

**(2011) 07 DEL CK 0168**

**In the Delhi High Court**

**Case No : Writ Petition (C) No. 1528 of 2011**

Manoj Kumar

APPELLANT

Vs

The Commissioner of Delhi Police

RESPONDENT

**Date of Decision : 04-07-2011**

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226, 227

Penal Code, 1860 (IPC) — Section 186, 294, 323, 325, 332

**Citation : (2011) 180 DLT 640**

**Hon'ble Judges : Dipak Misra, C.J.; Sanjiv Khanna, J**

**Bench : Division Bench**

**Advocate : Avadh Bihari Kaushik, for the Appellant; Vinod Wadhawa, for the Respondent**

**Final Decision : Dismissed**

## Judgement

Dipak Misra, C.J.—Invoking the inherent jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, the Petitioner has called in question the legal acceptability of the order dated 4.2.2011 passed by the Central Administrative Tribunal, Principal Bench (for short "the tribunal") in OA No. 2482/2010.

2. The brief resume? of facts which are imperative to be stated are that in response to an advertisement dated 11.10.2007 issued by the Respondent, the Petitioner applied for the post of Constable (Driver) in the Delhi Police. He had submitted his application form on 22.11.2007 and attestation form on 25.9.2008. After clearing all the tests as well as interview, he was declared provisionally selected subject to verification of his character and antecedents, medical fitness and final checking of documents. On receipt of the verification report dated 10.11.2008 relating to his character and antecedents, it was found that he had been involved in a criminal case FIR No. 156/99 dated 29.9.1999 under Sections 332/353/341/186 of the Indian Penal Code (for short "the IPC") P.S. Kharkhoda, Haryana but he had not disclosed his involvement / acquittal in the above

mentioned case in the relevant columns of application as well as attestation form. A show cause notice was issued to him on 13.3.2009 proposing cancellation of his candidature for the post of Constable (Driver). On receipt of the explanation of the Petitioner, the appointing authority did not find the explanation given by him to be convincing and satisfactory and, accordingly, his candidature for the post of Constable (Driver) was cancelled by order dated 4.5.2009. Aggrieved by the aforesaid action, he submitted a representation to the Commissioner of Police which was rejected on 20.8.2009.

3. Being dissatisfied with the aforesaid action, the Petitioner preferred O.A. No. 2595/1999 and the said application was decided on 19.5.2010 whereby the tribunal quashed the order dated 20.8.2009 and directed the competent authority to pass a detailed speaking order. In pursuance of the directions given by the tribunal, the case of the Petitioner was re-examined and the competent authority, taking note of the fact that on two different occasions he had concealed the fact of his having been involved in a criminal case, opined that he was not considered suitable for appointment in a disciplined force like the Delhi Police. Being grieved by the aforesaid order, the Petitioner preferred OA No. 2482/2010 on the grounds that he was acquitted by the concerned court on merits in the year 2000 seven years prior to applying for the post and, hence, the same cannot be a disqualification for his appointment; that mentioning of the word "NO" in the relevant column of the application and attestation form was a bonafide mistake and an error of judgment as he was not going to get any benefit from such concealment; that the non-disclosure of information relating to a criminal case in which he had been acquitted was no ground for withholding appointment; and that under similar circumstances, one Constable Kapil Kumar had been recruited but the Petitioner had been treated in a different manner which tantamounts to discrimination.

4. The Respondent, in oppugnation, contended that the case of the Petitioner had been examined carefully by the competent authority and regard being had to the concealment, a conscious decision was taken. It was averred that on two separate occasions, he concealed his involvement in the criminal case by not mentioning the same and, therefore, it is an act of deliberate suppression which makes him unsuitable for appointment in a disciplined force like the Delhi Police which requires highest levels of integrity and moral conduct and that there is no illegality or infirmity in the order passed by the Respondent.

