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Court : Central Administrative Tribunal CAT Delhi

Decided On : Aug-06-2012

Judge : The Honourable Mrs. Justice Meera Chhibber, Member (J) & Shailendra Pandey, Member (a)

Appeal No. : O.A. NO. 3899 OF 2011

Appellant : Subhash Chander

Respondent : The Commissioner of Police, Police Headquarters, I.P. Estate, New Delhi and Another

Advocate for Pet/Ap. : For the Appellants: Ajesh Lutha, Advocate. For the Respondents: Mrs. Renu George, Advocate.

Judgement :

ORDER

Mrs. Meera Chhibber, Member (J)

1. Applicant has challenged order dated 11.5.2011 whereby his candidature for the post of Constable in Delhi Police has been cancelled (page 16).

2. The brief facts, as stated by the applicant are that he had applied for the post of Constable (Executive) Male in Delhi Police in the year 2009. After he cleared all the tests/examination, he was provisionally selected to the said post, subject to verification of character and antecedents etc. Applicant was acquitted in FIR No. 147/2003. As far as FIR No. 200/2004 is concerned, his name was not even included as an accused yet he was issued a show cause notice on the ground that he has no regard for woman and had indulged in a heinous offence. The allegations show that applicant is aggressive in nature, therefore, he should explain why his candidature should not be cancelled. Applicant immediately gave reply to the said show cause notice by placing on record the judgment dated 25.11.2005 whereby he had been acquitted in FIR No. 147 dated 8.9.2003 and in the other FIR 200/2004, he was not even sent for trial because he was not found involved during investigation. He had thus submitted that it is wrong to state that applicant has aggressive nature. He has thus prayed that the show cause notice should be quashed. However, without considering his defence, the disciplinary authority cancelled his candidature vide order dated 11.5.2011 in a mechanical manner. Being aggrieved, applicant filed OA No. 2135/2011 but the same was withdrawn with liberty to file a better petition on 2.8.2011 (page 32). Thereafter, applicant sought copy of minutes and recommendations of the Screening Committee under RTI, which shows that the members had not even applied their minds to the facts as given above. He has thus prayed that the impugned order may be quashed and set aside and respondents be directed to restore his candidature and offer him appointment to the post of Constable (Executive) (Male) with all consequential benefits.

3. Reliance has been placed by the applicant on number of judgments given by this Tribunal and by the Hon'ble High Court of Delhi.

4. Respondents on the other hand have opposed the OA. They have stated, that the applicant had disclosed the fact of his involvement in the criminal cases, namely, FIR 147 dated 8.9.2003 under Sections 307/382/323/147 IPC and FIR 200 dated 24.11.2004 under Sections 451/323/147/149 IPC. Accordingly, the case of the applicant was examined by the Screening Committee of PHQ constituted by the Commissioner of Police who declared him as not suitable for police Service.

FIR No.147, dated 08.09.2003 u/s 307/383/323/143 IPC, PS Goluwala, District Hanuman Garh (Raj.) was registered on the complaint of Smt. Kamla Devi, W/o Shri Bhanwar Lal, who reported that applicant along with others namely Prakash, Manoj, Sheopat and Raju abused her. When she objected, he along with others beat her and her daughter namely Maya Devi with lathies. He gave blow with lathi on her head. During trial, the prosecution had failed to prove the guilt of the accused persons, as such, the Hon'ble Court acquitted the applicant u/s 147/148/149 IPC by giving him benefit of doubt as well as u/s 323/341 by way of compromise vide its order dated 25.11.2004, (2) FIR No.200, dated 24.11.2004 u/s 451/323/147/149 IPC PS Goluwala District Hanuman Garh (Raj.) was registered on the complaint of Shri Harphool Singh, who reported that his brother-in-law namely Papiya had occupied his land. On 23.11.2004 at 4.00 PM, Panchayat was held at his house which was attended by Papiya and his in-laws. The complainant asked Papiya to leave his land, on this Papiya hit applicant with Gandasi. Upon this, he also slapped Kalu Ram and beaten him with hand blows and lathies. On hearing a noise, Dharampal and Jagdish also reached at the spot. During investigation, the applicant along with other accused namely Karni Ram, Jaggu Ram Manoj, Raj Kumar, Om Prakash, Prakash, Munshi Ram were found innocent u/s 341/323. Hence, their names were removed and a Charge Sheet u/s 323/341 IPC was filed against accused Papiya @ Amar Singh.

