

(2012) 05 DEL CK 0489

In the Delhi High Court

Case No : Writ Petition (C) 2848 of 2012

Commissioner of Police and Others

APPELLANT

Vs

Sandeep

RESPONDENT

Date of Decision : 15-05-2012

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 19(1)
Penal Code, 1860 (IPC) — Section 148, 149, 323, 427, 452

Citation : (2012) 05 DEL CK 0489

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

Bench : Division Bench

Advocate : S.P. Sharma and Mr. Ashwani Bhardwaj, for the Appellant; Sachin Chauhan, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—The Commissioner of Police is aggrieved by the order dated 20.01.2012 passed by the Central Administrative Tribunal, Principal Bench, New Delhi. This case concerns the cancellation of the candidature of the respondent who had applied for the post of Constable (Executive) in the recruitment of 2006 with the Delhi Police. We may also point out that the said OA 4298/2010 was the third round of litigation in respect of this subject matter. The facts are that the respondent had filed an application dated 22.03.2006 seeking appointment as a Constable (Executive) with the Delhi Police. In the said application form, he had disclosed his alleged involvement in a criminal case arising out of the FIR No.104 dated 04.08.2003 registered under Sections 148/149/323/427/452/506 IPC at Police Station Ateli, Haryana. He had also disclosed that the trial in respect of the said criminal case was pending. However, the respondent had not disclosed the factum of an earlier criminal case arising out of FIR No.257 dated 09.11.2001 registered under Sections 148/149/323 IPC at Police Station City Narnaul, Haryana. It would be pertinent to note, at this juncture, that insofar as the said FIR No.257 is concerned, the respondent had been acquitted by the trial court on 02.12.2003 inasmuch as the prosecution

witnesses did not identify the respondent as one of the persons involved in the said offences. As a consequence, because the prosecution was unable to prove its case against the respondent, the said respondent was acquitted by virtue of the said order dated 02.12.2003.

2. Thus, the position is that in the application dated 22.03.2006, the respondent had disclosed the pending criminal case but had made any mention of the criminal case in which he had been acquitted about three years back in the year 2003. However, in the attestation form which was submitted by the respondent on 30.12.2006, the respondent had disclosed both the criminal cases, namely, the one arising out of FIR No.257 as also the case arising out of the said FIR No.104. The respondent had also indicated that insofar as the case arising out of FIR No.257 was concerned, he had been acquitted by the trial court on 02.12.2003. It should also be mentioned that by the time the attestation form was filled by the respondent on 30.12.2006, the respondent had also been acquitted in the criminal case arising out of FIR No.104 by virtue of the trial court's decision dated 03.10.2006. The respondent had been acquitted after having been given the benefit of doubt. It is, therefore, clear that by the time the petitioner submitted the attestation form, he had been acquitted in both the criminal cases by the concerned trial court. It is also clear that in the attestation form the respondent had disclosed both the criminal cases and the entire proceedings in respect thereof leading to his acquittal in both the cases.

3. At this juncture, it would be useful to refer to Standing Order No.371/2009 issued by the Delhi Police with regard to "Action to be taken on detection of concealment of information/furnishing false/bogus/forged documents during recruitment in Delhi Police". Clause 1 of the said Standing Order indicates that it deals with action to be taken in such cases at the time of filling up the application form/attestation form for recruitment in the Delhi Police and it also indicates that the rules indicated therein shall be applicable for all recruitments conducted by the Delhi Police. Clause 2(A) of the Standing Order prescribes the guidelines in respect of cases of concealment of information/declaration at the time of filling up the application/attestation forms. The same reads as under:-

2. GUIDELINES:-

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

(a) If a candidate fails or does not disclose his involvement and/or arrest in criminal case(s), complaint case(s), preventive proceedings etc. in the application form but discloses the same in the attestation form, the candidature will not be cancelled only on this ground.

(b) However, the candidature will be cancelled in case the candidate does not disclose the fact of his involvement and/or arrest in criminal case(s), complaint case(s), preventive proceedings etc. both in the application form and in the attestation form and the fact is subsequently found out from the verification

report received from the District authorities or otherwise.

Before taking action against the candidate, a show cause notice must be first issued and the candidate be given reasonable opportunity to submit his reply. If sought, a personal hearing must be given. Thereafter a speaking order should be passed regarding cancellation of the candidature.

(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.

(d) If a candidate had disclosed his involvement and/or arrest in criminal case(s), complaint case(s), preventive proceedings etc. both in the application form as well as in the attestation form but was acquitted or discharged by the court, his case will be referred to the Screening Committee of the PHQ to assess his suitability for appointment in Delhi Police.

(e) As per Section 19(1) of the Juvenile Justice (Care and Protection of Children) a juvenile who has committed an offence and has been dealt with under the provisions of the Juvenile Justice Act shall not suffer any disqualification on account of conviction in an offence under the said law.

Cases of candidates who have a past record of being "juveniles in conflict with law" who were dealt with under Juvenile Justice (Care and Protection of Children) Act will be decided keeping in mind the above provisions of law,such a juvenile shall have no effect on his recruitment and joining service.

4. Clause 2(A)(a) clearly indicates that if a candidate fails or does not disclose his involvement and/or arrest in criminal cases in the application form but discloses the same in the attestation form, his candidature will not be cancelled only on this ground. This guideline clearly applies to the case in hand. The respondent had disclosed his alleged involvements in FIR No.104 in the application form but had not disclosed his alleged involvement in FIR No.257 in the said application form. However, he had disclosed his alleged involvements in both the FIRs in the attestation form. Therefore, in view of guideline 2(A)(a), it is evident that this was not a case of concealment of information and the Tribunal was right in holding so.

