
(2010) 04 DEL CK 0252

In the Delhi High Court

Case No : Writ Petition (C) No. 12899 of 2009

Delhi Police and Another

APPELLANT

Vs

Omveer Yadav

RESPONDENT

Date of Decision : 19-04-2010

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Penal Code, 1860 (IPC) — Section 304, 324, 34, 392

Citation : (2010) 04 DEL CK 0252

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : Sonia Sharma, for the Appellant; Deepender Hooda, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioners, recruitment cell of Delhi Police and another has impugned the order dated 10th July, 2009 passed by the Central Administrative Tribunal, Principal Bench in OA No. 2479/2008 titled Omveer Yadav v. Delhi Police and Ors. whereby the original application filed by the respondent was allowed and the order dated 16th October 2008 passed by the petitioner holding that the respondent was not suitable for the post of constable (executive) and cancelling his candidature for the said post, was quashed and the petitioners were directed to confer the appointment order if the respondent is found fit in all respects otherwise. The Tribunal had also held that the respondent shall not be entitled to be assigned any prior date in respect of his appointment and it would be only prospective.

2. Brief facts to comprehend the controversies are that the respondent had applied for the post of Constable (Executive), Mail in Delhi Police during the recruitment held in the year 2007. He was selected provisionally subject to medical fitness, verification of character and antecedents reveal that he was involved in a criminal case FIR 865/2005 dated 20th December, 2005 u/s 392/34

of IPC where, the respondent was released by order dated 24th November, 2006, though these facts were disclosed by the respondent in his application form and attestation form, however, in view of nature of involvement of the respondent and the gravity of offence and other relevant factors a show cause notice was issued to the respondent as to why his candidature be not cancelled.

3. After considering the reply of the respondent to the show cause notice, it was held that the replies given by the respondent were not convincing and the respondent was held not suitable for the post of Constable (Executive), Mail and his candidature was cancelled by order dated 16th October, 2008 which was challenged by the respondent before the Tribunal in a petition u/s 19 of the Administrative Tribunal Act, 1985.

4. The respondent had contended that he was implicated falsely in the case of snatching of a car by one Mr. Manoj and he was neither a party nor he had any information regarding the alleged offence. It was emphasized on behalf of the respondent that the FIR did not include his name nor stipulated his involvement. The victim Mr. Vikas had stated that he could identify Mr. Manoj and his associates who were involved in snatching of the car and therefore test identification parade was conducted by the Magistrate, where the complainant/victim did not identify the respondent. No recoveries were also made from the respondent, therefore, the investigating officer had filed an application for discharge of respondent from the case stipulating that putting up the name of the respondent in charge-sheet would be a futile exercise and consequently, the respondent was discharged from the case FIR 865/2005 by the Metropolitan Magistrate by order dated 24th November, 2006. In the circumstances, it was contended on behalf of the respondent that the order dated 16th October, 2008 was perverse and was based on non-application of mind. Merely because the respondent was falsely implicated, his candidature could not be cancelled merely because he was arrested despite his name being not included in FIR 865/2005. It was contended that while inferring his suitability these factors were not considered and merely on the basis of statement of main accused, which is also not admissible against him, it has been held that he is not suitable. The respondent also contended that the treatment meted to him was harsh and therefore, such a harsh treatment of cancelling his candidature could not be inflicted upon the respondent in the facts and circumstances.

5. The plea of the respondent was opposed by the petitioners contending, inter alia, that a person who was accused in a case of robbery could not be permitted to work in the police force and since the primary accused, Mr. Manoj had disclosed the name of the applicant, therefore, perhaps on account of undue pressure alleged to have been put, the respondent was not identified in the test identification parade and was released. It was contended that no malafides were attributed to the petitioners and since the decision was taken bonafide and for the administrative exigencies and reasons and so that no ineligible person gets into police force, the order cancelling the candidature of the respondent was

passed and it is not required any interference by the Tribunal.

6. The Tribunal, however, noted that no fraud has been played by the respondent and his name was not included in the FIR, and the arrest of the respondent was almost a year after the incident of car snatching. It was also observed that had the name of the respondent been in the FIR, the facts would have been different. Reliance was also placed on the fact that at the instance of the victim/complainant that he could identify the prime accused Manoj and his accomplice, a test identification parade was conducted where the complainant had Failed to identify the respondent leading to an application being filed by the petitioners for his release on the ground that putting up the name of the respondent shall be a futile exercise and the plea of the petitioner was accepted and the Metropolitan Magistrate had released the respondent by order dated 24th November, 2006. The Tribunal also noted that the case of the respondent is not where he was acquitted after the trial or by availing any benefit of doubt. The Tribunal had held that though a person with stigma cannot be enrolled, however, an innocent person cannot be denied the right for public employment if is implicated falsely and there is no incriminating material against the respondent. In the circumstances, the order of the petitioners holding that the reasons disclosed by the respondent to the show cause notice for cancelling his candidature were not convincing and were without any basis and perverse was not accepted and it was set aside.

7. We have perused the impugned order, the petition filed by the respondent before the Tribunal, reply of the petitioners before the Tribunal and the writ petition. The learned Counsel for the petitioners has also relied on Delhi Administration through its Chief Secretary and Others Vs. Sushil Kumar, R. Radhakrishnan Vs. The Director General of Police and Others, in support of petitioners' pleas and contentions. Sushil Kumar (supra) was also relied by the petitioners before the Tribunal. However, it was held that in the case relied on by the petitioners, the case was u/s 304, 324/34 of IPC and the Supreme Court had held that the view taken by the appointing authority in the background of the case, could not be set to be unwarranted. The Supreme Court had held so in the peculiar facts and circumstances of the case. Apparently, the case relied on by the petitioner is distinguishable as in the case of the present respondent, his name was not included in the FIR, he was not arrested for almost after one year and the complainant, though stated that he could identify the accused and his associates, however, in the test identification, he had failed to identify the respondent leading to an application being filed by the petitioners for release of his name, as it was contended that putting up respondent's name would be a futile exercise. Although, these facts were disclosed to the petitioners, however while passing the order dated 16th October, 2008, these facts apparently were not taken into consideration and merely on the basis that name of the respondent was disclosed by the accused Manoj Kumar, it was held that the reasons given by the respondent are not convincing. 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.

8. The other case relied on by the petitioner of R. Radhakrishnan (*supra*) is also distinguishable as in that case, a candidate had filed an application for appointment to the post of fireman and he was provisionally selected. The candidate in the said case, in reply to a question in the application whether he had ever been convicted in any criminal case as an accused had stated that he had not been involved in any case and subsequently it had transpired that he had suppressed the material fact and consequently, his candidature was cancelled. The case of the respondent is not of suppressing of any fact and in the circumstances, the ratio of R. Radhakrishnan (*supra*) cannot be relied on by the petitioners. Even the decision rendered by the Supreme Court in the case of Sushil Kumar on peculiar facts and circumstances of the said case, cannot be treated to be a binding precedent.

9. In totality of the facts and circumstances, therefore, this Court does not find any such illegality or irregularity in the order of the Tribunal, which will require any interference by this Court with the order impugned before us. The writ petition in the facts and circumstances, is without any merit and, it is therefore, dismissed.

10. The parties are however, left to bear their own costs.