

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.2705/2011

Order Reserved on: 04.10.2016
Order pronounced on 13.12.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri K. N. Shrivastava, Member (A)

Ex Const (Dvr) Kapil Kumar Meena, (No:4661/PCR)
S/o Sh. Gopi Ram Meena
Aged about 30 years
R/o RZ-H-59, Raj Nagar-II, Palam Colony,
New Delhi and was working as Constable (Dvr)
in Delhi Police. ... Applicant

(By Advocate: Sh.S.S.Tiwari)

Versus

1. Commissioner of Police
Police Headquarters
I.P.Estate
New Delhi.
2. Addl. Commissioner of Police (PCR)
Police Headquarters, I.P.Estate
New Delhi.
3. Addl. Dy. Commissioner of Police (HQ)
Police Control Room
Police Headquarters, I.P.Estate
New Delhi. ... Respondents

(By Advocate: Sh. Amit Anand)

ORDER

By V. Ajay Kumar, Member (J):

The applicant, a Constable in the respondent-Delhi Police, filed the OA, questioning the legality and validity of the imposition of the penalty of dismissal on him on the ground of concealment of his involvement in a criminal case at the time of his selection.

2. In pursuance of the Notification of the respondents, the applicant applied for selection to the post of Constable (Driver) and in pursuance of the selection conducted by the respondents, he was selected as such. After the applicant filled up the necessary attestation form and submitted the necessary documents, the respondents appointed him as Constable and accordingly, he joined as such on 01.11.2006. His services were duly confirmed w.e.f. 01.11.2008. However, the respondents placed the applicant under suspension w.e.f. 18.12.2009, vide Order dated 18.12.2009 whereunder it was stated that the applicant concealed the fact regarding his involvement in case FIR No.506/2003 under Section 365 IPC, PS R.K.Puram, at the time of his appointment in Delhi Police as Constable Driver.

3. Vide Order dated 2.02.2010, regular departmental inquiry was initiated against the applicant. The applicant was served with summary of allegations dated 17.02.2010, which reads as under

"It is alleged that Const. (Dvr.) Kapil Kumar Meena No.4661/PCR (PIS No.28063096), while he was enlisted in Delhi Police as Const. (Dvr.) on 01.11.2006 and filling up the attestation form, he did not disclose about his involvement in criminal case FIR No.506/03 u/s 365 IPC P.S.R.K.Puram and got enlisted in the department by deceitful means. ASI (Min.) Praveen Kumar no.636/D (PIS No.27890130), while posted in Punishment Branch/PCR as Dealing Hand put up the criminal case file in respect of Const. (Dvr.) Kapil Kumar Meena No.4661/PCR, received from DCP/Crime himself and did not show it to the HAP/PCR. On perusal of criminal case, the then Addl. DCP/PCR passed the remarks on the notesheet that **"This should have been done at once"**. ASI (Min.) Praveen Kumar no.636/D, being Dealing Hand instead of taking action as per Rule-28 of Delhi Police (Punishment & Appeal) Rules, 1980, he prepared a letter to DCP/South West District to know about the detail of the case vide Memo No.32567/HAP/P-IV/PCR dated 21.11.2008 and failed to take proper action into the matter. HC (Exe.) Raja Ram No.1197/PCR (PIS No.28860735), attached with ASI (Min.) Praveen Kumar no.636/D also failed to make necessary entry in the concerned register.

The above act on the part of ASI (Min.) Praveen Kumar no.636/D, HC (Exe.) Raja Ram No.1197/PCR and Const. (Dvr.) Kapil Kumar Meena No.4661/PCR amounts to gross misconduct, negligence, carelessness and dereliction in the discharge of official duty which renders him liable to be dealt with departmentally under the provision of Delhi Police (Punishment & appeal) Rules 1980."

