

(2020) 03 CAT CK 0025

In the Central Administrative Tribunal

Case No : Original Application No. 2718 Of 2016

Deepak Khatri

APPELLANT

Vs

UOI And Others

RESPONDENT

Date of Decision : 04-03-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120B, 186, 294, 304, 307, 323, 324, 325,
332, 353, 364, 394, 420, 451, 506, 506B
Constitution Of India, 1950 — Article 16

Citation : (2020) 03 CAT CK 0025

Hon'ble Judges : S.N. Terdal, Member (J), Mohd. Jamshed, Member (A)

Bench : Division Bench

Advocate : Manoj Joshi, Priya Barua

Final Decision : Dismissed

Judgement

Mohd. Jamshed, Member (A)

1. The applicant appeared in the exam conducted by SSC i.e the Combined Higher Secondary Level (CHSL) (10+2) Examination, 2013. He also passed the written examination becoming eligible for the post of Data Entry Operator (DEO) in Comptroller and Auditor General (CAG) office. However, no appointment letter was issued to him. On having learnt that other candidates have already joined, he sought information from the respondents under Right to Information (RTI) Act, 2005. He later on, came to know as per the information provided by the respondents that as he was involved in two criminal cases, he was not found fit for the present job as per the rules and guidelines. The applicant submits that he was falsely implicated and the trial in the criminal cases is pending before the Hon'ble Trial court. Therefore, he cannot be deprived of his legitimate rights for appointment. The applicant further sent a legal notice dated 06.05.2016 to the Respondent No. 01. His legal notice was, therefore, referred to Respondent No.03 for consideration. The applicant contends that he participated in the selection procedure conducted by the respondents and secured 159.50 marks

and as per merit he was selected for the post of DEO in CAG. The applicant contends that he has been falsely implicated in the criminal cases and the trial is still pending before the Trial Court and he has yet not been convicted in these cases and, therefore, he deserves to be appointed. The Present OA has been filed seeking the following relief(s):-

"i) To pass order of joining of applicant for the post of Data Entry Operator.

ii) to allow the OA with exemplary cost."

2. Respondents in their counter affidavit have opposed the OA submitting that the applicant was selected for the post of DEO through CHSL examination, 2013 conducted by the SSC. The dossier of the applicant, along with 23 other selected DEO, were sent to the answering Respondent No. 01 by Respondent No. 02 (SSC) for appointment. Respondent No. 01 allocated the applicant to its field office i.e. Respondent No. 04 and sent the dossier vide letter dated 21.03.2015 for issue of offer of appointment after verification of his character and antecedents. Respondents submit that in terms of the procedure laid down for making appointment of a person to Civil Services and posts under the Government of India, the Appointing Authority should satisfy itself about the identity and suitability of the candidates by verifying his or her character and antecedents. Accordingly, verification report was received through the Police department vide letter dated 19.05.2015 intimating that 02 FIRs have been filed against the applicant under different sections of IPC and Arms Act. It was confirmed that both criminal cases have been filed against the applicant and are under trial.

3. The respondents have further submitted that the applicant was found to be involved in carrying arms illegally and firing with country-made pistols and cheating in SSC exam. Since, the cases registered against the applicant are of very serious nature and are still under trial, the respondents did not consider the applicant suitable for appointment to Government service and accordingly he was not allowed to join the post of DEO. Respondent No. 01 vide its letter dated 02.05.2016 directed the Respondent No. 04 to return his dossier to SSC as the applicant could not be offered appointment in view of the pending cases against him in the Court of Law.

4. Respondent No. 02 (SSC) in their short counter affidavit have submitted that the applicant was a candidate of CHSL, examination 2013 which was advertised by the commission in the Employment News/Rozgar Samachar dated 20.07.2013. Written examinations were held on 20.10.2013, 27.10.2013 and 10.11.2013 followed by a skill test for the post of DEO and a typing test for the post of LDC. It is stated that the applicant went through these two stages of examination and was provisionally selected to the post of DEO in CAG and was, accordingly, nominated to the concerned user department. Respondent No. 04 vide letter dated 16.05.2016 returned the dossier of the applicant to SSC as two criminal cases were pending against him. It is also stated that this is up to the

user department to undertake character and antecedents verification and appoint the candidate, if found suitable.

