
(1998) 11 DEL CK 0028
In the Delhi High Court
Case No : C.W. No.4320/97

Pramod Kumar Rastogi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 16-11-1998

Acts Referred:

Citation : (1999) 49 DRJ 506

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. Ajay Kapoor, for the Appellant;

Judgement

K. Ramamoorthy, J.—The petitioner has challenged the order of termination dated 17.12.1996 which was confirmed by the appellate authority on 03.06.1997. The case of the petitioner could be briefly stated thus. The petitioner was appointed as General Manager (Hotel Sales) as per the order dated 01.08.1996 and the Petitioner was declared selected by 7 - Member Selection Committee and he was offered appointment as General Manager (Hotel Sales). he petitioner was asked to joint duty by 30.08.1996.

2. On 28.08.1996, the petitioner joined as General Manager, in charge of Hotel Sales & Marketing Division at New Delhi. Before joining he had to fill in a form and that was done on 20.08.1996. On 17.12.1996, the Second respondent Corporation passed an order terminating the services of the petitioner on the ground that the petitioner was guilty of concealment of material information and Therefore by virtue of clause 13 of the offer of appointment, the respondent dispensed with the services of the petitioner. The petitioner had approached this court with CW No.4828 of 1996. On 20.12.1996, an order of status-quo was passed by this court.

3. On 26.12.1996 the petitioner was informed not to attend the office. According to the petitioner this court had directed the parties to maintain status-quo and Therefore the action of the second respondent in asking the petitioner not to

attend the office was in violation of the order passed by the court. The case of the petitioner is that he had not concealed any information from respondent No.2.

4. On 07.05.1997, the writ petition bearing No. 4828/96 was dismissed as withdrawn with the following observations:

07.05.1997

CW No. 4828/96

Learned counsel for the petitioner on instructions from the petitioner who was present in Court, wants to withdraw the writ petition. He submits that he has already given representation to the respondent on 18th December, 1996 which has yet not been disposed of. The respondents are directed to dispose of the representation within six weeks.

The writ petition is dismissed as withdrawn.

5. On 03.06.1997, the Chairman & Managing Director of the second respondent rejected the representations of the petitioner making a few observations. The second respondent had submitted a form filled up by the petitioner on 20.08.1996. In Column 3 it is stated as under:

If the fact that false information has been furnished or that there has been suppression of any factual information in the of a person, his/her services would be liable to be terminated.

6. In column 12.2 it is stated:

If the answers to any of the above mentioned question is "Yes" - give full particulars of the case/arrest/detention/fine/conviction/ sentence/punishment etc. and/or the nature of the case time of filling up this form.

Not applicable.

7. According to the second respondent Corporation, the petitioner had given false information about his antecedents. The petitioner was involved in a criminal case and Therefore, the second respondent was justified in passing the order terminating the services of the petitioner.

8. The petitioner appeared in person. He submitted that the order dated 17.12.1996 was liable to be set aside on the ground that it was in violation of the principles of natural justice. It casts stigma on the petitioner. Even on the Floor of the House in Parliament the ITDC has represented that the petitioner had furnished false information and consequently the name of the petitioner had completely been spoiled and his chances of getting any employment had been rendered remote by the action of the second respondent.

9. The case of the Corporation (second respondent) is that information was sought from the Deputy Commissioner of Police (Special Branch) and Corporation was informed that the petitioner was arrested pursuant to FIR no. 448 dated

18.12.1991 u/s 325 IPC, Police Station Hauz Khas and the case was pending trial before the Metropolitan Magistrate Patiala House, New Delhi, and this information was concealed by the petitioner in the Character Antecedents Form. Therefore, the second respondent acted under clause 13 and passed the order on 17.12.1996 terminating the services of the petitioner. Clause 13 of the offer of appointment is extracted in the order. The order dated 17.12.1996 reads as under:

INDIA TOURISM DEVELOPMENT CORPORATION LTD. SCOPE COMPLEX, 7-
LODHI ROAD, NEW DELHI - 03

Ref. No.PER/2873 dt. 17.12.1996 O R D E R This has reference to Offer of Appointment for the post of General Manager (Hotel-Sales) dated 01.8.1996 containing terms & conditions of appointment which was duly accepted by you in writing on 16.8.1996.