4. After conducting a detailed joint inquiry against the applicant and ASI (Min.) Praveen Kumar and HC (Exe.) Raja Ram, the Inquiry Officer, vide his Finding (Annexure E), held that the charges levelled against all of them are not proved, and the relevant part of the finding reads thus:

"From the above discussion, statements of PWs recorded during the enquiry and documents available in the joint DE File of ASI (Min) Praveen Kumar No.636-D, HC Raja Ram No.1197/PCR and Ct. (Dvr) Kapil Kumar Meena No.4661/PCR, it is clear that when the letter was received from DCP/C&R on 14.11.2008 regarding the involvement of Ct (Dvr) Kapil Kumar Meena No.4661/PCR it was clear that he was not arrested in the said case till then and he has not been arrested till now also. As per rule 28 of Delhi Police (Punishment & Appeal) Rules-1980, a police official will be deemed to be under suspension when he/she has been detained for more than 48 hours in connection with criminal case. As Ct (Dvr) Kapil Kumar Meena No.4661/PCR was not arrested by that time, which means ASI (Min) Praveen Kumar No.636-D could not have forwarded the matter for taking action under rule 28 of Delhi Police (Punishment &

Appeal) Rules-1980. Moreover after mentioning the facts in the FR, he had also solicited further orders from senior officers. Accordingly HC Raja Ram No.1197/PCR who was responsible for making the entry in the register pertaining to criminal cases and DE/PE, did not make the entry in this register for the same reasons mentioned above. It is also clear that Cr (Dvr) Kapil Kumar Meena No.4661/PCR was not arrested in the said case at the time of filling up the recruitment form and attestation form. Mere existence of some body's name in the FIR in no way proves that he/she is involved in that case. It is also clear that Ct (Dvr) Kapil Kumar Meena No.4661/PCR was never given the copy of FIR, therefore it cannot be concluded that Ct (Dvr) Kapil Kumar Meena No.4661/PCR was aware about any FIR registered against him. As such the charge against ASI (Min) Praveen Kumar No.636-D, HC Raja Ram No.1197/PCR and Ct (Dvr) Kapil Kumar Meena No.4661/PCR is not substantiated."

5. However, the disciplinary authority, disagreed with the findings of the inquiry officer and vide his disagreement note dated 28.09.2010 called the applicant to submit his representation against the said disagreement note. After considering the representation dated 05.10.2010 of the applicant, the disciplinary authority, vide the impugned order dated 25.10.2010 dismissed the applicant from service, imposed the punishment of forfeiture of two years approved service temporarily for a period of two years entailing proportionate reduction on HC (Exe.) Raja Ram and exonerated ASI (Min.) Praveen Kumar. The relevant parts of the said order, read as under:

"Const. (Dvr.) Kapil Kumar Meena No.4661/PCR has taken the plea(s) through his representation that according to I.O. of Crl. Case FIR No.506/03 u/s 365 IPC PS R.K.Puram, the Const (Dvr.) neither arrested nor intimated about his involvement in above case. He was not given the copy of FIR etc. as such the question of mentioning the same in Attestation Form in relevant column does not arise. These plea(s) are totally devoid of force. The E.O. during enquiry has mainly based his finding on the fact that defaulter Ct. (Dvr.) was never arrested nor was informed about FIR and that just because his name is in FIR, it does not mean that he is an accused in the said case. The E.O.

