

(2013) 07 DEL CK 0329
In the Delhi High Court
Case No : Writ Petition (C) 2265 of 2012

Deepak Kumar

APPELLANT

Vs

Commissioner of Police and Another

RESPONDENT

Date of Decision : 15-07-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 506

Citation : (2013) 07 DEL CK 0329

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : R.K. Saini with Mr. Manish Kumar, Mr. Vikram Saini and Ms. Gunjan Sharma, for the Appellant; Anjum Javed, Advocate and Mr. Mirza Amir Baig, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The petitioner Deepak Kumar successfully cleared the selection examination for being appointed as a Constable (Ex.) in Delhi Police but found employment evading him because the Screening Committee constituted by the Commissioner of Police considered the circumstances pertaining to he being acquitted at a Sessions Trial No. 1280/2007 by the learned Court of Sessions, Ghaziabad for offences punishable u/s 302/506 IPC. Challenge to the order dated May 11, 2011 cancelling petitioner's candidature was unsuccessful by the petitioner before the Central Administrative Tribunal. OA No. 2158/2011 filed by the petitioner has been dismissed by the Tribunal vide impugned decision dated February 08, 2012.

2. Referring to the decisions of this Court in WP(C) 3566/2010 Government of NCT of Delhi & Anr. vs. Jai Prakash decided May 24, 2010, WP(C) 3600/2012 Commissioner of Police vs. Vijay Kumar Malik decided on May 29, 2012 and WP(C) 8731/2011 Devender Kumar Yadav vs. Govt. of NCT of Delhi & Anr. decided on March 30, 2012 learned counsel for the petitioner urged that being acquitted by the Court of Sessions the Screening Committee constituted by the

Commissioner of Police could not sit upon as a superior authority and decide upon the guilt of the petitioner. Learned counsel urged that it is settled law that presumption of innocence in favour of an accused gets reinforced upon acquittal. Thus, counsel urged that the decision cancelling petitioner's candidature has to be set aside and direction has to be issued to the respondents to issue the letter of appointment to the petitioner with all consequential benefits.

3. The contention urged by the learned counsel for the petitioner that if a person is acquitted at a criminal trial he has to be treated as an innocent person and no authority can re-looked into the allegations constituting the alleged criminal offence, as has seemingly been propounded by a Division Bench of this Court in the decision dated May 24, 2010 in Jai Prakash's case is based upon a misreading of the law. The decision has copiously extracted observations made by the Supreme Court in the Constitution Bench decision reported as G. Narayanaswami Vs. G. Pannerselvam and Others, which was followed in the decision reported as Shrikant Vs. Vasantrao and Others, .

4. The Constitution Bench decision of the Supreme Court concerns the issue of disqualification for membership of a Legislative Council/Assembly and brings out the point that disqualification flows out of legislations and since no law disqualified a person accused of having committed an offence to be elected as a member of a Legislative Council/Assembly, it cannot be held that such person could be disqualified.

5. The Division Bench of this Court did not take into account the difference between a disqualification which may impact eligibility, and suitability. The two i.e. eligibility and suitability are different concepts. A person may be eligible to be appointed to a post but may not be suitable to be appointed to the post.

6. We are not making a reference to a Larger Bench on the correctness of the law declared by three Division Benches of this Court for the reason the decisions do not note the law declared by the Supreme Court reported as Union of India and others Vs. Shri Bihari Lal Sidhana, and Dhananjay Vs. Chief Executive Officer, Zila Parishad, Jalna, which held that circumstances pertaining to the acquittal have to be kept in mind when public employment is in issue. In the decision reported as Management, Pandiyan Roadways Corp. Ltd. Vs. N. Balakrishnan, , the legal position with respect to the effect of an acquittal of a delinquent employee at a criminal trial viz-a-viz the disciplinary proceedings initiated against him has been succinctly by the Supreme Court in the following terms:-

21. However, there is another aspect of the matter which cannot be lost sight of. Respondent, in the meanwhile, has been acquitted. The factum of his acquittal has been taken into consideration by the Division Bench, which was considered to be an additional factor. Ordinarily, the question as to whether acquittal in a criminal case will be conclusive in regard to the order of punishment imposed upon the delinquent officer in a departmental proceeding is a matter which will

again depend upon the fact situation involved in a given case.

