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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2842/2003

New Delhi this the 25th day of November, 2003

**Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)
Hon'ble Shri S.A.Singh, Member (A)**

Shri Subhash Kumar Yadav,
Recruit Constable (Ex.) in Delhi
Police S/O Sh.Bhagwan Singh Yadav,
R/O Vill,.Silarpur
PO Naghori Tehsil Behror,
Distt.Alwar Rajasthan

..Applicant.

(By Advocate Shri Anil Singal)

VFRSUS

1. Govt.of NCT of Delhi through
Commissioner of Police, Police
Headquarters, I.P.Estate, New Delhi.
2. Dy.Commissioner of Police,
2nd Bn.DAP, New Delhi Police Lines
Kigsway Camp, Delhi.

..Respondents

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

This application has been filed by the applicant impugning the action taken by the respondents in issuing the show cause notice dated 7.10.2003 and the order dated 5.11.2003 (Annexures A.1 and A2).

2. The brief relevant facts of the case are that the applicant,while duly filling up the application form for appointment as Constable (Executive) in Delhi Police, according to him, had mentioned the relevant facts relating to the criminal case FIR No.37/99 under Sections 2147/323/341 IPC in which he had already been found guilty and bound down for two years and under Section 3 of the SC/ST Act in which he had already been acquitted

by order dated 29.8.2000. The applicant states that he had been found provisionally suitable for selection as Constable (Exe.) in Delhi Police after qualifying the physical, medical, written examination as well as interview/personality test.

3. The respondents have issued ^{a)} show cause notice to the applicant dated 7.10.2003 to which he also filed his reply on 21.10.2003 (Ann.A.3). By the impugned order dated 5.11.2003, the respondents have stated that he has not been found suitable for the post of Constable (Exe.) in Delhi Police and hence, his candidature for that post was cancelled.

4. Learned counsel has relied on the judgement of the Hon'ble Supreme Court in Pawan Kumar. Vs. State of Haryana (1996(4)SC 17) in which the following directions were given:

"Before concluding the judgement, we hereby draw the attention of Parliament to step in and perceive the large many cases which per law and public policy are tried summarily, involving thousands and thousands of people throughout the country appearing before summary courts and paying small amounts of fine, more often then not, as a measure of plea-bargaining. Foremost among them being traffic, municipal and other petty offences under the Indian Penal Code, mostly committed by the young and/or the inexperienced. The cruel result of a conviction of that kind and a fine of payment of a paltry sum on plea-bargaining is the end of the career, future or present, as the case may be, of that young and/or inexperienced person, putting a blast to his life and his dreams. Life is too precious to be staked over a petty incident like this. Immediate remedial measures are, therefore, necessary in raising the toleration limits with regard to petty offences especially

when tried summarily. Provision need be made that punishment of fine up to a certain limit, say up to Rs.2000 or so, on a summary/ordinary conviction shall not be treated as conviction at all for any purpose and all the more for entry into and retention in government service. This can brook, no delay, whatsoever".

(end with add'l)

5. We have heard Shri Anil Singal, learned counsel for the applicant and perused the relevant documents on record.

6. Learned counsel has vehemently submitted that the impugned order issued by the respondents cancelling the candidature of the applicant for recruitment to the post of Constable (Exe.) in Delhi Police is illegal. He has submitted that the applicant had been found fit by a Committee of officers, including ~~the~~ ^{an} officer who is senior to the officer who had issued the impugned order dated 5.11.2003. He has submitted that the applicant has been acquitted from the criminal charges at the relevant time when he had filled up the application form for consideration for appointment in Delhi Police. He had disclosed all the relevant facts. He has, therefore, submitted that following the judgement of the Hon'ble Supreme Court in Pawan Kumar's case (supra), the impugned cancellation order should be quashed and set aside together with the show cause notice and a direction ^{to be} issued to the respondents to appoint the applicant in the post of Constable (Ex.) with seniority and arrears of pay. He has also submitted that there are similar cases pending in the Tribunal, details of which have not been mentioned in the OA.