5. Learned counsel for the applicant placed reliance upon the judgment of Hon'ble Supreme Court in Commissioner of Police, New Delhi & anr. Vs. Mehar Singh (Civil Appeal No. 4842 of 2013), Judgment of Hon'ble Rajasthan High Court in Brijendra Singh Meena vs. State of Rajasthan and Ors. decided on 18.12.1997, judgment of Principal Bench of this Tribunal in Guru Dutt Ranga Vs. Government of NCT of Delhi and Anr. Decided on 07.10.2005 and OA No. 1506/2014 decided on 03.12.2016, judgment of Ernakulam Bench of this Tribunal in OA No. 496/2013 decided on 07.07.2016. Learned counsel for the respondents placed reliance on the judgment of Hon'ble Supreme Court in Delhi Administration through its Chief Secretary and others vs. Sushil Kumar (1996) 11 SCC 605 and the judgment of Principal Bench of this Tribunal in OA No. 3376/2016.

6. We heard Mr. Manoj Joshi, learned counsel for the applicant and Ms. Priya Barua for Mr. Gaurang Kant, Mr. G.S. Virk, learned counsel for the respondents.

7. It has not been denied by the respondents that the applicant was selected in CHSL examination. On having cleared the written examination, the candidate was also subjected to skill test for the post of DEO and typing test for the LDC. The applicant was also declared qualified in the skill test. The Commission i.e. SSC forwarded the dossier of the applicant to the CAG i.e. the user department for subsequent formalities and posting orders. The applicant also submitted prescribed attestation form clearly indicating that he was arrested and prosecuted. The respondents sought further reports from concerned Deputy Commissioner of Police vide letter dated 19.05.2015. DCP advised the respondents that with regard to verification of character and antecedents, the field enquiry has revealed that his name is included in two FIRs registered under various provisions of IPC and Arms Act. It is also stated that FIR No. 172/11 dated 17.04.2011 charged the applicant under Section 307, 186, 353, 332, 506, 120B of IPC and Section 25 and 27 of Arms Act, 1959 and in the other FIR No. 232/12 dated 16.09.2012, the applicant has been charged with offences under section 120B and 420 of IPC for his involvement in cheating in Tier-II Graduate level examination conducted by SSC in 2012.

These cases were under trial. The applicant was charged with very serious offences and also for cheating in SSC examination earlier. In view of this, the respondents did not consider the applicant suitable for Government Service.

8. The most important fact is whether the applicant whose character and antecedents are not up to the mark and against whom serious criminal charges are pending is to be considered for appointment by the user department. This aspect has been clarified in various judgments relied upon. One such order is the order passed in OA No. 3376/2016 dated 13.08.2019. In the said order, although the candidate was acquitted, the Tribunal upheld the decision of

respondents to reject his candidature on the basis of the criminal cases. The relevant portion of the order in OA No. 3376/2016 read as under:-

