

(2012) 05 DEL CK 0708

In the Delhi High Court

Case No : Writ Petition (C) 2861 of 2012

Commissioner of Police and Another

APPELLANT

Vs

Rakesh Kumar

RESPONDENT

Date of Decision : 15-05-2012

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5
Penal Code, 1860 (IPC) — Section 143, 323, 325, 341

Citation : (2012) 05 DEL CK 0708

Hon'ble Judges : V.K. Jain, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : S.P. Sharma, for the Appellant;

Final Decision : Allowed

Judgement

Badar Durrez Ahmed, J.

CM 6175/2012(exemption)

Allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 2861/2012 & CM 6176/2012(stay)

1. The writ petition is directed against the orders dated 09.01.2012 and 06.03.2012 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, in O.A. No. 798/2011 and R.A. No. 54/2012 respectively. The respondent (Rakesh Kumar) applied for the post of Constable (Executive) with the Delhi Police for the recruitments which took place in 2009. In the said application, Rakesh Kumar had clearly disclosed that he had been allegedly involved in a case arising out of an FIR No. 93/2008 registered u/s 143/323/341/325 IPC at Police Station Kurhera, District Bharatpur, Rajasthan. He had also disclosed the factum of the pendency of the criminal case. However, despite this, the said Rakesh Kumar was offered appointment and he actually joined service as a Constable.

Subsequently, a show-cause notice was issued to the said Rakesh Kumar on 19.07.2010 asking him to show-cause as to why his service ought not to be terminated under Rule 5(i) of the CCS (Temporary Service) Rules, 1965. The said Rakesh Kumar submitted his reply on 24.07.2010. The reply was, of course, not accepted by the petitioner and consequently, by an order dated 25.08.2010, the Additional Commissioner of Police : Principal, Police Training College, Jharoda Kalan, New Delhi, terminated the services of Rakesh Kumar in pursuance of the provisions of Rule 5(i) of the CCS (Temporary Service) Rules, 1965 with immediate effect.

2. Rakesh Kumar preferred an appeal before the Appellate Authority. The Appellate Authority also rejected the appeal by an order dated 11.01.2011 but modified the order after relying on the Standing Order No. 371/2009 in the following manner:-

"Since the abovesaid case is pending trial in the court and at this stage his representation cannot be accepted in view of the erstwhile prevailing SO No. 371/2009. In case he is acquitted/discharged in this case, he should inform the Department about his acquittal/discharge along with copy of judgment and FIR and his case will be judged by the Screening Committee of PHQ and if found fit/suitable, he will be re-instated in service. Hence, the decision taken by the Disciplinary Authority at this stage in terminating the services of the representationist is correct. Therefore, his representation is hereby rejected."

3. Being aggrieved by the said order dated 11.01.2011, Rakesh Kumar filed the said Original Application being OA No. 798/2011 in which the impugned order dated 09.01.2012 came to be passed.

4. At this juncture, it would be appropriate to refer to Standing Order No. 371/2009 and, in particular, to clause 2(A)(c) thereof which reads as under:-

"2. GUIDELINES:-

(A) Concealment of information/declaration at the time of filling up application/attestation forms

(a) xxxx

(b) xxxx

(c) If a candidate had disclosed his involvement and/or arrest in criminal case(s), complaint case(s), preventive proceedings etc. and the case is pending investigation or pending trial, the candidature will be kept in abeyance till the final decision of the case. After the court's judgment, if the candidate is acquitted or discharged, the case will be referred to the Screening Committee of the PHQ to assess his suitability for appointment in the Delhi Police."

5. As per the said clause 2(A)(c), it is clear that in case a candidate has disclosed his involvement in a criminal case and the said case was pending trial, the candidature of such a person was to be kept in abeyance till the final decision of

the case. It is also stipulated that after the Court's judgment if the candidate is acquitted or discharged, the case of appointment has to be referred to the Screening Committee of the Police Headquarters to assess the suitability for appointment in the Delhi Police. It is clear that clause 2(A)(c) of the standing order No. 371/2009 was not followed in the present case. This is so because although Rakesh Kumar had disclosed his involvement both in his application form as well as in the attestation form and had also disclosed the fact that the trial was pending, his candidature was not kept in abeyance but he was in fact appointed as a Constable (executive). Such appointment was contrary to the said standing order. What ought to have been done was that the candidature of Rakesh Kumar ought to have been kept in abeyance till the final decision in the case.

6. In this backdrop, we find that the order passed by the Appellate Authority on 11.1.2011 is in keeping with the Standing Order but, the impugned order passed by the Tribunal runs contrary to the same. The Tribunal ought not to have set aside the termination of Rakesh Kumar which would result in his reinstatement. We also feel that the Tribunal had misdirected itself inasmuch as the Tribunal had not even adverted to the said Standing Order No. 371/2009 even though that was the specific ground and basis for the passing of the appellate order dated 11.1.2011. Once the Standing Order is seen and, in particular, clause 2(A)(c) thereof, it is abundantly clear that in a case such as present the candidature of Rakesh Kumar has to be kept in abeyance till the final decision of the case. If the Court's decision goes in favour of Rakesh Kumar, his case for appointment would then have to be referred to the Screening Committee of the Police Headquarters for assessing his suitability for appointment in the Delhi Police.

7. In fact, Rakesh Kumar's case ought not to have been considered under Rule 5(i) of the CCS(Temporary Service) Rules, 1965 at all, inasmuch as his very appointment was contrary to the Standing Order. Consequently, we feel that the impugned orders passed by the Tribunal cannot be sustained. As a result, the same are set aside. While doing so, we restore the order dated 11.01.2011 passed by the appellate authority which, we feel, is in keeping with the Standing Order. The writ petition is allowed. There shall be no order as to costs.