5. The Screening Committee observed that applicant had abused the ladies and assaulted them. It shows that he has no regard for women and had indulged in a heinous offence. In other case, though he was found innocent but allegations showed his aggressive nature, therefore, the Screening Committee rightly did not recommend the applicant for appointment to the post of Constable (Exe.) in Delhi Police.

6. Applicant's candidature has been cancelled after following principles of natural justice by giving him show cause notice, therefore, the OA may be dismissed.

7. Reliance has been placed by the respondents on the judgment of Hon'ble Supreme Court in (Civil Appeal No. 13231/1996) in the case of on DAD Vs. Sushil Kumar where it has been held as follows:-

“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 antecedents 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 directions 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 in the conduct or character of a candidate to be appointed to a service and not actual result thereof. If the actual result happened to be a particular way, the law will take care of the consequences. The consideration relevant to the case of the antecedents of the candidate. Appointing authority, therefore, has rightly focused this aspect and found him not desirable to appoint to the service”.

8. We have heard both the counsel and perused the pleadings also.

9. Counsel for the applicant strenuously argued that since applicant had already been acquitted in one criminal case and was not even made an accused in the other, his candidature could not have been cancelled on the basis of allegations made in above cases. The order has been passed without application of mind, therefore, the OA may be allowed.

10. Perusal of the records show that in Police Verification Report, the comments given by the Additional District Magistrate read as follows:-

which means that though FIR No.200/2004 was registered against the applicant but after investigations, he was not even found involved in the case. Similarly, case No. 147/2003 was compromised.

11. In these circumstances, the question is whether applicant's candidature could have been cancelled by relying on these very cases.

12. At this juncture it would be relevant to refer to few judgments given by the Hon'ble High Court of Delhi. In Devender Kumar Yadav Vs. Government of NCT of Delhi and another (W.P.) No.8731/2011) decided on 30.03.2012, it was held as follows:-

What has to be seen in such cases is as to whether the material witnesses were examined or not. If they are examined, but do not support the prosecution and consequently it is held that the charge against the accused does not stand proved, that would not be a case of technical acquittal. We would like to note here that no independent inquiry was held by the respondents to verify the truthfulness or otherwise of the allegations which were made against the petitioner in the FIRs that were registered against him.

The Screening Committee which considered the case of the petitioner had no material before it which could give rise to an inference that the petitioner had actually committed the offences for which he had been prosecuted. As noted earlier, there is a presumption of innocence attached to an accused in a criminal case and the onus is on the prosecution to prove the charges leveled against him. Acquittal of the accused, after trial, only strengthens and reinforces the statutory presumption, which is otherwise available to him. We, therefore, hold that the view taken by the Screening Committee was not based on some legally admissible material and therefore cannot be sustained in law.

13. Similarly in Government of NCT of Delhi Vs. Jai Prakash Writ Petition) No. 3566/2010 decided on 24.5.2010 the same view was taken earlier which reads as under:-

15. In the case of Ghurey Lal Vs. State of Uttar Pradesh, (2008) 10 SCC 450, the Apex has held that the accused is presumed innocent until proven guilty. The trial court's acquittal bolsters the presumption that he is innocent. On proper analysis of the ratio and findings of this case, it is revealed that the findings of the trial court are based on the fundamental principles of the criminal jurisprudence. Presumption of innocence in favour of the accused further gets reinforced and strengthened by the acquittal of the trial court. Due or proper weight and consideration must be given to the trial court's decision.

16. Thus, taking into consideration the legal position as enunciated above, the decision of the authorities in having refused to give the respondent employment despite his selection merely because he was involved in a criminal case though he was acquitted much before his date of appointment and for which he had given all the information to the authorities as is required under the law, cannot be upheld and therefore, the decision of the Tribunal in allowing the OA cannot be faulted with in any manner whatsoever. Accordingly, the writ petition is dismissed with no orders as to cost.