2. Clause 13 of the Offer of Appointment reads as under:-

"If there is any concealment or if any information furnished by you at the time of appointment proves to be false, your services shall be liable for termination without notice".

3. At the time of appointment, in the Character and Antecedents form submitted by you, you had declared in Column 12 that you have neither been arrested nor prosecuted nor kept under detention. You had also declared that no case is pending against you in any Court of Law at the time of filing the above attestation form.

4. However, as per report dated 04.12.1996 from Deputy Commissioner of Police, Special Branch, New Delhi regarding verification of your character and antecedents it has been reported as under:-

"He was arrested in case FIR 448 dated 18.12.1991 u/s 325 IPC, P.s. Hauz Khas, New Delhi. The case is pending for trial in the Court of Shri VK Goyal, MM, Patiala House, New Delhi. The identity of the candidate has been established".

5. The above facts amount to concealment of information/furnishing of false information at the time of appointment.

It has, Therefore, been decided to terminate your services with immediate effect under Clause 13 of the Offer of Appointment dated 1.8.1996. You are hereby advised to handover the charge of your post to Shri Kuldeep Verma, DGM (Hotel-Sales) and settle your accounts with the Corporation after producing No Demand Certificate from all concerned.

10. The order passed by the Metropolitan Magistrate would give a clear picture. The order reads as under:

IN THE COURT OF SHRI V.K. GOYAL, MM NEW DELHI FIR No.448/91 PS Hauz Khas S/V Sushil Kumar etc. Judgment a) dt. of commission : 01.12.1991 of

offence. b) Name of the : STATE Complainant. c) Name of the Accused : Sushil Kumar Pramod Kumar. d) Offence complained : 325/34 IPC e) Final order : Acquitted. f) Date of order : 25.05.1996. BRIEF REASONS FOR DECISION:

In brief, case of the prosecution is that on 01.12.1991 at about 5.15 p.m. at Y46,Y23, Hauz Khas, both accused in furtherance of their common intention voluntarily caused grievous hurt to PN Mathur.

Accused appeared, Copies given. Charges framed U/S 323/34 IPC to which they pleaded not guilty and claimed trial.

To prove the case, prosecution has examined PW-1, C.N. Sharma only. He has stated that Sushil Rastogi is his tenant since 1984. On 01.12.1991, he got white wash in his house and waste of it was Kumar, his brother P.K. Rastogi and one other person came to his about the incident in the morning and while he was explaining, all the three started beating him with first blows. He raised hue and cry. Some public persons collected there. P.N. Mathur came downstairs for his rescue. Meanwhile all the three persons ran away from the spot. In this process, Mr. Mathur received injuries but he does not know how he received injuries and who hit him.

I have heard the Id. APP for the state, counsel for the accused and have perused the evidence on record. PW-1, examined by the prosecution is alleged eye witness who has resiled from his statement. He has been cross examined by the LD APP but nothing came out from crossexamination. Complainant/injured P.N. Mathur has also been expired on 16.4.1992 as per information given by his son N.N. Mathur.

In view of the same, PE closed. There is no incriminating evidence on record against the accused persons in respect of injuries caused by them. There is no incriminating evidence on record against the accused persons under which they have been charged. Accordingly, both the accused are

acquitted U/S 325/34 IPC.

Sd/-

(VIRENDER KUMAR GOYAL)

METROPOLITAN MAGISTRATE

NEW DELHI

25.05.1996

11. This was on 25.05.1996. The representation made by the petitioner on the basis of direction issued by this court was disposed of by the Chairman and Managing Director on 03.06.1997 and the same is as under:

INDIA TOURISM DEVELOPMENT CORPORATION LTD. REGD. A.D.

Date: June 3, 1997

Ref: PER: 2873

Shri P.K. Rastogi

Y-25, Hauz Khas,

New Delhi - 110 016.