5. The tribunal referred to column 14 of the application form and Column 13 of the attestation form and the manner in which the Petitioner had filled up the form and distinguished the decision rendered in Govt of NCT of Delhi and Another Vs. Robin Singh, and came to hold as follows:

14. From the aforesaid observations of the High Court in Robin Singh's case (supra) especially views contained in para 49 above, it cannot be laid down as a proposition of law that a person would be undesirable for induction in the service force merely because of his involvement in a criminal case in which he

subsequently came to be acquitted. There can be no straight jacket formula in the matters and the Respondents would be duty bound to examine each case on its own merits having regard to the totality of the facts and circumstances of the case and then decide as to whether the person is really unsuitable for induction in the service or not. The Hon''ble High Court has emphasized the need for having suitable guidelines with regard to categories/acts/offences which may or may not prohibit one's induction into police service. This non-suitability for induction into police service has to be further supplemented by requiring the Respondents to record their reasons in reaching a given conclusion in such matters.

15. The applicant has also challenged the order canceling his candidature on the ground of discrimination and violation of Article 14 of the Constitution of India since in a similar matter of Ct. Kapil Kumar (5729/DAP) wherein the recruit Constable had not disclosed about his involvement in a criminal case, the Respondents had imposed on him only the punishment of censure but in the case of the applicant differential treatment has been meted out.

16. In view of this, we are of the view that in the totality of the facts and circumstances of the case, as discussed above, the ends of justice would be met by remitting the case back to the Respondents to review the case of the applicant in the light of the guidelines drawn up (consequent to the Robin Singh's case judgment) and then take a final decision in the matter. The decision taken would need to be communicated to the applicant through issue of a reasoned and speaking order in accordance with the guidelines.

6. We have heard Mr. Avadh Bihari Kaushik, learned Counsel for the Petitioner and Mr. Vinod Wadhawa, learned Counsel for the Respondent.

7. It is submitted by the learned Counsel for the Petitioner that as the acquittal had taken place long back, the selection should not have been cancelled. It is his further submission that apart from the time factor, the age of the Petitioner and the factum of bonafide also should have been considered and a rational view should have been taken. To bolster the said submission, he has commended us to the decisions in T.S. Vasudavan Nair v. Director of Vikram Sarabhai Space Centre , Pawan Kumar Vs. State of Haryana and another, Kirpal Singh v. Union of India and Ors. (Writ Petition (Civil) No. 3084/2001 decided on 21st September, 2001), Govt. of NCT of Delhi and Others Vs. Jitender Kumar, , Municipal Corporation of Delhi v. Ram Niwas (Writ Petition (Civil) No. 2417/2010 decided on 27th July, 2010), Robin Singh (supra), Rahul Yadav Vs. CISF and Another, and Commr. of Police and Others Vs. Sandeep Kumar,

8. Mr. Wadhawa, learned Counsel appearing for the Respondent, per contra submitted that the order passed by the tribunal is absolutely impregnable inasmuch as the Petitioner was a matriculate and the information that was sought for was solely for the purpose of finding out the antecedents of the Petitioner as that is very essential for adjudging the suitability for entering into a

post in the disciplined force. It is canvassed by him that the action of the Petitioner would vividly reflect that there is a deliberate suppression and an endeavour has been made to keep the employer in dark and further the Petitioner has totally ignored the stipulations and the warnings on the application and attestation forms and, therefore, no illegality can be found in the order of the tribunal. To buttress his proponent's, the learned Counsel for the Respondent has commended us to the decisions in *R. Radhakrishnan Vs. The Director General of Police and Others*, and *Daya Shankar Yadav v. Union of India & Ors*, JT 2010 (13) SC 791.

