

(2015) 03 DEL CK 0337
In the Delhi High Court
Case No : Writ Petition (C) 3182 of 2015

Gugan

APPELLANT

Vs

Commissioner of Police and Others

RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 19(1)
Penal Code, 1860 (IPC) — Section 420

Citation : (2015) 03 DEL CK 0337

Hon'ble Judges : Kailash Gambhir, J; I.S. Mehta, J

Bench : Division Bench

Advocate : Sourabh Ahuja, for the Appellant; Rakesh Mittal and Kamlesh Anand, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.

C.M. Appl. No. 5678/2015 (Exemption)

Exemption allowed subject to just exceptions.

Application stands disposed of.

W.P. (C) No. 3182/2015

1. By the instant Writ Petition filed under Article 226 of the Constitution of India, the petitioner questions the tenability of the impugned order dated 22.12.2014 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi, whereby the learned Tribunal dismissed the Original Application preferred by the petitioner.

2. We would now turn to the facts of the case for better comprehension:-

The petitioner was selected to the post of Head Constable (Min.) in the

recruitment initiated in the year 2010. Prior to his selection in the Delhi Police, he was working as Fire Operator in Delhi Fire Service (DFS), GNCT of Delhi, the recruitment process of which was conducted by Delhi Subordinate Services Selection Board for that post. The petitioner was offered appointment by DFS vide letter dated 25.06.2008. He accepted the offer of Fire Operator on 18.07.2008. However, vide an order dated 30.08.2011; he was terminated as a Fire Operator under Rule-5 (1) of CCS (Temporary Service) Rules, 1965. While submitting the attestation form after his selection with Delhi Police for the post of Head Constable (Min.) in the month of March 2013, the petitioner mentioned the fact of his termination from DFS and further mentioned the Order number of his termination letter from DFS. For the post of Fire Operator in DFS, a valid driving license is an essential requirement. According to the petitioner, he had filed his driving license, which he had obtained in the year 2004 from Agra Transport Authority and based on an adverse report by the Agra Transport Authority regarding the applicant's license, he was issued a Show Cause Notice dated 04.05.2011 proposing to terminate his services as Fire Operator under Rule 5 (1) of CCS (Temporary Service) Rules, 1965. The authorities did not accept his explanation and issued termination order dated 30.08.2011. After selection in Delhi Police, he was issued a Show Cause Notice dated 04.07.2013 mentioning the following:-

"You have submitted your Attestation Form filled up by you on 10.03.2013 in Column No. 10 of said form you had mentioned that earlier you had joined Delhi Fire Service as Fire Operator but your services were terminated on 01.10.2011 under sub rule(1) of Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965 for producing fake Driving License. You had got entry in Delhi Fire Service by deceitful means and your services were terminated when it was revealed that the Driving License produced by you was fake. This act of using fake Driving License for getting entry in Delhi Fire Service was a deliberate, well planned and intentional which amounts to gross misconduct and also constitute an offence of cheating punishable u/s 420 of IPC. Since the fire department did not prefer to file an FIR against you, you have escaped from the criminal liability but this cannot lighten the criminal act done by you."

In the instant case, your act of producing fake driving license amounts to gross misconduct. You produced a fake driving license in Delhi Fire Service for your personal gain and succeeded in getting job by deceitful means. A person having dubious character like you is not fit to be appointed in a disciplined force like Delhi Police.

In view of the facts and circumstances, the Delhi Police is not under obligation to recruit a person having doubtful integrity. Therefore, you, candidate cannot be allowed to join Delhi Police which is even more sensitive organization than Delhi Fire Service".

3. Assailing the legality and correctness of the impugned order dated 22.12.2014 passed by the learned Tribunal, Mr. Sourabh Ahuja, learned counsel for the

petitioner submits that the Ld. Tribunal has exceeded its jurisdiction in reading between the lines of the order of termination issued by the Delhi Fire Service (hereinafter DFS), which order is an order simplicitor and innocuous in nature.

4. The counsel contends that the genuineness or otherwise of the Driving License of the petitioner must be put to rest at the stage of his termination from the DFS.

5. The counsel further avers that the Id. Tribunal has not appreciated the fact that the driving license of the petitioner must be put to rest at the stage of his termination from the Delhi Fire Service and also contends that the tribunal while dismissing the O.A ignored the fact that the driving license submitted by the petitioner at the time of his appointment in DFS has been found to be genuine by the DFS prior to his appointment.

