

**Central Administrative Tribunal
Principal Bench, N.D.**

OA No. 2901/2013

Order reserved on 06.09.2016
Order pronounced on 16.11.2016

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. K.N. Srivastava, Member (A)**

Shri Pinto Kumar
S/o Shri Rumal Singh
R/o Vill. Maulabad, Post-Chhanyasa
Distt. Bulandshahr
Uttar Pradesh. ... Applicant

(By Advocate: Shri Sachin Chauhan)

VERSUS

1. The Govt. of NCTD through
The Commissioner of Police (DAP)
Police Headquarters, I.P. Estate
M.S.O. Building, New Delhi.
2. The Special Commissioner of Police (Armed Police)
PHQ, MSO Building, IP Estate
Delhi.
3. The Dy. Commissioner of Police (Vice Principle)
Police Training College
Jaroda Kalan, Delhi.
4. The DCP, 1st BN (DAP)
through the Commissioner of Police (DAP)
Police Headquarters, I P Estate
M.S.O. Building, New Delhi. ... Respondents

(By Advocate: Shri N K Singh)

ORDER

Mr. V. Ajay Kumar, Member (J):

The applicant, a Constable(Executive) in the respondent Delhi Police, filed the present Original Application questioning

the impugned Annexure A-2 dismissal order dated 29.04.2013 and the Annexure A-3 Appellate order dated 17.07.2013.

2. The brief facts of the case are that the applicant, on his selection, was appointed as Constable(Executive) in the respondent Delhi Police by virtue of offer of appointment letter dated 03.10.2011. While he was working as such, the respondents ordered a regular departmental inquiry against the applicant vide the Annexure A-1 order dated 04.06.2012. The relevant part of the said order reads as under:-

"It is alleged that candidate (now R/Const.) Pintu Kumar, Roll No. 906579 (belt No.27069/PTC PIS No. 28110056) had provisionally selected as Constable (Exe.) Male in Delhi Police during the recruitment held in the year 2009 (Phase-II). The character & antecedents of the above said candidate were got verified from Special Branch, Delhi and nothing adverse was found against him. As such, he was issued an offer of appointment letter vide order N. 15568-569/Rectt. Cell (R-I) (Const./M) dated 03/10/2011 with the directions to report to Principal, Police Training College, Jharoda Kalan, Delhi on 10/10/2010 for his basic training course for the post of constable (Exe.) Male in Delhi Police.

Later on, on receipt of formal verification of character & antecedent from Distt. Magistrate/Bulandshahr (UP), R/Constable Pintu Kumar, Roll No.906579 (Belt No.27069/PTC) has been found involved in a criminal case FIR No.389/2002 u/s 147/452/307/308/323/504/506 IPC P.S. Sikandrabad (UP). Later on, a FR No.31 in the case was filed on 11/06/2002 which was accepted by the Hon'ble Court.

On scrutiny of application form and attestation form filled up by R/Constable Pintu Kumar, Roll No.906579 (Belt No.27069/PTC) on 16/11/2009 & 02/06/2010 respectively, it revealed that he did not disclose the facts regarding his involvement in the above-said Criminal Case in the relevant columns of the application form and attestation form, despite clear instructions given at the top of these forms that giving any kind of false information or concealing any facts will be treated as disqualification. Besides, he had also submitted a false undertaking at the time of obtaining the offer of appointment letter and succeeded in joining the Deptt. by adopting deceitful

means. The concealment of facts regarding involvement in a criminal case clearly reflects his malafide intention.

The above act on the part of Recruit Constable Pintu Kumar, Roll No.906579 (Belt No.27069/PTC PIS No.28110056) amounts to gross misconduct, negligence, carelessness and unbecoming of a police officer which renders him liable to be dealt with departmentally under the provision of Delhi Police (Punishment & Appeal) Rules, 1980."

3. In pursuance of the same, a departmental inquiry was conducted and in pursuance of the Inquiry Officer's report wherein it was held that the charge leveled against the applicant was proved, the Disciplinary Authority vide Annexure A-2 order dated 29.04.2013 dismissed the applicant from service. The relevant part of the said order is reproduced as under:-

"I have perused the findings of EO, representation of the defaulter Constable and other records available on file and found that the information of FIR against him was concealed by candidate, hence, EO has proved the charges. There is no force in the argument of defaulter that he was not aware about FIR. Infact in that FIR his family was also involved, which resulted into compromise as told by defaulter. When compromise was done, it could be possible only when all parties were aware about contents of FIR. Thus the claim of defaulter that he was not aware does not hold good. Now, it is clear that defaulter concealed information, which was necessary to be disclosed at the time of application for recruitment. He deliberately did not disclose the information. This shows his dubious nature. Hence, I am left with no option but to dismiss him, from the force. Accordingly, I, M.N. Tiwari, DCP/1st Bn. DAP dismiss Ct. Pintu Kumar, No.4103/DAP, from the force with immediate effect."

