
(2020) 01 CAT CK 0072

In the Central Administrative Tribunal

Case No : Original Application No. 4340 Of 2014

Kuldeep

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 28-01-2020

Acts Referred:

Indian Penal Code, 1860 — Section 304, 324, 394

Citation : (2020) 01 CAT CK 0072

Hon'ble Judges : S.N. Terdal, J; Mohd. Jamshed, Member (A)

Bench : Division Bench

Advocate : M.K. Bhardwaj, U. Srivastava, S.M. Arif

Final Decision : Dismissed

Judgement

Mohd. Jamshed, Member (A)

1. The applicant in response to an advertisement dated 21.10.2012 for the post of Lower Division Page | 2 Clerk (LDC)/ Data Entry Operator (DEO) appeared in Staff Selection Commission (SSC), Combined Higher Secondary Level (CHSL), examination in the year, 2012. He was declared successful in the written test on 11.02.2013. He, further, appeared in the typing test and was declared successful and was advised to submit documents to get his appointment in Intelligence Bureau (IB) vide letter dated 26.09.2013. Respondents, however, through the impugned order dated 19.06.2014 declared the applicant not suitable for appointment in IB. The applicant, further, wanted to know the reason of his rejection and sought information under the Right to Information (RTI) Act, 2005. Respondents did not consider his request for appointment. Aggrieved by this, the applicant has filed the present OA seeking the following reliefs:-

"(i) To quash and set aside the letter/order dated 19.06.2014 and direct the respondents to appoint the applicant to the post of LDC in IB with all consequential benefits.

(ii) To direct the respondents to appoint the applicant as LDC in IB or any other

department as per the position of applicant in the select list prepared on the basis of CHSL, examination, 2012 with all consequential benefits.

(iii) To declare the action of respondents in declaring the applicant unsuitable for appointment as LDC as illegal, arbitrary and issue consequential direction for appointment."

2. The applicant has submitted that he was declared qualified in the written test and called for typing test vide letter dated 11.02.2013. He appeared for the typing test and also filed an attestation form. In the aforesaid form the applicant disclosed about his implication in 02 criminal cases registered at the instance of relatives and villagers. The result was finally declared, thereafter, and his name was recommended for IB, being his first preference. IB asked the applicant for filling certain forms which was done by the applicant including information with regard to his implication into two criminal cases.

3. Respondent No. 03 vide impugned order dated 19.06.2014 cancelled the candidature of the applicant for appointment in IB. The applicant contends that he was successful in the examination and had secured higher merit and gave his first preference for posting in IB. The impugned order issued by the respondents indicates that he was not found suitable for IB on the basis of C&A verification report and, accordingly, his candidature was cancelled. The impugned order dated 19.06.2014, reads as under:-

"Sub:- Candidature of Shri Kuldeep for the post of LDC in IB through SSC HSL Exam- 2012.

Sir,

I am to invite your attention to memo of even number dated 26.09.2013 on the subject cited above and to say that on the basis of C&A verification report, you are not found suitable for appointment in IB. Accordingly your candidature is hereby cancelled. Your dossier is being returned to SSC."

The applicant has challenged this decision of the respondents alleging it to be arbitrary and illegal.

4. Respondents No. 02 (Staff Selection Commission) in their short counter affidavit have confirmed that the applicant was a candidate in SSC, CHSL examination, 2012. He was selected and nominated for IB. For pre-appointment verification the IB called for the required documents and asked him to fill an attestation form giving full details about himself. In column-12 of the attestation form of the IB, specific information from the applicant, as to whether, he was ever arrested/prosecuted was required to be furnished. The applicant furnished the information regarding his arrest and FIRs against him in criminal cases. Therefore, on the basis of C&A verification report, the applicant was not found suitable for appointment in IB and, accordingly, his candidature was cancelled by IB vide order dated 19.06.2014.

5. Respondents No. 01 and 03 through their counter affidavit submitted that appointment to the post of LDC in IB is based on C&A verification report and that the candidature of the applicant was cancelled in accordance with well settled and established principles of Government of India. The information furnished by him in the attestation form revealed that the applicant was involved in two criminal cases and that FIRs were also registered against him. The first criminal case registered against him concerned to dowry death and the second criminal case was for other charges including house trespassing, rioting and causing grievous hurt etc. On the basis of such verification, he was not found eligible for posting by IB and his candidature was cancelled. The applicant has relied upon the judgment of this Tribunal in OA No. 1404/2011 dated 12.09.2011, judgment of Hon'ble Delhi High Court in Govt. of NCT of Delhi & Anr. Vs. Jai Prakash (W.P. (C) No. 3566/2010 and the judgment of Hon'ble Apex Court in Board of High School & Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, 1962 SCR (SUPP.) 36. The facts of the quoted cases are different from the facts of the present OA, as they are not related to the issue raised herein. Learned counsel for the respondents submitted departmental instructions dated 13.01.2020, which were taken on record.

6. We heard Mr. M. K. Bhardwaj, learned counsel for the applicant and Mr. U. Srivastava and Mr. S. M. Arif, learned counsel for the respondents.

7. The applicant in response to an advertisement in the year 2012, appeared in written test of CHSL examination conducted by SSC. After passing the written test, he also underwent a typing test and qualified the same. The preference of the candidate was also sought for posting in different departments. The applicant had given his first preference for IB and, accordingly, his dossier was forwarded to IB for further verifications. IB undertook C&A verification and based on the information provided by the applicant which included his involvement in two criminal cases in which FIRs had been registered. He also advised the respondents that he had been acquitted in both the cases. IB did not find him suitable for appointment and accordingly his candidature was rejected vide order dated 19.06.2014. Aggrieved by this decision, the applicant sought relief in terms of quashing the said impugned order and seeking a direction to appoint the applicant in LDC with IB or any other department.

