

(2019) 11 DEL CK 0635

In the Delhi High Court

Case No : Civil Writ Petition No. 11942, 12027 Of 2019, Civil Miscellaneous
Application No. 48921, 49228 Of 2019

Pawan Singh

APPELLANT

Vs

Delhi Police & Ors

RESPONDENT

Date of Decision : 15-11-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 307, 379

Juvenile Justice Act, 1986 — Section 25

Juvenile Justice (Care And Protection Of Children) Act, 2015 — Section 19, 24

Citation : (2019) 11 DEL CK 0635

Hon'ble Judges : G.S. Sistani, J; Anup Jairam Bhambhani, J

Bench : Division Bench

Advocate : Yashpal Rangi, Avnish Ahlawat, N.K. Singh

Final Decision : Disposed Of

Judgement

G.S.Sistani, J

1. These two writ petitions are directed against order dated 08.03.2019 passed by the Central Administrative Tribunal ("Tribunal") in OA Nos. 2484/2015 and 2467/2015 respectively.

2. With the consent of the parties, these writ petitions are set-down for final hearing and disposal at the admission stage itself.

3. It is claimed that the petitioner served the Indian Army between 1996 to 2012 till he was discharged from the force. In February, 2013 the respondents advertised for 43 posts of Constable (Dog Handler) in Delhi Police out of which 4 posts were reserved for Ex-Servicemen. The petitioner also belongs to OBC category; and therefore applied in the OBC category and under the Ex-Servicemen quota. He applied for the above post, cleared the physical endurance and measurement test and the written test. He was medically examined on 01.08.2014 and passed the test.

4. It is further claimed that the respondents advertised 752 vacant posts of Constable (Driver) in Delhi Police, out of them 75 posts were reserved for Ex-Servicemen. Since, the petitioner belonged to the OBC category, he applied for the said post also in OBC category, seeking reservation under the Ex-Servicemen quota. The petitioner was subjected to physical endurance and measurement tests and qualified the same on 18.10.2012. Written test with regard to the said post was conducted on 11.11.2012, trade test was held on 07.06.2013 and the petitioner successfully passed both the tests. The petitioner was medically examined on 11.10.2013 and was found fit.

5. Subsequently on 21.04.2015, a show cause notice was issued to the petitioner calling upon him to show cause as to why his candidature for the post of Constable (Dog Handler) and Constable (Driver) should not be cancelled. Reply to show cause notice was filed on 27.04.2015. The show cause notice was issued on the basis that the petitioner was involved in two criminal cases, namely, FIR No. 05/1995 u/s 307/34 IPC registered at PS : Jafarpur Kalan, Delhi and FIR No. 40/2000 u/s 379 IPC, registered at PS : City Bahadurgarh, Haryana, which however he did not disclose in his applications.

6. The petitioner claims that he was acquitted in both cases by the criminal courts; and that he had disclosed his involvement in the prescribed format and thus there was no concealment of facts.

7. Learned counsel for the petitioner submits that the Screening Committee, which examined the case of the petitioner, did not take into consideration that the first case was registered against him in the year 1995 when he was barely 16 years of age; and the second case was registered in the year 2000. In both the cases, the petitioner was acquitted; and he had an unblemished record with the Indian Army for the period 1996 to 2012.

8. Counsel submits that in case these two aspects had been considered by the Screening Committee, the Committee would not have taken an adverse view of his applications.

9. Ms. Ahlawat, learned Standing Counsel for the respondents has entered appearance on advance copy and submits that there is no infirmity in the view taken in the impugned order by the Tribunal. The Tribunal has correctly applied its mind to the facts of the present case. She submits that in a recent decision, the Supreme Court in Civil Appeal No(S). 3046/2019 titled The State of Madhya Pradesh & Ors. vs. Buntty has considered various decisions and has held that the decision of a screening Committee should not be altered. Reliance is placed on paragraphs 10 to 14 of the said judgment, which we reproduce hereunder :-

"10. Learned Single Judge of the High Court in the factual matrix projected, has rightly relied upon the decision in Mehar Singh (supra), wherein this Court has observed as under:-

"35. The police force is a disciplined force. It shoulders the great responsibility of

maintaining law and order and public order in 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 the 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 the trust reposed in it and must treat all candidates with an even hand.

"11. That apart, when we consider the decision of the three-Judge Bench of this Court in *Avtar Singh* (supra) the Court observed:-

"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."

"12. In *Pradeep Kumar* (supra) this Court has observed:-

"15. From the above details, we find that the Screening Committee examined each and every case of the respondents and reasonings for their acquittal and taken the decision. While deciding whether a person involved in a criminal case has been acquitted or discharged should be appointed to a post in a police force, nature of offence in which he is involved, whether it was an honourable acquittal or only an extension of benefit of doubt because of witnesses turned hostile and flaws in the prosecution are all the aspects to be considered by the Screening Committee for taking the decision whether the candidate is suitable for the post. As pointed out earlier, the Screening Committee examined each and every case and reasonings for their acquittal and took the decision that the respondents are not suitable for the post of Constable in Chandigarh Police. The procedure followed is as per Guideline 2(A)(b) an object of such screening is to ensure that only persons with impeccable character enter police force. While so, the court cannot substitute its views for the decision of the Screening Committee."

"13. The law laid down in the aforesaid decisions makes it clear that in case of acquittal in a criminal case is based on the benefit of the doubt or any other technical reason the employer can take into consideration all relevant facts to take an appropriate decision as to the fitness of an incumbent for appointment/continuance in service. The decision taken by the Screening Committee in the instant case could not have been faulted by the Division Bench.

"14. Coming to the decision relied upon by the learned counsel appearing for the respondent in Joginder Singh (supra) we are of the opinion that it was not the case of the decision taken by the Screening Committee on due consideration of the material on record of the case. Thus, the decision is distinguishable. In the peculiar facts and circumstances of the case, we are inclined to hold that the decision of the Screening Committee was appropriate."

10. We have heard learned counsel for the parties and have considered their rival submissions.

11. While there is no contest with the law laid down in the case of The State of Madhya Pradesh & Ors. vs. Buntty (supra), it is no doubt also necessary to notice that for the first offence alleged against the petitioner in 1995, being about 16 years of age, he would have been dealt with under the provisions of the Juvenile Justice Act, 1986; and Section 25 of the said statute specifically provided that notwithstanding anything contained in any other law, a juvenile who commits an offence and has been dealt with under the provisions of that statute "shall not suffer disqualification, if any, attaching to a conviction of an offence under that law" ; while in the petitioner's case, he was acquitted. It is noteworthy that the same thread of not imputing any subsequent disqualification to a juvenile offender runs even through the Juvenile Justice (Care and Protection of Children) Act 2000 and the subsequent Juvenile Justice (Care and Protection of Children) Act 2015 (sections 19 and 24 of the two statutes respectively). The second offence alleged against the petitioner under Section 379 IPC was one relating to theft with no other offence alleged ; and in the second case also, the petitioner stood acquitted. Furthermore, the fact the petitioner had served in the Indian Army between the period 1996 to 2012 was also not brought to the notice of the respondents, or was not considered.

12. Upon a conspectus of the foregoing, we are of the considered view that interests of justice require that, at the very least, the Screening Committee should consider both these aspects and decide the matter afresh.

13. It will be open for the petitioner to make a representation before the Screening Committee within six weeks and produce all relevant documents which he wishes to rely upon.

14. We make it clear that we have not expressed any opinion on the merits of the matter; and that rejection of the representation will not give to the petitioner any fresh cause of action.

15. With these observations, these writ petitions are disposed of.