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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1085/2004

New Delhi, this the 7th day of December, 2004

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.Singh, Member (A)**

Arvind,
S/o Shri Braham Pal,
E-85, Gali No. 4,
West Jyoti Nagar, Shahdara,
Delhi 110 094

...Applicant

(By Advocate: Shri Shyam Babu)

Versus

1. Government of N.C.T. of Delhi
Through its Chief Secretary
Player's Building, I.P. Estate,
New Delhi.
2. Joint Commissioner of Police
Police Headquarters
I.P.Estate,
New Delhi.
3. Deputy Commissioner of Police
2nd Battalion, DAP,
New Police Line,
Kingsway Camp,
Delhi

... Respondents

(By Advocate: Shri Vijay Pandita)

O R D E R(Oral)

By Mr. Justice V.S.Aggarwal:

The applicant had submitted an application on 15.4.2002 for the post of Constable (Executive) in Delhi Police. In the relevant column, he did not mention about his involvement in a criminal case. On 18.12.2002, he filled up the attestation form and disclosed that he was involved in F.I.R.No.82/2004. He was provisionally selected for the post of Constable (Executive). On

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10.2.2003, the applicant had compounded the said offence and was acquitted in terms of Section 320 (8) of the Code of Criminal Procedure.

2.A show cause notice was issued to the applicant alleging that he has suppressed material facts and his acquittal was not honourable and as to why his candidature be not cancelled. The applicant submitted his reply and pointed that the said column was not properly worded. It contained several questions. He was not able to understand and determine each aspect and, therefore, he has not suppressed any fact.

3.The Deputy Commissioner of Police vide the impugned order copy of which is Annexure 'A', had cancelled the candidature of the applicant. The order reads:

"Subject: Recruitment to the post of Const. (Exe.) in Delhi Police, 2002 - Reg. cancellation of candidature.

Memo

You, Arvind S/o Sh.Braham Pal had been provisionally selected as Const. (Exe.) in Delhi Police during the recruitment held in the year 2002 against Roll No.421921, subject to verification of your character & antecedents, medical fitness etc. On receipt of your character & antecedents report from the authority concerned, it revealed that you were involved in a Crl. Case FIR No. 82/2000, dated 18.2.2000 U/S 323/341/34 IPC, PS Okhla Industrial Area (Delhi). However, later on the case was decided by the Hon'ble Court vide its order dated 10.2.2003 and you were acquitted of the charge as both the parties had compromised. On scrutiny of your Application Form and Attestation Form filled up by you on 15.4.2002 & 18.12.2002 respectively, it has been found that you have concealed the facts of the abovesaid Crl. Case in the relevant columns of Application Form. However, in the Attestation Form you have disclosed your involvement in the abovesaid Crl. Case, only it seems that first of all you had requested to another party for compromise and submitted the same before the Hon'ble Court. As such, you have not been acquitted honourably from the charges in the case.

2. Accordingly your case was examined and you were issued a Show Cause Notice vide this office Memo

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No.7816/Rectt. Cell/II Bn. DAP, dated 18.7.03, as to why your candidature for the post of Const.(Exe.) in Delhi Police should not be cancelled for the allegations mentioned above. In response to Show Cause Notice, you have submitted your reply on 5.8.2003 which has been considered along with relevant record available on file and the same has been found not convincing because of the reasons that initially you have concealed the facts of your involvement in the abovesaid Crl. Case in the relevant columns of Application Form and tried to seek appointment by deceitful means. However, lateron you have disclosed your involvement in the abovesaid Crl. Case in the Attestation Form. It seems that first of all you had requested to another party for compromise and submitted the same before the Hon'ble Court. As such, you have not been acquitted honourably from the charges in the crl. case. Hence, you have been found not suitable for the post of Const. (Exe.) in Delhi Police and your candidature for the post of Const.(Exe.) in Delhi Police is hereby cancelled."

4.By virtue of the present application, the applicant seeks to assail the said order.

5.Needless to state that in the reply filed, the application is being contested.