9. Before we advert to the factual score in the case at hand, it is appropriate to refer to certain authorities in the field with regard to the necessity of filling of the aforesaid forms in a correct and apposite manner and the role of a candidate in the said context. In the case of *Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav*, , the Apex Court was dealing with the issue of improper filling of form by a candidate who was selected for the post of physical education teacher in Kendriya Vidhyalaya. The candidate had answered in the negative with regard to the question whether he had ever been prosecuted/kept in detention or bound down or fined, convicted by a Court of Law of any offence. Similarly, in response to the question whether any case was pending in any Court of Law at the time of filling of his attestation form, he had answered stating "NO". As there was suppression, his services were terminated which compelled him to approach the Central Administrative Tribunal which declined to interfere. In the writ petition preferred before the High Court, the High Court set aside the decision on the ground that the candidate has prosecuted his studies in Hindi, the criminal case was withdrawn and that he was not involved in an offence pertaining to moral turpitude. The Apex Court, while reversing the decision of the High Court, stated thus:

11. It is not in dispute that a criminal case registered under Sections 323, 341, 294, 506-B read with Section 34 IPC was pending on the date when the Respondent filled the attestation form. Hence, the information given by the Respondent as against Columns 12 and 13 as "No" is plainly suppression of material information and it is also a false statement. Admittedly, the Respondent is holder of B.A, B. Ed and M. Ed degrees. Assuming even his medium of instruction was Hindi throughout, no prudent man can accept that he did not study English language at all at any stage of his education. It is also not the case of the Respondent that he did not study English at all. If he could understand Columns 1-11 correctly in the same attestation form, it is difficult to accept his version that he could not correctly understand the contents of Columns 12 and 13. Even otherwise, if he could not correctly understand certain English words, in the ordinary course he could have certainly taken the help of somebody. This being the position, the Tribunal was right in rejecting the contention of the Respondent and the High Court committed a manifest error in accepting the contention that because the medium of instruction of the Respondent was Hindi, he could not understand the contents of Columns 12 and 13. It is not the case

that Columns 12 and 13 are left blank. The Respondent could not have said "No" as against Columns 12 and 13 without understanding the contents. Subsequent withdrawal of criminal case registered against the Respondent or the nature of offences, in our opinion, were not material. The requirement of filling Columns 12 and 13 of the attestation form was for the purpose of verification of character and antecedents of the Respondent as on the date of filling and attestation of the form. Suppression of material information and making a false statement has a clear bearing on the character and antecedents of the Respondent in relation to his continuance in service.

12. ...The purpose of seeking information as per Columns 12 and 13 was not to find out either the nature or gravity of the offence or the result of a criminal case ultimately. The information in the said columns was sought with a view to judge the character and antecedents of the Respondent to continue in service or not.

(emphasis in original)

10. In *R. Radhakrishnan* (supra), the Petitioner had withheld the information in the application form while seeking appointment as Fireman and in that context, their Lordships have ruled thus -

10. Indisputably, the Appellant intended to obtain appointment in a uniformed service. The standard expected of a person intended to serve in such a service is different from the one of a person who intended to serve in other services. Application for appointment and the verification roll were both in Hindi as also in English. He, therefore, knew and understood the implication of his statement or omission to disclose a vital information. The fact that in the event such a disclosure had been made, the authority could have verified his character as also suitability of the appointment is not in dispute. It is also not in dispute that the persons who had not made such disclosure and were, thus, similarly situated had not been appointed.

11. In *A.P. Public Service Commission Vs. Koneti Venkateswarulu and Others*, their Lordships have opined thus -

7. ...The explanation that it was irrelevant or emanated from inadvertence is unacceptable. In our view, the Appellant was justified in relying upon the ratio of *Kendriya Vidyalaya Sangathan* and contending that a person who indulges in such suppressio veri and suggestio falsi and obtains employment by false pretence does not deserve any public employment. We completely endorse this view.

12. In the case of *Daya Shankar Yadav* (supra), a two-Judge Bench of the Apex Court referred to *Union of India (UOI) and Others Vs. Bipad Bhanjan Gayen, State of Haryana and Others Vs. Dinesh Kumar, R. Radhakrishnan* (supra), *Secy. Deptt. of Home Secy. A.P. and Others Vs. B. Chinnam Naidu, and Ram Ratan Yadav* (supra) and came to hold as follows: -

13.1. If the object of the query is to ascertain the antecedents and character of

the candidate to consider his fitness and suitability for employment, and if the consequence of a wrong answer can be rejection of his application for appointment, or termination from service if already appointed, the least that is expected of the employer is to ensure that the query was clear, specific and unambiguous. Obviously, the employer cannot dismiss/discharge/terminate an employee, for misunderstanding a vague and complex question, and giving a wrong answer.

