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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.829/2004

New Delhi, this the 10th day of January, 2005

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

Jitender Shokeen
Ex. Constable No.10639/DAP
S/o Shri Dharambir Singh
29 A, Mongolpur Khurd
Delhi.

.... Applicant

**(By Advocate: Ms. Kanika Vadera proxy counsel for Mrs.
Avnish Ahlawat)**

Versus

1. Lt. Governor of Delhi
Through Commissioner of Police
Police Headquarters
IP Estate
New Delhi.
2. Additional Commissioner of Police
Security
New Delhi.
3. Deputy Commissioner of Police
9th Batallian DAP
New Delhi.

... Respondents

(By Advocate: Sh. Ajesh Luthra)

ORDER

By Mr. Justice V.S. Aggarwal:

Applicant had applied for the post of Constable (Executive) in Delhi Police during the recruitment held in the year 2002. He was selected as Constable subject to verification of his character and antecedents and medical fitness. He joined the Department on 24.1.2003 and was allotted the constabulary number.

2. A report was received regarding the character and antecedents of the applicant from the Deputy Commissioner of Police (Special Branch). It revealed that he was involved in a



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criminal case FIR No.23, dated 11.2.2002 with respect to offences punishable under Sections 323/341/34 IPC, Police Station Maurice Nagar, Delhi and was acquitted on 7.8.2002.

3. On scrutiny of his application and attestation form, it was found that he had not disclosed his involvement in the said case in the relevant columns of the application form and the attestation form. In addition to that, at the time of joining Delhi Police, he had submitted an undertaking that he had not concealed any facts in the application form and the attestation form and that he was not involved in any case or was arrested therein.

4. When these facts came to the light, the applicant was issued a show cause notice for termination of his services by the disciplinary authority. He had submitted the reply. On consideration of the same, the disciplinary authority rejected the representation recording:

"3. I have carefully gone through the representation submitted by Ex. Const. Jitender Shokeen No.10639/DAP in light of facts and circumstances of the case and have also heard the appellant in person on 21.11.2003. The representationist has mainly taken the pleas that he had written 'No' in the column No.11 of the application form, which was given to him. He has further pleaded that while doing the B.A. (Pass) Course, he and three other students had an altercation with the conductor of a blue line bus. As in normal with the conductors of the blue line buses most of them are bullies and they do not allow the students to board their buses, as they carry the DTC Student pass. The blue line bus owners have to honour that pass. That in fact, when the students wanted to board the bus, the conductor did not allow them and in that verbal quarrel the conductor gave beating to Daljeet and later on made a complaint alleging that he was slapped and pushed by Daljeet. The case was registered and all the students including the representationist were released on bail in the P.S. itself. Both the parties even compromised the matter, but since the FIR had already been registered, the



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compromise had to be recorded before the court. Column No.10/11 is an ambiguous column asking so many questions in one paragraph itself and the answer is to be given in 'Yes' or 'No.'. The representationist said 'No.' against that column for the reason that so far as he was not prosecuted in the criminal case and the trial had not begun at all. He was not even called in the court, he was not convicted in any court of law, he was not debarred from participating in any selection or taking part in any examination, he was not declared ineligible for any service and since the complaint filed by the conductor, the case had not started in the court of law, the representationist was advised by the staff who was helping the candidates to fill up their attestation form. Since the case has not yet started and the matter has already been compromised before the police also, there was no need of mentioning the same. In fact, there was nothing in that case, which could disallow the representationist a government job. He has also pleaded that a casual reading of column no.10/11 goes to show that it covers only those cases where a person has been involved in a criminal case, detained and found guilty by court of law of an offence. That it was not a case involving moral turpitude or otherwise the involvement and the facts of the criminal case are not such that he becomes ineligible for govt. service. These pleas of the representationist is not tenable, because it is not important what were the circumstances when criminal case was registered against him. What is important to that he has concealed the facts of his involvement in the said criminal case at the time of his recruitment in Delhi Police. In Column No.11 of the attestation form, he was asked to furnish whether he has been prosecuted in any criminal case, detained, found guilty by any court of law for any offence and whether at the time of filling up this attestation form any case is pending against him in any court of law. But in reply the representationist had mentioned that he had never been prosecuted, detained and found guilty by the court. Again at the time of joining in Delhi Police on 24.1.03 he submitted an undertaking and affirmed that he had not concealed any facts in the application form as well as in attestation form. Thus it is clear that the representationist had deliberately concealed his involvement in criminal case to get enlisted in Delhi Police. It is desirable from a person at the time of recruitment in Delhi Police that he should have a good character. If a person with a criminal tendency gets enlisted in

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a disciplined force like Delhi Police he would certainly earn a bad name for the whole department in future. The representationist's selection in Delhi Police was subject to the verification of character and antecedents by the local police. Moreover the representationist is educated and can easily understand the contents of the Column No.11, but he deliberately concealed the facts in the attestation form. I, therefore, do not find any reasons to interfere the orders passed by the disciplinary authority. Hence the representation is hereby rejected."

Resultantly, vide the impugned order his services were terminated.

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

6. It is not in dispute that in the application and the attestation form filled up by the applicant, there were specific columns to indicate as to if he was arrested or any case was pending against him. In both these forms, he did not mention the correct facts. Admittedly, at the relevant time, a case with respect to the offences punishable under Sections 341/323/34 IPC was pending against him.

7. On behalf of the applicant, strong reliance was being placed on the decision rendered by the Supreme Court in the case of **PAWAN KUMAR v. STATE OF HARYANA AND ANOTHER**, (1996) 4 SCC 17. The Supreme Court had held that if there are convictions of petty nature which are committed by youngsters and irresponsible persons, they cannot be treated as convicts.

8. The ratio deci dendi of the said decision has no application in the facts of the present case. This is for the reason that the basic controversy is as to whether the applicant can be taken to be a person who could be taken in Delhi Police or not. It is his character and antecedents which are important.



9. Reliance further is being placed on the decision in the case of **COMMISSIONER OF POLICE & ANR. v. DHAVAL SINGH**, (1999) 1 SCC 246. In the said case, **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.”

Perusal of the decision clearly shows that the Supreme Court had held that the concerned authority had not considered the relevant facts. It was obligatory to do so. The Supreme Court noted that they were not aware as to how the communication was disposed of.



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It was also held that it was an inadvertent mistake and thus the impugned order was quashed. That is not so in the present case. In the present case, the facts were suppressed through out. Even in the application and attestation forms, he did not care to mention all those facts. The decision in the case of **Shri Dhaval Singh (supra)** is distinguishable.

10. 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

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there had been no adverse report against the conduct of the applicant."

11. This Tribunal in the case of **SHRI HASMUDDIN v. GOVT. OF NCT OF DELHI AND OTHERS** in O.A.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 was 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."

12. 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

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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 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


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focused 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.

13. Reverting back to the facts of the present case, it is obvious that the applicant when he filled up the application form, did not mention about his involvement in the criminal case to which we have referred to above. Even in the attestation form, the same fact was suppressed. When he joined services, at that time he did not care to mention any such thing. It is too late in the day, therefore, to believe that he had not suppressed any facts. To contend that there was inadvertent mistake also cannot be accepted. Keeping in view the same, if the department feels that the applicant is not a proper person to be recruited in Delhi Police in view of his character and antecedents, we find little ground to interfere.

14. For the reasons recorded above, the OA being without merit must fail and is dismissed.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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