

(2023) 04 DEL CK 0025
In the Delhi High Court
Case No : Civil Writ Petition No. 860 Of 2023

Mahesh Kumar

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 11-04-2023

Acts Referred:

Indian Penal Code, 1860 — Section 148, 149, 304B, 307, 325, 498A
Dowry Prohibition Act, 1961 — Section 3, 4
Code Of Criminal Procedure, 1973 — Section 156(3)

Citation : (2023) 04 DEL CK 0025

Hon'ble Judges : V. Kameswar Rao, J;Anoop Kumar Mendiratta, J

Bench : Division Bench

Advocate : Aman Mudgal, Avnish Ahlawat, Tania Ahlawat, Nitesh Kumar Singh, Palak Rohmetra, Laavanya Kaushi, Aliza Alam

Judgement

Anoop Kumar Mendiratta, J

1. Writ Petition has been preferred by the petitioner challenging an order dated December 08, 2022 passed by the Central Administrative Tribunal (hereinafter referred to as "the Tribunal") whereby the Tribunal declined to set aside order dated September 11, 2020 issued by the Deputy Commissioner of Police, Recruitment NPL, Delhi canceling the appointment of the petitioner to the post of SI (EXE) in Delhi Police Exam 2017 despite his acquittal in FIR No.424/2011, under Sections 498-A/304-B IPC and Section 3/4 of Dowry Prohibition Act, PS: Samthar, District: Jhansi, UP.

2. In brief, the petitioner participated in the selection process initiated by the Staff Selection Commission for the post of Sub Inspector in Delhi Police and CAPF (Central Armed Police Force) and Assistant Sub Inspector in CISF vide notification/advertisement circulated in the year 2017. Petitioner was declared as qualified for appearing in the detailed medical examination which was conducted on April 07, 2018. A letter was issued to the petitioner by SSC, thereby calling upon him for verification of documents/certificates on October 09, 2018.

Petitioner was finally recommended for appointment as Sub inspector (EXE) in Delhi police in the final results declared by SSC and subject to verification.

3. A show-cause notice was issued by the office of Commissioner of Police on May 31, 2019 as to why candidature of the petitioner for the post of SI (EXE) Male in Delhi Police 2017 should not be cancelled due to alleged involvement in criminal case i.e. FIR No.424/2011 under Section 498-A/304-B IPC and Section 3/4 Dowry Prohibition Act registered at PS: Samthar, as disclosed by him in the Attestation Form.

4. Vide letter dated September 11, 2020 issued by the office of DCP Recruitment, petitioner was informed that his reply dated June 17, 2019 to the show-cause notice was examined by the Screening Committee but was not found convincing and as such the appointment for the post of SI (EXE) in Delhi Police Exams 2017 is cancelled.

5. Aggrieved against the issuance of show-cause notice and order dated September 11, 2020 passed by the respondent No.2&3, petitioner preferred O.A.No.525/2021 before the Tribunal for setting aside the show-cause notice dated May 31, 2019 as well as impugned order of the Screening Committee dated September 11, 2020. It was further prayed that the Screening Committee of respondent be directed to re-consider the case of the petitioner and be accordingly appointed as Sub Inspector (EXE) in Delhi Police.

6. In support of the claim, learned counsel for the petitioner contended before the Tribunal that the information regarding FIR and acquittal was truthfully conveyed in the Attestation Form and despite clear judgment of acquittal, an adverse inference has been wrongfully drawn by the respondents. It was also pointed out that the petitioner had been earlier selected in another exam conducted by SSC in 2016 for SI (CISF) but his candidature was rejected by the Deputy Inspector General, CISF vide order dated July 26, 2018 on account of criminal involvement in aforesaid FIR. However, aggrieved by the same, petitioner approached by way of Writ (A) No.18208/2018 before the High Court of Allahabad which was allowed vide order dated August 04, 2021 and directions were issued for passing fresh order in the light of the judgment passed by the Hon'ble Supreme Court of India in Avtar Singh vs. Union of India, (2016) 8 SCC 471. It was further submitted that the said order of appointment had been complied with by CISF, and since the recruiting agency for both CISF and Delhi Police is the same i.e. SSC, similar directions be passed against Delhi Police. Reference was also made to judgment passed by the learned criminal court whereby the petitioner stood acquitted. Reliance was also placed upon judgment passed by the Hon'ble Supreme Court of India in The Deputy Commissioner of Police & Anr. vs. S. Samuthiram (SLP NO.31592/2008 decided on 30.11.2012).