14. We do hope that the CRPF and other uniformed services will use clear and simple questions and avoid any variations between the English and Hindi versions. They may also take note of the fact that the ambiguity and vague questions will lead to hardship and mistakes and make the questions simple, clear and straightforward. Be that as it may.

15. But in this case, the Appellant is not entitled to any benefit of doubt on the question whether he knew the meaning and purport of questions 12(a) and (b). Even assuming that there was ambiguity in the English version of the questions, a reading of the Hindi version of the questions shows a clear indication of the information that was required to be furnished by the declarant. The Appellant read the questions in Hindi and answered them in Hindi. We extract below an English translation of query 12(a) in Hindi to show that there was no ambiguity in regard to the question:

English Translation of the question in Hindi

Have you ever been arrested for any offence or have been prosecuted or have been taken in custody or have been released on bail or have been fined/convicted by court of law or have been debarred/disqualified by any Public Service Commission from appearing at its examination/ selection or debarred from taking any examination/restricted by any university or any other educational authority/institution?

(emphasis supplied)

15.1. The fact that a criminal case was registered against the Appellant is not disputed. The fact that no criminal case was pending against him, when he gave the verification declaration in the year 2004, or the fact that he was not convicted or fined or bound down in any case, loses relevance, when he clearly suppressed the material fact that he was prosecuted and thereby made a false statement. Though the English version of the questions could have used a little more clarity, we cannot agree with the contention that he was misled into answering the question wrongly, as the Hindi version of the questions which were answered by the Appellant did not suffer from any vagueness or ambiguity.

16. We are satisfied that the Appellant had knowingly made a false statement that he was not prosecuted in any criminal case. Therefore, the employer (CRPF) was justified in dispensing with his services for not being truthful in giving material information regarding his antecedents which were relevant for

employment in a uniformed service, and that itself justified his discharge from service. Consequently, we dismiss this appeal as having no merit.

13. In the case of Sandeep Kumar (*supra*), their Lordships took note of the incident when the Respondent therein, aged about 20 years, had committed an indiscretion and opined thus -

10. We may also here refer to the case of Welsh students mentioned by Lord Denning in his book *Due Process of Law*. It appears that some students of Wales were very enthusiastic about the Welsh language and they were upset because the radio programmes were being broadcast in the English language and not in Welsh. They came up to London and invaded the High Court. They were found guilty of contempt of court and sentenced to prison for three months by the High Court Judge. They filed an appeal before the Court of Appeals. Allowing the appeal, Lord Denning observed:

I come now to Mr. Watkin Powell's third point. He says that the sentences were excessive. I do not think they were excessive, at the time they were given and in the circumstances then existing. Here was a deliberate interference with the course of justice in a case which was no concern of theirs. It was necessary for the judge to show - and to show to all students everywhere - that this kind of thing cannot be tolerated. Let students demonstrate, if they please, for the causes in which they believe. Let them make their protests as they will. But they must do it by lawful means and not by unlawful. If they strike at the course of justice in this land - and I speak both for England and Wales - they strike at the roots of society itself, and they bring down that which protects them. It is only by the maintenance of law and order that they are privileged to be students and to study and live in peace. So let them support the law and not strike it down.

But now what is to be done? The law has been vindicated by the sentences which the Judge passed on Wednesday of last week. He has shown that law and order must be maintained, and will be maintained. But on this appeal, things are changed. These students here no longer defy the law. They have appealed to this Court and shown respect for it. They have already served a week in prison. I do not think it necessary to keep them inside it any longer. These young people are no ordinary criminals. There is no violence, dishonesty or vice in them. On the contrary, there was much that we should applaud. They wish to do all they can to preserve the Welsh language. Well may they be proud of it. It is the language of the bards - of the poets and the singers - more melodious by far than our rough English tongue. On high authority, it should be equal in Wales with English. They have done wrong - very wrong - in going to the extreme they did. But, that having been shown, I think we can, and should, show mercy on them. We should permit them to go back to their studies, to their parents and continue the good course which they have so wrongly disturbed.