6.Respondents plead that during the year 2002, an advertisement to fill up certain posts of Constable (Executive) in Delhi Police had appeared in the leading newspapers. The applicant had applied for the post. He was put to physical endurance test, written test and interview etc. He was selected subject to verification of his character and antecedents. The character and antecedents of the applicant were verified. It was revealed that he was involved in a criminal case with respect to offences punishable under Section 323/341/34 Indian Penal Code at Police Station Okhla Industrial Area. In the attestation form, of course he had disclosed this fact subsequently. Considering all these facts, it was found that the applicant was not a suitable person to be taken into Delhi Police. The petition was opposed.

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7. Learned counsel for the applicant had argued that the applicant had inadvertently not mentioned the said fact in the application form that he was involved in a criminal case. Subsequently, on his own, in the attestation form he had given the correct particulars since few months thereafter, the matter was compromised and the applicant was acquitted. According to the learned counsel, therefore the reasons given in the impugned order that it was not an honourable acquittal, are illegal and thus the impugned order cannot be sustained. Learned counsel strongly relied upon the decision of the Supreme Court in the case of **COMMISSIONER OF POLICE, DELHI & ANR. v. DHAVAL SINGH**, (1999) 1 SCC 246 and of this Tribunal in the case of Ghanshyam Singh vs. Govt. of NCT of Delhi and ors. (O.A.500/2002) decided on 28.11.2002.

8. We have carefully considered the said submissions.

9. So far as the decision of this Tribunal in the case of Ghanshyam Singh (supra) is concerned, this Tribunal had held:

"16. If one has regard to the settled principles of law we find that in the present case there was no malafide intention on the part of applicant to suppress the information regarding criminal case and he himself disclosed in the relevant form. Though, complete particulars have not been given but the intention was not to keep the respondents in dark about the criminal case. However, we find that subsequently applicant has been acquitted from the criminal charges on merits, as such the involvement in criminal case stood obliterated by the order. As he himself disclosed the fact of criminal case in the relevant column of application and attestation forms, decision in Sushil Kumar's case (supra) would not apply and rather the ratio laid down in Dhaval Singh's case would hold the field. As the respondents have wrongly construed the disclosure as suppression of the material fact the orders are not legally sustainable."

10. The findings recorded above clearly show that in the facts of that case, it was held that there was no suppression of material

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facts and that there was no intention to keep the respondents in dark. Therefore, this would be a decision confined to the peculiar facts of that case.

11. Similarly in the case of Commissioner of Police vs. Dhaval Singh, the said Shri Dhaval Singh had applied for the post of Constable. In the application form, he concealed the fact of his involvement in the criminal case but subsequently had submitted an application pointing out the said fact. The Supreme Court held:

"5..... A perusal of the order of the Deputy Commissioner of Police canceling the candidature on 20-11-1995 shows that the information conveyed by the respondent on 15.11.1995 was not taken note of. It was obligatory on the part of the appellant to have considered that application and apply its mind to the stand of the respondent that he had made an inadvertent mistake before passing the order. That, however, was not done. It is not as if information was given by the respondent regarding the inadvertent mistake committed by him after he had been acquitted by the trial court - it was much before that. It is also obvious that the information was conveyed voluntarily. In vain, have we searched through the order of the Deputy Commissioner of Police and the other record for any observation relating to the information conveyed by the respondent on 15.11.1995 and whether that application could not be treated as curing the defect which had occurred in the Form. We are not told as to how that communication was disposed of either. Did the competent authority ever have a look at it, before passing the order of cancellation of candidature? The cancellation of the candidature under the circumstances was without any proper application of mind and without taking into consideration all relevant material. The Tribunal, therefore, rightly set it aside. We uphold the order of the Tribunal, though for slightly different reasons, as mentioned above."

12. Perusal of the decision clearly shows that the Supreme Court in the cited case held that the concerned authority had not considered the relevant facts. It was obligatory to do so. The

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Supreme Court noted that they were not aware as to how the communication was disposed of. It was also held that it was an inadvertent mistake and, therefore, the impugned order was quashed. That is not so in the present case. Therefore, the decision in the case of **Dhaval Singh (supra)** is distinguishable.