7. On the other hand, learned counsel for the respondent contended before the Tribunal that the competent authority i.e. Delhi Police is to decide the suitability of the applicant and it would not be appropriate to appoint a person to the post

of SI (EXE) who has been involved in an FIR under Section 498-A/304-B IPC and Section 3/4 of the Dowry Prohibition Act. Reliance was also placed upon Union of India vs. Methu Meda (Civil Appeal No.6238 of 2021 decided on 06.10.2021).

8. Having heard the petitioner as well as the respondents, the O.A. filed by the petitioner was dismissed by the Tribunal. The reasons accorded by the Tribunal in para 10 of the impugned order dated December 08, 2022 may be reproduced for reference:

"10. It is not in dispute that the applicant was involved in FIR No. 424/2011. It is also not in dispute that the applicant has been acquitted, as the prime witnesses in the said FIR turned hostile and the Delhi Police being a disciplined force, they have to shoulder greater responsibility to maintain law and order in the society as people repose greater confidence in them. Therefore, a person who is aspiring to join the Delhi Police should have impeccable character and integrity. Even though the applicant may have been acquitted by the competent criminal court, it is for the competent authority and the screening committee in the present case to take the final view in the matter unless it is a mala fide to decide whether the person, who is aspiring to join the respondents, is desirable for the organisation."

9. The contentions made before the Tribunal have been reiterated both by the learned counsel for the petitioner as well as the respondents. We have given considered thought to the contentions raised.

At the outset, the relevant observations/reasons recorded in letter dated September 11, 2020 by the Deputy Commissioner of Police, Recruitment cancelling the appointment of the petitioner may be reproduced for reference:

"....."

The accused were charge sheeted before the court of Additional session judge/ Special Judge Jhansi. During the trial the complainant Shiv kumar turn hostile and stated that prior of marriage his sister used to have pain in her stomach and was under depression and her mental balance was not fit. On 4.07.2011 his sister died and he got information that his sister had taken some poisonous medicine for her stomach pain. The accused persons i.e. husband (you) and inlaws of his sister neither demanded Rs. 80,000/- and motorcycle nor tortured her physically. Other family members i.e. father, mother, brother of the deceased also gave similar statements and they were also declared turned hostile. Dr. Santram Verma Primary health Centre Moth stated Kanti was brought by her in law for treatment on 04.07.2011 and was treated by him. Her neck and tongue was tight and complained for vomiting and menses. When after half an hour no relief was found she was referred to District hospital Jhansi for treatment. All the accused were found not guilty for the offences and acquitted for the same vide judgement/Order dated 03.04.2013. You in your reply stated that at the time of incident you had been living in government hostel Dr. B.R. Ambedkar P.G. hostel, Hazratganj, Lucknow.

The screening Committee viewed that the complainant has clearly mentioned in the FIR that just after the marriage the accused stated harassing his sister for non fulfillment of extra demand of dowry. The deceased might took poisonous substance due to continuous physical and mental torture for not meeting down demand. However as the complainant and family members of the deceased turned hostile, the accused were acquitted of the offence by the Hon'ble court by giving benefit of doubt. A candidate who has been involved in case of such heinous nature and no respect for women continuous appointed in a law enforcing agency like Delhi Police. Your reply to the show cause notice was not found convincing to the screening committee. As such your appointment for the post of S.I. (Exe.) in Delhi police exam 2017 is hereby cancelled.

SD/

DINESH KUMAR GUPTA IPS

DEPUTY COMMISSIONER OF POLICE

RECURITMENT NPL DELHI

NO. _____ Rcel(S.1. (DA-1)/NPL Dated New Delhi the Copy to
the Dy. Commissioner of Police, Establishment Delhi for information.

DINESH KUMAR GUPTA IPS

DEPUTY COMMISSIONER OF POLICE”

10. It is well settled that even if a disclosure has been truthfully made by the applicant, the employer has the right to consider antecedents and fitness and cannot be compelled to appoint a candidate. While doing so, the fact of conviction and background facts of the case, nature of offence etc. have to be considered. Even if the acquittal has been made, the employer may consider the nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons, and decline to appoint a person, who is unfit or is of dubious character. Further, in case employer comes to conclusion that conviction or grounds of acquittal in criminal case would not affect the fitness for employment, incumbent may be appointed or continued in service.

