

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
O.A.NO.3486 OF 2015**

New Delhi, this the 29th day of April, 2016

CORAM:

**HON'BLE SHRI SUDHIR KUMAR, ADMINISTRATIVE TRIBUNAL
AND
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

.....

Anju Devi Jatav,

25 years,

Constable (Executive),

D/o Sh.Sohan Lal Jatav,

R/o Village Dadar, Post Burja,

Tehsil & Dist.Alwar,

Rajasthan 301001

í í ..

Applicant

(By Advocate: Mr.Sudeep Singh)

Vs.

Addl. Deputy Commissioner of Police,

Delhi Police, Recruitment Cell,

New Delhi-01

í í ..

Respondent

(By Advocate: Mr.N.K.Singh for Ms.A.Ahlawat)

í í ..

ORDER

Per Raj Vir Sharma, Member(J):

The brief facts and circumstances giving rise to this Original Application are as follows:

1.1 An advertisement was published in leading newspapers dated 17.1.2013, and in the Employment News dated 2.2.2013, to fill up 522 posts of Constable (Executive) Female in Delhi Police. In response to the Advertisement, the applicant applied for the said post on 20.2.2013. She was

put through physical endurance and measurement test, and written test on 8.3.2014 and 13.7.2014 respectively. She was declared provisionally selected, subject to verification of character and antecedents, medical fitness and final checking of documents, etc. On 27.8.2014, she filled up and submitted the Attestation Form. In column no.11 (b) of the Attestation Form, she clearly mentioned that no FIR was registered against her. On 18.9.2014, her medical examination was conducted, and she was declared as medically fit.

1.2 On 5.1.2015, the respondent issued a Memo calling upon the applicant to show cause, within 15 days from the date of receipt thereof, as to why her candidature for the post of Constable (Exe.) Female in Delhi Police should not be cancelled for the reasons mentioned in paragraphs 1 and 2 of the Memo, which are reproduced below:

ØYou, candidate Anju Devi Jatav D/o Shri Sohan Lal Jatav had applied to the post of Constable (Exe.) Female in Delhi Police during the recruitment held in the year 2012 and selected provisionally against Roll No.200558, subject to verification of character & antecedents, medical fitness and final checking of documents, etc. On receipt of your character & antecedents report from DM/Alwar (Rajasthan) it was revealed that case FIR No.203/2013 dated 31.03.2013 u/s 147/323/341 IPC, PS/Sadar Alwar (Rajasthan) was registered against you. Later on, the above-said criminal case was decided and you were convicted/directed by the Hon'ble Court to pay Rs.100/- as fine vide its order dated 19.11.2013.

On scrutiny of Application Form & Attestation Form filled up by you on 20.2.2013 & 27.08.2013 respectively, it was revealed that you did not disclose the facts of your involvement in the above said criminal case in the relevant columns of Application Form & Attestation Form and concealed the same deliberately despite clear warning given at the top of these forms that furnishing of any false information or concealing any facts will be treated as disqualification. Thus, you have

concealed the facts of your involvement in the above said criminal case in the relevant columns of both the forms and tried to seek appointment in Delhi Police by adopting deceitful means through mala fide intention.ö

1.3 The applicant sent her reply, dated 15.1.2015, to the Memo dated 5.1.2015, *ibid*, stating therein that she had filled up the application form on 20.2.2013 and at that time no criminal case was pending against her.

1.4 The respondent, after considering the applicant's reply dated 15.1.2015, issued Memo dated 30.1.2015 cancelling the candidature of the applicant for the post of Constable (Executive) Female in Delhi Police. The relevant portion of the Memo dated 30.1.2015, *ibid*, is reproduced below:

öThe plea(s) put forth by you in the reply have been considered in detail and found not convincing. It must be stated that you had filled up the Attestation Form for verification of character & antecedents on 27.8.2014 and in Column No.11(b) of the said form, you had clearly mentioned that öNahi koi FIR darj hui haiö and concealed the facts of your involvement in the above-said criminal case despite warning clearly given on the Application & Attestation Forms that furnishing of any false information or concealing any facts will be treated as disqualification.

