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CENTRAL ADMINISTRATIVE TRIBUNAL.  
PRINCIPAL BENCH

OA No. 645/2003

New Delhi. dated this the 18<sup>th</sup> day of August, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman  
Hon'ble Shri S.K. Naik, Member (A)

Shri Girish Chander (Roll No. 121)  
Recruit Constable (Bugler) of Delhi Police  
S/o Shri Govind Ram  
R/o H-58, New Police Lines  
Kingsway Camp  
New Delhi.

...Applicant

(By Advocate: Shri Anil Singhal)

versus

1. Commissioner of Police,  
Police Head Quarters,  
IP Estate, New Delhi
2. Dy. Commissioner of Police,  
HDQRS (Establishment) PHQ,  
IP Estate, New Delhi

... Respondents

(By Advocate: Shri Ajesh Luthra)

ORDER

Justice V.S. Aggarwal:-

Shri Girish Chander (applicant) had made an application for appointment as Constable (Bugler) in Delhi Police. He qualified in the written test and was asked to appear before the authorities for physical measurement and stamina test. He was called for trade test and for interview on 19.4.2000. The applicant was to fill up an attestation form. At the time of filling up the attestation form, it came to the notice of the applicant that information required by clause 12 of the attestation form could not be given inadvertently when he filled up the application form. Applicant informed the



authorities about a criminal case pending against him vide First Information Report No.339/1993 with respect to offences punishable under Sections 325/34 of the Indian Penal Code registered at Police Station Model Town. Applicant was directed to report for medical examination. Meanwhile, a show cause notice was served for cancellation of the candidature of the applicant which is stated to have since been cancelled. Applicant in the meanwhile had been acquitted by the court of Metropolitan Magistrate. By virtue of the present application, he seeks quashing of the show cause notice and the subsequent order cancelling his candidature.

2. The application has been contested. The basic facts were not in dispute. It has been pointed that the character and antecedents of the applicant were verified. It was intimated that the applicant was involved in a case First Information Report No.339/93 with respect to offences punishable under Sections 325/34 of the Indian Penal Code. The applicant in his application form had not mentioned this fact despite a clear warning that furnishing of false information or suppression of any factual information would lead to disqualification rendering the applicant unfit for the job. The show cause notice was served and on consideration of the same, the candidature of the applicant had been cancelled. In the opinion of the respondents, it was rightly so done.



3. During the course of submissions. the learned counsel for the respondents had produced the application form filled up by the applicant which clearly indicated that in the column as to if there is any criminal or other case pending against him (column No.11), the applicant had used the word "No" indicating that no such case is pending against him. There is a clear warning given in the application form that furnishing of false information or suppression of information can disqualify a person.

4. The learned counsel for the applicant contended that despite the same and the show cause notice having been served, the applicant was still called for the medical examination and, therefore, the said notice must be deemed to have been waived. We have no hesitation in rejecting this claim.

5. Waiver is a conscious abandonment of right of a party. It can be done expressly or impliedly. There is no abandonment of a right because the show cause notice had been served and on receipt of the reply, the order had been passed. Merely because if the applicant was called for medical examination in routine, it will not tantamount to holding that the respondents have waived the right or condoned the false information given by the applicant.



6. In that event, the learned counsel for the applicant relied upon a decision of the Supreme Court in the case of **Commissioner of Police, Delhi & Anr. v. Dhaval Singh**, JT 1998 (9) SC 429. In the cited case, there was an omission on the part of the respondent to give information against the relevant column in the application form about the pendency of a criminal case. He had subsequently voluntarily conveyed to the Commissioner of Police about the mistake. Despite receipt of the communication, the candidature of Dhaval Singh was cancelled. The Supreme Court held that the candidature could not have been withheld on that count because of the mistake that had earlier been committed. The findings reached were:-

"5. That there was an omission on the part of the respondent to give information against the relevant column in the Application Form about the pendency of the criminal case, is not in dispute. The respondent, however, voluntarily conveyed it on 15.11.1995 to the appellant that he had inadvertently failed to mention in the appropriate column regarding the pendency of the criminal case against him and that his letter may be treated as "information". Despite receipt of this communication, the candidature of the respondent was cancelled. A perusal of the order of the Deputy Commissioner of Police cancelling the candidature on 20.11.1995 shows that the information conveyed by the respondent on 15.11.1995 was not taken note of. It was obligatory on the part of the appellant to have considered that application and apply its mind to the stand of the respondent that he had made an inadvertent mistake before passing the order. That, however, was not done. It is not as if information was given by the respondent regarding the inadvertent mistake committed by him after he had been acquitted by the trial court- it was much before that. It is also obvious that the information was conveyed voluntarily. In vain, have we searched through the order of the Deputy

