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Court : Central Administrative Tribunal CAT Delhi

Decided On : Jan-20-2012

Judge : V.K. Bali, Chairman & the Honourable Dr. Ramesh Chandra Panda, Member (a)

Appeal No. : OA No.2540 of 2011

Appellant : Mandeep

Respondent : Govt. of Nct of Delhi, Through the Commissioner of Police, Police Headquarters, I.P. Estate, New Del

Advocate for Def. : Mrs. Harvinder Oberoi

Advocate for Pet/Ap. : For the Applicant: Anil Singal, Advocate. For the Respondents: Mrs. Harvinder Oberoi, Advocate.

Judgement :

Dr. Ramesh Chandra Panda, Member (A)

1. Shri Mandeep Kumar, the applicant herein, desiring to be a Constable in Delhi Police responded to an advertisement issued in 2009 to fill up 6302 vacancies for the post of Constable (Exe.) Male and applied for the said post under OBC category. He was put through Physical Endurance and Measurement Test, Written

Test and was declared provisionally selected against Roll No.928371, subject to verification of character and antecedents, medical fitness and final checking of documents etc. He was got medically examined and declared fit. The character and antecedents of the applicant were got verified from the authority concerned which revealed that he was involved in two criminal cases (i) FIR No.137 dated 24.06.2005 under Section 147/148/149/336/341/323/451 of the IPC and (ii) FIR No.235, dated 20.09.2005 under Section 341/323 of the IPC both cases registered at Police Station, Chirawa, Distt. Jhunjhunu, Rajasthan. The Trial Court acquitted him vide order dated 14.7.2005 and 05.05.2010 respectively. The respondents on scrutiny of Application and Attestation Forms found that he had disclosed the facts of his involvement in the above said two criminal cases in the relevant columns of the attestation form. Accordingly, the case of the applicant was examined by the Screening Committee constituted for this purpose to examine the circumstances which led to the commission of above offences, nature of offences, grounds of acquittal, judgment of the Trial Court and the role of the candidate. The Screening Committee observed that applicant was involved in two criminal cases wherein he had assaulted the complainants with deadly weapons causing injuries to them. He was found involved in violent act and has no respect for law. In a disciplined force, a person of such temperament is not suitable for appointment in a Delhi Police, as such the Committee did not recommend his case for appointment to the post of Constable (Exe.) Male in Delhi Police. Therefore, the applicant was issued a Show Cause Notice vide Office Memo dated 14.03.2011 (Annexure-A1) proposing cancellation of his candidature for the said post to which he submitted his reply on 22.3.2011 (Annexure-A3). The applicant's grounds were considered along with relevant records and the respondents did not find the same convincing. Thus, in view of the observation made by the Screening Committee he was found not suitable for the post of Constable (Exe.) Male in Delhi Police and his candidature for the said post was cancelled by Memo dated 11.05.2011 (Annexure-A2). Feeling aggrieved, the applicant has approached this Tribunal in assailing (i) the said order 11.5.2011 and (ii) the Show Cause Notice dated 14.3.2011. He has also prayed to direct the respondents to issue letter of appointment to him to the post of Constable (Exe.) with all consequential benefits.

2. Highlighting the background of the case, Shri Anil Singal, learned counsel for the applicant would submit that the applicant disclosed both the criminal cases in his application and Attestation Forms and he was acquitted in both cases. His contention is that acquittal due to compromise is to be treated as on merits as per Section 320 of Cr.P.C. Shri Singal would contend that the respondents cannot sit on appeal on the applicant's acquittal. It was further contended by the counsel for the applicant that the Delhi Police had exceeded its jurisdiction by sitting over the decision of the Trial Court since an acquittal is an acquittal and unless some insinuation or indictment is reflected in the judgment, the same cannot be construed otherwise. Once the case was compromised between the parties then the acquittal is liable to be treated as acquittal on merits as per Section 320 Cr. P.C. Further, mere involvement in a criminal case is not an impediment for appointment to the post of Constable. When, a person who had already been acquitted from the criminal charges, any stigma attached pertaining to the criminal case gets obliterated and appointment cannot be denied. It is further stated that only a conviction is regarded as ineligibility. But the denial of appointment on the ground that the case was compromised was not justified. Applicant, he contends, cannot be discriminated as similarly circumstanced persons have been appointed. He cited the examples of Shri Anoop Kumar, Mintu Yadav, Anil Kumar, Arun Kumar, Sandeep Talyan, Pawan Kumar etc. to state that the applicant is better placed than them and should be offered appointment. His another contention is that nature of offence in both the cases being minor and not grave, those cannot be the basis for denial of appointment to Delhi Police. He distinguished the judgment of Hon'ble Supreme Court in Sushil Kumar's case (supra) and places his reliance on the judgments of Hon'ble Supreme Court in Commissioner of Police and Others Versus Sandeep Kumar [OA No.1430/2007 decided on 17.03.2011] where the judgment of Hon'ble High Court of Delhi dated 31.07.2006 in Sandeep Kumar Versus Commissioner of Police and Others was upheld. Shri Singal would state that applicant's case is fully covered by many judgments of Hon'ble High Court of Delhi and this Tribunal but would limit the same to the following : Delhi Police Versus Omveer Yadav [WP No.12899/09 dated 19.4.2010]; GNCTD Versus Jai Prakash [WP No.3566/2010 dated 24.05.2010]; GNCTD Versus Sunil Kumar [WP No.5768/2010 dated 27.08.2010]; and GNCTD Versus Dinesh [WP

No.5510/2010 dated 11.11.2010].

