

(2012) 02 DEL CK 0218

In the Delhi High Court

Case No : Writ Petition (C) No. 1694 of 2011, W.P. (C) No. 6253 of 2011 and W.P. (C) No. 7811 of 2011

GNCTD and Another

APPELLANT

Vs

Dharam Veer Singh
 Mukesh Kumar Vs Govt. of Nct of Delhi
 Commissioner of Police Vs Vinod Kumar

RESPONDENT

Date of Decision : 15-02-2012

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Penal Code, 1860 (IPC) — Section 143, 147, 154, 294, 323
Probation of Offenders Act, 1958 — Section 12, 3, 4
Public Examinations (Offences) Act, 1980 — Section 3, 6

Citation : (2012) 6 AD 533

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : V.K. Tandon, in W.P. C No. 1694/2011, Mr. Susheel Sharma, in W.P. C No.6253/2011 and Mr. V.K. Tandon, in W.P. C No. 7811/2011, for the Appellant; Shyam Babu with Mr. Shekhar Kumar, in W.P. (C) No. 1694/2011, Mr. Sumit Chander in W.P. (C) No.6253/2011 and Mr. Sachin Chauhan in W.P. (C) No. 7811/2011, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—W.P.(C) No.1694/2011 impugns the order dated 25.11.2010 of the Central Administrative Tribunal (Tribunal), Principal Bench allowing the OA No.164/2010 u/s 19 of the Administrative Tribunals Act, 1985 preferred by the respondent and directing the petitioner Delhi Police to appoint the respondent to the post of Head Constable along with others of the batch for which he had competed, without however giving him the benefit of back wages but entitling him to seniority from the date the person immediately below him in the merit list of Constables for the selection of the year 2006 was appointed. Notice of the writ petition was issued and vide interim order dated 06.04.2011, the operation of the order of the Tribunal stayed.

2. W.P.(C) No.6253/2011 impugns the orders dated 19.03.2010, 27.07.2010 and 16.05.2011 of the Tribunal dismissing the OA No.2372/2009 preferred by the

respondent therein impugning the cancellation of his candidature for the post of Constable in the Delhi Police and dismissing the review applications filed by the petitioner. Rule was issued of the said petition also.

3. W.P.(C) No.7811/2011 impugns the order dated 27.07.2011 of the Tribunal allowing the OA No.3384/2010 u/s 19 of the Act preferred by the respondent therein and directing the petitioner Delhi Police to appoint respondent therein to the post of Constable (Executive) in Delhi Police along with others of the batch for which he had competed without however giving him the benefit of back wages but entitling him to count his seniority from the date the person immediately below him in the merit list of Constables for selection of the year 2009 was appointed. Rule DB issued in the said petition also.

4. Since the issue involved in all the three petitions is the same, we heard the same together and are disposing of all the three petitions by this common judgment. Written arguments have also been filed on behalf of the respondents in W.P.(C) Nos.1694/2011 & 7811/2011.

5. The respondent in W.P.(C) No.1694/2011 had in pursuance to the recruitment in the year 2006 to the post of Constable in Delhi Police applied in the OBC category and cleared the Physical Endurance and Measurement Test, Written Test, Interview and Medical Test and was declared provisionally selected subject to the verification of his character and antecedents. The said verification revealed, that he was involved in FIR No.131/99 under Sections 454 and 380 of the IPC and FIR No.145/2004 under Sections 147, 323 and 451 of the IPC; that he was vide judgment dated 17.03.2001 acquitted in the criminal case in FIR No.131/1999 by giving him benefit of Section 3 of the Probation of Offenders Act, 1958; that in criminal case in FIR No.145/2004 also, he was acquitted vide judgment dated 01.12.2006 pursuant to a compromise and giving him benefit u/s 3 of the Probation of Offenders Act, 1958 and clarifying that the same would not have any adverse effect on the respondent. The respondent though had not disclosed the aforesaid criminal cases in the application form but in the attestation form meant for verification of character had made disclosure thereof. The petitioner Delhi Police however after giving a notice to show cause and considering his reply thereto, cancelled the candidature of the respondent. The representation of the respondent also did not find favour. The respondent thereafter filed O.A. No.2083/2008 which was disposed of vide judgment dated 21.04.2009 directing Delhi Police to reconsider the eligibility of the respondent. Delhi Police however vide order dated 17.06.2009 found the respondent unsuitable for a disciplined force like Delhi Police where safeguarding the human right is the utmost priority, giving the following reasons:

