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**Court** : Central Administrative Tribunal CAT Delhi

**Decided On :** Feb-14-2012

**Judge** : V.K. Bali, Chairman &Amp; the Honourable Dr. Veena Chhotray, Member (J)

**Appeal No.** : Original Application No.1328 of 2011

**Appellant** : Manoj Kumar

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

**Advocate for Pet/Ap.** : For the Applicant: Ajesh Luthra, Advocate. For the Respondents: Amit Anand, Advocate.

**Judgement** :

Dr. Veena Chhotray:

1. The applicant, a provisionally selected candidate for the post of Constable (Driver) in Delhi Police, is aggrieved at the cancellation of his candidature on the ground of unsuitability due to criminal antecedents. By way of relief, the OA seeks quashing the impugned Show Cause Notice dated 16.8.2010 and the Cancellation Order dated 3.2.2011 (Annex A/2 and A/1 respectively). Besides, directions to the respondents for offering appointment to the applicant for this post with all

consequential benefits including seniority and monetary benefits have been sought.

No interim relief in this case has been granted by the Tribunal.

2. The learned counsels Shri Ajesh Luthra and Shri Amit Anand would represent respectively the applicant and the respondents.

3. The claims in this case are being agitated in the context of a recruitment process for Delhi Police for the post of Constable (Driver) undertaken during the years 2007-2010. The applicant had been provisionally selected, subject to satisfactory Police verification of character and antecedents. The impugned action has been taken considering the background of three criminal cases against the applicant. The factum of such an involvement had been disclosed by the applicant himself in the Application and the Attestation Forms. Subsequently, however, in course of the verification report, the full details had been revealed. In all these cases the applicant had been acquitted by the trial court.

On examination of the matter in detail by the Screening Committee constituted by the Commissioner of Police, Delhi to assess the suitability of the applicant for the post of Constable (Driver), a Show Cause Notice dated 16.8.2010 was issued proposing the cancellation of his candidature. In his reply dated 30.8.2010, the applicant had made his submissions against the proposed course of action. The respondents, however, on consideration of the reply to the Show Cause Notice have vide the order dated 3.12.2011 cancelled the candidature of the applicant for the post in question.

This has occasioned the present OA.

4. In this case, the following three FIRs had been registered against the applicant:

“1. FIR No.316/2006 u/s 279/337 IPC, P.S. Sadar, Gohana, Sonepat, Haryana dated 08.10.2006.

2. FIR No.100/2007 u/s 279/337/338 IPC, P.S. Sadar, Gohana, Sonepat, Haryana dated 24.05.2007.

3. FIR No.260/2007 u/s 279/337/304-A-IPC, P.S. Sadar, Gohana, Haryana dated 04.12.2007."

All the three cases pertained mainly to charges of rash and negligent driving on a public way endangering life and personal safety of others. These cases had been registered on the complaints of the persons allegedly involved in the accidents resultant to such rash driving. Further, as per the FIRs, the complainants and the persons along with them had received injuries. In one case a victim had also died on the spot. Except in the criminal case (FIR No.100/2007) where even as per the FIR, it was a case of mistaken identity, the applicant was alleged to be the driver. In all the three cases, the applicant was the sole accused.

In the criminal trials, however, all the three cases had ended in acquittal of the accused. In these cases, the prosecution witnesses had been declared hostile. While in the criminal case arising out of the FIR 100/2007 there was an additional finding of the court about the failure to connect the accused with the crime in question; in all the three cases the acquittal was on the ground of the inability of the prosecution to prove the charges.

5. In the reply to the Show Cause Notice, the applicant had submitted about there having been no concealment on his part regarding these criminal cases and all material facts having been duly disclosed by him in the relevant forms for appointment to the this post. A plea of the applicant being utterly innocent and having been falsely implicated under these criminal cases was also raised. The acquittal by the criminal court after full-fledged trial was emphasized to prove the innocence of the applicant. The opinion of the Screening Committee was contended to be erroneous and arbitrary. As per the applicant, there had been no appropriate consideration of the judgments of acquittal. Besides, the department had attempted to over-reach the judgments of a competent judicial body. In support, the decisions of the Tribunal and the Delhi High Court in certain other cases had been referred.

