1. The Commissioner of Police,
PHQ, MSO Building,
I.P. Estate, New Delhi-110002.
2. The Dy. Commissioner of Police (PCR),
PHQ, MSO Building,
I.P. Estate, New Delhi-110002. **Respondents.**

(By Advocate Shri Ram Kawar)

ORDER

By this O.A. applicant has challenged the Show Cause Notice dated 25.11.2003, order dated 08.01.2004 whereby his services were terminated under Rule 5 (1) of the CCS (Temporary Service) Rules, 1965 and the order dated 23.07.2004 whereby his representation has been rejected.

2. It is submitted by the applicant that he was enlisted provisionally as a Constable (Exe.) in Delhi Police during the recruitment held in the year 2002 and allowed to join on 18.1.2003 (A.N) subject to verification of his character and antecedents.
3. The applicant was served a Show Cause Notice dated 25.11.2003, on 11.12.2003 calling upon him to explain why his services should not be terminated as he concealed the fact regarding his involvement in a criminal case in the application and attestation form, also gave a false undertaking and thus joined



the department by adopting deceitful means (page 13). Applicant gave his reply stating therein that he was a minor on the date when a false FIR was lodged as his date of birth is 30.6.1981 and that was also compromised and applicant was acquitted in the said case on 11.2.2002 i.e. before filling up the form. Therefore, he did not mention about it under a bona fide belief and advice. He had no intention to conceal. Moreover, since he was already acquitted, even if it was mentioned, it would not have made any adverse impact. He, therefore, prayed to withdraw the Show Cause Notice (page 14).

4. The disciplinary authority, however, terminated the services forthwith under Rule 5 (1) of the CCS (Temporary Service) Rules, 1965 by observing that he shall be entitled to claim a sum of pay and allowances for one month (page 16). Being aggrieved, he filed a representation to the Addl. CP/P&C but vide letter dated 12.5.2004, applicant was directed to give representation to the Commissioner of Police, Delhi (page 17). Accordingly, he gave the representation to the Commissioner of Police but he too rejected the same vide order dated 23.07.2004. He, therefore, had no option but to file the present O.A. Counsel for the applicant relied on the following judgments:

- (1) Rampal Vs. Commissioner of Police, Delhi & Anr. (O.A. No. 596/2004 – Principal Bench, decided on 20.12.2004);
- (2) Dipti Prakash Banerjee Vs. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta and Ors. (AIR 1999 SC 983);
- (3) Pawan Kumar Vs. State of Haryana & Ors. (AIR 1996 SC 3300);
- (4) Shamsher Singh Vs. State of Punjab (AIR 1974 SC 2192);
- (5) Shishpal Vs. UOI & Ors. (O.A. No. 2170/1992 – Principal Bench, decided on 7.4.1993).

5. Respondents on the other hand have opposed this O.A. by submitting that since applicant did not disclose the fact regarding his involvement in the criminal case in the application form and attestation form despite clear instructions and joined the department by giving a false undertaking, he has rightly been terminated from service. It was clearly mentioned in the application dated



28.2.2003 that applicant would be liable for termination without giving any reasons if the facts given by him are found incorrect in any material respect. Since he had suppressed material fact, he has no right to continue in service. The adverse report was received from the office of District Magistrate, Jhunjhunu, Rajasthan. Moreover, applicant was an adult when he filled up the form. Therefore, there is no case made out for interference by the Tribunal. The O.A. may, therefore, be dismissed.

6. I have heard both the counsel and perused the pleadings as well. In the case of Delhi Administration and Ors. Vs. Sushil Kumar reported in 1996 (11) SCC page 605, Hon'ble Supreme Court observed as follows:

“.....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 found physically 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 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...”

7. It is, however, seen that in a subsequent case of similar nature, Commissioner of Police Delhi and Anr. Vs. Dhaval Singh reported in 1999 (1) SCC 246, Hon'ble Supreme Court was dealing with a case where at the time of filling the form in August, 1995 candidate had put X in the column where he was required to give the information regarding pendency of criminal case but subsequently he informed the authorities voluntarily on 15.11.1995 about the criminal case i.e. before appointment order was issued, yet his candidature was cancelled on 20.11.1995. The candidate was finally acquitted also on 8.12.1995. The Hon'ble Supreme Court held that since the respondents therein had given the information voluntarily even when the criminal case was still pending but the authorities did not apply their mind to this aspect at all and cancelled the



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candidature without taking into consideration all relevant material, therefore, Tribunal rightly set aside the cancellation order. Sushil Kumar's case (supra) was distinguished as in that case no information was given by the respondent therein.

