

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.455/2004

New Delhi, this the 15th day of December, 2004

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

Chhotu Ram
Recruit Constable (Ex.) in Delhi Police
S/o Sh. Deepa Ram
R/o Vill. & PO : Shyam Pura
Via Khacha Riawas
Dist. Sikar, Rajasthan. ... Applicant

(By Advocate: Sh. Anil Singhal)

Versus

1. Govt. of NCT of Delhi
Through Commissioner of Police
Police Head Quarters
IP Estate, New Delhi.
2. Dy. Commissioner of Police
2nd Bn. DAP, New Police Lines
Kingsway Camp, Delhi. ... Respondents

(By Advocate: Sh. Ajesh Luthra)

O R D E R(Oral)

By Mr. Justice V.S.Aggarwal:

Applicant (Chhotu Ram) had submitted an Application Form on 16.4.2002 for appointment as Constable (Executive) in Delhi Police. Therein, he mentioned about his involvement in Criminal Case FIR No.118/95 with respect to offences punishable under 332/353 of Indian Penal Code in which he was convicted on 14.8.2001. The applicant contends that he was provisionally selected but was served with a show-cause notice dated 16.12.2003 for cancellation of his candidature on the ground that he was convicted and bound down for one year of probation with respect to the above said offences. After considering the reply, the



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candidature of the applicant has been cancelled and the operative part of the order reads:

“Accordingly, your case alongwith your application dated 27.8.2003 was examined and you were issued a Show Cause Notice vide this office Memo. No.9734/Rcett. Cell (R/I)/2nd Bn. DAP, dated 16.12.03 as to why your candidature for the post of Const. (Exe.) in Delhi Police should not be cancelled for the reasons mentioned above. In response to Show Cause Notice, you have submitted your reply on 28.12.2003, which was received in this office on 1.1.04. Your reply as well application dated 27.8.2003 has been considered alongwith relevant record available on the file and the same has been found not convincing because of the reasons that you were involved in a Crl. Case FIR No.118/95 u/s 332/353 IPC & 3(1)(X) SC/ST Act, PS Satarangarh (Rajasthan). Later on you were found guilty of the charge U/S 332/353 IPC by the Hon’ble Court but instead of awarding any immediate punishment, the Hon’ble Court bound down for a period of one year with a personal bond & surety of Rs.2000/- each. Further, the Hon’ble Court added that since you were in Army, so that this punishment shall not be treated as disqualification under section 12 of the Probation of Offenders Act. As such, you have been found not suitable for the post of constable (Exe.) in Delhi Police in view of the judgement dated 4.10.1996 passed by the Supreme Court of India in Civil Appeal No.13231 of 1996 (arising out of SLP (C) No.5340 of 1996) DAD V/s Sushil Kumar. Hence, your candidature for the post of constable (Exe.) in Delhi Police is hereby cancelled.”

2. By virtue of the present application, the applicant seeks to assail the said order contending that he had been released on probation for a period of one year vide Judgment dated 14.8.2001 and probation period is already over. Under Section 12 of the Probation of Offenders Act, 1958, it is not a disqualification from being taken in the Delhi Police as Constable.

3. In the reply filed, the application has been contested. The basic facts are not in dispute. The respondents plead that the claim of the applicant had been examined in the Police

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Headquarters and thereupon in accordance with law, a notice to show cause had been issued. The applicant had submitted his reply. Since he had been guilty of the offences punishable under Sections 332/353 IPC, he was not found suitable for the post of the Constable. The order is stated to be in accordance with law.

4. The learned counsel for the applicant relied upon Rule 6 of Delhi Police (Appointment & Recruitment) Rules, 1980 and on the strength of the same, he contended that if a person is released on probation, he is not ineligible to be taken in Government service or in Delhi Police and, therefore, he urged that once the applicant had given the correct particulars, the impugned order cannot be sustained.

5. We have heard the parties' counsel and have seen the relevant record.

6. At the outset, it would be appropriate to mention that the Tribunal would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational in the sense that it was in outrageous defiance of logic or moral standards. To the same effect is the decision of the Supreme Court in the case of **UNION OF INDIA & ANOTHER v. G. GANAYUTHAM**, (1997) 7 SCC 463.

7. With this limited scope of interference, we can dwell into the question in controversy.

8. The learned counsel for the applicant relied upon the decision of the **Punjab and Haryana High Court** in the case of **KRISHAN DEV v. STATE OF HARYANA AND OTHERS**, 2003 (2) SLR 658. The concerned Krishan Dev was involved in a case of sudden fight. The High Court held that it did not involve moral

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turpitude and, therefore, the Writ Petition had been allowed. In the present case in hand, the facts do not indicate that it was so. The applicant has been held guilty with respect to offences punishable under Section 332/353 of the Indian Penal Code. There is no element of sudden fight in the present case and nor it can be stated that ^{no}~~any~~ moral turpitude is involved.

9. In that event, reliance was being placed on the decision of the **Delhi High Court** in the matter of **IQBAL SINGH v. INSPECTOR GENERAL OF POLICE AND OTHERS**, AIR 1970 **DELHI** 240 (V 57 C 52). It must be stated that the case is distinguishable because the findings of the Delhi High Court are as under:

“16. Section 12 of the Act uses the word “**disqualification**” and the meaning given to this word in Webster’s Third New International Dictionary is:-

“(i) the act of disqualifying or the state of being disqualified” (protesting his disqualification from office under the new law);

(ii) “something that disqualifies or incapacitates”

(A crime conviction is automatically a disqualification for that public office).”