13. We take liberty in referring to a Division Bench decision of the Delhi High Court in the case of **VIRENDER PAL SINGH v. UNION OF INDIA**, 2002 (3) ATJ 561. Therein also the concerned person had applied for the post of Constable and it was found that he had failed to disclose the material facts. His appointment was cancelled. The Delhi High Court held that the appointment was rightly cancelled. The findings read:-

"9. A person who is to be appointed as Constable, in our opinion, should disclose all material facts. It was for the appointing authority to consider as to whether the details provided by the candidate are true or false. Concealment of material facts for the purpose of obtaining appointment itself may be a ground for cancellation of the appointment. In the Application Form itself the petitioner was required to give a declaration to the effect that endorsement therein is true to the best of his knowledge and belief and in the event of any information found wrong, he can be dismissed from service. He thus knew that any wrong information or concealment of fact may entail his dismissal from service. It is, therefore, not a case where the court is called upon to pose a question as to whether despite conviction in a trickling matter, a person should be denied appointment or not. In *Shishpal (supra)* the decision was rendered in the peculiar facts of the case. It was stated in that case that the concerned employee was provisionally selected subject to police verification. The police found his involvement in two cases which facts he did not disclose in his application. The Tribunal found that he had served for long 5 years and there had been no adverse report against the conduct of the applicant."

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14. More recently, the Supreme Court in the case of **KENDRIYA VIDYALAYA SANGATHAN & ORS. v. RAM RATAN YADAV**, JT 2003 (2) SC 256 was dealing with the same question.

It held:-

"8. The object of requiring information in columns 12 and 13 of the attestation form and certification thereafter by the candidate was to ascertain and verify the character and antecedents to judge his suitability to continue in service. A candidate having suppressed material information and/or giving false information cannot claim right to continue in service. The employer having regard to the nature of the employment and all other aspects had discretion to terminate his services, which is made expressly clear in para 9 of the offer of appointment. The purpose of seeking information as per columns 12 and 13 was not to find out either the nature or gravity of the offence or the result of a criminal case ultimately. The information in the said columns was sought with a view to judge the character and antecedents of the respondent to continue in service or not."

Thereupon, after setting aside the decision of the High Court, the Supreme Court was held that the order requires no interference. In other words, the consistent view is that a person who suppressed the facts cannot insist upon the discretion to be exercised in his favour. The Supreme Court in the case of **DELHI ADMINISTRATION THROUGH ITS CHIEF SECRETARY AND OTHERS v. SUSHIL KUMAR**, (1996) 11 SCC 605 held that verification of the character and antecedents is a necessary ingredient. It is for the appropriate authority to consider whether the candidature has to be cancelled or not. The Supreme Court concluded:-

"It is seen 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 found

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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. 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. Appointing authority, therefore, has rightly focused this aspect and found it not desirable to appoint him to the service."

15. These facts clearly show that the Delhi High Court as well as the Supreme Court have come heavily in cases where material facts are suppressed. Once the fact is suppressed and it is clearly mentioned that suppression of fact can entail the cancellation of the candidature and the applicant did not give correct facts when he applied for the post and it has been found that he is not a fit person to be appointed and acting on the same, his candidature has been cancelled, we find no reason to interfere.

16. Consequently, the proposition enunciated that once the applicant has submitted correct facts subsequently in the attestation form and therefore, his candidature could not be cancelled, cannot be accepted.

17. In that event, as already referred to above, it was urged that the concerned authority had rejected the candidature holding that the applicant was not honourably acquitted. So far as this particular contention is concerned, again it must be repelled. The


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order is to be read as a whole. One line cannot be read in isolation of the rest. Reading of the order as a whole indicates that his candidature had been cancelled because he had not given correct facts and suppressed his involvement in a criminal case in the application form. When he mentioned the same in the attestation form, the department felt that still he was not a fit and proper person to be recruited in Delhi Police. So far as the question of honourable acquittal is concerned, this has been recorded in the light of the aforesaid that when the applicant disclosed his involvement in a criminal case, he requested the other party for a compromise. It could be subsequently. That is not relevant. Thus the basic question was that the applicant was not found suitable because of suppression of material facts about his involvement in a criminal case.

18. Once the department felt that it would not be appropriate to recruit such a person, we find little ground to interfere.

19. For these reasons, the O.A. being without merit must fail and is dismissed.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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