Dear Sir,

This is with reference to your Representation dated 18.12.1996. Your representation has been carefully examined with regard to the facts and circumstances of the case which are in brief as follows:

You had made representation dated 17.12.1996 to the Director (Finance) stating that you were a site witness and obtained anticipatory bail and went for Court surrender following the registration of the FIR.

Documents filed by you before the Hon"ble High Court of Delhi in the Civil Writ Petition being CWP No.4828 of 1996 clearly show that you were not granted anticipatory bail on the ground that the petition for anticipatory bail did not lie. The said documents also showed that the Complainant injured namely Shri P.N. Mathur had expired during the pendency of the said case.

Since you had represented that you were neither arrested nor prosecuted nor kept under detention and that no case was pending against you in any Court of Law as on 28.8.1996, the matter was referred back by the ITDC Management to the Dy. CP, Special Branch, New Delhi to reverify the position. The Dy. CP informed inter alias that there is a concealment of facts to the extent that Shri Rastogi was prosecuted in FIR No. 448 dated 18.12.1991 u/s 324/34 of the IPC with the Police Station, Hauz Khas, New Delhi. The Character Antecedents Form clearly stipulates that, "if the fact that false information has been furnished or that there has been suppression of any factual information in the Attestation Form comes to notice at any time during the service of a person his/her services would be liable to be terminated".

Clause 13 of the offer of appointment clearly stipulates that if there is any concealment of any information or if any information furnished by the employee at the time of appointment proves to be false the services are liable to be terminated without notice. Clause 17 of the offer of appointment further stipulates that the appointment is subject to satisfactory verification of the Character & Antecedents of the employee.

It is unfortunate that you had reiterated that you were neither arrested nor prosecuted.

In your representation dated 7.5.1997 you have for the first time expressed regret that inadvertently you had only filled one Clause of the antecedents Form wrong and that I should condone the same as you had no intention to benefit

from the said wrong.

In view of the facts and circumstances which clearly reveal that you had deliberately concealed and suppressed the material facts in violation of the relevant Clauses of the Character Antecedents Form and Offer of Appointment, I am not inclined to accept the said contention.

In view of the above, your representation dated 18.12.1996 is hereby rejected.

Sd/-

(ANIL BHANDARI)

CHAIRMAN & MANAGING DIRECTOR

12. The only point that arises for consideration is whether there had been any concealment by the petitioner when he gave the character antecedent form on 20.08.1996, whether the second respondent Corporation was justified in invoking Clause 13 of offer of appointment. The purpose of ascertaining the antecedent of an employee is to have the general idea about the deportment of the employee in the society. That must have a direct bearing on the duties to be performed by the employee and the antecedent must be of such a nature that it would be wholly prejudicial to the interest of the organisation concerned to employ him. The power under Clause 13 is given to the second respondent Corporation to weed out without any delay, with all dispatch a person who cannot be retained in the organisation. What is revealed from the order of the Metropolitan Magistrate dated 25.05.1996 is that there was some small scuffle as it were and late Mathur was alleged to have been intimidated by the petitioner and his brother. The court had acquitted the petitioner. In view of the death of the Complainant nothing could be done in the matter and Therefore, there had been no finding by the Criminal Court about the guilt of the petitioner but as I have noticed above, the petitioner was acquitted. The legal inference that would arise from the order of acquittal is that the petitioner had never been indicted of any charge and whatever that had happened anterior point of time to the order would stand completely obliterated. Therefore, on 20.08.1996 when the petitioner answered the query of character antecedent form he had given the answer correctly and Therefore, there had been no concealment. The word concealment has got a definite connotation in law. Every withholding of a fact would not be concealment. When civil consequences follow on the basis of the any act of omission on the part of the employees, the provision has to be strictly construed and the second respondent should not only prove and establish that there was a concealment in law and act complained of was such that the employee concerned could not be entrusted with any responsible job having regard to his propensity to commit crime. From the information made available the second respondent should have come to a positive conclusion that the general tendency of the petitioner is to resort to force and to take law into his hands and the employee has no regard for the rule of law. The law does not empower the second respondent to presume proprio vigore that the concealment would amount to the

petitioner being rendered unfit for the tasks assigned to him and the petitioner would compromise the interests of the organisation.