The observations in Avtar Singh vs. Union of India, (2016) 8 SCC 471 in para 31 in aforesaid context are also pertinent to be noticed:

“31. Coming to the question whether an employee on probation can be discharged/refused appointment though he has been acquitted of the charge(s), if his case was not pending when form was filled, in such matters, employer is bound to consider grounds of acquittal and various other aspects, overall conduct of employee including the accusations which have been levelled. If on verification, the antecedents are otherwise also not found good, and in number of cases incumbent is involved then notwithstanding acquittals in a case/cases, it would be open to the employer to form opinion as to fitness on the basis of

material on record. In case offence is petty in nature and committed at young age, such as stealing a bread, shouting of slogans or is such which does not involve moral turpitude, cheating, misappropriation, etc. or otherwise not a serious or heinous offence and accused has been acquitted in such a case when verification form is filled, employer may ignore lapse of suppression or submitting false information in appropriate cases on due consideration of various aspects."

The conclusions in Avtar Singh (supra) as summarized in para 38 may also be beneficially reproduced:

"38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:

38.1. Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3. The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents,

and cannot be compelled to appoint the candidate.

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.

38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. In case the employee is confirmed in service, holding departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11. Before a person is held guilty of suppressio veri or suggestion falsi, knowledge of the fact must be attributable to him."

11. Reverting back to the facts of the present case, it may be noticed that there is no dispute that the petitioner had truthfully disclosed involvement in FIR No.424/2011 under Section 498-A/304-B IPC and Section 3/4 Dowry Prohibition Act registered at PS: Samthar, UP at the time of filling of Attestation Form.

A bare perusal of the judgment of acquittal passed in FIR No.424/2011 under Section 498-A/304-B IPC and 3/4 Prohibition of Dowry Act reveals that the marriage of the petitioner with deceased Kanti was solemnized on May 05, 2007. The deceased expired on July 04, 2011 after period of about four years of marriage on consumption of poison which is alleged to have been administered by her husband (petitioner), father-in-law, mother-in-law and brother-in-law in furtherance of common intention of non-fulfillment of demand of dowry. The FIR was registered after filing of a complaint under Section 156(3) Cr.P.C. However, it is pertinent to note that at the stage of evidence, the material prosecution witnesses did not support the prosecution case. Complainant Shiv Kumar (PW1) stated that his sister prior to marriage was under depression due to illness and her mental balance was not fit. The complaint under section 156(3) Cr.P.C. was

stated to have been given by him on the instigation of others. The witness was also duly cross-examined and admitted that the accused had never harassed the deceased or demanded any dowry. He also admitted that his sister had died since she was continuously having pain in her stomach. Similarly, PW2 Smt. Meena (mother of the deceased) and PW4 Sanjay (brother of the deceased) did not support the prosecution version and were also declared hostile.

12. It cannot be ignored that omnibus allegations had been made against all the family members of petitioner with reference to unfortunate death of deceased within seven years of marriage. However, in the witness box, none of the witnesses supported, who were the close family members of the deceased. The leveling of allegations at the instigation of others has been admitted by PW1 and it is not out of place that in the Indian context, out of love and affection for deceased and minor differences in matrimonial relations at times allegations are made against the entire family. It is definitely unfortunate that deceased died within seven years of marriage but an adverse inference cannot be drawn under all circumstances against the accused if the same have not been supported in any manner by the witnesses, who were the close family members of the deceased. It has also come on record in evidence of PW5 Dr. Sant Ram Verma that the accused themselves had taken the deceased to the Primary Health Centre and she was in senses at aforesaid time. Further, the deceased did not disclose any other fact except of her illness. The operative portion whereby the accused had been acquitted, giving the 'benefit of doubt' is to be appreciated in the light of the evidence on record and the words 'benefit of doubt' cannot be mechanically read and applied. The present case is not wherein a 'benefit of doubt' was extended on account of discrepancies in the evidence but since the allegations in no manner were supported by the prosecution witnesses. There is no evidence to presume that the petitioner had any role in winning over the witnesses. The findings by the Screening Committee are merely based on involvement of the petitioner in aforesaid FIR and wrong presumption that petitioner had no respect for women without appreciating the judgment of acquittal in correct perspective.

In the facts and circumstances, we are of the considered view that having regard to the evidence on record and the fact that the petitioner had already been considered suitable for appointment as SI (EXE) in CISF, the Screening Committee was not justified in concluding that the petitioner was not suitable for appointment to the post in Delhi Police. The Screening Committee failed to appreciate the entirety of facts and was merely swayed by invocation of Section 304-B IPC in FIR which was never supported on record by the material witnesses who were the close relations of the deceased.