5.1 These grounds have been reiterated in the instant OA. It has further been contended that as per the trial court's judgment, there was no evidence, direct or circumstantial, in support of the charges leveled against the accused [Ground 'E

(iv)']. Various judicial rulings regarding the impact of 'acquittal' in criminal cases have also been cited. An averment of there being no statutory rules prescribing a disqualification on this ground has been made (Ground 'Y'). The validity of the cancellation order has also been questioned on the ground of being passed by a DCP rank officer whereas the recommendations in this case had been made by the Screening Committee chaired by the Special Commissioner of Police.

5.2 Shri Ajesh Luthra, the learned counsel for the applicant, would seek to emphasize that the allegations in all the three FIRs had not been proved. An additional argument of even the Motor Vehicle Act not prescribing suspension or cancellation of the driving licence of a person unless it was a case of 'conviction' by the criminal court would also be adduced by the learned counsel.

6. As per the respondents, the selection in this case was provisional and subject, inter alia, to character and antecedents verification. The matter had been duly examined by a high level Screening Committee constituted for this purpose by the Commissioner of Police. On examination of all the relevant facts the applicant has not been found suitable. The plea regarding the cancellation order having been issued by an incompetent authority has been rebutted with the submission about the DCP rank being the Appointing Authority for posts upto Sub-Inspector. The issuance of Show Cause Notice and grant of a personal hearing to the applicant before passing the impugned order have also been referred to emphasize the due observance of the principles of natural justice on the part of the respondents.

6.1 Shri Amit Anand, the learned counsel for the respondents would emphasize that in view of the antecedents of the applicant, he had clearly been found unsuitable for the post of a Constable (Driver). It would be submitted that a driver in Delhi Police is expected to bear onerous responsibilities of driving in pursuit and under tremendous pressure. Hence, with the kind of antecedents the applicant has, he cannot be considered as suitable for appointment under a disciplined Force such as the Delhi Police.

7. The applicant has placed reliance on the judicial rulings on the subject of impact of acquittal in a criminal case besides referring to several individual cases in which the decision of the Tribunal and the High Court had been in favour of the

candidates. The main reliance placed by the respondents is on the Apex Court's decision in Delhi Administration vs Sushil Kumar {(1996) 11 SCC 605} and Daya Shankar Yadav vs Union of India and Ors (CA No.9913/2010).

8. The issue at hand has been the subject of judicial adjudication in a number of cases by the Central Administrative Tribunal, the Delhi High Court as well as the Apex Court. Hence this would need to be viewed within the broad contours of law on the subject as developed in course of the judicial pronouncements. Further, there would be a need to distinguish the law on the subject from individual decisions in particular cases, depending upon the facts and circumstances therein.

9. While deciding the OA 2939/2009 (Kulbir Singh vs GNCTD and Anr) decided on 26.2.2010 by a Coordinate Bench of this Tribunal (of which the present Member (A) was also a member), the following had been identified as the milestone judgments:

The decision of the Apex Court in Sushil Kumar's case (supra);

The Delhi High Court/s judgment in the WP(C) No.6042-43/2005 and other connected writ petitions in the matter of Govt. of NCT of Delhi and Ors vs Deepak Kumar and Ors decided on 28.11.2005;

The decision by the Central Administrative Tribunal in the OA 178/2008 [Anoop Kumar vs Govt. of NCT and Anr) decided on 23.7.2008 (in this one of us, the Chairman was a Member);

The Tribunal's decision in the OA 2255/2009 {Praveen Yadav vs GNCT of Delhi and Ors} decided on 12.11.2009.

9.1 On the basis of these judgments, the law on the subject had been summed up in Sudeep Kumar vs Commissioner of Police and Ors {OA No.2853/2009} as below:

"On the aforesaid basis, we may conclude the law on the subject by stating that whereas the respondents do indeed have a right to verify the character and antecedents of the applicant before issuing the final appointment order and also

that mere acquittal in the criminal case would not entail a claim for suo moto appointment, in this case under the Delhi Police; at the same time, the matter needs a careful consideration by the respondents before denying a person the right for appointment for all times to come. Such a view cannot be taken lightly or perfunctorey, and would only be justified after a very thorough consideration of all the attendant circumstances of the case and the order of acquittal. Besides, there is also the need for extreme caution in this respect so that the quasi judicial authorities do not over step their legitimate domain and give a finding over and above the findings recorded by a Trial Court. While dealing with such cases, discrimination also has been held to be an important ground.