14. At earlier point of time in Government of NCT of Delhi and Another Vs. Robin Singh in Writ Petition No. 2068/2010, Hon'ble High Court of Delhi ruled that being charge with the offences which are not cognizable and do not involve moral turpitude and ultimately being acquitted from the same, a person should not be barred from being seeking employment on being declared successful in selection.

15. To be precise, it was observed as follows:

28. Thus, we have a guideline of serious and grave offences being the touchstone in case of the door being shown to the government servant.

29. Looking through the prism of case law pertaining to when can the door be shown to a government servant and by doing reverse engineering we can safely say that what is good for the door to be shown, is good for prohibiting entry through the door, and thus while denying public employment with respect to the offence committed by a person, it can be said, and we say so, that it may be a serious violation of the constitutional right of a citizen to be fairly treated in the W.P.(C) No.2068/2010 Page 16 of 24 matter of public employment if trivial offences committed by the citizen would justify the State shutting its eyes and denying employment.

30. Having answered the question posed in para 1 above, and the answer being in favour of the citizen, we need to answer the further question as to which offences or brush therewith, would justify non entry into public service.

31. We have a clue; of offences being grave, serious and involving a moral turpitude justifying public employment not being given. These would certainly not justify the offender being inducted into public service. None would disagree that convicted and fined for parking a car in a no-parking area or convicted for over-speeding would attract the de minimis principle, but the problem would be in cases closer to the borderline. For therein would lie the problem as to in which side of the boundary line should they be categorized.

32. It is unfortunate that in India, the Government does not come out with white papers of the deliberations at various seminars, but we find a reference made to the All India Seminar on Correctional Service? held at New Delhi in March 1969, to consider and lay guidelines pertaining to the problem of rehabilitation of ex-convicts, with emphasis on the need for their employment under the government. Vide OM dated 2.2.1973, No.6857-GSI-72-2755, the State of Haryana has listed the penal offences which have been treated as grave, serious and involving moral turpitude. The said OM lists the under-noted penal offences as grave, serious and involving moral turpitude, disentitling the convict to public employment; the offences are:- Sections 120-A, 121-A, 122 to 124, 161, 161-W.P.(C) No.2068/2010 Page 17 of 24 1A, 165, 167, 181, 182, 193 to 201, 205, 209, 293, 302, 304, 307, 354, 359, 362, 363 to 366, 366-A, 366-B, 367 to 373, 376, 377, 379, 380, 391, 392, 398 to 400, 403, 404, 406 to 409, 417 to 421, 449, 450, 453 to 458, 465 to 468, 471 to 476, 477- A, 489-A, 489-B, 489-C, 489-D, 489-E, 493 to 498 of the Penal Code.

33. We are a little surprised at the list as it excludes offences such as promoting enmity or doing acts prejudicial to maintenance of harmony i.e. offences punishable under Section 153-A IPC. It excludes offences pertaining to mutiny and its abetment i.e. offences under Sections 131 to 136 IPC. But we do not comment. However, what we find is, the common thread of including all offences against women and such offences which are punishable with imprisonment for life as also imprisonment for a term exceeding three years and above. We get a clue. Offences which do not carry a mandatory sentence of imprisonment and it to be imprisoned the term is less than 3 years and the offender can be let off with payment of fine, are not included in the said list. It is an undisputed fact that there

are no rules to guide the authorities in Delhi Police as to in what cases despite acquittal, the person can be kept out of service or can be deprived of employment.

34. That apart, as generically understood, offences involving moral turpitude can be classified with reference to the act being one which shocks the moral conscience of the society in general and this can be determined with reference to the motive of the offender i.e. whether the motive which led to the act was a base one or alternatively whether on account of the act having been committed the perpetrator could be W.P.(C) No.2068/2010 Page 18 of 24 considered to be of a depraved character or a person who was to be looked down upon by the society.