13. It is relevant to notice in this connection, the Judgment of the Supreme Court reported in Pawan Kumar Vs. State of Haryana and another, . The appellant before the Supreme Court was removed from service on the ground that he was convicted of an offence. While in service the Appellant was convicted for a summary trial for an offence u/s 294 IPC on his confessing to his guilt and a sum of Rs. 20/- was imposed as fine. When his case came up for consideration before the respondent to regularise the services of the appellant the respondents sought verification from the Supdt. of Police and it was reported that the Appellant was convicted u/s 294 IPC but otherwise the appellant was of good character. Opinion of the District Attorney was also sought for. He was of the opinion that the offence u/s 294 IPC was not a serious one and it did not involve any moral turpitude and the sentence of fine Rs. 20/- imposed on the appellant would not make him unfit for service and there was no legal bar for regularisation. However, the department was of the view that the appellant could not be retained in service in view of the imposition of fine of Rs. 20/-. The appellant filed a suit for declaration before the Civil Court challenging the order of termination. The issue framed by the court was whether the order dated 30.09.1984 terminating his services of the plaintiff is wrong, illegal and liable to be set aside as alleged. The appellant was unsuccessful up to High Court. The High Court rested its decision on two premises, namely, (1) that the conviction of the appellant u/s 294 IPC revealed an act which per se constituted moral turpitude; and (2) the order of termination of service, bare facedly, on its plain language was not stigmatic. All the same it was never disputed by the respondents that since the character and antecedent verification had revealed the conviction of the appellant u/s 294 IPC that was the reason why the services of the appellant were dispensed with and not regularised. This was challenged before the Supreme Court.

14. The Supreme Court posited:

We had required of the respondents to produce before us the copy of the judgment whereby the appellant was convicted for the offence. As was expected only a copy of the institution/summary register maintained by the Court of the Chief Judicial Magistrate, Bhiwani was placed before us showing that the appellant on 4.6.1980 was imposed a fine of Rs. 20/-. A copy of the treasury challan supporting that the fine paid was deposited by the Chief Judicial Magistrate the same day has also been produced. The copy of summary register neither discloses the substance of the allegations put to the appellant, nor the words in which the plea of guilt was entered. It is of no significance that the appellant treats himself a convict as he had pleaded guilty. Ex facie it only shows that the entry concerns F.I.R. No. 231/3-6-1980 u/s 294 IPC. there from it is difficult to discern the steps taken in the summary trial proceedings and what had the appellant pleaded to as guilty, whether to the allegations in the FIR or to

the provision of the I.P.C. or any other particular? Mere payment of fine of Rs. 20/- does not go to show that the conviction was validly and legally recorded. Assuming that the conviction is not open to challenge at the present juncture, we cannot but deprecate the action of the respondents in having proceeded to adversely certify the character and antecedents of the appellant on the basis of the conviction per se, opining to have involved moral turpitude, without satisfying the tests laid down in the policy decision of the Government. We are rather unhappy to note that all the three Courts below, even when invited to judge the matter in the said perspective, went on to hold that the act/s involved in conviction u/s 294 IPC per se established moral turpitude. They should have been sensitive to the changing perspectives and concepts of morality to appreciate the effect of Section 294 I.P.C. on today's society and its standards, and its changing views of obscenity. The matter unfortunately was dealt with casually at all levels.

