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Central Administrative Tribunal, Principal Bench

Original Application No.1990/2003

New Delhi, this the 13th day of January, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman

Hon'ble Mr. R.K. Upadhyaya, Member (A)

Sandeep Kumar
S/o Shri Balbir Singh,
R/o F-117, Panchsheel Garden,
Mera Gali Naveen Shahdara
Delhi-32

...Applicant

(By Advocate: Shri Arun Bhardwaj)

Versus

1. The Commissioner of Police,
Police Headquarters,
I.P. Estate, New Delhi.
2. The Dy. Commissioner of Police,
HQRS. Estt.
Police Headquarters,
I.P. Estate, New Delhi

...Respondents

(By Advocate: Shri Ajesh Luthra)

O R D E R

By Justice V.S. Aggarwal, Chairman

Applicant Sandeep Kumar applied for the post of Head Constable (Ministerial) in Delhi Police on 24.2.99. He successfully qualified all the tests and had filled up the necessary form. On 3.4.2001, he submitted his attestation form. In the attestation form, he clearly mentioned that because of the dispute with the tenant, a case was registered against him, his mother and father for the offences punishable under Section 325/34 of the Indian Penal Code. He also mentioned that the matter had been compromised.

2. On 2.8.2001, a notice to show cause was issued to the applicant asking him as to why his candidature for the post of Head Constable (Ministerial) should not be



cancelled because he had concealed the fact of his involvement in the criminal case. The applicant submitted a reply stating that he has not concealed the fact of the involvement with any oblique motive. On 29.5.2003, his candidature was cancelled.

3. By virtue of the present application, the applicant seeks quashing of the order of 29.5.2003 by virtue of which his candidature has been cancelled. He also seeks a direction to appoint him in Delhi Police on the post referred to above with consequential benefits.

4. The petition has been contested. The respondents plead that an advertisement appeared to fill up 128 posts of the Head Constables in two leading newspapers and in the employment news. The applicant had submitted his application form. He was declared selected provisionally subject to verification of his character and antecedents. His character and antecedents were verified. It transpired that he was involved in case FIR No.326 dated 21.7.96 with respect to offences punishable under Section 325/34. On a compromise, he was acquitted. The case of the applicant was examined in the headquarters and it was found that he had not disclosed his involvement in the application form despite clear warning that in case of false information, the person could be disqualified and declared unfit for employment. A show cause notice was issued. The applicant submitted his reply. It was thereafter that because of the furnishing of said false information that his candidature had been withdrawn. It is contended that the order is



valid and in accordance with the law and procedure.

5. We have heard the parties counsel and have seen the relevant record.

6. To keep the record straight, we deem it necessary to mention some of the other facts. Admittedly when the application form was filled up by the applicant in the year 1999. against the column "as to if he was ever involved in a criminal case", he had submitted the answer in emphatic 'no' when on that date, a case had been registered against him with respect to offences punishable under Section 325 read with Section 34 of the Indian Penal Code and on a compromise, he had been acquitted on 13.1.98. When this fact had come to the notice of the respondents, they had served the following show cause:

"You, Sandeep Kumar, S/o Shri Balbir Singh, Roll No.5301 had submitted an application form for the post of Hd. Const.(Min.) in Delhi Police. On your selection to the above said post, you were called to fill-up the attestation form and other forms. Your character and antecedents were got verified through DCP/Special Branch, Delhi. As per verification report of DCP/Special Branch, Delhi, you were involved in Case FIR No.362/96 dated 21.07.96 U/S 325/34 IPC PS Shahdara, Delhi in which you were acquitted on compromise by the Hon'ble Court of Sh.K.S. Pal, ACMM, Shahdara, on 18.01.1996.

You did not mention your involvement in the above said case in your application in column No.12(a) & (b) of the application form. Thus, you have concealed the facts about your involvement in the above said criminal case at the time of filling-up of the application form which contains the warning at the top "the furnishing of false information or suppression of any factual information in the attestation form/application form would be a disqualification and is likely to render the candidate unfit for employment under the government.

You, Sandeep Kumar, Roll No.5301 are hereby called



upon to show cause within 15 days from the date of receipt of this notice as to why your candidature should not be cancelled for concealing the above facts. In case no reply is received within the stipulated period it will be presumed that you have nothing to say and the case will be decided ex-parte."

