

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-3376/2016

Reserved on : 31.07.2019.

Pronounced on : 13.08.2019.

**Hon'ble Mr. Pradeep Kumar, Member (A)
Hon'ble Mr. R.N. Singh, Member (J)**

Sh. Surinder Maan,
S/o Sh. Azad Singh,
Aged: around 39 years,
R/o H.No. 484, Prahladpur Bangar,
Delhi-110042. Applicant

(through Sh. G.K. Singhal for Sh. Harpreet Singh, Advocate)

Versus

1. The Delhi Transport Corporation (DTC)
Through its Chairman-cum-MD
DTC Head Quarter I.P. Estate,
New Delhi.

2. The Dy. Manager (Per.),
Delhi Transport Corpn.,
I.P. Estate, New Delhi. Respondents

(through Sh. Umesh Joshi, Advocate)

O R D E R

R.N. Singh, Member (J)

Heard Sh. G.K. Singhal for Sh. Harpreet Singh, learned counsel for the applicant and Sh. Umesh Joshi, learned counsel for the respondents.

2. In the present application, filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, the letter/order No. PLD-III/(Driver/DSSSB)/2016/1682 dated 22.04.2016 (Annexure A/1) has been challenged whereby the respondent No.2 had informed the applicant that his provisional selection made by DSSSB for the post of Driver stands cancelled.

3. The precise facts leading to filing of the present O.A. are that in pursuance to an advertisement made by DSSSB vide Post Code No. 65/09 for appointment to the post of Driver under the respondents, the applicant has applied. The applicant participated in the requisite written test followed by a skill test and he was declared successful in such selection process. The respondents have issued letter No. PLD-III/(Driver)/DSSSB/2010/5446 dated 06.12.2010 (Annexure A/4) informing the applicant about his provisional selection to the post of Driver in Delhi Transport Corporation (DTC) in Pay Band of Rs.5200-20200 with Grade Pay of Rs.2000/- and other allowances as admissible thereon. However, it was also informed to the applicant vide the said letter that his candidature for appointment to the post of Driver shall be considered subject to fulfillment of all conditions of eligibility for the post of Driver including verification of original documents, correctness of information given by him in the application form with DSSSB as well as fitness in accordance with the prescribed standard of the Corporation and

also subject to the satisfactory completion of the training imparted in DTC. In the same letter, the applicant was also required to give an undertaking as per the proforma enclosed therewith to the effect that he has neither been convicted by any Court of Law nor any accidental or any other case is pending against him in any Court of Law. The applicant was medically examined by the designated Medical Board on 20.12.2010 and was declared fit for the post. The applicant submitted an undertaking in the prescribed form on 29.12.2010 wherein it was found that a criminal case under Sections 279, 337 and 304-A of IPC is pending against him.

4. Learned counsel for the applicant submits that the Learned Court of the Judicial Magistrate 1st Class, Sonepat vide order/judgment dated 19.09.2013 in Criminal Case No. 522/2009 arising out of FIR No. 215 dated 25.05.2009 Police Station-Rai, Sonepat under Sections 279, 337 and 304A of the IPC has acquitted the applicant of the charges levelled against him and the applicant has placed before the respondents a copy of the said judgment dated 19.09.2013 along with an affidavit. However, the respondents have passed the impugned order dated 22.04.2016 cancelling the provisional selection of the applicant made by the DSSSB for the post of Driver.

4.1 Learned counsel for the applicant submits that the applicant's appointment inspite of his selection by the DSSSB, his fulfilling all the

eligibility conditions and found medically fit was stalled in view of the aforesaid pending criminal case and once he has been acquitted by the Learned Court of Judicial Magistrate, 1st Class vide order/judgment dated 19.09.2013, it was incumbent upon the respondents to issue offer of appointment to the applicant.

5. In response to the notice received from this Tribunal, respondents have filed counter affidavit and submitted that the selection of the applicant was provisional and was always subject to his medical fitness and his suitability was to be decided also keeping in view the pending Court cases, if any. The respondents have also submitted that the Learned Court of Judicial Magistrate, 1st Class, Sonepat has acquitted the applicant vide judgment dated 19.09.2013 holding that the prosecution has miserably failed to prove its case beyond reasonable doubt. However, the acquittal was because the prosecution witnesses turned hostile and also in view of the fact that the said criminal case was not properly prosecuted by the prosecution. Moreover, keeping in view the nature of offences for which the applicant has been prosecuted, the respondents could not take a risk. In this background, the respondents have passed the impugned order dated 22.04.2016 as the request of the applicant for appointment to the post of Driver has been rejected by the Committee constituted by the respondents to consider such cases keeping in view the fact that the applicant was prosecuted

for rash and negligent driving also causing death of a human being and the applicant was not acquitted of the charges levelled against him on merits. Learned counsel for the respondents has relied upon the judgment of Hon'ble Apex Court in the case of **Delhi Administration through its Chief Secretary and Ors. Vs. Sushil Kumar**, JT 1996(10)SC 34, para-3 of which reads as under:-

"3. This appeal by special leave arises from the order of the Central Administrative Tribunal, New Delhi made on September 6, 1995 in OA No. 1756/91. The admitted position is that the respondent appeared for recruitment as a Constable in Delhi Police Services in the year 1989-90 with Roll No.65790. Though he was found physically fit through endurance test, written test and interview and was selected provisionally, his selection was subject to verification of character; and antecedents by the local police. On verification, it was found that his antecedents were such that his appointment to the post of Constable was not found desirable. Accordingly, his name was rejected. Aggrieved by proceedings dated December 18, 1990 culminating in cancellation of his provisional selection he filed OA in the Central Administrative Tribunal. The Tribunal in the impugned order allowed the application on the ground that since the respondent had been discharged and/or acquitted of the offence punishable under Section 304 IPC, under Section 324 read with 34 IPC and under Section 394 IPC, he cannot be denied the right of appointment to the post under the State. The question is: whether the view taken by the Tribunal is correct in law? 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 physically found 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 forces 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 focussed this aspect and found him not desirable to appoint him to the service."