Since your contentions have not been found tenable because of the reasons that you have concealed the facts of your involvement in the above-said criminal case deliberately in the relevant column of the Attestation Form and tried to seek appointment in Delhi Police by adopting deceitful means which clearly reflects your malafide intention. As such, you are not found suitable for appointment to the post of Constable (Exe.) and your candidature for the post of Constable (Exe.) Female in Delhi Police is hereby cancelled with immediate effect.ö

1.5 Being aggrieved by the cancellation of her candidature, the applicant submitted an appeal, dated 24.3.2015, to the Joint Commissioner of Police, Recruitment Cell, NPL, Delhi. Her appeal having been rejected by the Additional Deputy Commissioner of Police, Recruitment Cell, Delhi,

vide Memo dated 21.4.2015, the applicant has filed the present O.A. seeking the following reliefs:

- oA. Setting aside the order dated 30.1.2015 passed by the respondent cancelling the candidature of the petitioner and order dated 21.4.2015, dismissing the representation of the petitioner;
- B. Directing the respondent to appoint the petitioner for the post of Constable (Exec.);
- C. Such further and other orders as this Hon'ble Tribunal deem fit, just and proper in the facts and circumstances of the case.ö

2. It has been contended by the applicant that she had no criminal antecedent as on 20.2.2013, i.e., the date when she applied for the post. Only on 31.3.2013, she was named as one of the accused persons in FIR No.203/2013, P.S.Sadar, Alwar, under Sections 147, 323 and 341 IPC. The FIR was registered on a trifle issue between the families/neighbours. She was roped in, because of family enmity. None of the offences, alleged to have been committed by her and others, fell under the purview of ñmoral turpitudeö. The FIR/criminal case was disposed of by the Lok Adalat, vide order dated 19.11.2013 (Annexure A). In the interest of her future, and her family members, she and others sustained the conviction. Such conviction was not to be treated as a disqualification for appointment to any post, as she and others were granted the benefit of Section 12 of the Probation of Offenders Act. Therefore, she under a bona fide impression did not mention about the said FIR in the Attestation Form. Had she mentioned about the said FIR in the Attestation Form, the same would not have been a bar for her employment inasmuch as none of the offences alleged against her was

grave/serious or could be categorized as one involving ~~moral turpitude~~ so as to discard her candidature. When the concealment is inconsequential, the same ought not to have been a ground for cancellation of her candidature. It has, thus, been submitted by the applicant that the respondent has failed to appreciate her pleas in proper perspective, and has acted arbitrarily in cancelling her candidature on the ground of concealment of the fact of registration of FIR in the Attestation Form submitted by her. In support of her contentions, the applicant has relied on the decision of the Hon'ble Supreme Court in **Commissioner of Police & Ors. Vs. Sandeep Kumar**, (2011) 4 SCC 644. He has also referred to Standing Order No.398/2010 wherein it has been laid down that if the candidate has been discharged by extending the benefit of the Probation of Offenders Act, 1958, this will not be viewed adversely by the department for his/her suitability for Government service.

3. It is the stand of the respondent that on scrutiny of the Attestation Form filled up and submitted by the applicant on 27.8.2014, it was revealed that she had deliberately and willfully concealed the fact of her involvement as an accused in FIR No.203/2013,*ibid*, despite clear warning given at the top of the Attestation Form that furnishing of any information or concealing any fact would be treated as disqualification. Her candidature was cancelled in accordance with the instructions contained in the Standing Order No.371/2011, which clearly states that ~~the~~ candidature will be cancelled in case the candidate does not disclose the fact of her involvement

and/or arrest in criminal case(s), complaint case(s), preventive proceedings, etc. both in the application form and in the attestation form and the fact is subsequently found out from the verification report received from the District authorities or otherwise. In Column No.11(b) of the Attestation Form for verification of character and antecedents filled up and submitted by the applicant on 27.8.2014, she had clearly mentioned that “**Nahi koi FIR darj hui hai**”. It has been submitted by the respondent that in **Commissioner of Police & Ors. Vs. Sandeep Kumar** (supra), the respondent had disclosed in the Attestation Form about his involvement in the criminal case, whereas the applicant, in the present case, had failed to mention in the Attestation Form about her involvement as one of the accused persons in the FIR/criminal case. Therefore, the decision in **Commissioner of Police & Ors. Vs. Sandeep Kumar** (supra) is not applicable to the case of the applicant. The respondent has relied on the decision of the Hon'ble Supreme Court in the case of **Devendra Kumar Vs. State of Uttarakhand & Others**, Civil Appeal No.1155 of 2006, decided on 29.7.2013, where it has been held that suppression of material information sought by the employer, or furnishing false information itself, amounts to “**moral turpitude**”, and is separate and distinct from the involvement in a criminal case. It is, therefore, submitted by the respondent that there is no infirmity in the cancellation of candidature of the applicant.