In case FIR No.145/2004, Sh. Ajit Singh S/o Sh. Ramjilal R/o Jogawar PS Mundawar, Distt. Alwar (Raj.) reported that on the morning of 26.07.2004 at about 5-6 A.M. he along with his father Sh. Ramjilal, mother Smt. Servo, wife Manju, Lekhram and Lekhram's wife Munesh were in their house. While his mother Servo was churning buttermilk, Sube Singh, Kanwar Singh, Sanwal S/o

Kunjaram, Dharamveer S/o Sube Singh and their wives attacked them with cane sticks and halberds (Pharsa) and injured all of them. Kanwar Singh and Sube Singh were equipped with halberd while rest were equipped with cane sticks. Sube Singh attacked him with halberd on his back. They vandalized the household articles and robbed Rs. 40,000/- cash, gold chain of his wife Manju, gold earring of Munesh. On hearing the noise, the neighbours gathered and intervened. Subsequently, a case u/s 451/341/323 IPC and as such, the court admonished all of them u/s 147 IPC by giving benefit u/s 03 of Probation of Offenders Act, 1958, vide order dated 01.12.2006. The Hon'ble Court also passed an order that admonition U/s 147 IPC shall have no adverse bearing on service of Dharamveer U/s 12 of Probation of Offenders Act, 1958.

In Second case FIR No.131/99, PS Mundawar Sh. Ramji Lal S/o Sh. Laxman R/o Jogawar, PS Mundawar, Distt. Alwar (Raj.) reported that he had a hut (chhappar) in the village in which he had stored "Tura" & "Wheat". On 03.05.99 at about 4:00 PM Sube Singh, Lal Singh, Kanwar Singh S/o Kunja Ram, Rakesh S/o Sube Singh, Dharamveer S/o Sube Singh, Sudesh D/o Lal Singh, Dhamali D/o Sube Singh, Chiriya W/o Sube Singh and Gidoari W/o Kunja Ram came there and broke his hut with the help of wood sticks and halberd. They also stole the wheat, tura and other materials forcibly. When he, his family and other villagers objected to it, they threatened them for dire consequences. Accordingly the case was registered U/s 454/380 IPC. During course of trial the court charged them U/s 147/323 IPC and the accused persons pleaded their guilt. Charges U/s 147/323 IPC were proved against them and the Court fined Rs. 100/- each on the five accused persons. However, the Court also given them benefit of Section 03 of Probation of Offenders Act, 1958.

Keeping in view the above circumstances, it has been established that you were involved in two criminal cases and played an active role in these cases. In one case FIR No.131/99, U/s 154/380 IPC, P.S. Mundawar, Rajasthan, the Court imposed a fine of Rs. 100/- on you extending benefit of Section 03 of Probation of Offenders act, 1958. In other one case FIR No.145/04 U/s 143/323/341/379 IPC, PS Mundawar (Raj.), the Hon'ble Court held all the accused guilty U/s 147 IPC and granted benefit u/s 03 of Probation of Offenders Act, 1958.

From the facts as explained above, it shows that you are of the habit of picking up quarrel and resorting to violence. This type of attitude renders you unsuitable for a disciplined force like Delhi Police where safeguarding the human right is the utmost priority. As such, you have again been found not suitable for appointment to the post of Constable (Exe.) Male in Delhi Police and your application is considered and rejected.

The said order was impugned in O.A. No.164/2010 (supra). The Tribunal however in view of the acquittal in the criminal cases with clarification that the probation would not adversely affect the respondent held such rejection to be bad and directed Delhi Police to appoint the respondent therein.

6. The petitioner in W.P.(C) No.6253/2011 had also applied for the post of Constable in Delhi Police in the recruitment of the year 2008; he also cleared all the tests and was provisionally selected but on verification was found to have been involved in case FIR No.134/2003 u/s 3/6 of the Public Examination Act and was convicted with a fine of Rs. 1,000/- and given the benefit of the Probation of Offenders Act. On such revelation, his candidature was also cancelled. The Tribunal dismissed his challenge holding that he has to suffer for the consequences of his conviction and the conclusion reached by the Delhi Police of his being unfit for service could not be questioned.

7. The respondent in W.P.(C) No.7811/2011 had also applied during the recruitment of the year 2009 for the post of Constable (Executive) in Delhi Police and was provisionally selected; however verification of his antecedents revealed that he was involved in criminal case FIR No.115/2007 dated 16.07.2007 under Sections 341/294/506/34 IPC in which he was convicted but released after admonition u/s 3 of the Probation of Offenders Act for the reason of his being a student and under 21 years of age. His candidature was also cancelled after hearing him. The Tribunal set aside the said order relying inter alia on Commr. of Police and Others Vs. Sandeep Kumar, and accordingly directed his appointment.