8. It would also be relevant to refer the case of Rampal Vs. Commissioner of Police & Anr., decided by Principal Bench on 24.12.2004 in batch of cases. These were the cases where applicants had disclosed the pendency of criminal case against them in the application form yet their candidature was cancelled after giving them show cause notice, on the ground that charge was framed and the witnesses were examined, who did not support the prosecution case as they turned hostile. Therefore, he was acquitted by giving him the benefit of doubt ^{or due to Court's own} ¹². The allegations involved moral turpitude, therefore, he was unfit for police service as he was not acquitted honourably.

9. The Division Bench of Tribunal after referring to Rule 25 of Delhi Police (Appointment and Recruitment) Rules observed that character and antecedents verification is a sine qua non before a person is appointed. It was held that verification of character and antecedents is done to see the suitability of the candidate for a particular post but mere allegations by itself will not make a person unfit for police service because ultimately the persons have been acquitted by a court of law and administrative authorities cannot question the validity of acquittal. Once a person is acquitted, he is exonerated of the charge that has been framed against him. Acquittal for all practical purposes puts an end to the charge framed. It was thus held that expression of "acquittal by giving benefit of doubt" cannot be used adversely against the said person. It was further held that merely because a person was involved in a criminal case, therefore, even after acquittal he should not be taken into service, would be indeed incorrect. Apart from it, no other ground was taken nor there was any other material to show unsuitability of the candidates. It was thus held that the reasoning given by respondents for cancelling their candidature or appointment



cannot be sustained. Accordingly, the impugned orders were quashed. O.As were allowed. Respondents were directed to act in accordance with law preferably within three months from the date of receipt of the orders.

10. If the present case in hand is seen in the background of judgments, as referred to above, following facts emerge out.

- (1) FIR was filed against the applicant when he was still a minor u/s 323/452 IPC, i.e. hurt and trespass;
- (2) Matter was compromised and applicant was acquitted by a Court of Law on 05.02.2002;
- (3) On the date when he filled up the form, there was no case pending against him and he stood acquitted in the earlier case even before filling up the form;
- (4) Applicant's father gave copy of the judgment to the verifying officer;
- (5) The only report which came on verification was that a case under Section 73/99 was registered against applicant in which charge sheet No. 59/99 was filed under Section 452/323/34 in the court of ACJM, Jhunjhunu, Rajasthan on 16.10.1999 but he was acquitted vide judgment dated 5.2.2002 on the basis of compromise as far as Section 323 is concerned and due to no evidence as far as Section 452 is concerned;
- (6) There was no other material to suggest that applicant was not suitable for being appointed as a Constable in Delhi Police;
- (7) Two responsible persons had certified that he bears good reputation, ^{and is} character and has no antecedents which render him unsuitable for Govt. employment;
- (8) Question No. 11 of application form is in present tense. The answer given was also in present tense that no case is going on;
- (9) The intent of Question No. 11 was to know whether the candidate had been found guilty by any court of law or restrained from taking



examination by any Public Service Commission which was not the case here;

In the undertaking, applicant had stated as follows:

"I hereby declare that I was neither involved nor arrested/prosecuted/convicted, bound over interned, extened nor dealt with under any law in force in any criminal case and that no criminal case or court proceeding is pending against me at present"

11. Strictly speaking if all these points are seen, applicant did give a wrong undertaking because he could not have stated that he was never involved in any criminal case but at the same time it has to be kept in mind whether it would have made any difference even if he had mentioned about the criminal case when he was already acquitted even before filling up the form. It has also to be kept in mind that in villages whenever there is quarrel for piece of land, generally the names of entire family are given in the FIR. Applicant has stated that he was only a minor on the date when FIR was filed. Now simply because he was named in the FIR, can it be said he would be unsuitable for Govt. job? The answer is definitely No, as explained by the Division Bench in the batch matters as referred to above. We have also seen that there is absolutely no other material on record on the basis of which it could be held that applicant was unsuitable for Govt. job. Moreover in the application form the question was not "Have you ever been involved in any criminal case." Since the question was in present tense, applicant's reply could be a bonafide mistake as well. Had the question been "क्या कभी भी जाप पर कोई अभियोग या अल रहा है" things would have been different but since question itself was not very clear, I think this case needs to be reconsidered. As far as the judgment of Sushil Kumar (supra) is concerned, that is distinguishable because in that case the criminal case was still pending. Therefore, outcome of same was not yet known. He was acquitted subsequently but in the instant case he was already acquitted in the criminal case even before filling up the form. Therefore, even if applicant had mentioned this fact in the application, it would not have made any



difference. Moreover, no body has tried to verify the fact whether judgment was given by his father, as alleged by him. These aspects need to be looked into. Therefore, the appellate authority's order dated 23.7.2004 is quashed and set aside. The matter is being remitted back to Respondent No. 1 for reconsideration. The appellate authority shall apply mind to these facts as referred to above and pass a reasoned order within a period of three months from the date of receipt of a copy of this order under intimation to the applicant.

12. With the above directions, O.A. is disposed of with no order as to costs.



(MRS. MEERA CHHIBBER)
MEMBER (i)

'SRD'