
(2011) 08 DEL CK 0068

In the Delhi High Court

Case No : Writ Petition (Civil) No. 6320 of 2011

Pankaj Kumar

APPELLANT

Vs

Govt. of NCT and Another

RESPONDENT

Date of Decision : 30-08-2011

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Arms Act, 1959 — Section 23
Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 304, 324, 34, 383, 392

Citation : (2011) 08 DEL CK 0068

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

Bench : Division Bench

Advocate : Ashish Gupta and Abhishek Goyal, for the Appellant;

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—Pankaj Kumar, the Petitioner has assailed the order dated 19th April, 2011, passed by the Central Administrative Tribunal, Principal Bench, New Delhi (Tribunal, for short), dismissing his application u/s 19 of the Administrative Tribunal Act, 1985.

2. The Petitioner claims that he was provisionally appointed as Sub-Inspector (Executive) male and direction should be issued to the Respondents to make the said appointment.

3. Pursuant to the recruitment notification dated 21st October, 2009, the Petitioner had appeared and qualified the written test and was declared provisionally selected for appointment to the post of Sub Inspector (Executive) Male. Thereafter he received show cause notice dated 18th June, 2010, proposing to cancel his candidature, as the screening committee upon consideration had come to a tentative view that he was not suitable for the post because of his involvement in a criminal case. After considering the reply of the Petitioner, he was declared not suitable. As noticed above, the order of the

screening committee has been upheld by the Tribunal.

4. Learned Counsel for the Petitioner has submitted that the Petitioner was acquitted in a criminal case and there is No. difference between an honourable acquittal and an acquittal on benefit of doubt. He submits that the Petitioner was falsely implicated in a case and upon acquittal, he is entitled to appointment. He has also submitted that the case law on the subject has been wrongly interpreted and understood by the Tribunal.

5. The Petitioner was prosecuted for involvement in FIR No. 62 dated 16th March, 2003, registered at P.S. Sonapat, Haryana. Initially, the FIR was registered u/s 383/506 Indian Penal Code, but ultimately the charge-sheet was filed u/s 392/397/506 Indian Penal Code and Section 23 of the Arms Act. The allegations were that in the intervening night of 15/16th March, 2003, at about 3.15 AM, three young persons had come to the petrol pump in question and one of them placed knife on the neck of the complainant and other persons went inside the petrol pump office and went away with the cash bag. The complaint alleged robbery of Rs. 23,500/- and four paper credit slips of Rs. 26,515/-.

6. The judgment passed by the Session Court is Annexure P-2 to the present writ petition. It is noticed that the complainant could not recognize the accused. However, he had stated that some young men had taken away the amount lying in the bag from inside the room of the petrol pump. PW9, Ravinder, the witness to the disclosure statement, also did not depose in favour of the prosecution case. The witnesses were declared hostile at the request of the public prosecutor, but they were able to withstand the cross-examination. However, the investigating officer had stated that the Petitioner had made a disclosure statement on the basis of which a knife, a bag and Rs. 5,000/-, were recovered from his house. It may also be noticed that Rs. 23,500/- which were recovered were neither claimed by the accused persons nor the complainant or the owner of the petrol pump and accordingly were confiscated to the State.

7. We have discussed the aforesaid in view of the decision in W.P. (C) No. 8016-17/2005 Govt. of NCT of Delhi and Ors. v. Sanjeev Kumar. In the said case a Division Bench of this Court after taking into consideration the concept of signification of antecedents in a disciplined force, had passed the following order:

The findings recorded by the Tribunal in the present case that whether it is an honourable acquittal or on benefit of doubt has little impact in the service career of the said person is in our considered opinion not appropriate as in the service law, a distinction is always made with regard to the honourable acquittal and acquittal on benefit of doubt, particularly in respect of payment of consequential benefits of some of the service employees, wherein it is provided that if it is honourable acquittal the concerned person will be entitled to full arrears of pay and wages whereas it is provided that if it is honourable acquittal the concerned person will be entitled to full arrears of pay and wages whereas if it is only acquittal on benefit of doubt, he may be deprived of payment of arrears of pay

and allowances for the period during which he was under suspension. The same is recognized under law and also approved and upheld by the Supreme Court for which we may appropriately refer to the decisions of this Court in the case of S.P. Thukral v. Delhi Development Authority LPA No. 2066/2005 decided on 6th October, 2005. However considering the facts and circumstances of this case and also the fact that in some other cases the Commissioner of Police has allowed the applicants to join the post considering the gravity of the offence in which they were involved and also the nature of the order passed by the criminal court, we feel that it would be appropriate, if all these matters are remitted back to the Commissioner of Police who shall appreciate the nature and gravity of the offence in which the Respondents were involved and the manner in which they were acquitted. Upon consideration of such facts if it is found that they could be allowed to join and work against the post of Constables, they should be allowed to join their posts but their order of appointment would be effective from their joining with No. claim at all with regard to the arrears of pay and allowances or seniority. Even after such appreciation of all the facts and circumstances of the cases, if it is found by the Commissioner of Police that Respondents cannot be so appointed as they are not suitable and desirable persons to be appointed to the post of Constable, he shall pass an appropriate order giving reasons for such decision.

8. In W.P. (C) 5782/2011 titled Sanjeev Kumar v. Government of NCT of Delhi and Ors. decided on 11th August, 2011, after examining several decisions on the point and after quoting from Delhi Administration through its Chief Secretary and Others Vs. Sushil Kumar, , it has been held as under:

8. To appreciate the rivalised submissions raised at the Bar, we have carefully scrutinized the order passed by the tribunal. It has analyzed the facts, the responsibility of a person in a disciplined force, the gravity of the offences with which the Petitioner was implicated, the nature of acquittal, the responsibility of the public authority and how such a person becomes unsuitable and undesirable to be appointed to the post in question and thereafter declined to interfere with the order passed by the competent authority. In the case of Sushil Kumar (supra), a two-Judge Bench of the Apex Court was dealing with recruitment of a constable in Delhi Police service. While dealing with the suitability and desirability after acquittal, their Lordships have opined thus:

3. 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 the 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 u/s 304 Indian Penal Code, u/s 324 read with 34 Indian Penal Code and u/s 324 Indian Penal Code, 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 Constable to the disciplined force. The view taken by the appointment 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.

15. In view of the aforesaid, we are absolutely certain the law laid down in the case of Sushil Kumar (*supra*) apply in full force and the finding recorded by the tribunal cannot be found fault with.

9. Keeping in view the aforesaid facts and findings recorded by the Tribunal, we do not think that this is a fit case to interfere in exercise of power of judicial review under Article 226 of the Constitution. Accordingly, the writ petition is dismissed in limine.