
(2013) 09 DEL CK 0423

In the Delhi High Court

Case No : Writ Petition (C) 5534 of 2013 and C.M. Application 12308 of 2013

Govt. of NCT of Delhi and Another

APPELLANT

Vs

Jitender Kumar

RESPONDENT

Date of Decision : 03-09-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 323, 325, 34, 341
Probation of Offenders Act, 1958 — Section 12, 13(b), 3, 4

Citation : (2013) 09 DEL CK 0423

Hon'ble Judges : S. Ravindra Bhat, J;Najmi Waziri, J

Bench : Division Bench

Advocate : Avnish Ahlawat, for the Appellant;

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The Govt. of NCT of Delhi questions an order of the Central Administrative Tribunal (CAT) dated 09.04.2013, setting aside the termination of the respondent on 30.05.2011. The respondent had applied for recruitment to the post of Grade-IV (DASS)/LDC and was duly selected. He was appointed by a letter dated 07.10.2010/16.10.2010 and he consequently joined the services. Before the appointment, the respondent had furnished an Attestation Form on 01.08.2010. In Column 13, in answer to certain queries, he had indicated in Columns 13(a) and 13(b) that he had been prosecuted earlier and that he had been arrested, However, in response to the query in Column 13(f), he mentioned that he had not been convicted by any Court for any offence. The Govt. of NCT of Delhi, in its Show Cause Notice dated 03.05.2011 stated that the respondent's response to query to Column 13(f) amounted to willful suppression of material facts. The Govt. of NCT of Delhi's position was that the applicant/respondent was duty-bound to fully disclose all facts, including that in respect of two incidents in which he had been prosecuted and that they had resulted in conviction. In respect of one incident, the respondent had been prosecuted for offence u/s 279 IPC-convicted but let off on probation under the Probation of Offender's Act,

1958. He had been in fact sentenced with reprimand and fine. As far as the second incident is concerned, the common ground before the CAT was that the applicant had been prosecuted for offences punishable under Sections 323/341 IPC. During the course of proceedings, it compounded the matter. The Govt. of NCT of Delhi argued before the Tribunal, whom the applicant had approached questioning his termination on 30.05.2011-that it was not the offence which was in question as much as the suppression of facts resorted to by the applicant.

2. By the impugned order, the CAT took note of various contentions, including the decisions cited, *Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav*, . The Tribunal in its impugned order noticed various other decisions cited by the applicant respondent, including the latest decision of the Supreme Court in *Commr. of Police and Others Vs. Sandeep Kumar*, . The Tribunal thereafter proceeded to apply the law declared in *Sandeep Kumar (supra)*, holding as follows:

17. It is to be seen that in *Commr. of Police and Others Vs. Sandeep Kumar*, , the candidature for the post of Head Constable was cancelled on the ground that the candidate had concealed his involvement in a criminal case under Sections 325/34 IPC. The Hon "ble Apex Court held that young people often commit indiscretions and authorities should have to condone such indiscretions.

18. In view of the aforesaid decisions, each case has to be examined with reference to the facts of the same. The applicant though convicted but not sentenced to undergo any imprisonment. Hence his understanding of the word "conviction" in giving an answer of "NO", was not altogether unreasonable to expect a layman to construe that he had never been convicted. Hence, the benefit of mistaken impression rather than the consequence of deliberate and wilful misrepresentation and concealment of facts, can be extended to the applicant. Even otherwise also, the indiscretions of the applicant are condonable, in view of *Sandeep Kumar's* case (*supra*). The applicant was acquitted, in any way, in the other case in FIR No. 1420/2005, P.S. Sultanpuri.

19. In these circumstances and for the aforesaid reasons, the OA is allowed and the impugned order dated 31.05.2011 is quashed and set aside and the respondents are directed to reinstate the applicant into service forthwith with all consequential benefits and to consider the case of the applicant afresh for suitability to the post and for declaration of his probation, in terms of the observations made in the OA. However the applicant is not entitled for any arrears. No order as to costs.

3. The Govt. of NCT of Delhi reiterates its grounds. Ms. Avnish Ahlawat, learned counsel urges that the Tribunal has fallen into error in not directing that the suppression of facts and the result in the other prosecution, i.e. compounding of offences amounted to wilful withholding of material facts. It was submitted that even if such disclosure had been made, there was a fair chance of the applicant's claim to be considered and recorded on its merits. Learned counsel

relied upon the decision of the Supreme Court reported as Commissioner of Police v. Mehar Singh [Civil Appeal No. 4842/2013]. The Supreme Court in a two Judge decision held that in such matters pertaining to recruitment to police force, the previous criminal cases and any further information as to whether that resulted in conviction or acquittal are material factors which a candidate could ill afford to withhold. In para 28, the Supreme Court held as follows:

28. The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee. The decision of the Screening Committee must be taken as final unless it is mala fide. In recent times, the image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in public domain and are a matter of concern. The reputation of the police force has taken a beating. In such a situation, we would not like to dilute the importance and efficacy of a mechanism like the Screening Committee created by the Delhi Police to ensure that persons who are likely to erode its credibility do not enter the police force. At the same time, the Screening Committee must be alive to the importance of trust reposed in it and must treat all candidates with even hand.

4. Section 12 of the Probation of Offender's Act reads as follows:

12. Removal of disqualification attaching to conviction. Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law: Provided that nothing in this section shall apply to a person who, after his release u/s 4, is subsequently sentenced for the original offence.

In the present case, it is not in dispute that the petitioner had made fair disclosure about certain previous cases by affirmatively responding to queries in paras 13(a) and (b). Section 13(b) was whether the applicant had been previously prosecuted. In these circumstances, this has to be the contextual background. The respondent had argued before the CAT that the conviction and the probation granted could not be taken into consideration as a civil disqualification by virtue of Section 12 of the Probation of Offender's Act. To this Court's mind, that argument is not mere technicality because Section 12 does confer such right. The logic of Section 12 can arguably be that since the previous conviction had resulted in an order of probation-(to which the State itself was a

party), the applicant could well say that such queries were not material. This cannot be recognized as a blanket proposition of law in every case. Much would depend on the facts and circumstances. Likewise, the fact that the other prosecution ended in a compounding order did not imply that the respondent had been in fact convicted. This Court is furthermore of the opinion that the decision in Mehar Singh (supra) as well as in Sandeep Kumar (supra) and large number of other cases dealt with recruitment to police and para military forces. The Courts were sensitive to the need for applicants to be part of the disciplined and organized force and, therefore, insisted upon the application of the material disclosure standard. In the present case, the respondent had applied for civil post, i.e. LDC. That he in fact did not intend to withhold material information is evident from his fair and genuine response to queries in Columns 13(a) and 13(b). For the above reasons, the Court is satisfied that the impugned order and order of the CAT does not call for interference. The writ petition and pending application are accordingly dismissed.