4. The appeal preferred by the applicant against the aforesaid dismissal order was rejected by the Appellate Authority vide Annexure A-3 order dated 17.07.2013. The relevant part of the said Appellate Order reads as under:-

"In his appeal, the applicant has mainly pleaded that (i) he was nowhere at fault because he was not aware about criminal case FIR No.389/2002 u/s 147/148/452/307/308/323/504/506 IPC PS Sikandrabad, UP registered against him. In the report obtained by the appellant from SSP/Bulandshahar (UP) under RTI Act, 2005, it has been clearly mentioned that the appellant was not arrested in the said criminal case. The final report submitted by the Police (Sikandrabad Police) was accepted by the Court and no one in the aforesaid case was convicted, (iii) when the said criminal case was registered on 17.05.2002, the appellant was a Juvenile and was least aware of it, (iv) he was never asked to join the investigation. As such, he did not mention it in his application form as well as in attestation form while joining Delhi Police, (v) his defence plea was not taken into consideration by the disciplinary authority before awarding harsh punishment, (vi) the appellant has also cited various court rulings passed by Supreme Court and Delhi High Court in similar matters and further requested to consider his case sympathetically and set aside the punishment order.

I have carefully gone through the appeal, impugned order dated 29.04.2013 and other relevant material available on record. I have also heard the appellant in O.R. on 18.06.2013. During O.R., he reiterated his pleas already raised in his appeal as mentioned above. The plea of the appellant is devoid of merit. The District Magistrate, Bulandshahar, UP has reported on formal verification of Character and antecedents of the appellant that appellant was involved in criminal case FIR No.389/2002 u/s 147/148/452/307/308/323/504/506 IPC PS Sikandrabad, UP. Perusal of record also revealed that the appellant has concealed the fact in his undertaking dated 04.10.2011 submitted at the time of obtaining offer of appointment letter. Record also shows that Hon'ble Court had accepted the final report of police on 14.10.2011 when Shri Ghanshyam Singh (the complainant) had submitted an oath application dated 13.10.2011 requesting therein to accept the Final Report of police. Instructions are clearly given in the Application Form and Attestation Form that giving any kind of false information or concealing any facts will be treated as disqualification. Since, it is a case of concealment, which amounts to misconduct and not of involvement in a criminal case. The appellant has concealed the fact of his involvement in a criminal case in the relevant columns of the application form as well

as attestation forms knowingly and dishonestly. The EO has submitted his findings on merit. The disciplinary authority after carefully considering all the facts and circumstances of the case has passed the punishment order, which is speaking and reasoned. The punishment awarded to the appellant is justified and commensurate keeping in view the gravity of misconduct. The cases mentioned by the appellant are appreciable but it cannot be overlooked that the nature and circumstances of each case are different and the decision is taken accordingly. Keeping in view the above facts, I find no reason to interfere with the impugned order. The appeal is, accordingly, rejected."

5. Heard Shri Sachin Chauhan, learned counsel for the applicant and Shri N K Singh, learned counsel for the respondents and perused the pleadings on record.

6. The short question fallen for our consideration in this OA is that whether the applicant concealed the fact of his involvement in a criminal case and fraudulently obtained the appointment and whether the said alleged concealment can be resulted in his dismissal.

7. Shri Sachin Chauhan, the learned counsel appearing for the applicant in support of the OA averments, *inter alia*, contended mainly as under:-

(i) The applicant was not having any knowledge about the Registration of FIR No.389/2002 and his involvement in a criminal case since he was a juvenile and was only 14 years, five months and 16 days old when the said FIR was registered, which was later ended in compromise and hence the charge

of concealment cannot be attributable to the applicant.

(ii) Even if the applicant's contention that he was not aware of his involvement in the criminal case is not acceptable, since admittedly the applicant was juvenile at the time of registration of the FIR No.389/2002 which was finally ended in a compromise, he is entitled for benefit of the provisions of the Juvenile Justice (Care and Protection) Act, 2000 and accordingly he should not suffer any disqualification including his appointment and continuation thereon.

8. On the other hand, Shri N K Singh, learned counsel for the respondents contend that the contention of the applicant about his ignorance and no knowledge about the registration of FIR cannot be accepted as his entire family was involved in the said offence and the same was finally ended in a compromise and that a compromise cannot be reached without the involvement of all the accused including the applicant. The learned counsel further submits that even if the criminal case registered against the applicant was closed by virtue of the compromise but since he intentionally concealed the said fact, the respondents are empowered to take action as per rules and as per the settled principles of law.

9. The issue of involvement of persons in criminal cases and concealment of the same while obtaining employment was dealt

with by the Hon'ble Apex Court in a number of decisions and the law on the subject is well settled.

10. A three judge bench of the Hon'ble Apex Court answering a reference in a latest decision in ***Avtar Singh Vs. Union of India & Ors.*** 2016 SCC Online SC 726, once again dealt with the entire case law on the subject and finally summarized the 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 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."

Conclusion No. 8 of the above judgment clearly indicate that "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 authority would take decision after considering the seriousness of the crime". However, the Conclusion No.11 states that "before a person is held guilty of *suppressio veri* or *suggestio falsi*, knowledge of the fact must be attributable to him".

11. In the facts of the present case, as rightly submitted by the respondents that once the entire family is involved in a criminal case and the same was finally ended in compromise, even though the applicant was a juvenile at the relevant point of time, it cannot be said that he was not having any knowledge about his involvement in the criminal case and the requirement of mentioning the same while filling up the form.

12. However, in our considered view, the impugned action of the respondents is liable to be set aside on the second ground raised by the learned counsel for the applicant.

13. It is not in dispute that the applicant was 14 years old and a juvenile when the FIR No.389/2002 was registered against him. In WP(C) No.2268/2012 – **Govt. of NCT of Delhi and**

Ors. Vs. Pradeep Hooda judgment dated 08.05.2012, which was upheld by the Hon'ble Apex Court, the Hon'ble High Court of Delhi in the similar circumstances observed as under:-

"5. The Tribunal, while considering the case of the respondent, referred to the decision of the Supreme Court on the case of Sandeep Kumar (supra) and also took note of the fact that the respondent was a juvenile on the date on which the said FIR had been registered. The respondent had also been acquitted by the Juvenile Justice Board on 24.11.2006, that is, much prior to the date of his submitting the application and attestation form. Taking note of various provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as 'the said Act'), the Tribunal decided in favour of the respondent. In particular, the Tribunal referred to Section 19(1) of the said Act which stipulated that notwithstanding anything contained in any other law, a juvenile who has committed an offence and has been dealt with under the provisions of the said Act, shall not suffer disqualification, if any, attaching to a conviction of an offence under such law. Section 19 (2) may also be noticed inasmuch as it stipulates that the Juvenile Justice Board is required to make an order directing that the relevant records of such conviction shall be removed after the expiry of the period of appeal or a reasonable period as prescribed under the rules, as the case may be.

6. In other words, even where a juvenile is found to have committed an offence, he shall not suffer any disqualification and even the records are to be obliterated after a specified period of time. The intention of the Legislature is absolutely clear that insofar as juveniles are concerned, their criminal record is not to stand in their way in their future lives.

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8. The learned counsel for the petitioner also submitted that one of the grounds for terminating the services of the respondent was that he had concealed the factum of his criminal involvement in his application form as also in the attestation form. Insofar as juveniles are concerned, even this plea does not have any merit. This is so because, as we have pointed out above, even in the case of conviction the criminal records as regards a juvenile are to be obliterated. Therefore, the requirement of law is that once a juvenile has been tried and, in particular, where he has been acquitted, there is no question of him carrying any hangover of his past. Therefore, the fact that the respondent did not mention his criminal involvement cannot, in law, be regarded as concealment, when there is to be no record of it."

14. The facts of ***Pradeep Hooda's*** case are squarely applicable to the present case and hence the OA deserves to be allowed following the said decision.

15. In the circumstances and for the aforesaid reasons, the OA is allowed and the impugned orders are quashed and the respondents are directed to reinstate the applicant into service with all consequential benefits. However, in the peculiar circumstances of the case, the applicant is not entitled for any arrears for the break period. No costs.

(K.N. Srivastava)
Member (A)

(V. Ajay Kumar)
Member (J)

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