

(2012) 09 DEL CK 0577

In the Delhi High Court

Case No : Writ Petition (C) 4490 of 2012

Commissioner of Police

APPELLANT

Vs

Sunil Chandra

RESPONDENT

Date of Decision : 03-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 325, 34, 392, 394, 411

Citation : (2012) 09 DEL CK 0577

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

Bench : Division Bench

Advocate : V.K. Tandon, for the Appellant; Ajesh Luthra, for the Respondent

Final Decision : Dismissed

Judgement

Siddharth Mridul, J.—The instant writ petition assails the order dated 07.03.2012 rendered by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 3548/2011. By the said order dated 07.03.2012 the Tribunal allowed the application of the respondent herein thereby directing the petitioner herein to consider the respondent for appointment to the post of SI (Exe.) Male in Delhi Police. Pursuant to an advertisement published by Delhi Police in the year 2009, respondent Sunil Chandra had applied for the post of SI (Exe.) Male against SC category. The respondent was provisionally selected for the said post subject to verification of his character, antecedents and medical fitness etc.

2. It is an admitted position that the respondent while filling the application form as well as the attestation form had disclosed about his alleged involvement in a criminal case registered vide FIR No. 345/1999 under Sections 392/394/34 of the Indian Penal Code, 1860 (hereinafter referred to as the IPC). The allegations which resulted in registration of the said FIR stated that on 05.04.1999 one Praveen @ Bittoo along with the respondent committed robbery of Rs. 500/-and some papers from the complainant Vijay Malik and also caused him hurt during the commission of such robbery.

3. Since the respondent had disclosed about his alleged involvement in a criminal case while applying for the post of SI (Exe.) Male in Delhi police, his case was duly forwarded to the Screening Committee for evaluating his suitability for the said appointment. The Screening Committee found the respondent unsuitable for appointment to the post in view of his alleged involvement in the criminal case, despite the fact that the respondent had been acquitted of the criminal charges by the Court concerned.

4. In view of the decision arrived at by the Screening Committee, the petitioner herein issued a Show Cause Notice dated 25.04.2011 asking the respondent to explain as to why his candidature to the post be not cancelled. The respondent vide reply dated 06.05.2011 stated before the petitioner herein that the former had not suppressed any material facts regarding his alleged involvement in a criminal case. The respondent further submitted that he was falsely implicated in the said FIR and had no active role to play in commission of the crime. The respondent also stated that the criminal case was pending against him for a period of 10 years for the reason that the prosecution could not even produce the complainant before the Trial Court. The respondent further stated that he had been acquitted of all the criminal charges by the concerned Trial Court by virtue of judgment dated 07.09.2010.

5. Not satisfied by the reply of the respondent, the Deputy Commissioner, Delhi Police rejected the same and, consequently, cancelled the candidature of the respondent by an order dated 16.06.2011 with immediate effect. It is relevant to note here that the concerned authority cancelled the candidature of the respondent solely on the fact that the name of the respondent had figured in the FIR No. 345/1999 which related to commission of robbery and the fact that the respondent was prosecuted for the same. In fact the order cancelling the candidature of the respondent specifies that the respondent was allegedly involved in criminal case registered under Sections 394/411/34 IPC, whereas the judgment dated 07.09.2010, by virtue of which the respondent was acquitted, shows clearly that the respondent was being prosecuted under Sections 392/394/34 IPC and the charge of receiving stolen property, that is, Section 411 IPC was not even levelled against him.

6. It is pertinent to observe here that there was no independent enquiry or any other material before the concerned authority on the basis of which the cancellation had been made. The relevant portion of the order dated 16.06.2011 is reproduced below:-

The plea(s) put forth in the reply to Show Cause Notice have been considered in detail and found that the candidate was involved in a serious crime of robbery. He was caught almost red handed by the efforts of police and recovery was also effected from him. The Hon"ble Court of law has also mentioned the testimony of the Sub-Inspector in the court of law regarding recovery of looted money/ documents from the accused persons. However, he was acquitted giving benefit of doubt, since the main complainant himself turned hostile. This is not a

honourable acquittal and there was enough material on record to show that the candidate had played an active role in committing robbery...

7. Aggrieved by the order dated 16.06.2011, the respondent approached the Tribunal.

8. Before the Tribunal, the respondent submitted that the criminal case pertaining to FIR No. 345/1999 remained pending against him for a period of 10 years and that the prosecution despite availing several opportunities had failed to produce the complainant to depose before the concerned Trial Court. It was further stated that due to protracted pendency of the criminal case, the respondent had approached the High Court u/s 482 of the Criminal Procedure Code seeking quashing of the criminal case. Consequently, the High Court vide order dated 03.08.2010 had issued a direction to the prosecution to produce the complainant or close their evidence. Thereafter, the complainant was produced before the concerned Trial Court, but did not support the case of the prosecution, inasmuch as, he denied remembering anything about the incident. Consequently, the respondent was granted acquittal by virtue of judgment dated 07.09.2009 passed by the Metropolitan Magistrate. It is relevant to note that the Trial Court after conducting a full-fledged trial, that is, after examining all the witnesses produced by the prosecution came to the conclusion that the respondent was not guilty.