7. The applicant had submitted the reply. He had admitted that he failed to mention this fact in the application form. It was an unintentional omission. There were no malafides on his part. He submitted an additional reply also. The Deputy Commissioner of Police had considered the same and had withdrawn the candidature.

8. Learned counsel for the applicant had drawn our attention to the fact that in similar cases, certain other persons who had also suppressed the said fact, had been allowed to continue and the cases of Constable Anand Kumar and Parveen Kumar were specially highlighted.

9. On the strength of this contention, it has been urged that the applicant has been dealt with unfairly and has been discriminated.

10. We are conscious of the fact that the Delhi High Court in the case of Raj Kumar vs. Union of India and others in Civil Writ Petition No.6672/2000 decided on 18.10.2001 had held:

"In the present case also, we find discrimination writ large on the record. Though it is explained by L/C for respondents that there were some distinguishing features between the two sets of constables and that the cards of the reinstated lot were found good on re-verification as these carried dates prior to the date of recruitment and were found tallying with the official record, we feel that any such distinction becomes irrelevant once



departmental authority had proceeded on the premises that registration with employment exchange and requirement of a registration card was not fatal to the appointment and on that basis had reinstated similarly situated constables even though small in number. Any minor variation or difference in degree of defects in the cards pales into insignificance in such a situation. We are, therefore, of the view that Departmental Authority ought to have applied the same standard and treated the similarly circumstanced alike. Having failed, it had only exposed the action to the charge of arbitrariness and discrimination rendering it unsustainable in the process.

Mr. Kamal Deep's apprehension that Delhi Police establishment would be jolted if these petitions were allowed was misplaced to say the least. Even if it was, it could not be allowed to obstruct the course of justice."

11. The principle is well settled that each case has to be dealt with on its own merits. It has to be examined in the facts and circumstances of that particular case. It has to be decided by the department as to whether in that particular facts, suppression of facts would entail withdrawal of candidature or any other action. The Supreme Court had considered a similar controversy in the case **State of Bihar vs. Kameshwar Prasad Singh and Another**, 2000 SCC (L&S) 845 and held:

"30. The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to them. Similarly wrong judgement passed in favour of one individual does not entitle others to claim similar benefits. In this regard this Court in *Gursharan Singh v. New Delhi Municipal Committee*, (1996) 2 SC 459 held that citizens have assumed wrong notions regarding the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea of equality as enshrined in Article 14 of

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the Constitution by way of writ petition filed in the High Court. The Court observed: (SCC p.465 para 9)

"Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination."

Again in Secy. Jaipur Development Authority v. Daulat Mal Jain. (1997) 1 SCC 35 this Court considered the scope of Article 14 of the Constitution and reiterated its earlier position regarding the concept of equality holding: (SCC pp.51-52, para 28)

"Suffice it to hold that the illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalised. In other words, judicial process cannot be abused to perpetuate the illegalities. Thus considered, we hold that the High Court was clearly in error in directing the appellants to allot the land to the respondents."

12. Identical is the position herein because if certain persons, even if assumed, have been given the illegal benefits that does not mean that all other persons even if they have committed similar dereliction, should be awarded the benefit. The applicant cannot claim that he must be allowed the said benefit. We, therefore, have no



hesitation in rejecting the said argument.

13. In that event, learned counsel for the applicant contended that concealment of fact was not a material fact and nor it was an intentional concealment. Reliance was placed on 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. Perusal of the cited judgement reveals that the Rajasthan High Court has proceeded on the premise that there was no provision in the rules of 1989 which debars the candidates against whom a criminal case is pending from the employment in the police service. The findings of the said High Court are:

"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."

14. In the present case in hand, we have already



pointed above that in the application form itself, it had been mentioned that suppression of facts would entail rejection of the application. Therefore, the decision of the Rajasthan High Court must be held to be distinguishable.

15. Our attention has been drawn towards the decision of the Supreme Court in the case of Sengara Singh and others vs. State of Punjab and others, (1983) 4 SCC 225. Perusal of the cited judgement reveals that there was a mass dismissal of police personnel for misconduct of participation in unlawful agitation. Majority of them were reinstated except the petitioners before the Supreme Court. The Supreme Court held that criteria for depriving those petitioners was not disclosed and reasons were unconvincing. It is patent from the facts narrated above that the cited judgement was confined to the peculiar facts of that particular case. Consequently, it will have no application in the present controversy.