4. No rejoinder reply has been filed by the applicant.

5. We have carefully perused the pleadings, and have heard Mr.Sudeep Singh, the learned counsel appearing for the applicant, and Mr.N.K.Singh for Ms.A.Ahlawat, the learned counsel appearing for the respondent.

6. In support of the contentions raised by the applicant in support of her case, Mr.Sudeep Singh, the learned counsel appearing for the applicant, relied on the decision of the Hon'ble High Court of Delhi in **Govt. of NCT of Delhi & Ors Vs. Jitender Kumar**, 147(2008) DLT 278.

6.1 In **Govt. of NCT of Delhi & Ors Vs. Jitender Kumar** (supra), the respondent was appointed as Chowkidar. He joined the duties on 26.9.2001, pending verification of his character and antecedents. Against Column 12 of the attestation form, he did not give any information, and it was left blank. During verification of his character and antecedents, the DCP, Special Branch, Delhi, submitted a report stating that the respondent was involved in FIR No.554 dated 15.7.1997 under Section 325/34 IPC, and that he was acquitted by the learned Metropolitan Magistrate, Delhi, on 2.7.2000, in Lok Adalat. Therefore, invoking the provisions of Rule 5(1) of the CCS (Temporary Service) Rules, 1965, his services were terminated. After being unsuccessful in the departmental appeal, the respondent challenged the termination of his services, by filing O.A. before the Tribunal. The Tribunal allowed his O.A. Feeling aggrieved, the Government of NCT of Delhi filed the writ petition. Dismissing the writ petition, and

upholding the Tribunal's decision, the Hon'ble High Court of Delhi observed, in paragraphs 8 and 9 of the judgment, as follows:

8. In the present case, the respondent was prosecuted under Sections 325/34 IPC. He had already been discharged much before the filling up of the attestation form. Therefore, if, going by the language of Column No.12, he under a bona fide impression thought that such an information is not to be provided and did not provide this information, it may not be a serious lapse on his part. One has to keep in mind the fact that the respondent is not a very literate person and the post for which he had applied was that of Chowkidar.

9. Even if it is to be presumed that he was required to give such an information, in a case like this, we are of the opinion that the Tribunal was correct in observing that such a minor indiscretion of non-disclosure would have no bearing on his ultimate appointment. ö

The Hon'ble High Court further observed in paragraph 11 of the judgment as follows:

11. We may remark here that where the case is pending at the time of filling up of the form, position would be different and in case a candidate conceals such an information or provides wrong information, the candidature or even the appointment can be cancelled. (See: Sanjay Kumar Bajpai v. Union of India 1997 II AD SC 704. Similarly, where the prosecution, though resulted in acquittal, was for an offence which otherwise involves moral turpitude, it may be necessary to mention particulars of such a case as that may be a relevant consideration to adjudge the conduct or character of a candidate to be appointed to a service even when such a prosecution resulted in acquittal, inasmuch as, it would provide information about the antecedents of the candidates. (See Delhi Administration through Chief Secretary and Ors. Vs. Sushil Kumar MANU/SC/1777/1996: (1996) 11 SCC 605. However, where the offence with which the candidate was charged was petty offence not involving moral turpitude and it has resulted in acquittal as well and going by the petty nature of the offence if such a factor is not material enough to deny appointment to a candidate, non-disclosure thereof shall not be a ground to terminate his services. ö

6.2 In Commissioner of Police & Ors. Vs. Sandeep Kumar

(supra), the respondent and some of his family members were involved in a criminal case, being FIR No. 362 under Section 325, read with Section 34, of I.P.C, which was admittedly compromised on 18.1.1998, and the respondent and his family members were acquitted on 18.1.1998. In response to the advertisement issued in January 1999, the respondent applied for the post of Head Constable (Ministerial) on 24.2.1999, but did not mention in his application form that he was involved in the aforesaid criminal case. He qualified in all the tests for selection to the post of Head Constable (Ministerial). On 3.4.2001 he filled up the attestation form wherein he, for the first time, disclosed that he had been involved in a criminal case with his tenant, which, later on, had been compromised in 1998, and he had been acquitted. On 2.8.2001, a show-cause notice was issued asking him to show cause why his candidature for the post should not be cancelled, because he had concealed the fact of his involvement in the aforesaid criminal case and had made a wrong statement in his application form. The respondent submitted his reply on 17.8.2001 and an additional reply, but the authorities were not satisfied with the same, and, on 29.5.2003, they cancelled his candidature. The O.A. filed by the respondent was dismissed by the Tribunal, and the writ petition filed against the Tribunal's order was allowed by the Hon'ble High Court of Delhi. Hence, the Civil Appeal was filed before the Hon'ble Supreme Court. Dismissing the Civil Appeal, the Hon'ble Supreme Court passed the following judgment:

