

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-2381/2004

New Delhi this the 28th day of June, 2005.

Hon'ble Shri Shanker Raju, Member(J)

Sh. Sultan Singh

..... Applicant

(By Advocate Shr. G.D. Gupta, Sr. Counsel with Sh. S.K. Gupta)

Versus

Govt. of NCT of Delhi & Ors.

..... Respondents

(By Advocate Sh. Ram Kwar)

1. To be referred to the Reporters or ~~not~~? *yes*
2. To be circulated to other Benches of the Tribunal or ~~not~~? *yes.*

S. Raju
(Shanker Raju)
Member(J)

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New Delhi this the 28th day of June, 2005.

Hon'ble Shri Shanker Raju, Member(J)

Sh. Sultan Singh,
S/o Sh. Balraj Singh,
R/o V.P.O. Udey Rampur,
Nangla, P.S. Masuri,
District Ghaziabad,
UP.

..... Applicant

(through Sh. G.D. Gupta, Sr. Counsel with Sh. S.K. Gupta, Advocate)

Versus

1. Govt. of NCT of Delhi through
Chief Secretary,
Delhi Secretariat,
Players Building,
I.P. Estate,
New Delhi-2.
 2. Commissioner of Police,
Delhi Police Headquarters,
MSO Building,
I.P. Estate,
New Delhi-2.
 3. Dy. Commissioner of Police
(Headquarters),
Delhi Police Headquarters,
MSO Building,
I.P. Estate,
New Delhi-2.
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4. Dy. Commissioner of Police, PCR,
Police Control Room Headquarters,
Model Town,
Delhi.

..... Respondents

(through Sh. Ram Kwar, Advocate)

Order (Oral)

Heard the learned counsel for the parties.

2. In this OA, a challenge has been made to an order passed by the respondents on 30.01.2004 terminating the services of the applicant under Rule 5 of the CCS (Temporary Service) Rules, 1965 as well as an order dated 19.6.2004 whereby representation preferred against the termination has been rejected.

3. The brief factual matrix of the case shows that the applicant had applied for the post of Constable (Executive) in Delhi Police and filled up various forms i.e. Application Form on 12.4.2002, Attestation Form on 16.12.2002 and an undertaking on 18.01.2003 to the effect that he has neither been involved nor arrested/prosecuted/convicted nor dealt with under any law in force in any criminal case and no criminal case or court proceeding is pending against him at present.

4. The brief background, leading to filling up the forms, shows that though on a complaint by one Sh. Ashok Kumar an FIR No. 82/2001 was registered on 18.4.2001 against one Kappu and Malkhan. On a detailed investigation by Police, a chargesheet has been filed before the Court of Competent Jurisdiction on 18.06.2001 which reflected that the allegations against the applicant could not

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be substantiated and the challan has not been put against the applicant for taking cognizance to be taken by the Magistrate under Section 190 of Cr. P.C. Rather name of the applicant was placed in Col.2 which reflects that the person, against whom if any evidence come forth, would be summoned in the trial as an accused.

5. In the above backdrop, learned Senior Counsel for the applicant stated that there is no willful or even deliberate concealment of the fact by the applicant or suppression of any information regarding the criminal case, which could have necessitated termination of the applicant.

6. Referring to the Application Form, it is stated that no information regarding FIR was sought by the respondents but in the Attestation Form Col.11 which is reproduced as under has sought the following information about criminal case:-

“ 11. क्या आप पर कोई अभियोग चलाया गया है, नजरबन्द रखा गया है, न्यायालय द्वारा किसी अपराध के लिए दोषी ठहराया गया है या किसी लोक सेवा आयोग द्वारा आपको परीक्षा चयन या उसमें भाग लेने से वंचित कर दिया गया या या उसमें लिए अभियोग ठहराया गया है। ”

(31) क्या इस सत्यापन का जो जरूरी समय आपको किसी न्यायालय में चल रहा है। ”

7. Learned counsel by referring to Legal Glossary issued by the Government of India in 1992 stated that the word 'Abhiyog' is defined as 'accusation'. Further referring to Blacks Law Dictionary Sixth Edition, 1991 it is stated that 'accusation' is a formal charge against the person, to the effect that he is guilty of a

punishable offence, laid before a Court or a Magistrate having jurisdiction to inquire into the alleged crime.

8. In the above backdrop, it is stated that the applicant was neither arrested nor was involved in any criminal offence at the time of filling up of the Form on 16.12.2002. As on 18.06.2001, the Police has ruled out any accusation against the applicant, a challan has not been put against him for which cognizance has been taken by the Magistrate. Referring to the judgment of the Chief Judicial Magistrate, Shri Gupta stated that despite the prosecution story for want of any evidence against the applicant, neither the cognizance has been taken against him nor the applicant has been summoned to face trial and ultimately on the basis that the prosecution has miserably failed to charge the two other persons acquitted from the charge which has not been appealed against and has attained finality.