To the above, we would like to add that the proposition about acquittal in a previous criminal case suo moto entailing the right for appointment of a provisionally selected candidate has not been laid down in any of the decisions on the subject. Similarly, right of the respondents to consider the matter of suitability of such a candidate in a sensitive force like the Delhi Police has also not been questioned. In fact, the host of cases cited before us in the OA deal with only specific aspects that need to be cautioned against while undertaking such an exercise of appraisal. On the other hand, what is required is a very thorough consideration of all the attending circumstances of the case, while carefully guarding the thin line of remaining within the legitimate domain and not overreaching the judicial findings. Arriving at hasty conclusions on isolated facts is also to be cautioned against."

9.2 The respondents have placed reliance, inter alia, on the Apex Court's judgment in Daya Shankar Yadav's case. As regards, the relevance of this decision even in cases like the present one was dealt with by us in the recent decision of the Coordinate Bench in the OA 2158/2011 (Shri Deepak Kumar vs GNCTD) decided vide the order dated 8.2.2012:

"Even in Daya Shankar Yadav's case (supra), while dealing primarily with the issue of non-disclosure of involvement in a criminal case, the Hon'ble Apex Court had considered the consequences visiting an employee or a prospective employee making affirmative answers to the queries. Para 9(a) had dealt with the scenario of

an employer refusing offer of appointment or discharging from service an already employed probationer in cases where the acquittal was by giving benefit of doubt for want of evidence. Further Para 9(b) had mentioned that where the criminal cases disclosed relating to offences 'which were technical, or of a nature that would not affect the declarant's fitness for employment' or where the declarant had been honourbly acquitted and exonerated, the fact of prosecution in a criminal case may be ignored."

9.3 The pivotal argument about the impact of acquittal in a criminal case on suitability or otherwise of a candidate for appointment to a post under the State, particularly in Delhi Police, had also been dealt with by us in the aforesaid OA 2158/2011 as follows:

"9.2 Likewise, the acquittal in the criminal case per se would not confer the said entitlement for appointment under the government. The judicial rulings cited in this context regarding the stigma of involvement in a criminal case being erased by the acquittal, as a general principle, are in a different factual context. What is relevant in the present context is the suitability or otherwise of a candidate for appointment particularly in the Delhi Police. This point is abundantly borne out by the decision of the Delhi High Court dated 10.9.2010 in WP(C) No. 6145/2010 in Mahesh Dahiya Vs. GNCTD and Anr. Referring to its earlier decision dated 25.10.2010 in WP (C) 2068/2010, Govt. of Delhi and Anr. Vs. Robin Singh, the following was observed:-

We had emphasized in the said decision that the issue had not to be decided with reference to a person being convicted or acquitted at a criminal trial. The nature of the acquisition, the quality of the evidence and the offence charged of were held by us as requiring consideration.

9. Our observations and findings as also conclusions, briefly culled out by us hereinabove, are sought to be pressed in by learned counsel for the petitioner who urges that since the petitioner has been acquitted at the criminal trial, he cannot be deprived employment.

10. We are afraid that we cannot concur."

10. A significant development of law on the subject took place as per the following judgments:

i) Mahesh Dahiya vs GNCTD (OA No.1642/2009) decided on 21.4.2010;

Mahesh Dahiya vs GNCTD and Anr (WP (C) No.6145/2010) decided on 10.9.2010.

Sanjeev Kumar vs GNCTD (OA No.2429/2006) decided on 26.4.2011.

Sanjeev Kumar vs GNCTD (WP (C) 5782/2011) decided on 11.8.2011.

Deepak Kumar vs GNCTD (OA 2158/2011) decided on 8.2.2012.

In all these cases the law laid down was that it would be within the legitimate domain of the administrative authorities to consider the residual evidence - omitted from consideration by the criminal court while determining the issue of suitability of a person for appointment under the Delhi Police.

10.1 As this aspect of the law has a critical bearing on the issues raised in the present OA, the following extracts from our order in Deepak Kumar's case (supra) are reproduced to capture the applicability of this basic principle of law on the facts of those cases:

"9.6.1 The present case is found to be one in which applicant along with the co-accused had been charged u/S 302/506 of the IPC. The acquittal had been ordered by the criminal court on the grounds of all the witnesses having been declared hostile. However, while taking this view, there had been no consideration of the fact of the victim in this case (son of the complainant himself) having actually been killed. The several documentary evidences which could have proved as important circumstantial evidences to prove the guilt of the accused persons, had not been taken note by the learned trial court. The details of such evidence have been recorded in the judgment of the trial court itself extracted above in para 8.