22. There are evidently two lines of decisions of this Court operating in the field. One being the cases which would come within the purview of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, . and G.M. Tank Vs. State of Gujarat and Another, . However, the second line of decisions show that an honourable acquittal in the criminal case itself may not be held to be determinative in respect of order of punishment meted out to the delinquent officer, inter alia, when: (i) the order of acquittal has not been passed on the same set of fact or same set of evidence; (ii) the effect of difference in the standard of proof in a criminal trial and disciplinary proceeding has not been considered. [See Commissioner of Police, New Delhi Vs. Narender Singh,], or; where the delinquent officer was charged with something more than the subject-matter of the criminal case and/or covered by a decision of the Civil Court. [See Jasbir Singh Vs. Punjab and Sind Bank and Others, . and Noida Enterprises Assn. v. Noida and Ors.]

7. The aforesaid view would hold good even when a person has to be considered for employment and pertaining to heinous offences even if the person has been acquitted would not mean that the person is of good character. We highlight that a person being acquitted at a criminal trial may not necessarily mean that the person is innocent. It would only mean that the prosecution could not muster sufficient and credible evidence to sustain a conviction. In today's environment where witnesses are suborned and hence turn hostile, one has to be careful. Thus, the fact of mere acquittal by itself may not be relevant and the background under which an acquittal took place may also become relevant for the reason the concern is not with the consequence of a man being acquitted but is on the subject of character verification.

8. A person seeking public employment must possess, if not more, at least the following attributes: -

- (a) Physical Strength and fitness/Free from medical diseases.
- (b) Emotional maturity, and ability to remain calm in emotionally charged situations.
- (c) Ability to exercise initiative in their work.
- (d) Good moral character and integrity.
- (e) The ability to carry a great deal of responsibility in handling difficult situations alone/dependability.
- (f) Good Judgment.

9. Good moral character and integrity is the sine qua non for public employment and if the public employment pertains to a police force good judgment, emotional maturity and ability to remain calm in emotionally charged situations would also be necessary. A criminal record is a record of a person's past history and is

generally used by potential employers to assess a candidate's character. A person with a criminal background not being given public employment is based on the premise that considerations of public policy, concern for public interest and regard for public good would justify a prohibition. Thus, the primary consideration has to be: Whether public interest or public good would be jeopardized if a person with a criminal background is inducted in public service and this would obviously mean that where a brush with a penal law is of such high degree of criminality the same would justify public employment.

10. In a decision pronounced by a Division Bench of this Court on April 29, 2013 in WP(C) 4052/2012 Commissioner of Police vs. Mukesh Kumar which incidentally comprised the authors of the present decision, in paragraph 22 to 23 it was opined as under:-

22. Where an acquittal is on the finding that a false complaint was lodged i.e. the best evidence led by the prosecution failed under the weight of admissions extracted during cross-examination of witnesses, whatsoever may be the offence alleged, it has to be held that the innocent accused cannot be made to suffer for the second time by denying him public employment merely because in the past a false complaint; proved to be false, was registered against him. But where the acquittal is on account of the high standard of proof required at a criminal trial or is based upon some critical facts not being proved or is the result of witnesses turning hostile, one has to be careful. Further facts have to be considered.

23. While considering the nature of acquittal, it would not be enough to simply observe that the witnesses had turned hostile and therefore it would be presumed that the accused had created a terror twice over; firstly when the offending act constituting the crime was committed and secondly when the witnesses were suborned. The judgment of the criminal court has to be taken into consideration with all the aspects leading to acquittal. The manner of acquittal and in particular whether it is on a benefit of doubt. Insofar as the nature of offence is concerned, the facts disclosed in the FIR supported with other material has to be considered. The gravity of the acts alleged the narration of the facts in the FIR and medical evidence has to be considered. Witnesses may not depose in tune with their statements made before the police and thus it would have to be looked into as to whether it was a case where the Investigation Officer did not seek full and complete version from the witness. It being settled law that while appreciating the deposition of witnesses, vis-?-vis their statements made before the police, on the issue of variation and improvements it has to be kept in mind that many a times a person informs facts which he thinks are relevant and ignores to tell facts which he thinks are irrelevant, but in law the relevance or irrelevance may be in converse and hence the duty of he who seeks information to elicit all relevant information.