6. It is the contention of the counsel for the petitioner that the order of termination issued by the DFS is an order simplicitor and not a stigmatic order and therefore this will not cause a hindrance in the petitioner's future employment and this fact has not been appreciated by the Id. Tribunal. The counsel further submits that the order being simplicitor and not stigmatic, the petitioner did not contest cases in the Courts for seeking declaration that the report with regard to the fake driving license qua him is illegal and arbitrary and thought it appropriate to apply for another Government Job where there was no requirement of any driving license.

7. The counsel submits that neither termination nor removal from service can operate as a disqualification for other post in the Government and it is only dismissal which will operate as a bar.

8. The counsel for the petitioner also avers that driving license submitted by the petitioner with the DFS was verified by them and the same was found genuine and that it was only after this that the other Government Department offered appointment to him and sent him for training and appointed him. Counsel for the petitioner further submits that it would be erroneous to say that the petitioner's service in the DFS was terminated on the ground of production of fake driving license as no such ground has been mentioned in the termination order which alone is to be read in law.

9. It is also the contention of the counsel for the petitioner that the petitioner was duped by the concerned authorities in issuing him a fake driving license (if any) and the respondents are victimising him further by depriving him of employment and also that the petitioner is a man of integrity and it is absolutely wrong to presume that he has a dubious character or had committed any misconduct or adopted deceitful means.

10. The counsel also contends that reliance placed by the Respondents on the judgment in the case of Delhi Administration through its Chief Secretary and Others Vs. Sushil Kumar, (1996) 8 AD 669 : (1997) 75 FLR 42 : (1996) 10 JT 34 : (1996) 8 SCALE 11 : (1996) 11 SCC 605 : (1996) 7 SCR 199 Supp : (1997)

1 UJ 159 is not applicable to the facts of the present case.

11. Refuting the said contentions, the learned counsel for the respondents contends that producing fake driving license in the DFS amounts to gross misconduct and definitely shows a dubious character with bad antecedents and hence the petitioner can't be given appointment in a disciplined force like the Delhi Police, which is an even more sensitive organisation than the DFS.

12. The counsel submits that on verification, the DFS found that the petitioner had produced a fake driving license and he was issued a Show Cause Notice dated 04.05.2011. In relation to this fake driving license, his reply to the said Show Cause Notice was examined and subsequently, the Department chose to terminate his service under Rule-5 (1) of the CCS (Temporary Service) Rules, 1965 vide notice dated 30.08.2011. Therefore, the petitioner's service was terminated by the Delhi Police in the light of the judgment in Sushil Kumar's case (supra). In this regard the counsel for the respondents has also placed reliance on a catena of judgments apart from Sushil Kumar's case (supra) viz. Commissioner of Police, New Delhi and Another Vs. Mehar Singh, (2013) 7 AD 352 : AIR 2013 SC 2861 : (2013) 9 JT 470 : (2013) LabIC 3207 : (2013) 4 LLN 461 : (2013) 9 SCALE 444 : (2013) 7 SCC 685 : (2013) 2 SCC(L&S) 910 : (2013) 4 SCT 311 , Mohd. Yunus Khan Vs. State of U.P. and Others, (2010) 10 JT 341 : (2010) 10 SCALE 286 : (2010) 10 SCC 539 : (2011) 1 SCC(L&S) 180 : (2010) 6 SLR 88 : (2010) AIRSCW 6089 : (2010) 7 Supreme 970 etc.

13. Based on the aforesaid submissions, the learned counsel for the respondent submits that the order passed by learned Tribunal is a well reasoned order and the same may not be interfered with by this Hon'ble Court.

14. We have heard the submissions made by the learned counsel for the parties and also gone through the impugned judgment passed by learned Tribunal and the material placed on record.

15. The Ld. Tribunal placed reliance on the judgment in the case of Commissioner of Police, New Delhi and Anr. v. Mehar Singh (supra) wherein on the question of claiming honesty and integrity held as follows:

"The respondents are trying to draw mileage from the fact that in their application and/or attestation form they have disclosed their involvement in a criminal case. We do not see how this fact improves their case. Disclosure of these facts in the application/ attestation form is an essential requirement. An aspirant is expected to state these facts honestly. Honesty and integrity are inbuilt requirements of the police force. The respondents should not, therefore, expect to score any brownie points because of this disclosure."