35. Today, with plea bargaining being a well-recognized facet of the administration of criminal law and a part of criminal jurisprudence in India, we do perceive a large number of cases involving thousands and thousands throughout the country, appearing before the Summary Courts and paying small amounts of fine, more often than not, as a measure of plea bargaining. Foremost would be amongst them petty crimes committed mostly by the young and/or the inexperienced. Some may even undergo a petty sentence of imprisonment of a week or ten days. We may also notice that Section 302 Cr.P.C. prescribes for taking note of compoundable offences at the instance of the complainant itself and there are cases where compounding can take place with the permission of the Court.

36. Life is too precious to be staked over petty incidents and the cruel result of conviction for petty offences being the end of the career, the future and the present, of young and inexperienced persons cannot blast their life and their dreams.

37. In a growing democracy, where the systems are failing and the weak and the downtrodden are hardly given the opportunity to sharpen their intellect thereby diminishing the ability of their consciousness to act as a mirror to their acts and actions, it is high time that the executive brings into place a policy where summary/ordinary conviction should not be treated as a conviction for entry or retention in government service.

38. Till then, it would be the duty of the Court to interpret the law by harmonizing human sufferings and human wants, delinquencies and criminal tendencies; conscious of the fact that passengers on Spaceship Earth are the rich and the poor, the needy and the well-off, the hungry and the well-fed, the educated and the uneducated. The need of the hour is to understand that criminals are not born and are not irredeemable brutes. Crime may be a disease but not the criminal, who are a kind of psychic patients and to understand, that anti-social maladies are mostly the result of social imbalances. It must be remembered that on the one hand, social stresses, for various reasons, explosively mount in the real world's hard environs and the harsh remedy of heartless incarceration and ouster from society deepens the criminality. The swing of the pendulum to the humanist side requires respect for the worth of personhood and the right of every man and woman in its residual human essence.

39. What is the gravamen of the allegation constituting the act committed by the respondent which was treated as voluntarily causing hurt is not known to us. What was the nature of insult heaped upon the complainant which attracted the offence punishable under Section 504 IPC and what was the act which attracted the crime of criminal intimidation is also not known. But from a trinity of the three i.e. the alleged offence punishable under Section 323 IPC, Section 504 IPC and Section 506 IPC we can safely presume that the allegation against the respondent was of abusing the complainant and threatening to beat him followed by simple beating.

40. All these offences are non-cognizable and needless to state are bailable. No moral turpitude, as W.P.(C) No.2068/2010 Page 20 of 24 generically understood, is involved. The acts do not shock the moral conscious of the society and with reference to the motive do not evidence a person with depraved character. The offences are not of the kind which would justify dismissal or removal from service, if the respondent had committed the same if in service.

41. Thus, being charged with the said offences, of which the respondent has ultimately been acquitted, would not be a bar and cannot be treated as a bar to seek public employment and on being successful at the entrance exam, to be denied the same.

16. In Commissioner of Police and Ors. Vs. Sandeep Kumar reported in JT 2011 3 SC 484, Honble Supreme Court ruled that at the age of 20 years youngsters often commit indiscretions, and such indiscretions can often been condoned. Taking such view Honble Supreme Court uphold the decision of Delhi High Court passed by it reversing the order of this Tribunal of dismissal of original application of Mr.Sandeep Kumar whose candidature for appointment to the post of HC (Min.) in Delhi Police was cancelled. Relevant excerpts of said judgment read as under:-

8. We respectfully agree with the Delhi High Court that the cancellation of his candidature was illegal, but we wish to give our own opinion in the matter. When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often been condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

9. In this connection, we may refer to the character 'Jean Valjean' in Victor Hugo's novel 'Les Miserables', in which for committing a minor offence of stealing a loaf of bread for his hungry family Jean Valjean was branded as a thief for his whole life. The modern approach should be to reform a person instead of branding him as a criminal all his life.