Before concluding this judgment we hereby draw attention of the Parliament to step in and perceive the large many cases which per law and public policy are tried summarily, involving thousands and thousands of people throughout the country appearing before summary Courts and paying small amounts of fine, more often than not, as a measure of plea-bargaining. Foremost among them being traffic, municipal and other petty offences under the Indian Penal Code, mostly committed by the young and/or the inexperienced. The cruel result of a conviction of that kind and a fine of payment of a paltry sum on plea-bargaining is the end of career , future or present, as the case may be, of that young and/or inexperienced person, putting a blast to his life and his dreams. Life is too precious to be staked over a petty incident like this. Immediate remedial measures are, Therefore, necessary in raising the toleration limits with regard to petting offences specially when tried summarily. Provision need be made that punishment of fine up to a certain limit, say up to Rs. 2,000/- or so, on a summary/ordinary conviction shall not be treated as conviction at all for any purpose and all the more for entry into and retention in Government service. This can brook no delay, whatsoever.

15. Fascicule of the column in clause 12 (a) to (j) would bring forth the object of collecting information which is to find out whether the candidate had been convicted of any offence. The petitioner not having been convicted was not bound in law to give any information and the answer given by him cannot be taken exception to in law. Column 12 (a) to (j) reads as under:

a) Have you ever been arrested? No b) Have you ever been prosecuted? No c) Have you ever been kept under No detention? d) Have you ever been bound down? No e) Have you ever been fined by a No Court of Law? f) Have you ever been convicted by No a Court of Law for any offence? g) Have you ever been debarred from No any examination or restricted by any University or any other educational authority/instruction? h) Have you ever been debarred/disqua No lified by any public service commission from appearing at its

examination/selection? i) Is any case pending against you No in any Court of Law at the time of filling up this Attestation form? j) Is any case pending against you in No any University/or any other educational authority/ Institution at the time of filling up this Attestation form?

16. The petitioner referred to the judgment of the Supreme Court reported in Union of India (UOI) and Others Vs. Arun Kumar Roy, . The respondent before the Supreme Court was appointed as Stores Officer in the department of the Zoological survey of India on 30.07.1975. He was placed on probation for two years. His probation was extended from 30.07.1977 by one year. On 27.07.1978 the Deputy Secretary to the Government of India, informed the petitioner of the order passed by the President of India by which the President had terminated the services of the respondent with effect from afternoon the 29th of July 1978. The communication stated that the respondent before the Supreme Court would be entitled to claim a sum equal to the amount of his pay plus allowances in lieu of one month's notice. That order was challenged before the Calcutta High Court. The main contention employee was that the order of termination was not in accordance with law since the sum equivalent to pay plus allowances for the notice period was not paid to him along with the notice as required under the terms of his appointment letter. The Union of India relying upon Rule 5 (1)(b) of the Central Civil Services (Temporary Service) Rules, 1965 submitted that the respondent before the Supreme Court would be entitled only to pay and allowances for the one month period and the rule would not oblige the Union of India to pay the amount to the employee before the order of termination and take effect. Rule 5 (1) in its amended form reads as under :

"Rule 5(1)(a)

The services of a temporary government servant who is not in quasi permanent service shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the government servant;

(b) The period of such notice shall be one month, provided that the services of any such government servant may be terminated forthwith and on such termination, the government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or as the case may be, for the period by which such notice falls short of one month".

17. In accordance with this Rule the order of termination stated as:

In pursuance of the provisions contained in para 2(ii) and (iii) of this Department's C.M. No. F.1-19/73-Sur.3 dated July 9, 1975 regarding appointment to the post of Stores Officer in the Zoo-logical Survey of India, the President of India hereby terminates with effect from the afternoon of July 29, 1978, before the expiry of extended period of probation the services of Shri Arun

Kumar Roy, Stores Officer, Zoological Survey of India, Calcutta and directs that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances in lieu of one month of notice at the same rates at which he was drawing them immediately before the termination of his services.