16. Considering the fact that the Ld. Tribunal has examined the issue at great length touching upon all the relevant and important aspects therefore apart from referring to the relevant paras of the said judgment we need not elucidate on the subject any further.

17. In the case of Commissioner of Police v. Mehar Singh, (supra) the Hon'ble Supreme Court laid strong emphasis on recruiting persons of impeccable character and integrity in the Delhi Police and said that persons having criminal antecedents were misfit for appointment in the police. Relevant para of this judgment is also reproduced as under:-

"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".

18. A slight re-iteration of the facts of the present case show that after selection in the Delhi Police, the petitioner was issued a Show Cause Notice dated 04.07.2013, which is reproduced as under:-

"You have submitted your Attestation Form filled up by you on 10.03.2013 in Column No. 10 of said form you had mentioned that earlier you had joined Delhi Fire Service as Fire Operator but your services were terminated on 01.10.2011 under sub rule(1) of Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965 for producing fake Driving License. You had got entry in Delhi Fire Service by deceitful means and your services were terminated when it was revealed that the Driving License produced by you was fake. This act of using fake Driving License for getting entry in Delhi Fire Service was a deliberate, well planned and intentional which amounts to gross misconduct and also constitute an offence of cheating punishable u/s 420 of IPC. Since the fire department did not prefer to file an FIR against you, you have escaped from the criminal liability but this cannot lighten the criminal act done by you.

In the instant case, your act of producing fake driving license amounts to gross misconduct. You produced a fake driving license in Delhi Fire Service for your personal gain and succeeded in getting job by deceitful means. A person having

dubious character like you is not fit to be appointed in a disciplined force like Delhi Police.

In view of the facts and circumstances, the Delhi Police is not under obligation to recruit a person having doubtful integrity. Therefore, you, candidate cannot be allowed to join Delhi Police which is even more sensitive organization than Delhi Fire Service".

19. The petitioner submitted his reply dated 17.07.2013 but the same was rejected by the respondents vide order dated 01.08.2013, and the candidature of the petitioner to the post of Head Constable (Min.) was cancelled with immediate effect. And while passing the order the Deputy Commissioner of Police relied on the judgment of the Hon"ble Supreme in Sushil Kumar's case (supra) wherein importance was placed on the conduct or character of the candidate to be appointed to the service and not the actual result, and it was held that if the result ended up in a particular fashion or manner, then the law would take care of the consequences. And the only relevant consideration to the case was the antecedents of the candidate.

20. Delhi Police has also issued a separate standing order i.e. Standing Order No. 398/2010 laying down policy guidelines for deciding the cases of candidates provisionally selected in Delhi Police, involved in Criminal Cases (Facing Trial or Acquitted) and relevant paragraphs of which are reproduced as under:-

"STANDING ORDER NO. 398/2010 POLICY FOR DECIDING CASES OF CANDIDATES PROVISIONALLY SELECTED IN DELHI POLICE, INVOLVED IN CRIMINAL CASES (FACING TRIAL OR ACQUITTED)

During the recruitments made in Delhi Police, several cases come to light where candidates conceal the fact of their involvement in criminal cases in the Application form/Attestation form in the hope that it may not come to light and disclosure by them at the beginning of the recruitment process itself may debar them from participating in the various recruitment tests. Also the department is hard put to decide whether candidate should be offered appointment if he/she has been acquitted but not honourably.

In order to formulate a comprehensive policy, the following rules shall be applicable for all the recruitments conducted by Delhi Police.

1. If a candidate does not disclose his/her involvement and/or arrest in criminal case(s), complaint case(s), preventive proceedings etc. in the application form but discloses the same in the attestation form, the candidature will not be canceled only on this ground.

2. However the candidature will be cancelled in case the candidate does not disclose the fact of his/her involvement and/or arrest in criminal case(s), complaint case(s), preventive proceedings etc. both in the application form and in the attestation form and the fact is subsequently found out from the verification report received from the District authorities or otherwise.

Before taking any action against the candidate, a show cause notice will be issued and the candidate will be given reasonable opportunity to submit his/her reply. If sought, a personal hearing must be given to the candidate. Thereafter a speaking order should be passed regarding cancellation of the candidature.

