

7

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.3197/2003

New Delhi, this the 19th day of August, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A.SINGH, MEMBER (A)

Vikas Dhama
s/o Shri Ramesh Dhama
r/o Village - Binauli
Distt-Bagpat (UP)
PIN - 250345.

... Applicant

(By Advocate: Sh. Sachin Chauhan)

Versus

1. Commissioner of Police
Delhi, Police Headquarters,
I.P.Estate, MSO Building
New Delhi.

2. Dy. Commissioner of Police
IInd Bn., D.A.P.
Delhi.

.. Respondents

(By Advocate: Ms. Rashmi Chopra)

O R D E R

Justice V.S. Aggarwal:-

Applicant (Vikas Dhama) during the year 2002 had applied for the post of Constable. This was in pursuance to the advertisement that appeared in the Employment News dated 13.4.2002. The applicant was put through Physical Endurance and Measurement Test/Written Test and Interview and was declared provisionally selected subject to verification of character and antecedents and final checking of documents and medical fitness. He was declared medically fit. However, on verification of his character and antecedents, it was found that he was involved in a criminal case with respect to the offence punishable under Section 294 of the Indian Penal Code. Police Station, Civil Lines, Meerut and later on it had been decided by the Court on 6.2.2003. The applicant had disclosed all these facts. The



respondents felt that applicant had indulged into an act of moral turpitude and his enrolment in police force was not desirable. The applicant was served with a notice to show cause dated 7.10.2003, copy of which reads:

"You, Vikas Dhama S/O Sh. Ramesh Dhama had been provisionally selected as Const. (Exe.) in Delhi Police during the recruitment held in the year 2002 against Roll No.423912, subject to verification of your character & antecedents, medical fitness etc. On receipt of your character & antecedents report from the authority concerned, it revealed that you were involved in a Crl. Case FIR No.61/2002 u/s 294 IPC, PS Civil Lines Meerut (UP). However, later on your name was discharged from the case vide order dated 6.2.2003 as the Hon'ble court did not believe the witnesses. On scrutiny of your Application Form and Attestation Form filled up by you on 14.4.2002 & 17.12.2002, respectively, it has been found that you have given the details of the above-said Crl. Case in the relevant columns of Application Form & Attestation Form. However, the allegations are of indulgence into an act of moral turpitude and such type of person is not suitable for enrolment in a uniformed force.

You, candidate Vikas Dhama (Roll No.423912) are, therefore, called upon to Show Cause as to why your candidature for the post of Const. (Exe.) in Delhi Police should not be cancelled for the allegation mentioned above. Your reply, if any, should reach to this office within fifteen days from the date of receipt of this notice, failing which it will be presumed that you have nothing to say in your defense and the case will be decided ex-parte on its merit."

2. After considering the reply of the applicant, his candidature had been cancelled vide the following order:

"You, Vikas Dhama S/O Sh. Ramesh Dhama had been provisionally selected as Const. (Exe.) in Delhi Police during the recruitment held in the year 2002 against Roll No.423912, subject to verification of your character & antecedents, medical fitness etc. On receipt of your character & antecedents report from the authority concerned, it revealed that you



were involved in a Crl. Case FIR No.61/2002 u/s 294 IPC, PS Civil Lines Meerut (UP). However, later on your name was discharged from the case vide order dated 6.2.2003 as the Hon'ble court did not believe upon the witnesses. On scrutiny of your Application Form and Attestation Form filled up by you on 14.4.2002 & 17.12.2002, respectively, it has been found that you have given the details of the above said Crl. case in the relevant columns of Application Form & Attestation Form.

2. Accordingly your case was examined and you were issued a Show Cause Notice vide this office Memo No.8964/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 on the allegations mentioned above. In response to Show Cause Notice, you have submitted your reply on 21.10.2003 which was considered alongwith record available on file and the same has been found not convincing because of the reasons that the allegations are of indulgence into an act of moreal turpitude and such type of person is not suitable for enrolment in a uniformed force. As such, your candidature for the post of Const. (Exe.) in Delhi Police is hereby cancelled."

3. By virtue of the present application, applicant seeks quashing of the said orders.

4. The petition has been contested. There is a little dispute raised with respect to the facts which we have referred to above. It is admitted that the candidature of the applicant was cancelled. Respondents' plead that the pleas of the applicant had been carefully considered. The applicant was indulged in an act of moral turpitude. It was found that he was not suitable for enrolment in a uniformed force.