here, seems to have lost track of the main allegation regarding concealment of facts in the attestation form by the then recruit Ct. (Dvr.) Kapil Meena. This aspect has been clearly established that though he was interrogated for the first time on 9-3-04, he did not mention the same in Col. No.12(2) of the attestation form regarding his involvement in FIR. He was appointed in Delhi Police as Ct. (Dvr.) on 1-11-2016. He was confirmed in the post w.e.f.1-11-08. During this period he was interrogated several times. He could have even informed after joining the service or during his 2 years probation period in which all the primary police proceedings training are provided to police personnel. The Const. (Dvr.) was first interrogated on 9-3-04, after registration of the case on 17-8-03. Thereafter, he was again called for examination. These actions of the police should have been enough stimulus for an about to be a graduate youth to comprehend that something was amiss so as to why he is being summoned and for what he is being questioned again & again. If not, he should have protested for undue harassment, for which he has not placed any record or documentary proof to support his this stance. In view of the above deliberations, in totality it is seen that the current DE was initiated on the allegations against Ct (Dvr) Kapil Meena that he did not disclose about his involvement in case FIR No.506/03 u/s 365 IPC of PS R.K. Puram, i.e. concealment of facts in his attestation form and not because on the allegation that he was involved in a Crl. case. He has not provided the relevant information in the relevant column. This fact is undisputed. The column is provided as the police department does not intend to recruit persons with criminal background. Moreover, if any body feels that he has wrongly been implicated or the accusations are false, he should as an honest citizen mention the correct facts in the relevant column.

In view of foregoing discussion and evidence adduced on record, it is Crystal clear that HC Raja Ram, No.1197/PCR and Const. (Dvr) Kapil Kumar Meena No.4661/PCR have centred their defence around the fact of being "not involved" as Ct. Kapil Kumar Meena was "not arrested" whereas the main allegation is of concealment of the fact of being involved in a FIR in the attestation form at the time of recruitment. This is an irresponsible behaviour and the force cannot tolerate such an act which is duty bound to implement rule of law. As such Const. (Dvr.) Kapil Kumar Meena, No.4661/PCR is Dismissed from service with immediate effect. His suspension period from 18-12-2009 to the date of issue of this office order is treated as period not spent on duty for all intents and purposes. And because of the lapses on the part of HC (Exe.) Raja Ram No.1197/PCR due to which Ct. Kapil Kumar Meena was confirmed in service as constable, awarded the punishment of forfeiture of 2 years approved service temporarily for a period of 2 years entailing proportionate reduction in his pay from Rs.12,480/- PM to Rs.11,750/- PM. His Suspension Period from 13-1-2010 to 4-3-2010 is decided as period not spent on duty for all intents and purposes and ASI (Min.) Praveen Kumar, No.636/D is hereby exonerated from the charges levelled against him. His suspension period from 18-12-2009 to 4-3-2010 is decided as period spent on duty for all intents and purposes."

6. The statutory appeal dated 29.10.2010 of the applicant was rejected by the appellate authority vide the impugned order dated 26.05.2011.

7. Heard, Shri S.S.Tiwari, the learned counsel for the applicant and and Shri Amit Anand, the learned counsel for the respondents, and perused the pleadings on record.

8. Shri S.S.Tiwari, the learned counsel for the applicant while not disputing the fact that the applicant did not disclose that the FIR No.506/2003 under Section 365 IPC, PS R.K.Puram was pending against him as on the date of his appointment, and answered `NO' to the relevant column in the attestation form, i.e., "whether any FIR was ever registered against you in any Police Station?, if yes, give complete detail," mainly submits that at no point of time the said FIR copy was served on the applicant and that the applicant was never arrested and that no chargesheet was ever filed against the applicant, and hence, the applicant bonafidely, innocently and genuinely answered the said query as `NO', as he was not aware of registration and pendency of any FIR against him, at that time. Hence, he cannot be punished for either concealment or for involvement in a criminal case. The learned counsel further submits that though the applicant was interrogated on 09.03.2004, but he was not aware of the registration of the FIR or its pendency, against him, when he filled up the attestation form on 04.05.2006.

9. The learned counsel for the applicant submits that the applicant is a young man and even if this Tribunal comes to the conclusion that he concealed his involvement in a criminal case at the time of obtaining the employment, the same may be condoned following the principle of youth often commit indiscretions and cannot be punished for their whole life. The learned counsel placed reliance on the decision of the Hon'ble Apex Court in **Commissioner of Police & Others v. Sandeep Kumar**, (2011) 4 SCC 644, and **Avtar Singh v. Union of India & Others**, 2016 (7) SCALE 378.

