
(2012) 08 DEL CK 0330

In the Delhi High Court

Case No : Writ Petition (C) 4429 of 2012

Commissioner of Police and Others

APPELLANT

Vs

Bhupinder Singh

RESPONDENT

Date of Decision : 03-08-2012

Acts Referred:

Criminal Law (Amendment) Act, 2005 — Section 7
Penal Code, 1860 (IPC) — Section 147, 148, 186, 308, 325
Prevention of Damage to Public Property Act, 1984 — Section 2, 3, 4

Citation : (2012) 08 DEL CK 0330

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

Bench : Division Bench

Advocate : Anjum Javed and Mr. Mirza Amir Beg, for the Appellant;

Final Decision : Dismissed

Judgement

Siddharth Mridul, J.—The present writ petition challenges the validity of the order dated 2nd March, 2012 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in Original Application No. 1579/2011, whereby the Tribunal quashed the order dated 3rd February, 2011 pursuant to which the candidature of the respondent to the post of Constable (Driver) in Delhi Police was cancelled. The respondent had applied for appointment to the post of Constable (Driver) in Delhi Police during the recruitment held in the year 2009.

2. It is an admitted position that the respondent had clearly disclosed about his involvement in FIR No. 92/2001, both in the application form as well as the attestation form. The respondent was declared provisionally selected for the post subject to satisfactory verification of his character and antecedents.

3. The petitioners on seeking a verification report in respect of the respondent came to be informed by the concerned authority about the respondent's alleged involvement in FIR No. 92/2001 u/s 332/353/427/186/34 of the Indian Penal Code (hereinafter referred to as IPC). The FIR was registered on 12th July, 2001 at Police Station Jafarpur Kalan, Delhi. The incident which resulted in registration

of FIR pertained to the alleged assault by one Om Prakash, Azad Singh and the respondent on the employees of Delhi Vidyut Board thereby causing obstruction in way of the public servants from discharging their official duties.

4. The respondent was acquitted in the said criminal case vide the judgment dated 6th September, 2007 passed by the learned Metropolitan Magistrate, New Delhi. The trial court acquitted the respondent after conducting a full-fledged trial and after due examination of all the witnesses. The trial court came to the conclusion that there were material contradictions in the testimonies of the witnesses who allegedly got injured and also the fact that the material witnesses failed to identify the accused persons.

5. Thereafter the Screening Committee considered the case of the respondent in order to ascertain his suitability for appointment. The Screening Committee declared the respondent unfit for appointment, essentially on the basis of the charges framed against the respondent in the said FIR. It is pertinent to note that no independent enquiry or any other material was either before the Screening Committee or considered by them on the basis of which it arrived at its finding. Resultantly, a Show Cause Notice dated 16th August, 2010 came to be issued to the respondent asking the latter to explain the reasons why his candidature should not be cancelled.

6. The respondent vide his reply to the Show Cause Notice dated 30th August, 2010 stated that he had not concealed/suppressed any material fact regarding his involvement in the criminal case from the petitioners. The respondent further contended that he had disclosed all the relevant information in the prescribed forms. He also submitted that he was falsely implicated in the aforesaid criminal case and had been acquitted in the year 2007 after a full-fledged trial. The respondent contended that he was totally innocent and had no connection whatsoever with the alleged offence. The respondent also drew the attention of the petitioners to cases of other candidates who had been given appointment after their acquittal in criminal cases.

7. However, rejecting the reply of the respondent, the Deputy Commissioner of Police by virtue of the order dated 3rd February, 2011 cancelled the candidature of the respondent. It is relevant to note that the concerned authority cancelled the candidature solely relying upon the fact that the name of the respondent figured in FIR No. 92/2001 and that he was put on trial for the same. There was no independent enquiry or any other material before the concerned authority on the basis of which cancellation was done.

8. Aggrieved by the order dated 3rd February, 2011 the respondent approached the Tribunal. The Tribunal vide the impugned order dated 2nd March, 2012 directed the petitioner to offer the appointment to the respondent for the post of Constable (Driver), if he is otherwise found suitable.