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5. Respondents further plead that maintainance of discipline is foremost and fundamental essential for smooth and successful running of an organisation. Therefore, it was felt that applicant was not a proper person to be so enrolled.

6. We have heard the parties counsel.

7. From the nature of the facts stated above, it is obvious that the applicant whose matter was sent to the Court with respect to the offence punishable under Section 294 of the IPC, has been discharged by the concerned Judicial Magistrate at Meerut.

8. Section 239 of the Code of Criminal Procedure reads as under:

"239. When accused shall be discharged.- If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."

9. These provisions clearly show that discharge is totally different from acquittal. If on examination of the accused or after recording of evidence or otherwise, Magistrate considers that charge is groundless, the accused shall be discharged. The effect of discharge under Section 239 of the Criminal Procedure Code is the same. Thus, there is no bar of trial if subsequently a fresh material is forthcoming. Discharge can be on perusal of the police report. If a matter where there is no proper



investigation, there is no evidence collected, there is no sanction to prosecution or such like matters, the accused can still be discharged with liberty to the prosecution to file a fresh challan. However, the present case, as would be noticed hereinafter, is on a different footing. The learned judicial Magistrate recorded that the ingredients of the offence punishable under Section 294 of the IPC are not at all drawn. Since it was not a fit case, therefore, the learned Magistrate discharged the applicant.

10. In the impugned order that has been passed, it has been noted that the explanation of the applicant is not convincing. In the first instance, it must be mentioned that whenever information is given pertaining to the cognizable offence to the Duty Officer, he is duty bound to record the same in the form of a First Information Report or in the prescribed form. This is obvious from the plain reading of Section 154 of the Criminal Procedure Code.

11 The Supreme Court in the case of STATE OF HARYANA AND OTHERS, v. CH. BHAJAN LAL AND OTHERS, AIR 1992 SC 604 has categorically held:

"It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154 (1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information."

12. On behalf of the respondents, reliance is being placed on the decision of the Apex Court in the case of DELHI ADMINISTRATION THROUGH CHIEF SECRETARY



AND OTHERS v. SUSHIL KUMAR, (1996) 11 SCC 605. The Supreme Court held that verification of character and antecedents is one of the important criteria to test whether selected candidate is suitable to a post under the State or not. If a person is discharged or acquitted, it has nothing to do with verification of character and antecedents. The findings of the Supreme Court reads:

"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 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 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 it not desirable to appoint him to the service."

13. From the aforesaid, we have no hesitation in concluding that even if a person has been discharged, the authorities can consider the character and antecedents of the person concerned and see if he is suitable to be recruited or not. However, when such a power is given, it is not an unfettered, arbitrary power. Arbitrariness is sworn enemy of reasonableness. Once a power has been given, it has

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-7- 3

to be exercised in reasonable manner rather than in arbitrary manner. The scope of judicial review, of course, is limited. It can only be limited to decision making process and co-related facts. This Tribunal will not force ultimate decision.

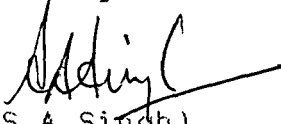
14. Reverting back to the facts of the case, from the impugned order reproduced above, it is clear that the candidature of the applicant has been rejected on the ground that the Hon'ble Magistrate did not believe upon the witnesses and therefore, discharged the applicant. It appears that there has been non-application of mind on behalf of the authorities. No witness had been examined. The question of believing the same, therefore, did not arise.

15. The applicant has placed on the record a copy of the order passed by the learned Judicial Magistrate. It is in vernacular. It shows that the learned judicial Magistrate had recorded that the alleged incident took place within the boundary wall of a house. It was not a public place and, therefore, Section 294 of the IPC was not attracted. In other words, it was found that no case was drawn as per the assertions of the prosecution against the applicant. When no case has at all been drawn as per the prosecution, the applicant has been discharged. In this backdrop, therefore, to state that the applicant was indulged into an act of moral turpitude and there were allegations to this effect, would be contrary to the law. If law does not bar any such act at a private place, in that event to state that there are

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allegations of indulgence to any act of moral turpitude, is not suitable, would be totally incorrect and against the law of the land. In the peculiar facts, therefore, it is a fit case for setting aside the impugned order.

16. For these reasons, we allow the present application and quash the impugned order. The respondents may consider the claim of the applicant afresh in accordance with law and in the light of the findings recorded above.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

/NSN/