9. On the other hand, learned counsel of the respondents vehemently opposed the contentions and stated that the word 'accusation' not only involves within its ambit a formal charge but also an information whether there is a criminal offence against a person and this is nothing but an information sought to find out whether any FIR is registered against a police officer. Admittedly, at the time of filling up the Attestation Form, the applicant was named in the FIR with others, however, the same has not been culminated into a chargesheet against him. He has not faced any trial before the Magistrate. Accordingly there is suppression of material information in the Attestation Form and as per warning contained in it, entails termination. The representation of the applicant was duly considered by the authorities and the applicant has been rightly terminated.

10. On careful consideration of the rival contentions of the parties, I find that the word 'accused' has not been defined in Cr.P.C. but Legal Glossary ibid

defines the word 'accused' against whom an allegation of committal of offence is alleged.

11. It is not disputed that in the Application Form the respondents have not sought for any information with regard to the alleged involvement in a criminal case or registration of FIR. The Application Form is a computerized proforma but on selection, every police officer has to fill up Attestation Form. In the Attestation Form, the information sought as to registration of an FIR against the applicant is conspicuously missing. What has been sought is an information relating to criminal case, such as, it has been verified in Col.11 of the Attestation Form where any accusation has been reflected or a person has been detained by a Court or has been held guilty of the charge. The applicant filled up the Attestation Form on 16.12.2002 mentioning that he has not yet been accused nor any criminal case is pending against him in the Court. Though our arena is to adjudicate the grievance of the person relating to a service matter but in the course of such adjudication this Court is competent to give an interpretation to the provision of Cr. P.C. which is settled by various pronouncements. Section 154 of the Cr.P.C. provides that on an information relating to the cognizable offence to be recorded in the form of first information report and on the basis of which an investigation is carried out by the prosecuting authorities i.e. Police. During the investigation, the Police under Section 159 dealing with the case is empowered to hold an investigation or a preliminary enquiry as to the involvement of the person in the FIR thereupon on conclusion of the criminal case and before a chargesheet is filed, to be taken cognizable offence by the Magistrate under Section 190 of Cr. P.C. Section 169 empowers the police officer to release the accused when there is no sufficient evidence or reasonable ground of suspicion to justify forwarding of the accused to a Magistrate, with a direction to appear, if and when so required, before a Magistrate empowered to

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take cognizance of the offence on a police report, and to try the accused or commit him for trial.

12. Admittedly, in the present case, from the perusal of the chargesheet it reveals that whereas two other accused persons, namely, Kappu and Malkhan have been sent to face a trial but applicant and Sh. Bale Ram have been placed as suspected persons who were not arrested to face a trial. However, in the event of evidence come forth which is taken cognizance by the trial Court. As such, the chargesheet clearly shows that involvement of applicant has not been found rather he has been found falsely implicated. Accordingly, the applicant was not sent to a trial and no trial was proceeded against him. An order by the Magistrate dated 9.9.2002 reflects prosecution brief and thereafter on the ^uevidence of the complainant which is not corroborated in any manner resulted in honourable acquittal of the applicant. The aforesaid fact clearly shows that there was no evidence to establish the criminal charge. Column No.2 of the form reveals that the applicant has never been arrested/prosecuted or not even faced a trial and, therefore, he was not at all found guilty. The accusation which is an allegation in criminal offence certainly was not in the chargesheet nor forthcoming from the order passed by the Magistrate.

13. In the above circumstances, the applicant has filled up the Attestation Form and an undertaking as a person who has not been involved for any criminal offence.

14. In a recent decision in Secretary, Deptt. Of Home Secretary Vs. B. Chinnam Naidu (2005 SCC(L&S) 323), the following observations are made:-

"7. In Kendriya Vidyalaya Sangathan case the factual position can be ascertained from paras 8 and 9 which read as follows:

"8. The attestation form dated 26.6.1998 duly filled in by the respondent and attestation show that the respondent has taken BA degree from St. Aloysius College, JBP and Bed

and Med degrees from R. Durgavati Vishwavidyalaya, JBP. Columns 12 and 13 as filled up read thus:

- '12. Have you ever been prosecuted/kept under detention or bound down/fined, convicted by a court of law of any offence?-No.
13. Is any case pending against you in any court of law at the time of filling up this attestation form?-No.

9. The respondent has also certified the information given in the said attestation form as under:

"I certify that the foregoing information is correct and complete to the best of my knowledge and belief. I am not aware of any circumstances which might impair my fitness for employment under Government."