18. The learned Single Judge who heard the petition dismissed the writ petition. On appeal by the employee before the Division Bench the Judgment of the learned Single Judge was upset and the appeal was allowed and the Union of India took up the matter to the Supreme Court. The contention of the employee before the Supreme Court was that the Union of India was bound by the terms of appointment letter and cannot rely upon Rule 5(1)(b) of the Rules. This is the contention that was accepted by the Division Bench of the Calcutta High Court. The Supreme Court rejected the contention and allowed the appeal of the Union of India holding that the Union of India was obliged to act in accordance with the Rules and not in terms of the appointment letter. Relying upon this Judgment of the Supreme Court the petitioner contended that as he had been appointed and had taken charge the second respondent Corporation could act only in accordance with the Rules of India Tourism Development Corporation Ltd., Conduct, Discipline and Appeal rules, 1978 and the concealment of material by the petitioner from the second respondent would not come within the meaning of misconduct mentioned in rule 4 and Therefore the second respondent Corporation cannot act on Clause 13 of the appointment letter.

19. The petitioner referred to the judgment of the Supreme Court reported in Parshotam Lal Dhingra Vs. Union of India (1958) SCR 828. In this case it is submitted that the petitioner would be entitled to protection under Article 311(2) of the constitution of India and in this case no opportunity was given to the petitioner. The order dated 17.12.1996 is void in law.

20. The petitioner referred to the Judgment of the Supreme Court in Samsher Singh Vs. State of Punjab and Another, . For the proposition that order of termination is by way of punishment, the employee would be entitled to the protection under Article 311(2).

21. Jagdish Parsad Vs. Sachiv, Zila Ganna Committee, Muzaffarnagar and Another, , in that case the appellant Jagdish Parsad was employed as a Clerk in the office of Zila Ganna Adhikari, Muzaffarnagar in a temporary capacity. His services were terminated on 28.10.1976. Prior to the order a show cause notice was given to the appellant. The appellant moved the High Court of Judicature at Allahabad questioning the legality and validity of the order on the ground that he had not been given sufficient opportunity of hearing nor was the procedure prescribed under Regulation 68 of the U.P. Cane Co-operative Service Regulations 1975 was complied with. That regulation provided that the employee should be communicated the charges in writing and that was not done. The Supreme Court observed:

Furthermore this order of termination if considered along with the show cause

notice will clearly reveal that the order of termination if considered along with the show cause notice will clearly reveal that the order of termination in question is not an innocuous order made for doing away with the service of the temporary employee like the petitioner-appellant in accordance with the terms and conditions of his service. This order is, Therefore, per se, illegal, arbitrary and in breach of the mandatory procedure prescribed by Regulation 68 of the U.P. Cane Co-operative Service regulations 1975. The order made is also in utter violation of the principles of audi alteram partem. The findings of the High Court that no disciplinary departmental proceedings have been taken against the petitioner appellant and the petitioner was afforded opportunity before his service was terminated are liable to set aside in as much as these findings were arrived at without at all considering the relevant materials produced before the Court.

In the premise aforesaid, there is no other alternative, but to quash and set aside the impugned order passed by the Court below.

22. The ratio laid down by the Supreme Court would not apply to the facts of this case. The petitioner referred to the judgment of the Supreme Court reported in O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others, . It is not necessary to deal with this case because the facts are entirely different and there is no ratio applicable to the present case. The petitioner referred to the judgment of this Court in Ishwar Lal Vs. State Bank of Travancore 1996(V) AD(Delhi) 682. This court took the view in the following manner:

In view of the aforesaid pronouncements of the Supreme Court the legal position seems to be clear that for an employee who is on probation for a period of six months, the management cannot terminate his services before the expiry of six months, except on the grounds of misconduct. If this principle is made applicable to the facts of the instant case, then the conclusion would be that the management was not justified in terminating the service of the petitioner.

23. Therefore, this case would not be of any assistance to the petitioner.

24. Mr. Ajay Kapoor, the learned counsel for the respondent (second respondent) submitted that the petitioner is not entitled to protection under Article 311 as that provision is no application. The learned counsel referred to the judgment of the Supreme Court reported in Dr. S.L. Agarwal Vs. The General Manager, Hindustan Steel Ltd., to show that the petitioner would not be entitled to the protection under Article 311. Nobody can take any exception to the dictum laid down by the Supreme Court. The petitioner would not be entitled to protection under Article 311 because the second respondent is an independent organisation.

