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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1176/2004

New Delhi, this the 13th day of May, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A.SINGH, MEMBER (A)

Pawan Kumar
Recruit Constable (Dvr.) in Delhi Police
s/o Sh. Randhir Singh
r/o H.No.217, Vill: Maidan Garhi
Adhikari Mohalla
PO: IGNOU, Delhi - 68. ... Applicant

(By Advocate: Sh. Anil Singhal)


Versus

1. Govt. of NCT of Delhi
through Commissioner of Police
Police Headquarters
I.P.Estate
New Delhi.
2. Dy. Commissioner of Police
Hdqs. (Estt.) Police Head Quarters
IP Estate, New Delhi. ... Respondents

O R D E R (Oral)

Justice V.S. Aggarwal:-

Applicant (Pawan Kumar) applied for appointment as Constable (Driver) in Delhi Police. He was provisionally selected after he qualified the physical, medical and written examination besides interview/personality test. On 17.2.2004, the applicant was issued a show-cause notice for cancellation of his candidature on the ground of concealment of fact, about the involvement in a criminal case at the time of filling up of his Application Form and Attestation Form. The applicant had replied to the show-cause notice. Vide the impugned order, the respondents rejected the reply of the applicant and cancelled his candidature. By virtue of the present application, he seeks quashing



of the show-cause notice and the order that has been so passed.

2. Learned counsel for the applicant has contended that the applicant had already been acquitted by the court of competent jurisdiction and, therefore, it was not necessary for the applicant to disclose this fact and resultantly the impugned order should be quashed.

3. In support of his plea, learned counsel relied upon a decision of the Punjab and Haryana High Court in the case of SUBHASH S/O RAM PARKASH v. THE STATE OF HARYANA AND ANOTHER, 1990 (4) SLR 525. In the cited case, the said Court held:

"4. Having heard the learned counsel for the parties and after going through the necessary record I find that the plea taken by the respondents is highly hypertechnical and the writ petition deserves to be allowed. It is not a concealment of fact regarding his earlier conviction which can be taken into consideration against an employee and on the basis whereof his appointment can be set aside later on. In the present case, petitioner had only been prosecuted and was acquitted by a competent Criminal Court. It was not necessary for the petitioner to disclose his fact to the respondents at the time of his submitting application for recruitment to the police service. In any case, the fact stands that there is nothing against the petitioner on the basis whereof his appointment could be set aside having already been made by order dated 4.9.1989 Annexure P.1. Therefore, the non-disclosure of the information relating to his acquittal in the criminal case is no ground for withholding the appointment of the petitioner."

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Perusal of the cited decision would clearly show that the question that is alive before us was not for consideration before the Punjab and Haryana High Court. Otherwise also, as would be noticed hereinafter, the Supreme Court held otherwise and a decision of the Supreme Court binds this Tribunal more than that of the High Court.

4. Reliance was further placed on the decision of the Punjab and Haryana High Court in the case of MUNICIPAL COMMITTEE, JAITU v. GULAB SINGH, 2003(3) SCT 1011. The findings relied upon are:

"13. In my opinion, there is a fallacy in the submissions made by learned counsel for the Municipal Committee, Jaitu. When Gulab Singh was acquitted by the High Court vide its order dated 8.3.1984, he became, at once, entitled to reinstatement into service as if he was never dismissed from service. It is quite settled that acquittal will have the effect of placing him in the same position in which he was, before registration of the case against him. It is as if no case was ever registered against him and he was never put up on trial and he will be always deemed to be in service of Municipal Committee, Jaitu. He is, therefore, entitled to all arrears of salary together with usual increments and usual allowances with effect from 9.9.1976 till 19.10.1990 as if he was all along in the service of Municipal Committee, Jaitu and never placed under suspension/dismissed from service. While calculating the salary disburseable to the legal heirs of Gulab Singh, whatever payments have been made to him those will be adjusted and the rest of the amount shall be paid to the legal heirs of the deceased Gulab Singh."

5. In the present case is the question of suppression of fact. On that count, whether the applicant should have been appointed or his candidature could be cancelled or not. Therefore, the cited decision is distinguishable.

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6. 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 a 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 case 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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7. This Tribunal in the case of Shri Hasmuddin v. Govt. of NCT of Delhi and others in OA No.7/2002 decided on 8.11.2002 had also considered the same controversy and concluded:-

" 11. With this backdrop, one can revert back to the facts of the present case. As already pointed above, the applicant was aware of the pending First Information Report in which he was acquitted but he informed the department that he was never involved in such matter. On verification in October, 2000, it transpired that the information given was not correct. The learned counsel for the respondents was right in pointing that on coming to know that it has come to the notice of the authorities, the applicant immediately in January 2001, wrote to the authorities that he had been involved in such a case in which he was acquitted. The fact remained that the applicant had suppressed the material fact. It also cannot be denied that he was not aware of it. It cannot be termed to be an inadvertent mistake. Once there was a conscious omission for which the authority would be well within its rights to conclude that the applicant's candidature should be withdrawn. We find nothing illegal in this regard to interfere."

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. The Supreme Court 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

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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, it 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**, (1196) 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 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 focussed this aspect and found it not desirable to appoint him to the service."

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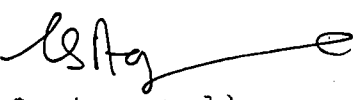
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It clearly shows that if the authorities feel as in the present case that the suppression of material fact of involvement in a criminal case against the applicant would disentitle him to be appointed in Delhi Police, there would be no ground to interfere.

8. Reverting back to the facts of the present case. Though the applicant is stated to have been acquitted before he filled up the necessary form, but it is not in dispute that in the relevant column of the Attestation Form, the applicant is required to state as to if he was ever involved in criminal case or not? He suppressed the same. It is this fact which prompted the respondent authorities to come to the conclusion that he is not a fit person to be so appointed. The decisions reported above, particularly that of **Sushil Kumar (supra)** squarely applies to the peculiar facts of the case. This is so because 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 or not and once the applicant has suppressed a particular fact and on that count it was not found appropriate to appoint him, the decision of the respondents does not appear to be unwarranted.

9. Resultantly, the application must fail and is dismissed in limine.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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