3. If a candidate had disclosed his/her involvement and/or arrest in criminal case(s), complaint case(s), preventive proceedings etc. and the case is pending investigation or pending trial, the candidature will be kept in abeyance till the final decision of the case. After the Court's judgment, if the candidate is acquitted or discharged, the case will be referred to the Screening Committee of the PHQ comprising of Special commissioner of Police/Administration, Joint commissioner of Police/Headquarters and Joint Commissioner of Police/Vigilance to assess his/her suitability for appointment in Delhi Police.

4. If a candidate had disclosed his/her involvement and/or arrest in criminal case(s), complaint case(s), preventive proceedings etc. both in the application form as well as in the attestation form but was acquitted or discharged by the Court, his/her case will be referred to the Screening Committee of PHQ to assess his/her suitability for appointment in Delhi Police.

5. As per Section 19(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000 a juvenile who has come in conflict with law and has been dealt with under the provisions of the Juvenile Justice Act, he/she shall not suffer any disqualification on account of conviction in an offence under the said law.

However, if a candidate who was a juvenile in conflict with law and who does not disclose such information in the Attestation form, his/her candidature will be cancelled on account of concealment.

6. Such candidates against whom chargesheet in any criminal case has been filed in the Court and the charges fall in the category of serious offences or moral turpitude, though later acquitted or acquitted by extending benefit of doubt or the witnesses have turned hostile due to fear of reprisal by the accused person(s), he/she will generally not be considered suitable for government service. However, all such case will be judged by the Screening Committee of PHQ to assess their suitability for the government job. The details of criminal cases which involve moral turpitude may kindly be perused at Annexure "A".

7. Such cases in which a candidate had faced trial in any criminal cases which does not fall in the category of moral turpitude and is subsequently acquitted by the Court and he/she discloses about the same in both Application form as well as Attestation Form will be judged by the Screening Committee to decide about his/her suitability for the government job.

8. Minor offences, traffic violations, juvenile in conflict with law tried in open courts (Juvenile Justice Boards) and accident cases [not applicable for candidates provisionally selected as constable (Driver)] should not be a bar for recruitments in Delhi Police in view of the various CAT/Court judgments.

9. If any candidate is discharged by extending the benefit of Probation of Offenders Act, 1958 this will also not be viewed adversely by the department for his/her suitability for government service.

10. If a candidate was involved in a criminal case which was withdrawn by the State Government, he/she will generally be considered fit for government service, unless there are other extenuating circumstances."

21. The learned Tribunal is right in observing that the DFS after issuing a Show Cause Notice came to the conclusion that the petitioner was not fit to be retained in the fire service and terminated his service but the question of fake certificate is on record, but the petitioner never challenged it before the Court of Law, which he could have done had he wished to clear his name.

22. A candidate to be recruited to the police service must be worthy of confidence and should be a person of utmost rectitude, impeccable character and integrity. A person having criminal antecedents will not fit in this category. Persons who are likely to erode the credibility of the police ought not to enter the police force (Ref: State of M.P and Ors. v Parvez Khan, in Civil Appeal no. 10613 of 2014, decided on 1.12.2014). Character of a person is vital for adjudging his suitability for the job. Anne Frank has rightly summed up the "character" in these lines:

"The final forming of a person"s character lies in their own hands".

23. It is pertinent for a country to have a morally upright, effective, righteous Police Force. Police are expected to provide security to people. It has to be made sure that right, ethical, upright, principled people find their way into the Police force. People repose a great deal of confidence and trust on Police, therefore, it is imperative that only those people who are worthy of that confidence are drawn into the Police Service. A starting point of cleansing the Police system is to weed out the possibility of infiltration by people with criminal antecedents and a chequered history. The disturbing levels of corruption and misdemeanour in the Police Force have compelled the Courts to prescribe high standards of rectitude and uprightness for people making their way into the Law Enforcement Agency.

24. Endorsing the view taken by the learned Central Administrative Tribunal, we hardly find any ground to take any contrary view. It is a well acknowledged that the petitioner has disclosed his termination in his attestation form, but just based on this disclosure, the petitioner can't expect to gain a brownie point or gain an extra leverage, because disclosure of these facts in the application form/ attestation form is a pre- requisite and one is expected to state these facts honestly. Stricter norms need to be applied while appointing persons in a disciplinary force because public interest is involved in it.

25. Therefore, in the light of these facts and circumstances, we find no merit in the present petition, and the Writ Petition as well as the pending application is dismissed, with no orders as to costs.