25. The learned counsel for the second respondent referred to the judgment of the Supreme Court Delhi Administration through its Chief Secretary and Others Vs. Sushil Kumar, . The Judgment of the Supreme Court is a very short one and Therefore, it can be extracted.

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 u/s 304 IPC, u/s 324 read with 34 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 force. 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.

27. In that case the respondent was a constable in Delhi Police Services. Therefore, in spite of discharge the appellant was justified in taking into account the conduct of the person who appointed as a constable. Therefore, as already mentioned above, the second respondent should have considered the nature of the allegations against the petitioner and how far it will be detrimental to the Organisation if that is taken into consideration. The department came to a definite conclusion in the case before the Supreme Court, on verification, it was found that the antecedents were such that the appointment of the person to the post of the constable was not found desirable, even though the person was acquitted by the Court. It is in that context the Supreme Court upheld the order impugned. It is admitted position that no verification of the antecedents of the appellant was done by the second respondent. Therefore, the proposition of law

propounded by the learned counsel for the second respondent Mr. Ajay Kapoor on the strength of the Judgment of the Supreme Court is different and the principle laid down by Supreme Court would not apply to the facts of the instant case. Mr. Ajay Kapoor the learned counsel for the respondents submitted that whatever be the nature of the offence complained of, the second respondent was justified in basing its decision on concealment.

28. Ajay Kapoor referred to the judgment of the Supreme Court in Sanjay Kumar Bajpai Vs. Union of India 1997 2 AD SC 704. The appellant before the Supreme Court was selected for recruitment as M.E.R.(Technical/Nursing Assistant in the Army Medical College. He was enrolled as M.E.R.(Technical)/Nursing Assistant on February 29, 1988. At the time of enrolment the employee was to fill up a form. At the time of enrolment the appellant was being prosecuted before the Special Judicial Magistrate (Pollution Control) U.P. Lucknow for offence u/s 147, 452, 326 and 323 I.P.C. The Supreme Court observed:

We must, Therefore, proceed on the basis that the answers that are recorded against the questions contained in the said enrolment form are based on the statement made by the appellant at the time of enrolment. Since as per the enrolment form question No.8 answered in the negative, it must be held that at the time of enrolment the appellant did not disclose that the criminal case was pending against him and made a false statement that no case was pending against him at the time.

29. Therefore, this case is not of help for the proposition canvassed for by the learned counsel for the second respondent Mr. Ajay Kapoor.

30. The learned counsel contended that the petitioner withdraw the earlier writ petition 4828/96 and Therefore, he cannot maintain this writ petition when opportunity has not been given to him to adjudicate the matter afresh. Mr. Ajay Kapoor referred to the judgment of the Supreme Court reported in Har Swarup Vs. The General Manager, Central Railway and Others, , G.K. Dudani and Others Vs. S.D. Sharma and Others, and Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others, .

31. There can be no exception to the position that the litigant who had approached a court of law and withdraws the case he cannot re-agitate the subject matter of the case by institution a fresh action unless the court had given him liberty to do so. In this case, the learned Judge while dismissing the writ petition as withdrawn directed the second respondent to dispose of the representation made by the petitioner. Therefore, the petitioner had to wait for the disposal of the representation and when the representation was rejected on 03.06.1997 the petitioner has approached this court. Therefore, the petitioner cannot be put out of court on the ground that he cannot re-agitate the matter. I have absolutely no hesitation in rejecting the contention of the learned counsel for the second respondent Mr. Ajay Kapoor.

32. Coming back to the main point about the concealment of materials, I am of

the view that there was no concealment of material by the petitioner. Clause 13 is very clear. The order dated 17.12.1996 cannot at all be sustained accordingly, it is set aside. The writ petition is allowed.

33. The orders dated 17.12.1996, 26.12.1996 and 03.06.1997 passed by the respondents are set aside. The respondent No.2 shall reinstate the petitioner with effect from 17.12.1996 with all consequential benefits forthwith. There shall be no order as to costs.