

(2010) 07 DEL CK 0329

In the Delhi High Court

Case No : Writ Petition (C) 8929 of 2009

Govt. of NCT of Delhi and Another

APPELLANT

Vs

Amit Kumar

RESPONDENT

Date of Decision : 12-07-2010

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5(1)
Penal Code, 1860 (IPC) — Section 147, 148, 323, 324, 452

Citation : (2010) 07 DEL CK 0329

Hon'ble Judges : Pradeep Nandrajog, J; Mool Chand Garg, J

Bench : Division Bench

Advocate : S.P. Sharma, for the Appellant; Avnish Ahlawat, for the Respondent

Final Decision : Dismissed

Judgement

Mool Chand Garg, J.—The respondent, Amit Kumar, was appointed as Constable in Delhi Police on 29.03.2006. He was called upon to file an Attestation Form along with an undertaking in the requisite proforma, as supplied by the petitioners to him. He did submit the Attestation Form along with an undertaking. The relevant portion of the undertaking reads as under:

I Amit Kumar s/o Samarpal Singh r/o RZ-6C, New Gopal N, Najafgar, New Delhi - 43 Roll No. 826681 do hereby solemnly affirm that I have not concealed any fact in the Application Form as well as in the Attestation Form. I further declare that I have neither been involved in any criminal case nor been arrested/prosecuted/convicted/ bound/over/interned/externed as well as not dealt with under any law in force in any criminal case. No criminal case or court proceeding is pending against me at present.

2. On 29.08.2006 without issuing any show cause notice or warning, the respondent was dismissed from service on the ground that he concealed fact about his involvement in FIR No. 88/2001 registered u/s 147/452/323/504/506 IPC at Police Station Garhi Pukhta, in which a compromise took place on

7.10.2001. The representation made by the respondent against the aforesaid order was without any success. It is, thereafter, the respondent filed an Original Application bearing No. 318/2007 before the Central Administrative Tribunal, Principal Bench (hereinafter referred to as the "Tribunal") which was partly allowed by the Tribunal vide order dated 18.09.2007 and the petitioners were directed to accord a reasonable opportunity to the respondent by issuance of show cause notice etc. and adopting due process of law.

3. Accordingly, a show cause notice was served upon the respondent on 28.11.2007 to which the respondent submitted his reply dated 04.12.2007 contending therein that non-mentioning of criminal case was due to the fact that the respondent was not aware of his involvement in the said FIR inasmuch as he was neither arrested nor prosecuted in that case. He never received any communication about his involvement in that case either from the Court or from the Police before he was informed by the In-charge Police Station that the Closure Report in the case has been filed.

4. On 11.12.2007 the above show cause notice was withdrawn on the administrative ground but again a fresh show cause notice was issued, which was in the nature of termination by invoking provisions of Rule 5(1) of the CCS (Temporary Services) Rules, 1965. It was also defended by the respondent by reiterating that there was no occasion for him to conceal his alleged involvement in a criminal case.

5. The petitioners rejected the explanation and again terminated the services of the respondent. The respondent then approached the Tribunal again by filing an OA No. 553/2008 which stands allowed by the Tribunal vide order dated 26.09.2008. The petitioners thereafter filed Review Application No. 170/2008, which was dismissed by the Tribunal vide order dated 28.11.2008.

6. The petitioners have approached this Court aggrieved of the order passed by the Tribunal and pleads that on account of concealment of his involvement, the respondent has violated the rules framed by Delhi Police and has made himself liable to be terminated forthwith and accordingly, the order passed by them terminating his services was justified.

7. The learned Counsel for the respondent on advance notice has refuted the assertions made by the learned Counsel for the petitioners.

8. We have heard the learned Counsel for the parties. It would be appropriate to take note of the show cause notice served upon the respondents which is annexed as Annexure 1A with the OA and reads as under:

It is alleged that Rect. Constable Amit Kumar No. 1516/PTC (Now 2489/PTC) (PIS No. 28061160) was selected provisionally to the post of Constable (Exe.) in Delhi Police during the recruitment held in the year 2005 and allowed to join the department on 29.03.2006 (AN) subject to verification of his character and antecedents. As per his character and antecedents report received from the

authority concerned, he was found involved in a criminal case FIR No. 88/2001 u/s 147/148/324/504-II"C Police Station Garhi Pukhta (UP) and acquitted by the Hon"ble Court vide judgment dated 21.02.2006, on the compromise basis.

On scrutiny of Application Form filled up by him on 04.07.2005, and attestation Form filled up on 02.01.2006, it has been found that he did not disclose the fact of his involvement in the relevant column of Application Form as well as Attestation Form and concealed the facts intentionally. Thus, he succeeded in joining the department as Constable (Exe.) on 29.03.2006 (AN) by submitting a false undertaking & Attestation Form stating therein that "MERE UPER KOI ABHIYOG NAHI CHALAYA GAYA HAIN, MERE VIRUDH KOI ABHIYOG DRAJ NAHI HUA HAIN, MERE UPER KOI MAMLA KISI NAYALAYA MAIN NAHI CHAL RAHA HAI". He has not mentioned that he is involved in the case FIR No. 88/2001 u/s 147/148/324/504-IPC Police Station Garhi Pukhta (UP). He succeeded in joining the department as Constable (Exe.) by submitting false undertaking on 29.03.2006, which clearly reflects his malafide/ deceitful intention.