8. We have recently had occasion to deal with the questions as raised in these petitions in our judgment dated 16.11.2011 in W.P.(C) No.8752/2011 titled Vinod Kumar Vs. Commissioner of Police and judgment dated 20.12.2011 in W.P.(C) No.6518/2011 titled Commissioner of Police Vs. Ranvir Singh. It was held that though non disclosure by the candidate of his involvement in a criminal case when he was of under age and not expected to behave in a mature manner as elder people expect, cannot be a ground for cancellation of provisional selection but where the Delhi Police as employer makes an assessment as to the suitability for service in its force which is required to constantly interact and render assistance to public and finds a candidate unsuitable, its such decision cannot be lightly interfered with. It was further held that Delhi Police as employer is entitled to consider the factum of the charge against the candidate in assessing his / her suitability for induction in the police force even though the candidate may have been acquitted of the said charge. It was also noticed that the Delhi Police itself has vide Standing Order No.398/10 dated 23.11.2008 framed "Policy for Deciding Cases of Candidates Provisionally Selected in Delhi Police, Involved in Criminal Cases (Facing Trial or Acquitted)" providing reference of such candidates to the Screening Committee to assess suitability for appointment.

9. We shall now proceed to consider each of the aforesaid cases in the light of our conclusions aforesaid.

10. In so far as the respondent In W.P.(C) No.1694/2011 is concerned, we find Delhi Police to have at the level of Deputy Commissioner evaluated the suitability of the respondent and considering the charge against the respondent and disposal of the cases as compromised with admonition and benefit u/s 3 of the Probation of Offenders Act concluded the respondent to be habitual of picking up

quarrels and resorting to violence and his such attitude rendering him unsuitable. It is thus not as if the candidature of the respondent was cancelled merely for non disclosure and / or for concealment of the said facts, as was the case in Sandeep Kumar (supra). The Delhi Police as an employer cannot be deprived of making such assessment qua the persons seeking employment with it and persons not found suitable for cogent reasons cannot be thrust upon the Police Force. In this light of the matter, the argument of the counsel for the respondent that the petitioner Delhi Police had in response to the contempt petition filed before the Tribunal sought time to comply with the order and concealed the said fact is of no consequence. Merely because the Delhi police to avoid being hauled up for contempt sought time from the Tribunal to comply with the order cannot deprive it of its right to avail remedies against the said order. In so far as the effect of Probation of Offenders Act is concerned, another Division Bench of this Court in Gokul Ram Meena Vs. Govt. of NCT of Delhi and Others, has dealt in detail on the said aspect and concluded the same to be a relevant factor in service matters. We are thus of the opinion that W.P.(C) No.1694/2011 of the Delhi Police deserves to be allowed and the order of the Tribunal impugned therein directing Delhi Police to appoint the respondent is set aside / quashed.

11. The case of the petitioner in W.P.(C) No.6253/2011 was also examined in detail by the Screening Committee; he, as a student of B.A. Part-I, was in the examination found copying by unfair means and was prosecuted and convicted u/s 3/6 of the Public Examination Act and given benefit of Section 4 of the Probation of Offenders Act and was thus not found suitable for Delhi Police. Again, the cancellation of the provisional candidature of the said petitioner is not merely on the ground of non disclosure / concealment but on assessment of his suitability. The Tribunal has concurred with the said assessment of the Delhi Police. We, in exercise of powers of judicial review are not inclined to interfere with such decision of the Delhi police of not finding the petitioner suitable for employment and which decision is found to be based on cogent reasons. Accordingly, W.P.(C) No.6253/2011 is dismissed and the petitioner therein not found entitled to employment.

12. However the facts of W.P.(C) No.7811/2011 disclose that the name of the respondent therein was not included in the FIR when filed and was included subsequently and the respondent therein had confessed his guilt during a Lok Adalat and the Court where the said criminal case was pending considering the nature of the offence, character of the respondent and the factum that the respondent was still studying in the School, had released the respondent on probation after admonition. We find the petitioner Delhi Police to have not evaluated the suitability of the respondent considering the said factors. We are further of the view that what was laid down by the Apex Court in Sandeep Kumar squarely applies to the said facts. Accordingly, W.P.(C) No.7811/2011 is dismissed and the order dated 27.07.2011 of the Tribunal directing the Delhi Police to appoint the respondent therein is upheld and the petitioner Delhi Police is directed to now comply with the said order within six weeks.

No order as to costs.