5. Completing the narration of facts, it would be necessary to note that the petitioners, on becoming aware of the respondent's said two involvements, issued a show cause notice to the respondent on 08.08.2007 asking him to show cause as to why his candidature should not be cancelled. The respondent submitted his reply on 17.08.2007 in which he stated that he had not mentioned the criminal case arising out of FIR No.257 in the application form inasmuch as he was under the impression that, as he had already been acquitted in the same

in the year 2003, he was not required to mention it in the application form. He, however, stated that since the criminal case arising out of FIR No.104 was pending he had duly disclosed the same in the application form. He also pointed out that he had, in any event, disclosed both the criminal cases in the attestation form and also the fact that he had been acquitted in those cases. However, the petitioner did not accept his reply and cancelled his candidature by an order dated 27.08.2007.

6. Being aggrieved, thereby the respondent filed an original application being OA No.1609/2007 which was disposed of by the Tribunal on 17.12.2007 requiring the petitioner to re-consider the matter. Upon re-consideration also, the petitioner maintained the same stand and cancelled the candidature of the respondent by virtue of the order dated 18.03.2008. Once again, the respondent approached the Tribunal by way of OA No.1715/08 which was disposed of on 24.05.2010 which, once again, required the petitioner to issue a fresh show cause notice to the respondent and to proceed thereafter. Subsequent to the issuance of the fresh show cause notice, the petitioner passed an order dated 22.11.2010.

7. The relevant portion of the said order dated 22.11.2010 reads as under:-

Your acquittal in both the cases cannot be said to be honorable acquittal as the material witness turned hostile and did not support the prosecution story perhaps due to fear of the reprisal by the accused persons. Despite acquittal in both the criminal cases, it cannot be denied that you were named in the FIRs and formed unlawful assembly, assaulted victims & voluntarily caused injuries to them which exhibits your violent nature and tendency to indulge in serious criminal activities being armed with deadly weapons and taking law into hands for settling personal issues.

8. It is apparent from the reasoning given in the order dated 22.11.2010 that the petitioners are relying entirely on the contents of the said two FIRs. There is no other independent material available with the petitioners to indicate that the respondent was unsuitable for the job.

9. The respondent being aggrieved by the order dated 22.11.2010 filed an original application No.4298/10 which has culminated in the impugned order dated 20.01.2012 passed by the Tribunal. After considering the entire factual matrix and the law on the subject, the Tribunal has arrived at the conclusion that the candidature of the respondent could not have been cancelled in the facts and circumstances of the case. The Tribunal placed reliance on the Supreme Court decision in the case of Commissioner of Police v. Sandeep Kumar: (2004) 4 SCC 644. It also placed reliance on a decision of this Court in the case of Rajesh Kumar v. Commissioner of Police and Another W.P.(C) No.8223/11 decided on 22.11.2011. We have also examined this aspect in detail in the case of Devender Kumar Yadav v. Govt. of NCT of Delhi and Anr. (WP(C) 8731/2011, decided on 30.03.2012).

10. We agree with the view taken by the Tribunal. In the first instance, we have pointed out that the Standing Order No.371/2009 which was issued on 05.05.09 clarifies the position insofar as the concealment of information is concerned by virtue of clause 2(A)(a) thereof. Although, the Standing Order No.371/2009 was not there when the initial orders cancelling the candidature of the respondent were passed, however, it had already come into being at the time when the fresh show cause notice was issued to the respondent on 20.08.2010, pursuant to the second round before the Tribunal. In any event, de hors the Standing Order, the logic is absolutely clear that in case a candidate fails to disclose his involvement in a criminal case in his application form but discloses the same in the attestation form, the same cannot be regarded as concealment of information and his candidature cannot be cancelled on this ground alone.

11. Coming now to the second aspect of the matter and, that is, with regard to the pendency of a criminal case at the time of application and submission of the attestation form, it was submitted by the learned counsel for the petitioner that inasmuch as the criminal case arising out of FIR No.104 was pending, the respondent could not be considered suitable for the post. We find that this aspect has also been dealt with in the Standing Order No.371/09 in clause 2(A)(c). The said clause clearly stipulates that if a candidate had disclosed his involvement in a criminal case and if that case was pending investigation or pending trial, the candidature of such candidate is to be kept in abeyance till the final decision of the case. It was also stipulated that 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 appointment in the Delhi Police. In the facts of the present case, the criminal case against the petitioner arising out of FIR No.104 was pending on the date on which he had submitted his application form but, by the time he submitted his attestation form, he had been acquitted. Thus, there was no question of keeping his candidature in abeyance.

12. This brings us to the question of the reason given in the order dated 22.11.2010 for cancelling the candidature of the respondent. We find that the only reason that has surfaced is the fact that two FIRs had been registered, in which the respondent had been named but, in both those cases the respondent had been acquitted. Once the respondent had been acquitted in those cases which were also not of a grave nature such as a case involving murder, rape and dacoity etc., the mere fact that the respondent had been named in the FIR cannot be held against him unless there is some other independent material available with the petitioner. Such independent material, should indicate that the respondent was unsuitable for the post of Constable (Executive) with the Delhi Police. We do not find any trace of any such independent material in the order dated 22.11.2010.

13. In view of the foregoing, we do not see any reason to interfere with the Tribunal's order, which, we find, is in accordance with the law as laid down by the Supreme Court and also as indicated by this Court in the decisions

mentioned above. The writ petition is dismissed. There shall be no orders as to costs.