[Vide: *Morris v. Crown Office*, (1970) 2 Q.B. 114 at p. 124 CH.]

In our opinion, we should display the same wisdom as displayed by Lord Denning.

11. As already observed above, youth often commits indiscretions, which are often condoned.

12. It is true that in the application form the Respondent did not mention that he was involved in a criminal case under Sections 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified. At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter.

14. At this juncture, we think it appropriate to refer to the decision in *Kuldeep Kumar Vs. Union of India and Others*, wherein the Division Bench, after referring to the information sought vide column Nos. 12(a), expressed it as a complex one and proceeded to state as follows: -

10. Meaningfully read and as we understand, what the Petitioner intends to plead is that a false case was registered against him and his father and brother and since on the date when he filled up the verification role he was not facing any criminal trial, the alleged incident being 8 years old i.e. dated 26.10.2001; and he being honourably acquitted on 18.7.2003, he was mislead, in view of the complexity of the question, by informing in the negative.

11. We note that in an unreported decision of the Supreme Court dated 24.11.2010 deciding CA No. 9913/2010, *Daya Shankar Yadav v. UOI and Ors.*, IX (2010) SLT 14, a similarly worded complex question was held to be capable of being misunderstood and the view taken was that in such situation a wrong answer would not entitle the employer to dismiss the employee.

12. But, we may hasten to add that as in the instant case in the said case the Hindi version of the question was found to be simple, clear and straightforward. Since the Appellant therein had read and answered the verification role in Hindi, the Supreme Court did not grant benefit of any confusion to the Appellant before it.

13. In the instant case we find that the Petitioner has furnished the relevant information in English and has written "No" pertaining to information sought vide Column Nos. 12(a) and 12(b). Similarly, we find that the form has been filled up in English and all information has been provided in English.

14. Accordingly, we hold that the Petitioner would be entitled to relief in view of the decision of the Supreme Court in the *Daya Shankar Yadav's* case (supra) and additionally for the fact that the alleged incident took place in the year 2001; Petitioner was acquitted in the year 2003; he was aged 16 years when the incident took place; he filled up the form in the year 2009 after 8 years of the incident and 6 years of Petitioner being acquitted. It is apparent that the Petitioner had only hazy memories in his mind and coupled with the fact that the information sought has been worded not only in a very complex manner but is even otherwise confusing, Petitioner would be entitled to the benefit of a doubt of not deliberately furnishing false information.

15. The present factual matrix has to be decided on the anvil of the aforesaid pronouncements.

16. The fulcrum of the matter is whether the finding recorded by the tribunal that the cancellation of the candidature of the Petitioner is correct as he has not given complete requisite details and further that the plea of the Petitioner that he was only a matriculate and did not understand that the judgment of acquittal would not weigh in his favour, was not acceptable. At this juncture, we may fruitfully refer to Column 14 of the application form which reads as follows:

14. Have you ever been arrested, or any FIR registered against you, or have you been tried in the court of law for any offence or convicted by the court, or filled any bond asked for by the Court? At the time of filing up this form is any criminal case or proceeding pending in the court of law or are you involved in any civil case? If so, give details.

17. There is a warning at the top of the application form which is as follows: -

**WARNING**

1. The furnishing of false information or suppression of any factual information in the application form would be a disqualification and is likely to render the candidate unfit for the employment under Government. If the fact that false information has been furnished or there has been suppression of any factual information in the application form comes to notice at any time during the service of a person, his services would be liable to be terminated.

18. The Petitioner, while filling up column 14 of the application form, has answered in a categorical "NO".

19. After the provisional selection, the Petitioner was required to fill up the attestation form for the purpose of verification of character and antecedents.

20. Be it noted, there is a warning in the Form which is as follows:

"WARNING" the furnishing of false information or suppression of any factual information in the attestation form would be disqualification and is likely to render candidate unfit for employment under the Government.