We find the present case as squarely covered by the decisions in Mahesh Dahiya and Sanjeev Kumar's cases (supra). In both these cases, the action of the

respondents regarding cancellation of candidature had been upheld at the level of the Tribunal as well the High Court on similar grounds of gravity of the offences and non-consideration of the residual evidence by the criminal court while passing the order of acquittal.

In Mahesh Dahiya's case, the applicant along with two others had been charged with having kidnapped a minor girl and having demanded ransom money for her release. The criminal court had acquitted all the accused on account of the prosecution witnesses i.e. victim, her father and brother having turned hostile. While not going by the mere factum of acquittal, the Hon'ble High Court had taken note of the residual evidence throwing negative light upon the petitioner. These had included the signatures of the father and brother of the victim on the recovery memos relating the ransom money (fake bundles). Their signatures on the arrest memos (all the accused had been arrested in this case); and the statements of the two independent witnesses about testifying the stay of one of the co-accused along with the young girl in a hotel.

In this context, the Hon'ble High Court had made the following observations:-

"11. Our reasons for so holding is that the acquittal of the petitioner is on account of the principal players i.e. the star witnesses of the prosecution turning hostile. But, there is enough residual evidence which throws negative light upon the petitioner. We hasten to add that the burden of proof at a criminal trial being one of proof beyond reasonable doubt would not mean that the evidence cannot be kept in mind for purposes of deciding the propensity, criminal tendencies etc. of a person."

9.6.2 In Sanjeev Kumar's case, the applicant had been charged under Sections 302/307 of the IPC, though subsequently had been acquitted by the criminal court. In this case also, one of the victims had died and other sustained grievous injury. The trial court had acquitted the accused as the witnesses had resiled from their earlier statements and had stated about not being present at the time of the incident. However, the learned coordinate Bench had taken note of the fact that the statement of the person, who was injured, was also relevant and could have thrown light on the manner in which the incident had occurred and involvement of

the accused persons.

9.6.3 Even at the cost of repetition, we find the present case being squarely covered by these two judgments. The offences charged are gravest in nature and the trial court's judgment of acquittal is only on the basis of the prosecution witnesses having turned hostile, without considering the vital documentary evidence in the case.

11. Along with the OA, copies of the trial court's judgments have been enclosed. On their perusal, the following aspects are found to be relevant in the present context:

11.1 As per the FIR No. 100/2007, even according to the registered complaint, the accused driver was stated to be the son of one Shri Jai Singh. As the father of the applicant before us is not Jai Singh but Shri Ram Mehar, hence the present one being a case of mistaken identity even as per the FIR need not be detailed further.

11.2 The most important in the present context is the criminal case arising out of the FIR No.260/2007 dated 4.12.2007, decided vide the trial court's judgment dated 12.12.2009. In this case the charges framed were under Sections 279, 337, 338 and 304A of IPC. The case of the prosecution in brief was that the complainant Vikas along with others including Sharadanand had been coming in a car on 3.12.2007, when at about 8.30 PM, their car had a head-on collision with a jeep being driven at very high speed and without using dipper (the Registration Nos. of the car and the jeep as well as the place of the accident had been specified). While the complainant and his other companions received injuries, Shardanand died on the spot. The injured had been medico-legally examined.

11.2.1 In course of the criminal trial the prosecution had examined four witnesses including the complainant Vikas. All of them had resiled from their earlier statements and refused to identify the accused present in the Court. They were declared as hostile. The learned trial court had arrived at the finding about the prosecution having miserably failed to prove the charges against the accused beyond any reasonable doubt. Non-production of any medico-legal evidence by the prosecution was also adversely commented upon. Reiterating the principle that

suspicion, however strong it may be, cannot take the place of proof, the order of acquittal had been passed.

11.2.2 We find it apt to note at this point not only the gravity of the charges, which included the serious charge of causing death by negligence (Section 304-A), but also the ground of 'acquittal' being non-production of sufficient evidence by the prosecution, including the medico-legal evidence. The critical observations of the trial court about the prosecution are relevant too. The observations of the Hon'ble Delhi High Court in WP (C) No.6145/2010 in Mahesh Dahiya's case, extracted above and reproduced once again for the sake of emphasis, are found to be pertinent to the facts of this case as well:

"We hasten to add that the burden of proof at a criminal trial being one of proof beyond reasonable doubt would not mean that the evidence cannot be kept in mind for purposes of deciding the propensity, criminal tendencies etc. of a person."