Heard learned counsel for the parties. This Appeal has been filed against the impugned judgment of the High Court of Delhi dated 31.07.2006. The facts have been given in the impugned judgment and hence we are not repeating the same here, except wherever necessary.

2. The respondent herein-Sandeep Kumar applied for the post of Head Constable (Ministerial) in 1999. In the application form it was printed :

"12(a) Have you ever been arrested, prosecuted kept under detention or bound down/fined, convicted by a court of law for any offence debarred/disqualified by any Public Service Commission from appearing at its examination/selection or debarred from any Examination, rusticated by any university or any other education authority/Institution."

Against that column the respondent wrote : 'No'.

3. It is alleged that this is a false statement made by the respondent because he and some of his family members were involved in a criminal case being FIR 362 under Section 325/34 IPC. This case was admittedly compromised on 18.01.1998 and the respondent and his family members were acquitted on 18.01.1998.

4. In response to the advertisement issued in January 1999 for filing up of certain posts of Head Constables (Ministerial), the respondent applied on 24.02.1999 but did not mention in his application form that he was involved in the aforesaid criminal case. The respondent qualified in all the tests for selection to the post of temporary Head Constable (Ministerial). On 03.04.2001 he filled the attestation form wherein for the first time he disclosed that he had been involved in a criminal case with his tenant which, later on, had been compromised in 1998 and he had been acquitted.

5. On 02.08.2001 a show cause notice was issued to him asking the respondent to show cause why his candidature for the post should not be cancelled because he had concealed the fact of his involvement in the aforesaid criminal case and had made a wrong statement in his application form. The respondent submitted his reply on 17.08.2001 and an additional reply but the authorities were not satisfied with the same and on 29.05.2003 cancelled his candidature.

6. The respondent filed a petition before the Central Administrative Tribunal which was dismissed on 13.02.2004. Against that order the respondent filed a writ petition which has been allowed by the Delhi High Court and hence this appeal.

7. The learned counsel for the appellants has submitted that the respondent should have disclosed the fact of his involvement in the criminal case even if he had later been acquitted. Hence, it was submitted that his candidature was rightly cancelled.

8. We respectfully agree with the Delhi High Court that the cancellation of his candidature was illegal, but we wish to give our own opinion in the matter.

When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often be condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

9. In this connection, we may refer to the character 'Jean Valjean' in Victor Hugo's novel 'Les Miserables', in which for committing a minor offence of stealing a loaf of bread for his hungry family Jean Valjean was branded as a thief for his whole life. The modern approach should be to reform a person instead of branding him as a criminal all his life.

10. We may also here refer to the case of Welsh students mentioned by Lord Denning in his book 'Due Process of Law'. It appears that some students of Wales were very enthusiastic about the Welsh language and they were upset because the radio programmes were being broadcast in the English language and not in Welsh. Then came up to London and invaded the High Court. They were found guilty of contempt of court and sentenced to prison for three months by the High Court Judge. They filed an appeal before the Court of Appeals. Allowing the appeal, Lord Denning observed :-

"I come now to Mr. Watkin Powell's third point. He says that the sentences were excessive. I do not think they were excessive, at the time they were given and in the circumstances then existing. Here was a deliberate interference with the course of justice in a case which was no concern of theirs. It was necessary for the judge to show - and to show to all students everywhere - that this kind of thing cannot be tolerated. Let students demonstrate, if they please, for the causes in which they believe. Let them make their protests as they will. But they must do it by lawful means and not by unlawful. If they strike at the course of justice in this land - and I speak both for England and Wales - they strike at the roots of society itself, and they bring down that which protects them. It is only by the maintenance of law and

order that they are privileged to be students and to study and live in peace. So let them support the law and not strike it down.

But now what is to be done?