As is noted in **Kendriya Vidyalaya Sangathan** case the object of requiring information in various columns like column 12 of the attestation form and information and declaration thereafter by the candidate is to ascertain and verify the character and antecedents to judge his suitability to enter into or continue in service. When a candidate suppresses material information and/or gives false information, he cannot claim any right for appointment or continuance in service. There can be no dispute to this position in law. But on the facts of the case it cannot be said that the respondent had made false declaration or had suppressed material information.

8. In order to appreciate the rival submissions it is necessary to take note of column 12 of the attestation form and column 3 of the declaration. The relevant portions are quoted below:

"Column 12.-Have you ever been convicted by a court of law or detained under any State/Central preventive detention laws for any offence whether such conviction sustained in court of appeal or set aside by the appellate court if appealed against."

Column 3.-I am fully aware that furnishing of false information or suppression of any actual information in the attestation form would be a disqualification and is likely to render me unfit for employment under the Government."

9. A bare perusal of the extracted portions shows that the candidate is required to indicate as to whether he has ever been convicted by a court of law or detained under any State/Central preventive detention laws for any offences whether such conviction is sustained or set aside by the appellate court, if appealed against. The candidate is not required to indicate as

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to whether he had been arrested in any case or as to whether any case was pending. Conviction by a court or detention under any State/Central preventive detention laws is different from arrest in any case or pendency of a case. By answering that the respondent had not been convicted or detained under preventive detention laws it cannot be said that he had suppressed any material fact or had furnished any false information or suppressed any information in the attestation form to incur disqualification. The State Government and the Tribunal appeared to have proceeded on the basis that the respondent ought to have indicated the fact of arrest or pendency of the case, though column 12 of the attestation form did not require such information being furnished. The learned counsel for the appellants submitted that such a requirement has to be read into an attestation form. We find no reason to accept such contention. There was no specific requirement to mention as to whether any case is pending or whether the applicant had been arrested. In view of the specific language so far as column 12 is concerned the respondent cannot be found guilty of any suppression.

10. In **Kendriya Vidyalaya Sangathan** case the position was the reverse. There the candidate took the stand that as there was no conviction, his negative answers to columns 12 and 13 were not wrong. This Court did not accept the stand that requirement was conviction and not prosecution in view of the information required under columns 12 and 13 as quoted above. The requirement was "prosecution" and not "conviction" and not "prosecution".

If one has regard to the above, Apex Court has ruled out that if requisite information is not sought from a person his failure to respond or even to wrong answer in that context ^{would not amount to} suppression of any material. Accordingly, cancellation of candidature of the petitioner therein has been set aside.

15. If one has regard to the above and in the above conspectus Attestation Form and an undertaking of the applicant which is produced by the respondents suggests that both in the Attestation Form and Application Form no information regarding registration of criminal case was sought from the applicant rather an information regarding accusation was sought to which the applicant has rightly filled up the forms. As from the chargesheet as well as decision taken by the Magistrate the applicant has not been accused of a criminal case. An answer to

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the information, which has not been sought, by no stretch of imagination, can lead to suppression of material information.

16. Moreover, it is not disputed and cannot be denied in the wake of Cr. P.C. that a person placed in Col. 2 had not been sent for trial and, therefore, it cannot be said that he is facing criminal trial for an offence. Accordingly, the answer to this question was rightly 'no' by the applicant.

17. Now the aforesaid brings us to the undertaking furnished by the applicant which he had signed. From the perusal of the undertaking it transpires that non specific in a narrative form, certain informations have been sought from the candidate which in the alternative seek information as to involvement, arrest, prosecution, conviction relating to criminal case as well as pendency of the Court proceedings. Answer to signing an undertaking ^{to} such a non specific question would be difficult preposition for a candidate. As in the present case the applicant who was not arrested and has not been summoned by the Court to face trial the undertaking by no stretch of imagination is incorrect or amounted to suppression of material information which could have led the termination of the applicant. Moreover, I am of the considered view that whatever information has been accorded does not have an iota of any mala fide intention, willful concealment ^{of} information, deceitment to gain entry in Delhi Police.

18. In the context of the present case, the applicant was neither involved in a criminal case at the time of filling up of the Forms in January 2002 and December 2002 nor he was ever arrested. He was not placed under trial and convicted. In this view of the matter an undertaking does not show any suppression or concealment of the fact.

19. It is trite law that any termination which is simple in nature cannot be assailed successfully in judicial review but if termination is founded on

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unjustifiable reasons and unsatisfactory performance of the applicant has not been established, the same has to be construed as a punitive order.

20. In the light of the above discussion and decision of the Apex Court (supra), termination cannot be sustained in law and is accordingly set aside. O.A. is allowed. Impugned orders are set aside. Respondents are directed to forthwith reinstate the applicant and in that event the applicant would be entitled to all consequential benefits. This exercise should be completed within two months from the date of receipt of a copy of this order. No costs

S. Raju
(Shanker Raju)
Member(J)

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