21. Column 13 of the attestation form reads as follows: -

(a) Have you been arrested/prosecuted kept under detention of bound down/ fined, convicted by a court of law for any offence or debarred/disqualified by any Public Service Commission from appearing at its examination/selection or debarred from any other educational authority/institution.

(b) Whether any F.I.R. was ever registered against you in any Police station? If Yes, give complete detail.

(c) If any case pending against you in any court of law university or any other education authority/institution at the time of filling up this attestation form (if the

answer to (a) and (b) is "Yes", full particulars of the case arrest, detention, fine, conviction, sentence etc. in the nature of the case pending in the country, university/education authority etc., at the time of filling up this form should be given.

NOTE: Please also see the warning at the top of the attestation form.

22. Quite apart from the above, as is reflectible from Column 13, there is also an addition to the warning at the top of the relevant forms to see the warning at the top of the attestation form. The Petitioner had filled up the attestation form in English on 25th September, 2008 and against columns 13(a), (b) and (c), had stated "No". The tribunal, analyzing this aspect, has expressed the view that when there is warning in both the application form and attestation form, which was also highlighted in bold and capital letters at the top, it is improbable that the Petitioner who is a matriculate did not understand that it was incumbent on his part to mention the relevant fact of his involvement in the criminal case. The tribunal has also opined that the contention that he was not convicted in the case was a specious argument did not commend acceptance.

23. If the entire gamut of facts is scanned under nuanced scrutiny, there can be no ounce of doubt that there is a suppression of fact. In the Law Lexicon of P. Ramanatha Aiyar, the word "suppression" has been defined thus:

Where there is an obligation to speak a failure to speak will constitute "suppression of a fact" but where there is no obligation to speak silence cannot be termed "suppression".

24. In Black's Law Dictionary, "suppressio veri" has been defined thus:

Suppression or concealment of the truth. It is a rule of equity, as well as of law, that a suppression very is equivalent to a suggestion falsi; and where either the suppression of the truth or the suggestion of what is false can be proved, in a fact material to the contract, the party injured may have relief against the contract.

25. Thus understood, we are of the considered opinion that the Petitioner was under obligation to state the facts in terms of the questions posed. When one is obliged under law to speak the truth but conceals the same, it tantamounts to suppression of truth and expression of what is false. In this context, we may refer with profit to the decision in Collector of Customs, Calcutta Vs. Tin Plate Co. of India Ltd., wherein it has been stated that suppression envisages a deliberate or conscious omission to state a fact with the intention of deriving wrongful gain. Neither equity nor law comes to the aid of such a person. As is evident, in the case, the Petitioner had deliberately and consciously answered in the negative despite the queries and the questions being cleared only to gain the benefit of appointment.

26. Ergo, the view expressed by the tribunal is totally defensible, for the Petitioner was seeking an appointment to the post of a Constable (Driver) in

Delhi Police Force, a disciplined force. He was a matriculate. The purpose of filling of these Forms in a correct manner is to verify the character and antecedents of an applicant. The Petitioner, in a mercurial manner, may contend that he had been acquitted but the same has no bearing as the purpose was to adjudge the character and antecedents of such person. On a perusal of the Forms and the warnings, it is luminescent that furnishing of such information was imperative. It is not such a Form where one can even miss it. It is also not a complex one. On the contrary, it can safely be concluded that the Petitioner being a matriculate had deliberately indulged in the act of omission and preferred not to disclose the relevant information. Thus, the cancellation of his appointment by the authority and the affirmation thereof by the tribunal cannot be considered to be illegal or infirm.

27. Therefore, we do not find any error in the order of the tribunal that cancelling the candidature cannot be regarded as arbitrary or unjust and it cannot be said that there is legal infirmity in the action of the Respondent. We will be failing in our duty if we do not take notice of the fact that the tribunal in paragraphs 15 and 16 of the order has remitted the matter to the authorities for reconsideration on the anvil of parity as envisaged under Article 14 of the Constitution. We do not intend to say anything on that score in the writ petition preferred by the Petitioner.

28. Ex consequenti, the writ petition, being sans substance, stands dismissed without any order as to costs.