11.3 In the third case arising out of FIR No.316 dated 18.10.2006, the charges involved were under Sections 279, 337 and 338 of IPC. The judgment of the trial court was dated 20.4.2009. The complainant in this case was one Damayanti and the date of incident was 8.10.2006. As per the complainant, the accident had occurred in the evening of the said date when she was going in a rickshaw with her son-in-law. Allegedly they had been hit by a car being driven rashly (the car Registration no. was specified). While the driver was stated to have fled after the accident; the complainant had suffered injuries and had been hospitalized.

11.3.1 While elaborating the case of the prosecution, the judicial court's order recorded the following:

"3. The police received a telephonic message that the complaint is admitted in General Hospital, Sonepat having suffered an accident. The Police approached the hospital and recorded the statement of the complainant. Investigations were carried out. Accused Manoj Kumar was arrested. Site plan of the place of occurrence was prepared with correct marginal notes. Statements under 161 Cr. PC of the witnesses were recorded. After completion of usual formalities, challan was presented in the Court for commencement of trial.

4. Copies of the documents as contemplated under section 207 Cr PC were supplied to the accused free of costs."

11.3.2 In course of the trial, two prosecution witnesses had been produced to prove the charges against the accused i.e. the complainant Damayanti and her son-in-law Harbans. Both of them had admitted about the occurrence of the accident with a car on the given date while they were going in a rickshaw. The fact of Smt Damayanti having suffered injuries in the process had also been admitted. However, resiling from their earlier statements, both of them had feigned ignorance about the person who had hit the rickshaw. It had also been stated that they did not know how the complainant got the injuries. The complainant had also denied having made any statement before the Police or having mentioned the car registration number. Both the prosecution witnesses had been declared as hostile.

No other evidence on the basis of the investigations done by the Police had been adduced by the prosecution before the Court. Finding the prosecution evidence as unreliable and inadequate, the order of acquittal of the accused had been passed by the Ld. Court.

11.3.3 In this case also, the sketchiness of the prosecution case itself which proved to be the determining factor behind the 'acquittal' cannot by itself be argued as an extenuating factor sufficient to establish the bonafides of the applicant by way of his character and antecedents, to facilitate the entry in the Delhi Police.

12. One of the legal grounds raised in the OA is regarding the impugned cancellation being in violation of the prescribed conditions of eligibility as per the RRs. Such a plea had on consideration been rejected by the Hon'ble Delhi High Court in the WP (C) No. 5782/2011 (Sanjeev Kumar vs GNCTD and Ors). The Hon'ble High Court had also disfavoured the submissions made on behalf of the petitioner in that case, that while considering the factum of antecedents, neither the competent authority nor the Tribunal could have entered into the reasons of acquittal or the nature of the acquittal and the trial court's judgment was binding in nature.

13. As has been mentioned above, the general judicial pronouncements about the impact of acquittal in a criminal case would not be relevant, in view of the specific consideration of this aspect in the given context of assessing the suitability of a candidate for appointment in Delhi Police. Besides, since each case needs to be examined as per its own peculiar facts and circumstances, we have not found it necessary to look into the details of the other judicial rulings referred on behalf of the applicant. The endeavour on the part of the applicant's learned counsel to derive sustenance from the provisions under the Motor Vehicle Act regarding cancellation of a driving licence only in cases of conviction is also not found to be tenable.

14. To conclude, having considered the facts of the case closely in the light of the development of law on the subject, we are seized with the fact that the appointment in question is for the post of Constable (Driver). The criminal cases also were on the charges of rash and negligent driving. The applicant was the sole accused in all these cases. Of the three criminal cases, at least in two, the acquittal in the trial court is found to be on the basis of inability on the part of the prosecution to prove its case. The sole consideration was on the basis of depositions of the prosecution witnesses, who had been declared hostile. One of the cases involves the serious charge under Section 304-A. The Respondents have found the applicant as unsuitable for the post of Constable (Driver) in Delhi Police keeping in view the various relevant aspects like the nature of involvement of the applicant in the criminal case, gravity of the offence, judgment of the court and grounds of acquittal. There is due observance of the principles of natural justice. As per the settled law, even a selected does not have any legally indefeasible right for appointment. The right of the Appointing Authority to verify the character and antecedents of a candidate before making the appointment has been upheld by the Apex Court. In the given facts of the case, we do not find any justification for judicial interference in the decision taken by the respondents regarding cancellation of candidature of the applicant.

Resultantly, the OA is dismissed with no orders as to costs.

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