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7. The fact that the applicant had mentioned the relevant facts, including his involvement in a criminal case FIR No.37/99 dated 12.9.1999 is not in question. The respondents have issued a show cause notice to him narrating these facts by letter dated 7.10.2003, in which they have mentioned, inter alia, that the applicant had been found guilty in the aforesaid criminal case under Sections 147/323/341 IPC and bound down for two years with a bond of Rs.5000/- vide order dated 29.8.2000. Further the Hon'ble Court acquitted him of the charges under Section 3 (1)(XI) of SC/ST Act by giving benefit of doubt. Incidentally, it may be mentioned that the learned counsel has submitted that he has not attached a copy of the order of the Hon'ble criminal Court about the acquittal of the applicant but does not dispute the fact that the applicant had been acquitted by giving the benefit of doubt to him. The respondents have also clearly stated that these details have been given in the application and attestation forms filled by him on 15.4.2002, respectively. Therefore, the allegations against the applicant are not with regard to the non-disclosure of the facts but the effect of those facts i.e. of conviction/acquittal in the final decision taken by the respondents to cancel his candidature for appointment as a Constable (Ex.) in Delhi Police. The relevant portion of the impugned order issued by the respondents dated 5.11.2003 reads as under:-

"Accordingly your case was examined and you were issued a Show Cause Notice vide this office Memo. No.89634/Rectt. Cell /II Bn.DAP, dated 7.10.2003 as to why your candidature for the post of Const. (Exe.) in Delhi Police should not be cancelled for the allegations mentioned above. In

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response to Show Cause Notice, you have submitted your reply on 21.10.2003 which has been considered alongwith relevant record available on file and found the same not convincing because of the reasons that the Hon'ble Court found you guilty in the above said Crl. Case u/s 147/149/323 IPC and bound down for two years with a bound of Rs.5000/- vide order dated 29.8.2000. Further, you were acquitted of the charge u/s 3 (1)(XI) SC/ST Act by giving benefit of doubt and it cannot be said to be an honorable acquittal. As such, you have been found not suitable for the post of Const.(Exe). in Delhi Police. Hence, your candidature for the post of Const.(Exe) in Delhi Police is hereby cancelled.

8. It is seen from the above order that the respondents have taken into account the reply given by the applicant. They have also given the details and cogent reasons as to why a decision has been taken by the competent authority that the applicant will not be suitable for appointment to the post of a Constable (Exe.) in Delhi Police. The reasons given by the respondents cannot either be held to be unreasonable or arbitrary to justify arriving at a conclusion that the decision of the competent authority is contrary to law and rules. The decision of the Hon'ble Supreme Court in **Pawan Kumar's** case (supra) refers to those cases of summary trial and as mentioned by the Supreme Court "more often than not" as a measure of plea bargaining. The Hon'ble Apex Court has also stated that the result may be cruel in cases of convictions for petty offences under the IPC which are mostly committed by young and/or inexperienced persons where some fine has been imposed against him. That is not at all the situation in the present case. The applicant himself has admitted and disclosed the fact that he was involved and found guilty in a criminal case under Sections 147/149/323 IPC and bound down by the competent criminal Court for two years with a

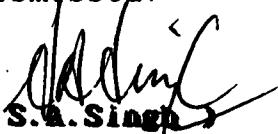
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bond of Rs.5000/- by order dated 29.8.2000. He has also admitted that he has been later acquitted under Section 3 (1)(xi) of SC/ST Act by giving him benefit of doubt.

9. Under the Delhi Police Act, 1978 read with Section 4 of the Delhi Police (Appointment and Recruitment) Rules, 1980, the Deputy Commissioner of Police is the appointing authority for Constables. In the circumstances we find no illegality in the order passed by the DCP IInd Dn.DAP, New Delhi cancelling the candidature of the applicant for appointment as Constable (Exe.) for the reasons mentioned in that order. Therefore, the contention of the learned counsel for the applicant that in the Selection Committee a superior officer might have been present will not assist him as the appointment is to be done by the Deputy Commissioner of Police (DCP). Apart from this fact, there is also no such averment in the OA and this plea is also rejected.

10. Therefore, in the particular facts and circumstances of the case, the decision taken by the competent authority that the applicant is not a suitable person for appointment to the post of Constable(Exe.) in Delhi Police cannot be held to be either arbitrary or illegal or against the relevant Rules. We have also considered the other grounds taken by the learned counsel for applicant but do not find any merit in the same.

11. In the result for the reasons given above, we find no merit in this application. OA is accordingly dismissed.


(S.A. Singh)
Member (A)


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)