

(2012) 07 DEL CK 0013

In the Delhi High Court

Case No : Writ Petition (C) 3926 of 2012

Commissioner of Police and Another

APPELLANT

Vs

Ramanuj Upadhyay

RESPONDENT

Date of Decision : 09-07-2012

Acts Referred:

Criminal Law (Amendment) Act, 2005 — Section 7
Penal Code, 1860 (IPC) — Section 147, 148, 308, 332, 333
Prevention of Damage to Public Property Act, 1984 — Section 2, 3, 4

Citation : (2012) 07 DEL CK 0013

Hon'ble Judges : Siddharth Mridul, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : S.P. Sharma and Dr. Ashwani Bhardwaj, for the Appellant; Arun Bhardwaj and Mr. Uday Prakash Yadav, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—This writ petition has been filed, inter alia, by the Commissioner of Police and is directed against the order dated 7th March, 2012 in OA No. 2591/2011. The respondent Ramanuj Upadhyay had applied for the position of Sub Inspector (Exe.) Male with the Delhi Police in Phase-I of the Recruitment conducted in 2009. The said respondent had cleared all the tests. However, subsequent thereto a show cause notice had been issued to him on 25th April, 2011 calling upon him to show cause as to why his candidature for the post of Sub Inspector (Exe.) Male in Delhi Police in Phase-I of the recruitment conducted in the year 2009 should not be cancelled for the reasons mentioned in the show cause notice. Those reasons essentially pertained to his alleged involvement in the criminal case registered under FIR No. 139 dated 13th November, 2003 under Sections 147/148/332/333/341/308 IPC r/w Section 7 of the Criminal Law Amendment Act and Sections 2/3/4 of the Prevention of Damage to Public Property Act. The said FIR was registered at PS Mutthiganj, District Allahabad, UP. It pertained to an agitation by students of Allahabad University where hundreds of students had allegedly gathered and agitated on

the issue of reservation and had indulged in rioting and damaging public property.

2. It may be pointed out that the respondent while applying for the post of Sub Inspector (Exe.) with Delhi Police, had not disclosed his alleged involvement in the said criminal case in the application form. He had, however, disclosed the same in the attestation form. At the time when respondent Ramanuj Upadhyay had filed his application and submitted the attestation form, the said criminal case was pending.

3. In view of Standing Order No. 371/2011 issued by Commissioner of Police, Delhi, the case of such a candidate as the respondent, where the criminal case was pending investigation or pending trial, the candidature is to 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 is to be referred to the Screening Committee of the Police Headquarters to assess his suitability for the appoint in the Delhi Police.

4. This procedure, which has been prescribed in the said standing order, had been followed. Subsequently, the respondent was acquitted by the Trial Court in Allahabad by an order dated 21st April, 2010. In the said order, it has been clearly held that the respondent, who was one of the accused in that case, was not involved in the said incident at all. It has been noted that on a careful analysis of evidence and facts and circumstances of the case, it could not be established by the prosecution that the accused, which included the respondent herein, were involved in the alleged acts. Consequently, by virtue of the said order dated 21st April, 2010 all the accused including the respondent Ramanuj Upadhyay were acquitted of all charges.

5. In view of the fact that the respondent had been acquitted in the said criminal case, his case for appointment was sent before the Screening Committee in view of the said guidelines prescribed in the said standing order. Thereafter, a show cause notice was issued to the respondent on 25th April, 2011 wherein it has been mentioned that the Screening Committee had examined the case of the respondent in detail and had not approved his case for appointment in the Delhi Police. It has been pointed out in the show cause notice that the Screening Committee while considering the case of the respondent, kept in view the attending circumstances, nature of offence, contents of FIR, nature of injuries, type of weapon used, judgment, grounds of acquittal and the role attributed to the respondent in the offence.

6. On receiving the said show cause notice, the respondent submitted his reply on 3rd May, 2011 wherein he has specifically stated that he had been clearly acquitted by the Trial Court and therefore, the factum of his name being mentioned in the same FIR could not be held against him. However, disregarding the plea taken by the respondent in his reply, the Dy. Commissioner of Police passed an Order dated 16th June, 2011 whereby the candidature of the respondent was cancelled. The cancellation order specifically indicated as under:

All his written and oral submission in details have been considered and found that the candidate was named in FIR for his involvement in a violent agitation/rioting, damaging public property, assaulting, causing simple/grievous injuries to public servant as well as press reporters and doing an act amounting to attempted culpable homicide. Such act is highly undesirable. His mob mentality and indulging in violent activities without fear of law of land renders him unsuitable for appointment in Delhi Police where the highest standards of discipline are maintained. As such, the candidature of the candidate Ramanuj Upadhyay, Roll No. 727227 for the post of Sub-Inspector (Exe.) in Delhi Police, 2009(Phase-I) is hereby cancelled with immediate effect.

7. It is obvious from the facts as indicated above that the sole reason as to why the respondent's candidature has been cancelled was the fact that his name found mention in the said FIR. We have, time and again, reiterated that once a person has been acquitted in a criminal case, the factum of his name being mentioned in FIR cannot stand in the way of his employment with the Delhi Police. Here, we find that although the respondent had been clearly acquitted after a full fledged trial by the Trial Court, the petitioner still took into account the fact that his name has been mentioned in the FIR and concluded that, he had been involved in the alleged incident. This course of conduct is clearly untenable. It was open for the Screening Committee and for that matter the petitioner to have rejected the candidature of the petitioner on some other valid ground based on some other inquiries made by them but they could not have cancelled the candidature of the respondent solely on the ground that the petitioner's name found mentioned in the said FIR which culminated in an acquittal by the criminal court.

8. In view of the foregoing, we see no reason to interfere with the impugned order passed by the Tribunal whereby the cancellation of the candidature has been quashed. As we have directed in the case of Devender Kumar Vs. Govt. of NCT of Delhi in WP (C) No. 8731/2011 decided on 3rd March, 2012 and several other similar matters, the petitioner is directed to issue an appointment letter to the respondent within four weeks subject to his otherwise being fit and completing all necessary formalities and requirements. The respondent would be entitled to seniority as well as pay and allowances from the date he joins the service. We, however, direct that the impugned order with regard to costs is set aside. Subject to these modifications, the Tribunal's order is upheld and the writ petition, to that extent, is dismissed. There is no order as to costs.