

Central Administrative Tribunal, Principal Bench

Original Application No. 1570 of 2004

New Delhi, this the 6th day of July, 2004

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

Shri Siya Ram Abana,
S/o Shri Harbaksh Singh Abana,
R/o B-53, Shakti Nagar,
Tonk Road, Jaipur,
(Rajasthan)-302 018

...Applicant

(By Advocate: Shri Sachin Chauhan)

Versus

1. Government of N.C.T.D.
Through its Chief Secretary,
Sachivalaya, I.P.Estate,
New Delhi
2. Commissioner of Police, Delhi
Police Headquarters, I.P.Estate,
M.S.O. Building, New Delhi
3. Deputy Commissioner of Police,
Headquarters,
Police Headquarters, I.P.Estate,
M.S.O. Building, New Delhi
4. Dy. Commissioner of Police,
II Ind Bn, Delhi.

.... Respondents

ORDER (ORAL)

Justice V.S. Aggarwal, Chairman

By virtue of the present application, the applicant seeks setting aside of the order passed by the respondents whereby his candidature for the post of Constable (Executive) has been cancelled.

2. Some of the relevant facts are that in the recruitment held in the year 1998, the applicant was provisionally selected. On receipt of character and antecedents verification, it was revealed that he was involved in a criminal case with respect to an offence punishable under Section 147, 148, 149, 341, 323 and 336 Indian Penal Code in the State of Rajasthan. In his

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attestation and application form; he had not mentioned this fact. He had been acquitted on 27.1.2001. ⁹⁷

3. A notice to show cause was issued to the applicant to which he had replied. The Deputy Commissioner of Police cancelled the candidature holding that when the applicant came to know that local police had sent an adverse report, he submitted an application on 7.3.2001 mentioning that he was involved in a criminal case but has since been acquitted. His appeal failed. Hence the present application seeking quashing of the said order and to appoint the applicant as a Constable.

4. We have heard the learned counsel for the applicant.

5. Learned counsel for the applicant has argued that the applicant had already been acquitted and he had informed the department in this regard subsequently and therefore, the impugned orders cannot be sustained. He relied upon the decision rendered by the Supreme Court in the case of Commissioner of Police, Delhi and another v. Dhaval Singh, (1999) 1 SCC 246.

6. At the outset, it must be stated that every case has its own facts. In the case of Dhaval Singh (supra), the Supreme Court had come to a conclusion that there was an inadvertent mistake that was committed in not giving the said information. He had voluntarily informed the authorities about the criminal case against him.

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7. In the present case, the position is different. In the application as well as attestation form, he suppressed his involvement in the earlier criminal case. The impugned order clearly recites that when the adverse report regarding his character and antecedents came to light, he submitted an application mentioning about his involvement in the criminal case. It is obvious that the facts of the present case are totally different.

8. 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

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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."

9. 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

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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, 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, (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 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

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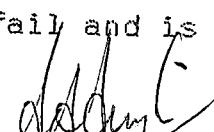
offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration 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."

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.

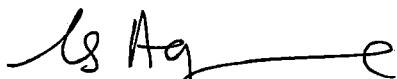
10. It is obvious from the aforesaid that character verification is done to ensure whether a person is proper to be recruited as a Constable or not. What is relevant is the conduct and character of the candidate. When the concerned person has suppressed material facts at the relevant time about his previous involvement in a criminal case, merely because he has already been acquitted, may not prompt the authorities to conclude that he is a fit person to be considered. We find little ground to interfere.

11. Taking stock of these facts, the arguments of the learned counsel must be repelled. No other plea was raised.

12. For these reasons, the Original Application must fail and is dismissed in limine.


(S.A. Singh)
Member (A)

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(V.S. Aggarwal)
Chairman