The court needs to be alive to the realities in such cases as an exaggeration of allegations in such unfortunate incidents, out of minor matrimonial differences cannot be ruled out. In the present case, the benefit of doubt has not been granted by the learned Sessions Judge merely for some discrepancies in

evidence or technical reasons but since no cogent evidence was brought on record to support the allegations of demand of dowry soon before the death of deceased.

13. In trial for criminal offences, the accused is presumed to be innocent unless proved guilty and it is the duty of the prosecution for establishing the actus reus of the crime as well as the mens rea. When the accused is acquitted after full consideration of prosecution evidence and the prosecution miserably fails to prove the charges leveled against the accused, it can possibly be said that the accused was honourably acquitted as held in *The Deputy Commissioner of Police and Anr. vs. S. Samuthiram*, (2013) 1 SCC 598.

There can be no second opinion that each case is to be scrutinized on its own facts through the designated officers and in case of the police force, the scrutiny needs to be more closer since the police officials are under a duty to tackle lawlessness. However, at the same time, generalizations cannot be made to deny the offer of appointment merely on the basis of registration of FIR without considering the reasoning in the judgment and the relevant facts and circumstances. Apart from the registration of the aforesaid FIR, there is nothing on record to reflect that the antecedents or the conduct of the petitioner disqualified him in any manner for the appointment to the post of SI (EXE), Delhi Police. It may be difficult to presume that the petitioner would be a threat to the discipline of the police force merely on account of aforesaid FIR and also considering the fact that petitioner had already joined on selection as SI (EXE) in CISF in an exam conducted by SSC. It does not appear to be logical that the petitioner who was found fit for appointment to the post of SI in CISF may be held to be unsuitable for appointment in Delhi Police on the basis of exam conducted by the same recruiting agency i.e. SSC.

14. It may also be noticed that in *Methu Meda* (Supra) relied by the learned counsel for the petitioner, principle reiterated is that if a person is acquitted giving him the benefit of doubt from the charge of an offence involving moral turpitude or because the witnesses turned hostile, it would not automatically entitle him for appointment that too in 'discipline force'. However, the petitioner therein was involved in an offence for kidnapping for demand of ransom which is a serious offence involving moral turpitude.

The facts in the present case are distinguishable since the FIR was registered due to allegations of alleged demand of dowry and unfortunate death of deceased due to consumption of poison but the allegations were not supported in any manner in evidence by the close family members of the deceased.

Reliance may also be placed upon *Joginder Singh vs. Union Territory of Chandigarh*, (2015) 2 SCC 377 wherein the appellant was declined appointment to the post of Constable despite his acquittal for offences under Section 148/149/323/325/307 IPC. The order passed by the Central Administrative Tribunal directing the respondents therein to appoint the appellant was set aside

by the High Court of Punjab & Haryana. However, Hon'ble Supreme Court observed that the appellant could not be denied an opportunity to qualify for any post including the post of Constable since he had honestly disclosed in his verification application that there was a criminal case registered against him which ended in an acquittal on account of compromise between the parties. It was further observed that denying the appellant therein the appointment to the post of Constable is like a vicarious punishment which is not permissible in law and as such the impugned order passed by the High Court was set aside. The observations in para 22 and 23 may be beneficially reproduced:

"22. Thus, we are of the opinion that the alleged past conduct of the Appellant in relation to the criminal case will not debar or disqualify him for the post of the Constable for which he was successfully selected after qualifying the written test, medical test and the interview conducted by the selection authority. Further, as stated by us earlier, there has been no concealment of any relevant fact from the Respondents by the Appellant. The Respondents were thus not justified in denying the said post to the Appellant. The conclusion arrived at by them is not cogent and lacks proper application of mind.

23. We therefore, hold that the High Court has committed a grave error both on facts and in law and it has failed to follow the legal principles laid down by this Court in the cases referred to supra and uphold the decision of the CAT. For the foregoing reasons both the appeals succeed and are allowed."

15. For the foregoing reasons, we are unable to agree with the reasoning of the learned Tribunal. Accordingly, the show-cause notice dated May 31, 2019 as well order dated September 11, 2020 passed by the respondents along with the impugned order dated December 08, 2022 is set aside, with the directions to the respondents to consider the appointment of the petitioner for the concerned post, subject to his satisfying all other conditions. No order as to costs. Pending applications, if any, also stand disposed of.