3. Opposing the above contentions advanced by the counsel for applicant, Mrs. Harvinder Oberoi, learned counsel for the respondents would submit that the action of the respondents under challenge was legally correct. She relied on the judgment of Hon'ble Supreme Court of India dated 04.10.1996 in Civil Appeal No.13231 of 1995 (arising out of SLP(C) No.16989 of 2006) in Delhi Administration Versus Sushil Kumar. She specifically drew our attention to the following paragraph in Sushil Kumar's case '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 is 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 of acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant in the conduct of 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 considerations 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.' Mrs. Harvinder Oberoi would further contend that the Competent Authority constituted a Committee to examine the applicant's suitability for Delhi Police, and as the Committee found him unsuitable, the applicant was accorded an opportunity to explain and thereafter the impugned order was issued. Her contention was that the nature of offence alleged to have been committed and the compromise he arrived with the complainants having resulted in acquittal, the applicant was correctly denied appointment to the Delhi Police, a disciplined force. She, therefore, urges to dismiss the OA.

4. Having heard the contentions of the parties, with the help of the counsel, we perused the pleadings and relied on judgments. The controversy for our

consideration is whether the applicant is to be considered for appointment to the post of Constable (Exe.) Male in Delhi Police?

5. At this stage, we may refer to both the criminal cases to find out the nature of offence and the acquittal ordered by the Trial Court. The 1st criminal case i.e. FIR No.137 dated 24.06.2005 was registered on the complaint of Shri Chand, who reported that on 23.06.2005 accused persons namely, Ramji Lal, Dhanpat, Mange Lal, Babu Lal, Rajender, Ravi Pal, Sandeep etc. blocked the way of his land in a planned way by dropping some soil. They abused complainant and Rattan Singh and tried to kill them. A Panchayat was held on the incident and at that time the applicant along with other accused, all of a sudden assaulted the complainant with lathis, stones and barchhi and caused injuries to the complainant. The Trial Court vide its order dated 14.07.2005 acquitted all the accused including the applicant charged under Section 148/336 of IPC in the absence of proper evidence and under Section 451/149/323 of the IPC due to compromise between both the parties.

6. Further, the second criminal case i.e. FIR No.235 dated 20.09.2005 under Section 341/232 of the IPC was registered on the complaint of Shri Swarup Singh, who reported that on 19.09.2005 at about 8.30 p.m. his brother Satayavir was returning from the fields and near Gidania, he was assaulted with lathi by Hawa Singh and the applicant along with others and caused several injuries to him. When the complainant reached at the spot, the applicant fled away from the spot. The injured was admitted at Chirawa Hospital. The Trial Court vide order dated 05.05.2010 acquitted him along with others for offence under Section 325/323/341 of the IPC due to compromise between both the parties.

7. The acquittal of the applicant is partly on the prosecution failed to prove its case, and partly the complainant and applicant entered into compromise. The Trial Court has acquitted him in both cases. Hence, the applicant cannot be put to a blame worthy position. A stand was taken by the respondents that the applicant was acquitted partly due to the compromise reached between the parties, and as such the acquittal is not honourable. Therefore, respondents found him unsuitable for the post of Constable. This stand was contested by the counsel for the

applicant on the plea that compounding of offences granted by the Trial Court is acquittal under Section 320 of Cr.PC. We have carefully considered this issue. It is noted that the Sub Section 8 of Section 320 envisages that 'a composition of an offence under this Section shall have the effect of an acquittal of the accused with whom the offence has been compounded.' In this regard law is well settled. The Hon'ble Apex Court in Khursheed and Another Versus State of UP [2007-12-SCC-68] has laid the ratio as follows :

“15. Sub-section (8) of Section 320 states that the composition of offence under the section shall have an effect of acquittal of the accused with whom the offence has been compounded. The resultant effect of compounding of offences would be that the accused should be acquitted. In other words, once the offences have been compounded and the requisite permission is granted by the Court, the accused must be acquitted.”

In view of the above, we are of the considered view that the applicant was honourably acquitted in both criminal cases.

8. We are surprised that even though the judicial pronouncements in both criminal cases have gone in favour of the applicant as he has been acquitted, denial of appointment to him for all times to come is really a serious matter. We have very carefully examined the facts of the case in both FIRs, leading to commission of the alleged crimes, nature of offences and we are of the considered view that those do not appear to be so serious or grave or heinous offences for which the applicant can be branded as a criminal for all times to come and prevented employment.

9. A careful study of the facts in Sushil Kumar's case (supra) relied on by the respondents in their impugned order, would reveal that the Hon'ble Supreme Court was considering a case where the candidate did not stand acquitted and the fact of the case was that the candidate concealed in his application and attestation forms about his involvement in a criminal case. In present case, facts are far different the applicant has disclosed both FIRs in the Attestation Form and Application Form. This cannot be called as concealment. Further, the applicant has been acquitted in both criminal cases. In the case of Ghurey Lal Versus State of Uttar Pradesh [2008-10-SCC-450] the Hon'ble Apex Court has held that the

accused is presumed innocent until proven guilty. The Trial Court judgment acquitting the applicant has, therefore, held him as innocent. Non-consideration of the said fact of acquittal and relying more on the allegations/complaints in the FIR though held not proved, the applicant has been denied his legitimate claim to be appointed to the post of Constable (Exe.) Male in Delhi Police. We do not find adequate and convincing reasons behind the stand taken by the respondents.

10. We may, now, refer to some of the latest judgments in the subject which have guided us in the instant OA. In Sandeep Kumar's case (supra) Hon'ble Supreme Court considered the facts of the case and noted that Sandeep Kumar at the relevant time was young, he concealed his involvement in a criminal case under Section 325/34 of IPC which resulted in Sandeep Kumar's acquittal. While holding the cancellation of Sandeep Kumar's provisional selection as illegal and relying on Morris Versus Crown Office [1970-2-QB-114] observed that young people often commit indiscretions and such indiscretions have often been condoned. Youth will be youth; they are not expected to behave in a manner as older people do and minor discretions committed by young people should be condoned rather than to brand as criminals for the rest of their lives. Recently, the Hon'ble High Court of Delhi considered a case similar to the present OA and following the judgment of Apex Court in Sandeep Kumar's case (supra), High Court in the matter of Rajesh Kumar Versus Commissioner of Police and Another [WP(C) No.8223/2011 decided on 22.11.2011] has allowed the Writ Petition and quashed this Tribunal order and inter alia observed in the following manner:-

"7. The hard reality cannot also be lost sight of. A disclosure of the FIR even if leading to acquittal, invariably leads to rejection of the application. The applicants thus cannot be blamed for shying away from making such disclosure and/or from indulging in concealment for fear of rejection at the threshold only without even having any opportunity to explain. We may in this regard also notice that the 'Policy For Deciding Cases of Candidates Provisionally Selected in Delhi Police, Involved in Criminal Cases (Facing Trial or Acquitted)' has been framed vide Standing Order No.398/2010 dated 23.11.2010. The said Policy also provides that even where the disclosure has not been made in the application form and the facts are discovered on verification, the case is required to be referred to the Screening

Committee to assess suitability for appointment. The concept of minor offences and/or offences not involving moral turpitude has also been evolved. The same indicates that the respondents have themselves accepted the judgment of the Apex Court in Sandeep Kumar (supra). The Tribunal has thus erred in ignoring the dicta in Sandeep Kumar and in blindly following the earlier judgments in Daya Shankar Yadav and Ram Ratan Yadav (supra) when the judgment in Sandeep Kumar was an advancement in law.”

Following the dicta of Hon'ble Supreme Court in Sandeep Kumar's case (supra) and that of High Court in Rajesh Kumar's case (supra), the Full Bench of this Tribunal in OA No.2602/2011 decided on 14.12.2011 to follow the said law.

11. Taking into consideration the totality of facts and circumstances of the case; guided by the trite law as stated above and for the reasons stated within, the applicant succeeds in his case. On the basis of above reasoning, we would have normally remitted this case to the concerned authorities to have a fresh look in view of our observations made above, but what we find in the OA is that the applicant's case relates to the year 2009 and considerable time has passed and those selected then are already in position. On two important grounds we do not intend the case to be remitted back to the respondents but to decide the OA in a conclusive manner. (1) It is well settled position in law, as laid by High Court of Delhi and Supreme Court that young people commit indiscretions which being minor in nature can be condoned rather than to brand them as criminals for the rest of their lives and have quashed orders of the respondents with directions to offer appointments in Delhi Police. The present case fits into the above decision of the Apex Court. (2) The respondents have offered appointments to many similarly circumstanced candidates.

12. In terms of our above orders and directions, the OA, having merits, is allowed. No costs.

13. Resultantly, for the above reasons the impugned order dated 11.05.2011 is quashed. The respondents are directed to issue offer of appointment to the applicant for the post of Constable (Exe.) Male in Delhi Police, if he is otherwise eligible. Consequently, the applicant will be entitled to his seniority as per his rank

in the relevant seniority list but he will not be entitled to any back wages. Let the directions and orders as ordained above be complied with as expeditiously as possible but not later than nine weeks from the date of receipt of a certified copy of this order.

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