11. The view taken in Mukesh Kumar's case (supra) has found approval in a recent decision pronounced on July 02, 2013 by the Supreme Court in Civil Appeal No. 4842/2013 Commissioner of Police Vs. Mehar Singh. Setting aside

two decisions of this Court which proceeded to apply the law as declared in *Jai Prakash's* case (supra), in paragraph 26 of its opinion the Supreme Court highlighted the requirement to maintain integrity and high standards of police force. Opining in para 27 that honesty and integrity are inbuilt requirements of a police force, in the same paragraph the Supreme Court observed:-

It bears repetition to state that while deciding whether a person against whom a criminal case was registered and who was later acquitted or discharged should be appointed to a post in the police force, what is relevant is the nature of the offence, the extent of his involvement, whether the acquittal was a clean acquittal or an acquittal by giving benefit of doubt because the witnesses turned hostile or because of some serious flaw in the prosecution, and the propensity of such person to indulge in similar activities in future. This decision, in our opinion, can only be taken by the Screening Committee created for that purpose by the Delhi Police. If the Screening Committee's decision is not mala fide or actuated by extraneous considerations, then it cannot be questioned.

12. In light of the aforesaid law declared by this very Bench which we find stands affirmed as per the view taken by the Supreme Court in *Mehar Singh's* case (supra) we simply highlight that the petitioner was acquitted at the criminal trial due to the complainant Rampal, examined as PW-1, turning hostile as also *Ami Chand Singh* PW-2 and *Kavinder* PW-3. As per the complaint Ex. A-1 made by Rampal pursuant whereunto FIR Ex. A-2 was registered, the petitioner and his co-accused had shot dead his son *Nardev* when his son demanded Rs. 50,000/- for having executed some electrical works for the accused. In Court he stated that he named the accused in his report because the villagers told him so. *Ami Chand Singh* PW-2 also resiled from his statement recorded by the police as per which he was an eye witness. Similar is the position with *Kavinder* PW-3.

13. We would only highlight that a father turning hostile has obviously to be a case of the witness being threatened and suborned. But we need not conclusively opine on the issue for the reason we are not called upon to pen an opinion as to what could be the probable cause for a father to be turning hostile. We are not required to re-appreciate the evidence led at the criminal trial which led to the petitioner being acquitted. Our job is to look at the material collected during investigation and analyze the same as per paragraph 23 of the decision in *Mukesh Kumar's* case.

14. That the complaint resulting in FIR being registered mentions the place where the deceased was killed and that the cause of the death was gunshot wounds is by itself proof of the fact that when the complaint was made the complainant knew the place where the deceased died as also the cause of the death. From a logically probative point of view it would be apparent that either somebody told the complainant said facts or the complainant saw them. If the complainant is a father and was told by somebody else said facts it is natural for the father to have taken said person along with him to the police. It is trite that from same set of evidence, upon a standard of proof warranted at a criminal trial

a conclusion may not be drawn because of the fact that evidence at a criminal trial requires proof beyond reasonable doubt and innocence being ruled out but pertaining to an issue relating to employment i.e. an issue having a civil character the same evidence, on logically probativeness of a circumstance may compel a different conclusion to be arrived at.

15. But we may not be bogged down on said account inasmuch as we are concerned with the reasonableness of an administrative decision on the subject the likely antecedents having bearing upon the character of a prospective candidate who seeks public employment as a police man.

16. Tested on the unveil of law as we understand it to be, as long as an administrative decision takes into account relevant circumstances and attracts itself to the correct legal principle the same cannot be questioned with respect to its merits warranting a re-appraisal of the facts and circumstances appraised by the decision maker. It is trite that it is a decision making process which has to suffer a judicial scrutiny and not the decision itself. We dismiss the writ petition but without any order as to costs.