6. In rejoinder, learned counsel for the applicant submits that once the applicant has been acquitted of the charges levelled against him after full consideration of the prosecution case and the prosecution miserably failed to prove the charges levelled against the accused, it can be treated that the accused was honourably acquitted. In this regard, he has referred and relied upon the judgment of the Hon'ble Apex Court in the case of **Stateof M.P. & Ors. Vs. Parvez Khan**, [Civil Appeal No. 10613/2014 arising out of SLP(C) No. 36237 of 2012].

7. We have gone through the pleadings on record, considered the submissions made on behalf of the parties and have also gone through the law laid down by the Hon'ble Apex Court in the case of **Sushil Kumar** (supra) as well as in the case of **Parvez Khan** (supra). Hon'ble Apex Court has considered its judgment in **Sushik Kumar** (supra) while deciding the issue raised in **Parvez Khan** (supra). In **Parvez Khan** (supra), the respondents had applied for compassionate appointment after death of his father, who was working in Madhya Pradesh Police. The competent authority sent his record for police verification. It was reported that the respondent was involved in two criminal cases. In one case, he was prosecuted for offences under Sections 294, 323, 324, 325 and 506-B/34 of IPC and in the other under Sections 364, 394 and 451 of IPC. The Superintendent of Police held that he was not eligible for

appointment in government service and closed his case. Aggrieved of the decision of the Superintendent of Police, the respondent had challenged the same before the Hon'ble High Court by filing a Writ Petition No. 15052/2008 on the ground that in the first case he was acquitted and in the second case he was discharged on account of compounding of the offences. The Learned Single Judge dismissed the Writ Petition. On appeal, the Division Bench took a different view. It was held that the object of verification was to verify suitability of a candidate and since the respondent was acquitted in both the criminal cases, he could not be considered unsuitable and accordingly the Division Bench directed consideration of the case of the respondent afresh in the light of observations in the order within three months. Aggrieved thereby, the State has preferred the Civil Appeal. The Hon'ble Apex Court after considering its own judgment in **R.P. Kapur Vs. UOI**, AIR 1964 SC 787, **Deputy Inspector General of Police & Anr. Vs. S. Samuthiram**, 2013(1) SCC 598, **RBI Vs. Bhopal Singh Panchal**, 1994(1)SCC 541 and also its judgment in **Sushil Kumar** (supra) has ruled in para-11 as hereunder:-

"After due consideration, we are of the view that the impugned order cannot be sustained. Refusal by the competent authority to recruit the respondent on the ground of criminal antecedents is not liable to be interfered with....xxxx"

In para-13 in the case of **Parvez Khan** (supra) the Hon'ble Apex Court has ruled as under:-

"xxxx A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was completely exonerated. Persons who are likely to erode the credibility of the police ought not to enter the police force. No doubt the Screening Committee has not been constituted in the case considered by this Court, as rightly pointed out by learned counsel for the Respondent, in the present case, the Superintendent of Police has gone into the matter. The Superintendent of Police is the appointing authority. There is no allegation of mala fides against the person taking the said decision nor the decision is shown to be perverse or irrational.

There is no material to show that the appellant was falsely implicated. Basis of impugned judgment is acquittal for want of evidence or discharge based on compounding."

8. In view of the law laid down by the Hon'ble Apex Court in the cases, referred to herein above, it is evident that the competent Disciplinary Authority is entitled to decide and reject the candidature of a candidate on the basis of his involvement in a criminal case even if the candidate has been acquitted but the acquittal is on account of the case had been compounded or prosecution has failed to prove the allegation in the criminal case for the witnesses turning hostile etc. In the present case, on perusal of the order/judgment dated 19.09.2013 of the Learned Court of the Judicial Magistrate 1st Class, Sonepat, it is evident that the applicant has been acquitted on account of the fact that Learned Court has found that the prosecution has miserably failed to prove his case beyond reasonable doubt wherein witnesses have turned hostile. The applicant is seeking appointment as a Driver, where careful driving is sine-qua-non. He was earlier working as a Driver when rash driving happened and the said criminal case was launched. His acquittal is not on merits. After taking into consideration these facts, the Committee, constituted by the respondents had not found the applicant fit for the post of Driver and therefore the respondents have passed the

impugned order. Accordingly, we do not find any illegality in the impugned order.

9. In view of the aforesaid facts and law, we are of the considered view that the O.A. is devoid of any merit. Accordingly, the same is dismissed. However, in the facts and circumstances of the present case, there shall be no order as to costs.

(R.N. Singh)
Member (J)

(Pradeep Kumar)
Member (A)

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