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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 94/2004

New Delhi this the 16th day of July, 2004

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

Rakesh Kumar
S/O Shri Srikrishan,
Ward No. 20 (Near Sikligarh)
Dahar Road, V& PO Siwah,
District Panipat, Haryana

..Applicant

(By Advocate Shri M.K. Bhardwaj)

VERSUS

Union of India and Ors. through:

1. The Commissioner,
Delhi Police, Police HQ
I.P. Estate, New Delhi.
2. Deputy Commissioner of Police,
2nd Btn. DAP, Delhi.

..Respondents

(By Advocate Ms. Pratima Gupta)

O R D E R (ORAL)

Mr. Justice V.S. Aggarwal, Chairman

The applicant, Shri Rakesh Kumar, is an aspirant for the post of Constable in Delhi Police. He applied for the said post in pursuance to the advertisement. He qualified physical endurance test and had taken the written test. The applicant states that he had qualified the written test. Interview was held on 24.8.2002.

2. By virtue of the present application he seeks quashing of the order of 15/17.12.2003 in which the candidature of the applicant has been cancelled.

3. To keep sequence of events complete, it is relevant to mention that applicant had been served show



cause notice as to why his candidature should not have been cancelled stating:

"You, Sh.Rakesh Kumar S/O Shri Krishan had been provisionally selected as Const. (Exe.) in Delhi Police during the recruitment held in the year 2002 against Roll no. 416885, 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 Crl.Case FIR No.35/97, dated 11.1.97 U/S 302/34 IPC, PS City Panipat (Haryana). However, later on the case was decided by the Hon'ble Court of Sh.Raj Rahul Garh, Addl. Session Judge, Panipat (Haryana) vide its order dated 3.4.2001 and you were acquitted of charge. On scrutiny of your Application Form and Attestation Form filled by you on 11.4.2002 and 12.12.2002 respectively, it has been found that you had concealed the facts of the Crl.Case in the relevant column of Application Form. However, in the relevant column of Attestation Form you have given the details of the above said Crl. case. Vide judgement dated 3.4.2001, you alongwith other accused persons were acquitted of the charge as the injured and eye witness turned hostile and without recording the statement of accused U/S 313 Cr.P.C. The accused might have won over the witnesses for securing acquittal. The crime is of heinous nature and grave moral turpitude is involved. Hence, you have been found not suitable for the post of Const. (Exe.) in Delhi Police in view of judgement dated 4.10.96 passed by the Hon'ble Supreme Court of India in a Civil Appeal No. 13231 of 1996 (Arising out SLP (C) No. 5340 of 1996) DAD Vs. Sushil Kumar.

2. You, candidate Rakesh Kumar (Roll no. 416885) are, therefore, called upon to Show Cause as to why your candidature for the post of Const.(Exe.) in Delhi Police should not be cancelled for the reasons mentioned above. Your reply, if any, should reach this office within 15 days from the date of receipt of this notice, failing which it will be presumed that you have nothing to say in your defense and the case will be decided ex-parte on its merit".

Applicant has replied and in pursuance thereof the impugned order was passed. Operative portion of the same reads:



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"Accordingly, your case along with application dated 13.3.2003 submitted by you, was examined and you were issued a Show Cause Notice vide this office Memo.No.7834 /Rectt.Cell/ II Bn.DAP, dated 18.7.2003, 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 28.7.2003 which has been considered along with relevant record available on file and found the same not convincing because of the reasons that the crime is of heinous nature and grave moral turpitude is involved. As such, you have been found not suitable for the post of Const. (Exe.) in Delhi Police in view of judgment dated 04.10.96 passed by the Hon'ble Supreme Court of India in a Civil Appeal No.13231 of 1996 (Arising out SLP (C) No.5340 of 1996) DAD Vs. Sushil Kumar. Hence, your candidature for the post of Const. (Exe.) in Delhi Police is hereby cancelled".

Further learned counsel for the applicant has argued that the applicant had voluntarily disclosed about his involvement in the criminal case in the attestation form and therefore, his candidature could not be so cancelled. He further contended that show cause notice gives one reason for concealment of fact while the candidature has been withdrawn simply on the ground that he was involved in a crime of heinous nature and grave moral turpitude and that the applicant might have won over to secure acquittal.

4. It is not in dispute that the applicant has been been acquitted pertaining to the offence punishable under Section 302/34 IPC by the hon'ble Court at Panipat.

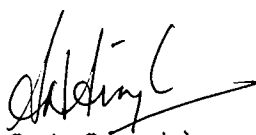
5. All that the records above indicate that the show cause notice for cancellation of the candidature was primarily on the ground that on scrutiny of application form and attestation form filled up by the applicant it


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was found that he has concealed the fact of the criminal case in the application form but there was a mention in the attestation form that the criminal case was registered against him. In the impugned order that has been passed, there is no mention in giving reasons that the applicant has suppressed the material facts. The candidature is being withdrawn on the ground the applicant is involved in a crime of heinous nature and grave moral turpitude and therefore he is not suitable.

6. In this regard, there is basic variation in the show cause notice and the order that has been passed.

7. In face of the aforesaid, it must be held that the impugned order has been passed without proper consideration of facts. Accordingly we allow the present application and quash the impugned order Annexure I dated 15.12.2003. Respondents should take necessary steps and pass a fresh order in accordance with law.


(S.A.Singh)
Member (A)


(V.S.Aggarwal)
Chairman

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