"7. We have gone through the pleadings on record, considered the submissions made on behalf of the parties and have also gone through the law laid down by the Hon'ble Apex Court in the case of Sushil Kumar (supra) as well as in the case of Parvez Khan (supra). Hon'ble Apex Court has considered its judgment in Sushik Kumar (supra) while deciding the issue raised in Parvez Khan (supra). In Parvez Khan (supra), the respondents had applied for compassionate appointment after death of his father, who was working in Madhya Pradesh Police. The competent authority sent his record for police verification. It was reported that the respondent was involved in two criminal cases. In one case, he was prosecuted for offences Page | 9 under Sections 294, 323, 324, 325 and 506-B/34 of IPC and in the other under Sections 364, 394 and 451 of IPC. The Superintendent of Police held that he was not eligible for appointment in government service and closed his case. Aggrieved of the decision of the Superintendent of Police, the respondent had challenged the same before the Hon'ble High Court by filing a Writ Petition No. 15052/2008 on the ground that in the first case he was acquitted and in the second case he was discharged on account of compounding of the offences. The Learned Single Judge dismissed the Writ Petition. On appeal, the Division Bench took a different view. It was held that the object of verification was to verify suitability of a candidate and since the respondent was acquitted in both the criminal cases, he could not be considered unsuitable and accordingly the Division Bench directed consideration of the case of the respondent afresh in the light of observations in the order within three months. Aggrieved thereby, the State has preferred the Civil Appeal. The Hon'ble Apex Court after considering its own judgment in R.P. Kapur Vs. UOI, AIR 1964 SC 787, Deputy Inspector General of Police & Anr. Vs. S. Samuthiram, 2013(1) SCC 598, RBI Vs. Bhopal Singh Panchal, 1994(1)SCC 541 and also its judgment in Sushil Kumar (supra) has ruled in para-11 as hereunder:-

"After due consideration, we are of the view that the impugned order cannot be sustained. Refusal by the competent authority to recruit the respondent on the ground of criminal antecedents is not liable to be interfered with...xxxx"

In para-13 in the case of Parvez Khan (supra) the Hon'ble Apex Court has ruled as under:-

"xxxx A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was completely exonerated. Persons who are likely to erode the credibility of the police ought not to enter the police force. No doubt the Screening Committee has not been constituted in the case considered by this Court, as rightly pointed out by learned counsel for the Respondent, in the present case, the Superintendent of Police has gone into the matter. The Superintendent of Police is the appointing authority. There is no allegation of mala fides against the person taking the said decision nor the decision is shown to be perverse or irrational.

There is no material to show that the appellant was falsely implicated. Basis of impugned judgment is acquittal for want of evidence or discharge based on compounding."

8. In view of the law laid down by the Hon'ble Apex Court in the cases, referred to herein above, it is evident that the competent Disciplinary Authority is entitled to decide and reject the candidature of a candidate on the basis of his involvement in a criminal case even if the candidate has been acquitted but the acquittal is on account of the case had been compounded or prosecution has failed to prove the allegation in the criminal case for the witnesses turning hostile etc. In the present case, on perusal of the order/judgment dated 19.09.2013 of the Learned Court of the Judicial Magistrate Ist Class, Sonapat, it is evident that the applicant has been acquitted on account of the fact that Learned Court has found that the prosecution has miserably failed to prove his case beyond reasonable doubt wherein witnesses have turned hostile. The applicant is seeking appointment as a Driver, where careful driving is sine-qua-non. He was earlier working as a Driver when rash driving happened and the said criminal case was launched. His acquittal is not on merits. After taking into consideration these facts, the Committee, constituted by the respondents had not found the applicant fit for the post of Driver and therefore the respondents have passed the impugned order. Accordingly, we do not find any illegality in the impugned order.

9. In view of the aforesaid facts and law, we are of the considered view that the O.A. is devoid of any merit. Accordingly, the same is dismissed. However, in the facts and circumstances of the present case, there shall be no order as to costs."

9. In a similar case in OA No. 4340/2014 wherein the applicant was acquitted in two criminal cases, the Department rejected the candidature of the applicant. The relevant portion of the order passed in OA No. 4340/2014 read as under:-

"11. Judicial intervention in the process of selection is also limited. In *Pitta Naveen Kumar v. Raja Narasaiah Zangiti*, (2006) 10 SCC 261 the Hon'ble Apex Court held as under:-

"32. ... A candidate does not have any legal right to be appointed. He in terms of Article 16 of the Constitution of India has only a right to be considered therefor. Consideration of the case of an individual candidate although ordinarily is required to be made in terms of the extant rules but strict adherence thereto would be necessary in a case where the rules operate only to the disadvantage of the candidates concerned and not otherwise."