10. We may also here refer to the case of Welsh students mentioned by Lord Denning in his book 'Due Process of Law'. It appears that some students of Wales were very enthusiastic about the Welsh language and they were upset because the radio programmes were being broadcast in the English language and not in Welsh. Then came up to London and invaded the High Court. They were found guilty of contempt of court and sentenced to prison for three months by the High Court Judge. They filed an appeal before the Court of Appeals. Allowing the appeal, Lord Denning observed :-

"I come now to Mr. Watkin Powell's third point. He says that the sentences were excessive. I do not think they were excessive, at the time they were given and in the circumstances then existing. Here was a deliberate interference with the

course of justice in a case which was no concern of theirs. It was necessary for the judge to show - and to show to all students everywhere - that this kind of thing cannot be tolerated. Let students demonstrate, if they please, for the causes in which they believe. Let them make their protests as they will. But they must do it by lawful means and not by unlawful. If they strike at the course of justice in this land - and I speak both for England and Wales - they strike at the roots of society itself, and they bring down that which protects them. It is only by the maintenance of law and order that they are privileged to be students and to study and live in peace. So let them support the law and not strike it down.

But now what is to be done? The law has been vindicated by the sentences which the judge passed on Wednesday of last week. He has shown that law and order must be maintained, and will be maintained. But on this appeal, things are changed. These students here no longer defy the law. They have appealed to this court and shown respect for it. They have already served a week in prison. I do not think it necessary to keep them inside it any longer. These young people are no ordinary criminals. There is no violence, dishonesty or vice in them. On the contrary, there was much that we should applaud. They wish to do all they can to preserve the Welsh language. Well may they be proud of it. It is the language of the bards - of the poets and the singers - more melodious by far than our rough English tongue. On high authority, it should be equal in Wales with English. They have done wrong - very wrong - in going to the extreme they did. But, that having been shown, I think we can, and should, show mercy on them. We should permit them to go back to their studies, to their parents and continue the good course which they have so wrongly disturbed." [Vide : Morris Vs. Crown Office, (1970) 2 Q.B. 114]

In our opinion, we should display the same wisdom as displayed by Lord Denning.

11. As already observed above, youth often commit indiscretions, which are often condoned.

17. Thus, the latest view being taken by Courts is show some leniency where the mistake is minor, and does not involve moral turpitude. We need not refer to each and every judgment on the point because all these judgments have been dealt

with in detail in Pappu Lal Meena's case, wherein the following guidelines were also laid down for guidance of Screening Committee to assess the suitability of such candidates who were initially implicated but later acquitted in criminal cases:

(i) The Screening Committee should give due credence/weightage to the report of verification of character and antecedents of the candidate, required to be obtained u/r 25 of Delhi Police (Appointment and Recruitment) Rules, 1980 before his appointment.

(ii) The committee may refer to the material available on record before it such as age of candidate at the time of commission of the alleged offence, the specific allegation against him in the FIR, his family background and job profile etc. before arriving at a conclusion regarding his suitability or otherwise for appointment.

(iii) While taking a final view on suitability, the Committee may also take note of circumstances during development/progress of the investigation and trial to arrive at a conclusion i.e whether witnesses were won over or prevented to come forward to support the charge by or at behest of accused in any manner.

(iv) Having done the aforementioned exercise, the Screening Committee must take into account the nature and gravity of offence in which the candidate was involved and the order passed in criminal proceedings".

18. In above backdrop, if we test the facts of the present case, we find that the above guidelines have not been followed in letter and spirit. In fact, perusal of the minutes of the Selection Committee shows the remarks given against the applicant's name are as follows:

The candidate first abused the ladies and then assaulted them, when it was objected by them. The conduct of the candidate shows that he has no regard for the women and indulged in a heinous offence. In another case, though he was found innocent, the allegations show the aggressive nature of the candidate. He is not fit to be appointed in a disciplined force. Hence, not recommended. meaning thereby that his candidature has not been recommended merely on the basis of allegations made against the applicant without analyzing the points as discussed

in the judgments, as referred to above.

19. We, therefore, quash the orders dated 14.03.2011 and 11.05.2011 and remit the matter back to the authorities to reconsider the case keeping in view the law as discussed above and then pass a reasoned and speaking order within eight weeks from the date of receipt of a copy of this order under intimation to the applicant.

20. With the above direction, this OA stands disposed of. No order as to costs.

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