The above act on the part of Ct. Amit Kumar No. 1516/PTC (Now 2489/PTC) PIS No. 28061160 amounts to misrepresentation, suppression of material facts and making him ineligible for recruitment in Delhi Police and rendering him unfit for Police Service.

Therefore, he is called upon to Show Cause as to why his service should not be terminated under Rule-5(I) of Central Civil Service (Temporary Service) Rules 1965 and the period i.e. from the date of termination to the date of joining on re-instatement in service i.e. from 29.08.2006 to 15.11.2007 should not be treated as Period Not Spent on duty. His reply if any should reach the undersigned within 15 days from the date of receipt of this notice, failing which it will be presumed that he has nothing to say in his defence and the matter will be decided ex parte on its merit.

9. At this stage, it may be noticed that in connection with FIR in question the Investigating Officer filed a Final Report dated 26.09.2001 before the concerned Magistrate having jurisdiction over the area. The relevant portion of the report reads as under:

Brief reason for Closure of the case Sir, it is submitted that on 25.9.2001 on the basis of Tehrir of complainant FIR No. 88/01 was registered and handed over for investigation to me. During investigation after recording the statement of complainant, witnesses and spot inspection, in absence of evidence this final report is submitted with request that this final report be accepted.

This report nowhere goes to show that the respondent was ever arrested or summoned for trial in this case.

10. On the basis of his report, the learned ACJ J.M. Kairna passed the following order:

Today this final report was produced. Matter was called on which complainant

Sehdev and injured Pradeep Kumar Sharma and Ravinder Kumar appeared. Complainant got himself as CW-1 and injured Pradeep Kumar Sharma as CW-2 and Ravinder Kumar as CW-3 examined. All the three stated on oath that they have no objection in case the final report is accepted.

On going through the case file it is clear that complainant got FIR No. 88/2001 u/s 147/452/323/324/504/506 IPC Police Station Garhi Pukhta against accused Amit, Neeraj, Sandeep, Sonu, Parvesh and Pappu. In the above-said case the IO after investigation found that no case is made out, thus, submitted his final report on which notices were issued to the complainant and accused persons.

Complainant Sehdev and injured Pradeep Kumar Sharma and Ravinder Kumar got themselves examined as CW-1, CW-2 and CW-3 before this Court. All the three stated on oath that they have no objection in case the final report submitted by prosecution is accepted and they want any action against any accused. Therefore, in view of the above evidence and circumstances keeping in mind the oral evidence of Complainant and injured, the final report is liable to be accepted.

In view of the evidence of Complainant Sehdev and injured Pradeep Kumar Sharma and Ravinder Kumar, the final report is accepted. Case file be consigned to record room.

11. Even the order passed by the learned Magistrate does not show that the respondent was ever summoned to appear in the aforesaid matter. None of the papers produced on record contains any acknowledgment of the respondent which may reflect about the pendency of the aforesaid case.

12. It is thus apparent that the respondent was neither arrested in the aforesaid case nor he was summoned to face the trial. Thus, submissions made by the respondent to the effect that he had not suppressed any material fact while submitting attestation form/undertaking at the time of his appointment as Constable in Delhi Police were rightly accepted by the Tribunal.

13. Even otherwise, merely because a complaint has been filed against an incumbent by arraying him as an accused even though he is neither arrested nor summoned/tried by the concerned Court, and the case comes to an end either by way of withdrawal of the case or on the basis of a final report filed by the police after investigation, to presume that the incumbent was involved in that case would be a misnomer of justice and there is nothing on record to show that he was aware of the pendency of the FIR at the time when he filed his attestation form/undertaking. In this regard, it would be of relevance to take note of the observation made by the Hon''ble Supreme Court in the case of Vidya Charan Shukla Vs. Purshottam Lal Kaushik, wherein the Hon''ble Supreme Court has discussed the effect of acquittal of an accused in a criminal case. The relevant observations are reproduced here under:

Before examining the facts and ratio of Manni Lal Vs. Parmai Lal and Others, it

will be worthwhile to notice here a general principle of criminal law bearing on this issue. This principle as re iterated by this Court in Dilip Kumar Sharma and Others Vs. State of Madhya Pradesh, is as follows:

An order of acquittal particularly one passed on merits wipes off the conviction and sentence for all purposes, and as effectively as if it had never been passed. An order of acquittal annulling or voiding a conviction operates from nativity. As Kelson puts it, "it is a true annulment, an annulment with retroactive force". So when the conviction (for the offence) was quashed by the High Court (in appeal)..."it killed the conviction not then, but performed the formal obsequies of the order which had died at birth.

14. In the facts of this case, when it is apparent that the respondent was neither arrested nor summoned/tried for his involvement in FIR No. 88/2001, and the case was closed by accepting the final report submitted by the police by the concerned Magistrate, wipes out even registration of the FIR itself for all purposes. This tantamounts to annulment of the FIR with retroactive force, i.e., as if it was never registered. In such a case to say that the respondent was involved in that case and suppressed this fact without anything on record to show that he ever came to know about the pendency of that matter or that suppression was with a view to hide his involvement in a case which stood closed, would be travesty of justice. We, therefore, find no reason to interfere with the order passed by the Tribunal. The writ petition is accordingly dismissed.

CM No. 6345/2009

Dismissed as infructuous.