9. Aggrieved by the said impugned order dated 2nd March, 2012, the petitioners have preferred the present writ petition.

10. The issue of whether a candidate ought to be considered for public employment once the accused has been acquitted in a criminal case, is no longer res integra.

11. In Commr. of Police and Others Vs. Sandeep Kumar, , the respondent had applied for the post of Head Constable (Ministerial) in 1999. He had already been acquitted on 18th January, 1998, pursuant to his compromise with the injured in the case which was registered against him u/s 325/34 IPC. The Supreme Court made the following observation:-

8. We respectfully agree with the Delhi High Court that the cancellation of his candidature was illegal, but we wish to give our own opinion in the matter. When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often be condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

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11. As already observed, youth often commit indiscretions, which are often condoned.

12. It is true that in the application form the respondent did not mention that he was involved in a criminal case under Sections 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified. At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter.

12. In this context, reliance is placed on the decision of Commissioner of Police & Anr. v. Ramanuj Upadhyay: W.P.(C) 3926/2012 delivered on 9th July, 2012. In the said case, the respondent therein was involved in FIR No. 139/2003 under Sections 147/148/332/333/341/308 IPC read with Section 7 of the Criminal Law Amendment Act and Sections 2/3/4 of the Prevention of Damage to Public Property Act. This Court upheld the quashing of order cancelling the candidature of the applicant therein while observing as following:-

8. 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.

13. The decision of Division Bench of Delhi High Court in Government of NCT of Delhi & Anr. v. Robin Singh :2010 (4) JCC 2821 can also be cited in this regard. In the said decision, the Court took the view that it would be a serious violation of the constitutional right of a citizen to be fairly treated in matter of public employment, if trivial offences committed by them would justify, denial of employment to them.

14. It is also relevant to place reliance on decision of Coordinate Bench of this Court in Devender Kumar Yadav v. Govt. of NCT of Delhi & Anr. : W.P.(C) 8731/2011 in which one of us (Badar Durrez Ahmed, J.) was a member. It has been held that:-

12..... Such acquittals, where the material witnesses are produced during trial, but, they do not support the case of the prosecution, to our mind cannot be said to be technical acquittals. We cannot accept the contention that only a case, where the accused is acquitted despite material witnesses supporting the case of the prosecution on merits, would be a case of acquittal other than technical acquittal. We cannot presume that a witnesses, who does not support the case of the prosecution is necessarily doing so in collusion with the accused, in order to save him from punishment, despite his actually having committed the offence, with the commission of which he is charged. It may be true in some cases, but may not necessarily be so in each case. What has to be seen in such cases is as to whether the material witnesses were examined or not. If they are examined, but do not support the prosecution and consequently it is held that the charge against the accused does not stand proved, that would not be a case of technical acquittal. We would like to note here that no independent inquiry was held by the respondents to verify the truthfulness or otherwise of the allegations which were made against the petitioner in the FIRs that were registered against him.

The Screening Committee which considered the case of the petitioner had no material before it which could give rise to an inference that the petitioner had actually committed the offences for which he had been prosecuted. As noted earlier, there is a presumption of innocence attached to an accused in a criminal case and the onus is on the prosecution to prove the charges levelled against him. Acquittal of the accused, after trial, only strengthens and reinforces the statutory presumption, which is otherwise available to him. We, therefore, hold that the view taken by the Screening Committee was not based on some legally admissible material and therefore cannot be sustained in law.

15. In the present case, it is observed that the respondent had been acquitted by

the trial court after a full-fledged trial. It is not the case of the petitioner that the acquittal had been granted on a technical ground. As noted above, the Screening Committee had not conducted an independent enquiry or relied on independent evidence to cancel the candidature of the respondent. Therefore, as stated in the decisions above, the factum of the respondent's name being mentioned in FIR cannot stand in the way of his employment with the Delhi Police. This course of conduct is clearly untenable. Therefore, in view of the foregoing, the order of the Tribunal does not warrant interference. Consequently, the writ petition is devoid of merit and is hereby dismissed, without any order as to costs.