9. The Tribunal vide impugned order dated 07.03.2012 directed the concerned authority to reconsider the respondent for appointment to the post of SI (Exe.) Male in Delhi Police and thereby quashed the order cancelling the candidature of the respondent.

10. The petitioner has urged before us that in view of the alleged involvement of the respondent in the criminal case, his candidature to the post of SI (Exe.) Male has been rightly cancelled by the department.

11. In the present case, the Tribunal noted that Section 394 of the IPC makes voluntarily causing hurt in committing robbery punishable with imprisonment for life, or with rigorous imprisonment for a term which may extend to 10 years. Section 411 of the said Code makes dishonestly receiving stolen property an offence punishable with imprisonment up to 3 years. The Tribunal further observed that insofar as Section 394 is concerned, it is indeed a serious offence, but the very label of the Section could not be decisive. The facts constituting the offence, in their view, had necessarily to be examined. The Tribunal, after perusing the records and the judgment of the Trial Court dated 07.09.2010, acquitting the respondent, stated that it shows that the respondent was put to trial along with one Praveen @ Bittoo u/s 392/394/34 IPC. Section 392 makes robbery punishable with 10 years imprisonment. The Tribunal stated that if, however, the robbery is committed on the highway between sunset and sunrise, the imprisonment may be extended to 14 years. The Tribunal, however, noted that the allegations against the respondent and his co-accused, briefly stated,

were that on 05.04.1999 at about 10.00 a.m. at District Park, Road No. 30, Paschim Vihar, Delhi, Praveen @ Bittoo and the respondent committed robbery of Rs. 500/-and some papers of complainant Vijay Malik, and also caused hurt to the complainant. The Tribunal finally noted that a firm finding had been recorded by the Trial Court, and the prosecution could not establish the guilt of the applicant, even after examination of the complainant and the other witnesses. It observed that the complainant had himself stated that he could not remember anything about the case and, therefore, the very foundation and the entire structure of the prosecution case crumbled and nothing survives. The proceedings in the criminal case clearly demonstrated that no witnesses were examined even to prove that there was any injury on the person of the complainant and no doctor, who might have, if at all, conducted the medico legal examination on the complainant, was examined. Therefore, the Tribunal concluded that even if, therefore, one was to go by the facts as given by the prosecution, case u/s 394 IPC was not made out at all. Furthermore, the Tribunal observed that insofar as the case u/s 392 was concerned, the allegations was that the money had been recovered from pocket of the trouser worn by Praveen @ Bittoo, the co-accused of the respondent and not the respondent. Lastly, the Tribunal considered the fact that the respondent was only 19 years of age at the time of the alleged commission of crime.

12. In Commr. of Police and Others Vs. Sandeep Kumar, the respondent had applied for the post of Head Constable (Ministerial) in 1999. The respondent had already been acquitted on 18.01.1998, pursuant to his compromise with the injured in the case which was registered against the former 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 been 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 u/s 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.

13. In *Devender Kumar Yadav v. Govt. Of NCT of Delhi & Anr* : W.P.(C) 8731/2011 decided on 30.03.2012 in which one of us, namely, 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 witness, 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....

14. In *Delhi Police & Anr v. Omveer Yadav* : W.P.(C) 12899/2009 decided on 19.04.2010, the Delhi Police sought to cancel the candidature of the applicant therein on the ground that he was involved in a criminal case registered u/s 392/34 IPC in which he was discharged by the Magistrate. It was contended before this Court that a person who was accused in a case of robbery, could not be permitted to work in Delhi Police. This Court vide its judgment dated 19.04.2010 upheld the order of the Tribunal directing the Delhi Police to consider the case of the applicant therein for recruitment, for the reason that the applicant was not guilty of suppression or concealment. The High Court observed as under:-

Apparently, the petitioners had passed the orders mechanically and in the circumstances, the order of the Tribunal quashing the order dated 16th October, 2008, cancelling the candidature of the respondent and holding that he is not suitable for the post of constable is arbitrary and could not be sustained in law and therefore, the order of the Tribunal setting aside the same does not suffer

from any illegality or such irrationality, which would require any interference by this Court.

15. In the present case, it is observed that the petitioner had not suppressed or concealed the factum of his being involved in the concerned FIR. Further, acquittals, such as the present one, where the material witnesses are produced during trial, but they do not support the case of the prosecution, cannot be said to be technical acquittals. We would like to note here that no independent enquiry was held by the petitioners to verify the truthfulness of the allegations which were made against the respondent in the FIR that was registered against him. We also observe that 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 offence for which he had been prosecuted. It is also observed that at the time of the alleged commission of the offence, the respondent was only 19 years old. We, therefore, hold that the view taken by the Screening Committee was not based on some legally admissible evidence and, therefore, cannot be sustained in law. Consequently, the present petition being devoid of merits is hereby dismissed, however, without any order as to costs.