8. In its detailed counter affidavit, the Respondent No. 03 have indicated that there were serious criminal charges against the applicant in two criminal cases and although he has been acquitted in both the cases, he has not been found suitable for appointment in IB as the organization deals with very sensitive matters requiring an outstanding and clear Character and Antecedents record.

9. The second aspect is whether the applicant can be adjusted by SSC for any other post in any other department. In this regard the proposition has been clarified vide letter dated 13.01.2020, brought on record by learned counsel for the respondents indicating that a candidate rejected on the ground of Character and Antecedents by one department, cannot be re-nominated or sponsored to

another department. Learned counsel for the respondents have submitted a letter of Ministry of Personnel, Public Grievances and Pensions dated 02.01.2020 indicating that the brochure on verification of character and antecedents do not contain any instructions on whether the dossier of a candidate can be sponsored to another Department after being rejected by one Department on the ground of character and antecedents. Another document submitted and taken on record is a letter from Staff Selection Commission dated 13.01.2020 intimating the DOP&T and also stating that dossier of the candidate rejected on the ground of character and antecedents is not re-nominated or sponsored to another Department. It is thus evident that the applicant had cleared the required examination, but was not found suitable for appointment on the basis of C&A verification report by IB. He had given his preference to join IB and, accordingly, his dossier was forwarded to IB, which did not find him suitable and his candidature was cancelled. In their counter affidavit the respondents have provided details of criminal cases in which the applicant was involved. Two FIRs were also registered against him for the cases pertaining to dowry death and house trespassing and causing grievous hurt, which are of a very serious nature. Although, the applicant was acquitted in both the court cases, this aspect was taken into account by IB and in view of the very sensitive nature of work, IB did not find him suitable for appointment and, accordingly, his candidature was rejected.

10. The applicant, thereafter, sought appointment to any other post in any other department by SSC. This has also been clarified by the SSC that a candidate rejected on the ground of character and antecedents by one department, cannot be re-nominated or sponsored to another department. Accordingly, the applicant was not considered for any other post in any other department.

11. Judicial intervention in the process of selection is also limited. In *Pitta Naveen Kumar v. Raja Narasaiah Zangiti*, (2006) 10 SCC 261 the Hon'ble Apex Court held as under:-

"32. ... A candidate does not have any legal right to be appointed. He in terms of Article 16 of the Constitution of India has only a right to be considered therefor. Consideration of the case of an individual candidate although ordinarily is required to be made in terms of the extant rules but strict adherence thereto would be necessary in a case where the rules operate only to the disadvantage of the candidates concerned and not otherwise."

12. In another judgment reported in *Kulwinder Pal Singh Vs. State of Punjab*, (2016) 6 SCC 532, the Hon'ble Apex Court held as under:

"10. It is fairly well settled that merely because the name of a candidate finds place in the select list, it would not give him indefeasible right to get an appointment as well. The name of a candidate may appear in the merit list but he has no indefeasible right to an appointment vide *Food Corporation of India v. Bhanu Lodh* (2005) 3 SCC 618, *All India SC & ST Employees' Assn. v. A. Arthur Jeen* (2001) 6 SCC 380 and *UPSC v. Gaurav Dwivedi* (1999) 5 SCC 180."

13. In the present OA, the selection process of the applicant has not been completed. He had only qualified in the written examination subject to verification of character and antecedents. During this whole exercise and on the basis of his involvement in criminal cases, the Department decided to reject his candidature. The law in this regard is also very clearly laid down by the Hon'ble Apex Court in Delhi Administration through its Chief Secretary & Ors. vs. Sushil Kumar decided on 04.10.1996. It reads as under:-

"We have heard learned counsel on both sides. This appeal by special leave arises from the order of the Central Administrative Tribunal, New Delhi made on September 6, 1995 in OA No. 1756/91.

The admitted position is that the respondent appeared for recruitment as a Constable in Delhi Police Services in the year 1989-90 with Roll No.65790. Though he was found physically fit through endurance test, written test and interview and was selected provisionally, his selection was subject to verification of character; and antecedents by the local police. On verification, it was found that his antecedents were such that his appointment to the post of Constable was not found desirable. Accordingly, his name was rejected. Aggrieved by proceedings dated December 18, 1990 culminating in cancellation of his provisional selection he filed OA in the Central Administrative Tribunal. The Tribunal in the impugned order allowed the application on the ground that since the respondent had been discharged and/or acquitted of the offence punishable under Section 304 IPC, under Page | 12 Section 324 read with 34 IPC and under Section 394 IPC, he cannot be denied the right of appointment to the post under the State. The question is: whether the view taken by the Tribunal is correct in law? It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was physically found fit, Passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined forces. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant to the case is of the antecedents of the candidate. Appointing authority, therefore, has rightly focussed this aspect and found him not desirable to appoint him to the service.

The appeal is accordingly allowed. The order of the Tribunal stands set aside. No costs. "

14. The selection process only becomes complete once the C&A verification is

also complete and, therefore, the applicant cannot claim to have been finally selected. His candidature has been cancelled by the IB vide impugned order dated 19.06.2014 and the proposition of his appointment in any other post in any other department as clarified by SSC vide their letter dated 13.01.2020, has not been considered. It is thus evident that the candidature of the applicant was rejected on the basis of character and antecedents verification by the concerned department, for which he had given his first preference. It has been clarified that once the candidature is rejected on account of character and antecedents verification, the dossier is not forwarded to other department for consideration or appointment.

15. In view of the law laid down by the Hon'ble Apex Court in the above mentioned cases, we find that the respondents were well within their right to reject the candidature of the applicant and, therefore, we are of the view that this OA is devoid of merit and the same is, accordingly, dismissed. There shall be no order as to costs.