The law has been vindicated by the sentences which the judge passed on Wednesday of last week. He has shown that law and order must be maintained, and will be maintained. But on this appeal, things are changed. These students here no longer defy the law. They have appealed to this court and shown respect for it. They have already served a week in prison. I do not think it necessary to keep them inside it any longer. These young people are no ordinary criminals. There is no violence, dishonesty or vice in them. On the contrary, there was much that we should applaud. They wish to do all they can to preserve the Welsh language. Well may they be proud of it. It is the language of the bards - of the poets and the singers - more melodious by far than our rough English tongue. On high authority, it should be equal in Wales with English. They have done wrong - very wrong - in going to the extreme they did. But, that having been shown, I think we can, and should, show mercy on them. We should permit them to go back to their studies, to their parents and continue the good course which they have so wrongly disturbed."

[Vide : Morris Vs. Crown Office, (1970) 2 Q.B. 114]

In our opinion, we should display the same wisdom as displayed by Lord Denning.

11. As already observed above, youth often commit indiscretions, which are often condoned. It is true that in the application form the respondent did not mention that he was involved in a criminal case under Section 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified. At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter.

12. For the reasons above given, this Appeal has no force and it is dismissed. No costs.ö

(Emphasis supplied)

7. In support of his case, the respondent has relied on the decision of the Hon'ble Supreme Court in **Devendra Kumar Vs. State of Uttaranchal & others** (supra).

7.1 **In Devendra Kumar Vs. State of Uttarakhand & others**

(supra), the brief facts of the case are that an advertisement was published in September 2001 inviting applications from eligible candidates for 250 posts of Constable in the State of Uttarakhand. The appellant applied in response to the same, vide application dated 7.9.2001. He appeared for the physical test and qualified the same on 28.9.2001. Subsequently, upon passing the written test, the appellant faced an interview in September, 2001 and, ultimately his name was mentioned in the list of selected candidates published on 30.9.2001. The appellant was called for medical examination on 4/5.10.2001, in which he was found fit. Thus, he was sent for training of six months on 18.10.2001. While joining the training, the appellant was asked to submit an affidavit giving certain information particularly, whether he had ever been involved in any criminal case. The appellant submitted an affidavit stating that he had never been involved in a criminal case. The appellant completed his training satisfactorily, and it was at this time in January 2002, that the respondent authorities, in pursuance of the process of character verification, came to know that the appellant was in fact involved in a criminal case. The final report in that case had been submitted by the prosecution and accepted by the learned Magistrate. On the basis of the same, the appellant was discharged abruptly on 8.4.2002 on the ground that since he was a temporary government servant, he could be removed from service without holding any inquiry. The appellant challenged the said order, by filing a writ petition, and since he was not favoured by the learned

single Judge, he challenged the same before the Division Bench, but to no avail. Hence, he filed the Civil Appeal, by way of SLP. The learned counsel appearing for him contended, *inter alia*, that final report having been submitted in case of the appellant under Section 173 of Code of Criminal Procedure, 1973, the question of suppression of material fact could not arise as the appellant had neither been punished, nor convicted, nor discharged. *Per contra*, it was submitted by the learned counsel appearing on behalf of the respondent State that the appellant suppressed the material fact of registration of a criminal case against him. Thus, the appointment had been obtained by misrepresentation and had become void/voidable. Thus, the courts below have correctly held the termination as valid. In view thereof, the Court should not grant any indulgence to the appellant and, the appeal is liable to be dismissed. After considering the facts and circumstances of the case, and the rival contentions of the parties, the Hon'ble Supreme Court held thus:

10. So far as the issue of obtaining the appointment by misrepresentation is concerned, it is no more *res integra*. The question is not whether the applicant is suitable for the post. The pendency of a criminal case/proceeding is different from suppressing the information of such pendency. The case pending against a person might not involve moral turpitude but suppressing of this information itself amounts to moral turpitude. In fact, the information sought by the employer if not disclosed as required, would definitely amount to suppression of material information. In that eventuality, the service becomes liable to be terminated, even if there had been no further trial or the person concerned stood acquitted/discharged.