12. In another judgment reported in *Kulwinder Pal Singh Vs. State of Punjab*, (2016) 6 SCC 532, the Hon'ble Apex Court held as under:

"10. It is fairly well settled that merely because the name of a candidate finds place in the select list, it would not give him indefeasible right to get an appointment as well. The name of a candidate may appear in the merit list but he has no indefeasible right to an appointment vide *Food Corporation of India v.*

Bhanu Lodh (2005) 3 SCC 618, All India SC & ST Employees' Assn. v. A.Arthur Jeen (2001) 6 SCC 380 and UPSC v. Gaurav Dwivedi (1999) 5 SCC 180."

13. In the present OA, the selection process of the applicant has not been completed. He had only qualified in the written examination subject to verification of character and antecedents. During this whole exercise and on the basis of his involvement in criminal cases, the Department decided to reject his candidature. The law in this regard is also very clearly laid down by the Hon'ble Apex Court in Delhi Administration through its Chief Secretary & Ors. vs. Sushil Kumar decided on 04.10.1996. It reads as under:-

"We have heard learned counsel on both sides. This appeal by special leave arises from the order of the Central Administrative Tribunal, New Delhi made on September 6, 1995 in OA No.1756/91. The admitted position is that the respondent appeared for recruitment as a Constable in Delhi Police Services in the year 1989-90 with Roll No.65790. Though he was found physically fit through endurance test, written test and interview and was selected provisionally, his selection was subject to verification of character; and antecedents by the local police. On verification, it was found that his antecedents were such that his appointment to the post of Constable was not found desirable. Accordingly, his name was rejected. Aggrieved by proceedings dated December 18, 1990 culminating in cancellation of his provisional selection he filed OA in the Central Administrative Tribunal. The Tribunal in the impugned order allowed the application on the ground that since the respondent had been discharged and/or acquitted of the offence punishable under Section 304 IPC, under Section 324 read with 34 IPC and under Section 394 IPC, he cannot be denied the right of appointment to the post under the State. The question is: whether the view taken by the Tribunal is correct in law? It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was physically found fit, Passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined forces. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof.

If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant to the case is of the antecedents of the candidate. Appointing authority, therefore, has rightly focussed this aspect and found him not desirable to appoint him to the service.

The appeal is accordingly allowed. The order of the Tribunal stands set aside.

No costs. "

14. The selection process only becomes complete once the C&A verification is also complete and, therefore, the applicant cannot claim to have been finally selected. His candidature has been cancelled by the IB vide impugned order dated 19.06.2014 and the proposition of his appointment in any other post in any other department as clarified by SSC vide their letter dated 13.01.2020, has not been considered. It is thus evident that the candidature of the applicant was rejected on the basis of character and antecedents verification by the concerned department, for which he had given his first preference. It has been clarified that once the candidature is rejected on account of character and antecedents verification, the dossier is not forwarded to other department for consideration or appointment.

15. In view of the law laid down by the Hon'ble Apex Court in the above mentioned cases, we find that the respondents were well within their right to reject the candidature of the applicant and, therefore, we are of the view that this OA is devoid of merit and the same is, accordingly, dismissed. There shall be no order as to costs."

10. In the instant case, the applicant's case was at trial stage and he had not even been acquitted in the criminal case. The seriousness of the charges itself was sole ground of the respondents not to appoint him and return his dossier. It was later argued that he should have been adjusted in some other department. The Tribunal vide order dated 31.10.2019 had directed the applicant to produce the relevant document, however, the same has not been furnished and the same is not on record. In view of the above, we do not find any illegality and infirmity in the decision of the respondents in not appointing the applicant to the post of DEO. It is not an indefeasible right of any candidate having passed certain stages of examination to get appointment. The whole process also consists of character and antecedents verification which is an essential part for appointing a person in Government job. This aspect has been clarified by the respondents and we do not find any shortcomings in these decisions.

11. We are, therefore of the view that the OA is devoid of any merit and the same is, accordingly, dismissed. Pending MAs, if any, shall stand disposed of. There shall be no order as to costs.