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Commissioner of Police and the other record for any observation relating to the information conveyed by the respondent on 15.11.1995 and whether that application could not be treated as curing the defect which had occurred in the Form. We are not told as to how that communication was disposed of either. Did the competent authority ever have a look at it, before passing the order of cancellation of candidature? The cancellation of the candidature under the circumstances was without any proper application of mind and without taking into consideration all relevant material. The tribunal, therefore, rightly set it aside. We uphold the order of the Tribunal, though for slightly different reasons, as mentioned above."

The decision referred to above clearly shows that therein the Supreme Court noted as a fact that there was a mistake on the part of the person concerned.

7. Can in the facts of the present case be it stated that there was a mistake on the part of the applicant? The answer would be in the negative. We have already pointed above that the applicant in the application form that was filled up had specifically stated that he is not involved in any such matter. It was after one year that he had given the information. It cannot, therefore, be taken that it was a case of mistake. The principle of law is well-settled as in the case of **Delhi Administration Through its Chief Secretary and Others v. Sushil Kumar**, (1996) 11 SCC 605 that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post or not. In the cited case, though Shri Sushil Kumar had been acquitted, still



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the Supreme Court deemed it not necessary to interfere because it was held that what is relevant is the conduct and character of the candidate. It was observed:-

"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 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 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."

In the face of this authoritative pronouncement, we find no reason as to why the discretion so exercised should be interfered with.

8. We are conscious of the decision of the Rajasthan High Court in the case of **Khama Ram Vishnoi and ors. v. State of Rajasthan and others** in Civil Writ Petition No.2843/1998 decided on 8.2.2000. It is indeed of no avail to the applicant. It was on perusal



of the relevant rules that the High Court had held that there was no provision in the Rules of 1989 which debars a candidate who was involved in a criminal case or against whom a criminal case was pending from the employment in police service. The precise findings of the Rajasthan High Court read:-

"29. A combined look at Rules 13 and 15 demonstrates that conviction of a candidate in a case involving moral turpitude and violence has a material bearing with his appointment in the police service and if the candidate is found guilty of suppressing such material information he may in addition to rendering liable himself to criminal prosecution may be debarred from employment under the Government. In view of Note (1) of Rule 13 information which relates to the conviction of a candidate can be termed as 'material information'. Information relating to involvement in a criminal case or pendency of criminal case at the date of the application in my considered opinion is hardly relevant. If such information is suppressed it does not amount to suppression of material information. There is no provision in the Rules of 1989 which debars the candidates who was involved in a criminal case or against whom a criminal case is pending from the employment in police service. Circular issued by the Director General of police on April 29, 1995 is relevant only to the extent in so far as it explains moral turpitude and 'violence' and not beyond that."

That indeed is not the position herein. As already pointed above in the case of Sushil Kumar (supra), the Supreme Court had categorically held that it is for the authorities to consider whether a particular person should be retained in a disciplined force or not.




9. The Delhi High Court in the case of **Ravinder Singh v Union of India & ors.** in Civil Writ Petition No.3091/1996 had also considered a somewhat similar situation on 20.4.1998. A perusal of the said judgement shows that the High Court was basically concerned with a case where the concerned person had pleaded that he was not aware of any criminal proceedings against him because he had not received any notice from any court. That is not the position herein. Therefore, the case of Ravinder Singh (supra) would be distinguishable.


10. A perusal of the record reveals that it could not be an inadvertent mistake on the part of the applicant. He was very positive in his assertion when he filled up the application form that he was not involved in a criminal case. It is not a case of immediately discovering his mistake and communicating the same. The delay is not at all explained. The subsequent acquittal is immaterial. Once the information had been given which is wrong, the authorities could rightly consider whether the applicant would be a fit person to be selected as such. The decision had been arrived at holding that he is not a desirable person to be appointed in Delhi Police. There is no ground in face of the aforesaid to interfere in the said discretion.

11. Resultantly, the present application being

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without merit must fail and is dismissed. No costs.

  
(S.R. Naik)  
Member (A)

  
(V.S. Aggarwal)  
Chairman

/sns/