11. It is a settled proposition of law that where an applicant gets an office by misrepresenting the facts or by playing fraud upon the competent authority, such an order cannot be sustained in the eyes of law. Fraud avoids all judicial acts,

ecclesiastical or temporal.ö (Vide: **S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs. & Ors.**, AIR 1994 SC 853. In **Lazarus Estate Ltd. v. Besalay**, 1956 All E.R. 349, the Court observed without equivocation that öno judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything.ö

12. In **Andhra Pradesh State Financial Corporation v. M/s. GAR Re-Rolling Mills & Anr.**, AIR 1994 SC 2151; and **State of Maharashtra & Ors. v. Prabhu**, (1994) 2 SCC 481, this Court has observed that a writ Court, while exercising its equitable jurisdiction, should not act to prevent perpetration of a legal fraud as Courts are obliged to do justice by promotion of good faith. öEquity is, also, known to prevent the law from the crafty evasions and subtleties invented to evade law.ö

13. In **Smt. Shrisht Dhawan v. M/s. Shaw Bros.**, AIR 1992 SC 1555, it has been held as under:ö

öFraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct.ö

14. In **United India Insurance Company Ltd. v. Rajendra Singh & Ors.**, AIR 2000 SC 1165, this Court observed that öFraud and justice never dwell togetherö (fraus et jus nunquam cohabitant) and it is a pristine maxim which has not lost temper over all these centuries. A similar view has been reiterated by this Court in **M.P. Mittal v. State of Haryana & Ors.**, AIR 1984 SC 1888.

15. In **Ram Chandra Singh v. Savitri Devi & Ors.**, AIR 2004 SC 4096, this Court held that ömisrepresentation itself amounts to fraudö, and further held öfraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.ö The said judgment was reconsidered and approved by this Court in **Vice-Chairman, Kendriya Vidyalaya Sangathan & Anr. v. Girdharilal Yadav**, (2004) 6 SCC 325).

16. The ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit those persons who have frauded or misrepresented themselves. In such circumstances the Court should not perpetuate the fraud by entertaining petitions on their behalf. In **Union of India & Ors. v. M. Bhaskaran**, AIR 1996 SC 686, this Court, after placing reliance upon and approving its earlier judgment in

District Collector & Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi, (1990) 3 SCC 655, observed as under:ö

öIf by committing fraud any employment is obtained, the same cannot be permitted to be countenanced by a Court of Law as the employment secured by fraud renders it voidable at the option of the employer.ö

17. In **Delhi Administration through its Chief Secretary & Ors. v. Sushil Kumar**, (1996) 11 SCC 605, this Court examined the similar case where the appointment was refused on the post of Police Constable and the Court observed as under:

öIt 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 offence, 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 consequence. The consideration relevant to the case is of the antecedents of the candidate. Appointing authority, therefore, has rightly focussed this aspect and found it not desirable to appoint him to the service.ö (Emphasis added)

18. In **Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav**, AIR 2003 SC 1709; and **A.P. Public Service Commission v. Koneti Venkateswarulu**, AIR 2005 SC 4292, this Court examined a similar case, wherein, employment had been obtained by suppressing a material fact at the time of appointment. The Court rejected the plea taken by the employee that the Form was printed in English and he did not know the language, and therefore, could not understand what information

was sought. This Court held that as he did not furnish the information correctly at the time of filling up the Form, the subsequent withdrawal of the criminal case registered against him or the nature of offences were immaterial. ðThe requirement of filling column Nos. 12 and 13 of the Attestation Formö was for the purpose of verification of the character and antecedents of the employee as on the date of filling in the Attestation Form. Suppression of material information and making a false statement has a clear bearing on the character and antecedent of the employee in relation to his continuation in service.

19. In **State of Haryana & Ors. v. Dinesh Kumar**, AIR 2008 SC 1083, this Court held that there has to be a deliberate and wilful misrepresentation and in case the applicant was not aware of his involvement in any criminal case or pendency of any criminal prosecution against him, the situation would be different.

20. In **Secretary, Department of Home, A.P. & Ors., v. B. Chinnam Naidu**, (2005) 2 SCC 746, this Court held that facts are to be examined in each individual case and the candidate is not supposed to furnish information which is not specifically required in a case where information sought dealt with prior convictions by a criminal Court. The candidate answered it in the negative, the court held that it would not amount to misrepresentation merely because on that date a criminal case was pending against him. The question specifically required information only about prior convictions.

21. In **R. Radhakrishnan v. Director General of Police & Ors.**, AIR 2008 SC 578, this Court held that furnishing wrong information by the candidate while seeking appointment makes him unsuitable for appointment and liable for removal/termination if he furnished wrong information when the said information is specifically sought by the appointing authority.