The word “disqualify” is also stated to mean – making someone unfit for something. The further meaning given is that the person may be deprived within the meaning of the word “disqualify” of any right or privilege. We are of the view that the words “disqualification, if any, attaching to a conviction of an offence” as used in Section 12 of the Act would include a person’s losing his right or qualification to remain or to be retained in service. Section 12 of the Act, clearly saves the convict from suffering such disqualification attaching to his conviction. In respect of his conviction, the petitioner had the protection of Section 12 and he was saved from suffering any disqualification such as the one which resulted in his dismissal.”

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The ratio deci dendi of the same is that once a person has been inducted in a case of conviction, he cannot be dismissed because it was not a disqualification. Once he is released under the Probation of Offenders Act, 1958, the decision will not come to the rescue of the applicant.

10. Similarly the decision of the **Supreme Court** in the case of **PAWAN KUMAR v. STATE OF HARYANA & ANR.**, 1996 (2) AISLJ 9 is of little avail to the applicant. The Supreme Court observed:

"14. Before concluding this judgment we hereby draw attention of the Parliament to step in and perceive the large many cases which per law and public policy are tried summarily, involving thousands and thousands of people through out the country appearing before summary courts and paying small amounts of fine, more often than not, as a measure of plea-bargaining. Foremost among them being traffic, municipal and other petty offences under the Indian Penal Code, mostly committed by the young and/or the inexperienced. The cruel result of a conviction of that kind and a fine of payment of a paltry sum on plea-bargaining is the end of the career, future or present, as the case may be, of that young and/or inexperienced person, putting a blast to his life and his dreams. Life is too precious to be staked over a petty incident like this. Immediate remedial measures are therefore necessary in raising the toleration limits with regard to petty offences especially when tried summarily. Provision need be made that punishment of fine upto a certain limit, say upto Rs.2000/- or so, on a summary/ordinary conviction shall not be treated as conviction at all for any purpose and all the more for entry into and retention in government service. This can brook no delay, whatsoever."

11. It is obvious from the aforesaid that the observations made by the Supreme Court are in the nature of a pious wish rather than a binding precedent.

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12. Perusal of the judgment of the learned Judicial Magistrate clearly indicates that the Court held the applicant guilty of the offence punishable under Section 332/353 of the Indian Penal Code. In fact the applicant admitted his guilt. Thereupon he was released invoking the provisions of Section 12 of the Probation of Offenders Act on executing a personal bond with two sureties of a sum of Rs.2000/-. In other words, it cannot be so denied that the applicant on his admission was held guilty of the offence punishable under Sections referred to above.

13. Rule 6 of Delhi Police (Appointment & Recruitment)

Rules, 1980 reads as under:

"6. Ineligibility.- (a) No person who is not a citizen of India shall except with the consent of the central Government to be obtained in writing in advance, be appointed, enrolled or employed in Delhi Police.

(ii) No person, who has more than one wife living or who having a spouse living marries in any case in which such marriage is void by reason of its taking place during the life time of such spouse, shall be eligible for appointment, enrolment or employment in Delhi Police.

(iii) Every candidate shall make a declaration in form No.B about his martial status before he is enlisted.

(iv) No person shall be appointed to any post in Delhi police unless he has been certified on as physically fit for police service by Form D & F by a medical authority to be appointed for the purpose by the Commissioner of Police."

This shows that a person is ineligible to be inducted in Delhi Police, if he has a living wife and he re-marries^{ETC}. What cannot be^A ignored further is **Rule 25** of the said Rules which permits verification of character and antecedents. The said Rule is as under:

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"25. Verification of character and antecedents.- (i) Every candidate shall, before appointment, produce an attestation from, duly certified by two gazetted officer, testifying that the candidate bears a good moral character and they are not aware of anything adverse against him. The candidate may be provisionally enrolled pending verification of his character and antecedents which shall be done by making a reference to the concerned police station. Standing instructions in this regard laying down the procedure for getting such verifications shall be issued by the Commissioner of Police.

(2) An entry about the result of verification of character and antecedents shall be made in the service book/character Roll of the police officer concerned. The papers of such verification shall be filed with his Miscellaneous Personal File."

14. The conjoint reading of the two would show that verification of character and antecedents is mandatory. Otherwise also, **eligibility** and **suitability** are two different expressions. They have different connotations. **Eligibility** has to be seen before a person applies for the job. **Suitability** necessarily can be considered even before or at times after the selection because if it is found that his character and antecedents are not upto the mark, he need not be taken into service.

15. **Section 12 of the Probation of Offenders Act, 1958** only removes the ineligibility but does not make him suitable. Therefore, once the character and antecedents are verified as in the present case and it is found that he had been held guilty of offences to which we have referred to above, the plea must fail.


16. In normal circumstances, it is for the department to consider as to if a person is suitable or not. If they found in the facts that he is not suitable keeping in view the said instance, it


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cannot be termed that decision so arrived was erroneous or
perverse. There is a little ground to interfere.

17. No other arguments have been advanced.

18. For these reasons, the Original Application being without
merit must fail and is dismissed.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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