16. Whether it is a material concealment of fact or unintentional concealment of fact, is entirely within the domain of the concerned authorities. In fact, the respondents' learned counsel while controverting the plea of the applicant's learned counsel that the applicant had not correctly understood the question, contended that after 2-1/2 years only the applicant had thought it appropriate to point out the correct facts.

17. The Supreme Court had considered this controversy

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in the case **Delhi Administration Through its Chief Secretary and Others v. Sushil Kumar**. (1996) 11 SCC 605. It held that verification of character and antecedents is a necessary ingredient. It is for the appropriate authority to consider whether the candidature has to be cancelled or not. The Supreme Court had returned the findings:

"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."

18. Not only this, a Division Bench of the Delhi High Court in the case of **Virender Pal Singh v. Union of India**, 2002 (3) ATJ 561 was concerned with a similar controversy. The petitioner therein had applied for the post of Constable. It was found that he had failed to disclose the material facts and his candidature was cancelled. The Delhi High Court held that the candidature was rightly



cancelled. The findings read:-

"9. A person who is to be appointed as Constable, in our opinion, should disclose all material facts. It was for the appointing authority to consider as to whether the details provided by the candidate are true or false. Concealment of material facts for the purpose of obtaining appointment itself may be a ground for cancellation of the appointment. In the Application Form itself the petitioner was required to give a declaration to the effect that endorsement therein is true to the best of his knowledge and belief and in the event of any information found wrong, he can be dismissed from service. He thus knew that any wrong information or concealment of fact may entail his dismissal from service. It is, therefore, not a case where the court is called upon to pose a question as to whether despite conviction in a trickling matter, a person should be denied appointment or not. In *Shishpal* (supra) the decision was rendered in the peculiar facts of the case. It was stated in that case that the concerned employee was provisionally selected subject to police verification. The police found his involvement in two case which facts he did not disclose in his application. The Tribunal found that he had served for long 5 years and there had been no adverse report against the conduct of the applicant."

19. This Tribunal even in the case of **Hasmuddin v. Govt. of NCT of Delhi and others** in O.A. No.7/2002 decided on 8.11.2002 had also held:

" 11. With this backdrop, one can revert back to the facts of the present case. As already pointed above, the applicant was aware of the pending First Information Report in which he was acquitted but he informed the department that he was never involved in such matter. On verification in October, 2000, it transpired that the information given was not correct. The learned counsel for the respondents was right in pointing that on coming to know that it has come to the notice of the authorities, the applicant immediately in January 2001, wrote to the authorities that he had been involved in such a case in which he was acquitted. The fact remained that the applicant had suppressed the material fact. It also cannot be denied that he was not aware of it. It cannot be termed to be an inadvertent mistake. Once there was a conscious



omission for which the authority would be well within its rights to conclude that the applicant's candidature should be withdrawn. We find nothing illegal in this regard to interfere."

20. More recently in the case of Kendriya Vidyalaya Sangathan and others vs. Ram Ratan Yadav, JT 2003 (2) SC 256, while dealing with a similar controversy, the Supreme Court held:

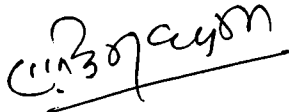
"8. The object of requiring information in columns 12 and 13 of the attestation form and certification thereafter by the candidate was to ascertain and verify the character and antecedents to judge his suitability to continue in service. A candidate having suppressed material information and/or giving false information cannot claim right to continue in service. The employer having regard to the nature of the employment and all other aspects had discretion to terminate his services, which is made expressly clear in para 9 of the offer of appointment. The purpose of seeking information as per columns 12 and 13 was not to find out either the nature or gravity of the offence or the result of a criminal case ultimately. The information in the said columns was sought with a view to judge the character and antecedents of the respondent to continue in service or not."

21. The applicant cannot take advantage of the decision of the Supreme Court in the case of Commissioner of Police, Delhi and anr. vs. Dhaval Singh, JT 1998 (9) SC 429. This is for the reason that in the said case, the Supreme Court had given a finding of fact that there was an inadvertent omission on the part of the applicant. In the present case, it cannot be so stated because we have already pointed that the applicant had stated the correct facts only after 2-1/2 years of the submission of the application form which was wrongly filled up. We have no reason to believe that the applicant did not correctly understand the question which otherwise also is a fact

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within the domain of the administrative authorities.

22. For these reasons, we are of the considered opinion that the application is without merit. It must fail and is accordingly dismissed.



(R.K. Upadhyaya)
Member (A)



(V.S. Aggarwal)
Chairman

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