22. In the instant case, the High Court has placed reliance on the Govt. Order dated April 28, 1958 relating to verification of the character of a Government servant, upon first appointment, wherein the individual is required to furnish information about criminal antecedents of the new appointees and if the incumbent is found to have made a false statement in this regard, he is liable to be discharged forthwith without prejudice to any other action as may be considered necessary by the competent authority. The purpose of seeking such information is not to find out the nature or gravity of the offence or the ultimate result of a criminal case, rather such information is sought with a view to judge the character and antecedents of the

job seeker or suitability to continue in service. Withholding such material information or making false representation itself amounts to moral turpitude and is a separate and distinct matter altogether than what is involved in the criminal case.

23. More so, if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. öSubla Fundamento cedit opusö- a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent Court. In such a case the legal maxim Nullus Commodum Capere Potest De Inuria Sua Propria applies. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation. (Vide: **Union of India v. Maj. Gen. Madan Lal Yadav**, AIR 1996 SC 1340; and **Lily Thomas v. Union of India & Ors.**, AIR 2000 SC 1650). Nor can a person claim any right arising out of his own wrong doing. (Juri Ex Inuria Non Oritur).

24. The courts below have recorded a finding of fact that the appellant suppressed material information sought by the employer as to whether he had ever been involved in a criminal case. Suppression of material information sought by the employer or furnishing false information itself amounts to moral turpitude and is separate and distinct from the involvement in a criminal case.

In view of the above, the appeal is devoid of any merit and is accordingly dismissed.ö

(Emphasis supplied)

8. In the present case, admittedly, the applicant was named as one of the accused persons in FIR No.203/2013, for alleged commission of offences under Sections 147, 323 and 341 of I.P.C., which was registered on 31.3.2013. A perusal of the order dated 19.11.2013 passed by the learned Judicial Magistrate, No.1, Alwar, in Case No.23/93/2013 [arising out of FIR No.203/2013 (ibid)] reveals that the applicant and other accused persons confessed their guilt before the Lok Adalat. Resultantly, the applicant and other accused persons were convicted for offences punishable under Sections 147, 323 and 341 of I.P.C. They were given the benefit under

Section 3 of the Probation of Offenders Act, and were released on probation. It was also ordered by the learned Magistrate that the applicant and other accused persons would be entitled to the benefit under Section 12 of the Probation of Offenders Act. She filled up and submitted the Attestation Form on 27.8.2014, wherein she falsely mentioned that no FIR was ever filed against her, which clearly amounts to suppression of material information and/or making false statement by her. As has been held by the Hon'ble Supreme Court in **Devendra Kumar Vs. State of Uttaranchal & others** (supra), such suppression of material information or making false statement by the applicant amounts to ~~moral turpitude~~ and is a separate and distinct matter altogether than what is involved in the criminal case. It has a clear bearing on the applicant's character and antecedents in relation to her candidature for selection and appointment to the post of Constable (Executive) Female. In our considered view, the ratio of the decision of the Hon'ble Supreme Court in **Devendra Kumar Vs. State of Uttaranchal & others** (supra) applies on all fours to the present case. Therefore, we do not find any substance in the contentions raised by the applicant.

8.1 In the light of the foregoing, the decision of the Hon'ble High Court of Delhi in **Government of NCT of Delhi & Ors. Vs. Jitender Kumar** (supra) is of no help to the case of the applicant. Furthermore, in **Commissioner of Police & Ors. Vs. Sandeep Kumar** (supra), though the respondent had not disclosed the fact of his involvement in the criminal case, while applying for selection, yet he had disclosed the said fact in the

Attestation Form, for which the Hon'ble Supreme Court held that a more lenient view should be taken in his case. But in the instant case, the applicant is found to have deliberately and willfully suppressed the fact of her involvement as one of the accused persons in the FIR/criminal case, and falsely mentioned in the Attestation Form that no FIR was ever registered against her. Therefore, as rightly contended by the respondent, the decision in **Commissioner of Police & Ors. Vs. Sandeep Kumar** (supra), being distinguishable on facts, is not applicable to the applicant's case.

9. In view of what has been discussed above, we have no hesitation in holding that the rejection of candidature of the applicant on account of her having suppressed material information and/or having made false statement in the Attestation Form remains unassailable, and that the O.A. is devoid of merit and liable to be dismissed.

10. Resultantly, the O.A. is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER