

(2016) 12 DEL CK 0064

In the Delhi High Court

Case No : Writ Petition (Civil) No. 7655 of 2016

Bahadur Singh

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 08-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 CLR 769 : (2017) 236 DLT 14

Hon'ble Judges : Mr. Sanjiv Khanna and Ms. Sunita Gupta, JJ.

Bench : Division Bench

Advocate : Mr. Anil Mittal, Advocate, for the Petitioner; Ms. Manisha Tyagi, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J. - The petitioner-Bahadur Singh upon selection by the Delhi Subordinate Services Selection Board, was appointed as a driver on probation with the respondent - Delhi Transport Corporation on 5th July, 2010.

2. The petitioner was served with the charge sheet dated 20th January, 2011, for at the time of appointment and filling up the CVR form he had concealed his involvement in three criminal cases. This, it was asserted, amounts to misconduct.

3. The petitioner in his reply dated 15th March, 2011 avowed that he had been acquitted in two criminal cases and the third criminal case was compromised. The reply was considered but was found to be unsatisfactory.

4. The departmental enquiry was conducted and relying on the report of the Inquiry Officer, the petitioner's services were terminated vide dismissal order dated 27th December, 2012.

5. The petitioner filed a departmental appeal, which was dismissed by the appellate authority vide order dated 6th January, 2014.

6. The two orders dated 27th December, 2012 and 6th January, 2014 were challenged by the petitioner in OA No. 123/2015 before the Central Administrative Tribunal, Principal Bench, New Delhi (Tribunal for short). The OA has been dismissed vide the impugned order dated 21st December, 2015.

7. Rule 10 of the Delhi Road Transport Authority Regulations, 1952 reads as under:-

"Every new recruit will furnish two character certificates from gazetted officers, 1st or 2nd class Magistrates, MPs, MLAs or member of Local Bodies. He will also furnish his full particulars for verification of his character and antecedents, through the Police Department. His appointment will be liable to termination in case of an adverse report by the Police Department."

8. Relevant column 12 of the CVR form (English version) as filled up by the petitioner at the time of appointment reads:-

"Column No. 12

Have you even been prosecuted or punished for any crime in a court of law or detained or fined or bailed out? -N.A.-

At the time of filling this Form, is any case pending against you in any court of law? -N.A.-

If the answer is in affirmative, then give complete detail in respect of the case instituted against or fine imposed or detention, if any? -N.A.-"

9. Pertinently, the CVR form had a warning, which is reproduced in the impugned order and reads:-

"The furnishing of false information or suppression of any information in the Attestation Form would be disqualification and is likely to render the candidate unfit for the employment under Government. If the fact that false information has been furnished or there has been suppression of any factual information in the Attestation Form comes to notice at any time during the service of a person, his services would be liable to be terminated."

10. We entirely agree with the reasoning of the Tribunal that column No. 12 of the CVR form was lucid and had clearly mandated the petitioner to disclose and state whether he had been prosecuted or punished for any crime in the court of law. If any case was pending against him, it had to be so stated. Thus, the petitioner was required to give details with respect to each and every case instituted against him or any fine imposed or detention, if any. Consequence of false declaration was stated; dismissal. Clearly, the petitioner had given false and misleading statement in column No. 12 by writing the alphabets "NA", i.e., not applicable, to indicate that the petitioner was not involved in any criminal case earlier or had a criminal case pending against him.

11. The element of concealment in the form of suppression of information by the

petitioner is, therefore, apparent. The petitioner accepts and admits that prior to his appointment on 5th July, 2010, he was prosecuted in three criminal cases, the first being FIR No. 100/1995, under Section 498/304B/34 IPC, Police Station Narela. In the said case, he was acquitted on 8th July, 2000. The petitioner was being prosecuted in FIR No. 139/2004, Police Station Kashmere Gate under Section 279/304A/201 IPC and FIR No. 418/2001, Police Station Janakpuri under Section 279 and 337 IPC.

12. The petitioner has placed on record a copy of the judgment dated 28th May, 2014 relating to FIR No. 139/2004, Police Station Kashmere Gate. This prosecution case related to death in a road accident caused by the driver of bus No. DL-1PA-5128. The cause of death as alleged was due to rash and negligent driving. As per the prosecution case, the petitioner was the driver of the said bus. The petitioner was acquitted for the eye witness had avowed having seen many people gathered near the door of the bus, including the driver of the bus, but he could not state anything regarding rash and negligent driving or whether he had seen actual commission of the offence. He affirmed rash and negligent driving by the driver on a leading question put to him. The court felt that the eye witness had failed to narrate the evidence leading to the occurrence/accident and without corroboration, the eye-witness's account should not be relied to convict the accused, i.e., the petitioner.

13. The order of acquittal in FIR No. 139/2004 is dated 28th May, 2014. The judgement of acquittal in this FIR was passed after the order of dismissal/termination dated 27th December, 2012 and the order of the appellate authority dismissing the appeal dated 6th January, 2014.

14. The involvement of the petitioner in the three criminal cases came to the knowledge and was a revelation vide the police verification report dated 31st December, 2010. The petitioner had not suo motu or on his own disclosed his involvement at any time before the police verification report was submitted.

15. In the factual matrix of the present case, we have to hold that the petitioner had secured appointment as a driver by giving false and deceiving information, by not filling up the CVR form correctly. Concealment is apparent and established beyond doubt. FIR No. 418/2001, Police Station Janakpuri under Section 279/337 IPC, which was compromised on 10th July, 2008 and also FIR No. 139/2004 under Section 279/304A/201 IPC relating to a death in a road accident, which was pending at the time when the petitioner was appointed, were crucial and critical information, which should have been furnished to enable the concerned authorities to take an objective decision regarding suitability of the petitioner.

16. The petitioner at the time of his dismissal was on probation till 4th January, 2013. Yet in the present case, the respondent had conducted disciplinary proceedings to ascertain and affirm facts.

17. In *Avtar Singh v. Union of India and Others*, (2016) 7 Scale 378, the three

Judges of the Supreme Court after examining several judgments have observed that "McCarthyism" being is an antithesis of the constitutional goal, chance of reformation should be afforded to the young offenders in suitable cases. Albeit, this precept cannot be applied universally and uniformly to all cases, selection has to be made. Several factors, including the nature of allegations, whether it would constitute suppression of material information etc have to be factored, for a just and fair decision. Technical or trivial occurrences should not be a ground to not appoint or dismiss an employee, yet acts of deliberate concealment of involvement in a criminal case of serious or heinous crimes, which would render the applicant unfit are of consequence and should not be ignored. The Supreme Court in the said case summarised their conclusions in the following manner:-

"(1) Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

(2) While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information

(3) The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

(4) In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted : -

(a) In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

(b) Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

(c) If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

(5) In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

(6) In case when fact has been truthfully declared in character verification form

regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.

(7) In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

(8) If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

(9) In case the employee is confirmed in service, holding Departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

(10) For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

(11) Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him."

18. In the context of the present case, sub-paras (1), 4(c) and 7 would be applicable and are compelling negative factors against the petitioner. The impugned order therefore rightly dismisses the OA.

19. Another contention raised by the petitioner is predicated on the ground of discrimination for it is stated that some other drivers, who were equally guilty of suppression of facts have not been removed or terminated. We do not see any merit in the said contention. We are concerned with the factual matrix of the present case and whether in the circumstances and the facts of this case, the order of termination is justified and correct. We do not have the full facts of the other cases and we do not know the nature and type of offences alleged against others. Article 14, which incorporates the doctrine of equality, is a positive provision and cannot be construed in a negative manner. Even assuming that there were errors made by the respondent Corporation in other cases, we would not direct the said Corporation to commit another error.

20. Consequently, the writ petition has no merit and is dismissed. In the facts of the case, there will be no order as to costs.