10. Shri Amit Anand, the learned counsel appearing for the respondents, while refuting the submissions made on behalf of the applicant would contend that once, admittedly, the applicant was interrogated by the police on 09.03.2004, it cannot be said that the applicant was not aware of the registration of the FIR against him.

11. It is further submitted that the applicant knowing fully well that he was involved in a criminal case and FIR 506/2003 was registered against him and in connection with that only he was interrogated on 09.03.2004, consciously and with an intention to cheat, concealed the said fact by giving a wrong answer in the attestation form and also during his period of service from 2006 till the disciplinary proceedings are initiated in the year 2009.

12. The learned counsel further submits that the Hon'ble Apex Court in **Commissioner of Police v. Mehar Singh**, (2013) 7 SCC 685, **and Avtar Singh** (supra), held that the employer is entitled to terminate the services or cancel the candidature either for concealment or for furnishing false information, however, after holding departmental inquiry, if the employee is confirmed in service. Since the respondents issued the impugned dismissal order after conducting the regular departmental inquiry as per rules, and after giving full and fair opportunity to the applicant and after following the principles of natural justice, no interference of this Tribunal is warranted.

13. As rightly pointed out by both the counsel that the Hon'ble Apex Court in its recent decision in **Avtar Singh** (supra), after discussing, in detail, the entire case law, including **Sandeep Kumar** (supra) and **Mehar Singh** (supra), on the subject of concealment or furnishing of false information, at the time of selection, summarized their conclusions, as under:

"30. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

(1) Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

(2) While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

(3) The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

(4) In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted : -

(a) In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

(b) Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

(c) If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

(5) In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

(6) In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.

(7) In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

(8) If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing Page 53 53 authority would take decision after considering the seriousness of the crime.

(9) In case the employee is confirmed in service, holding Departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

(10) For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However,

in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

(11) Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.

We answer the reference accordingly. Let the matters be placed before an appropriate Bench for consideration on merits."

14. The inquiry officer after analysing the entire evidence adduced before him, held that the applicant was not arrested at the time of filling up the recruitment form and attestation form and that he was never given the copy of FIR and hence, it cannot be said he was aware of the registration of the FIR against him, and accordingly, held that the charge against the applicant is not substantiated. The disciplinary authority though not disagreed with the finding of the non-arrest of the applicant and that non-service of the FIR on the applicant, but observing that the applicant was interrogated several times after his appointment and that the applicant did not inform about the same during the period of his service, disagreed with the findings of the inquiry officer and accordingly, imposed the penalty of dismissal on the applicant.

15. The Hon'ble Apex Court in **Avtar Singh** (supra), while concluding that "information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information", also observed as under:

"2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

Xxxx

(11) Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him."

16. In the peculiar facts of the present case, we are of the considered view that the knowledge of the fact of registration of FIR cannot be attributable to the applicant and that the non-revealing of the same is condonable.

17. However, it is to be noted that the applicant filed the OA in the year 2011 and the respondents filed the additional reply on 25.09.2012 and as per the same, the criminal case in FIR No.506/2003, P.S., R.K.Puram, is still pending investigation and no chargesheet has been filed in the Court till then. It is not known whether the said FIR is still pending and any chargesheet is filed therein, in the meanwhile. The respondents can always take appropriate action against the applicant depending upon the present status of the FIR, i.e., if any chargesheet is filed, in pursuance thereto.

18. In the circumstances and for the aforesaid reasons, the OA is allowed and the impugned orders are quashed with all consequential benefits. The respondents shall reinstate the applicant into service within 60 days from the date of receipt of a copy of this order. However,

in the circumstances of this case, the applicant is not entitled for any arrears. No costs.

(K. N. Shrivastava)
Member (A)

(V. Ajay Kumar)
Member (J)

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