
(2020) 03 CAT CK 0080

In the Central Administrative Tribunal

Case No : Original Application No. 2365 Of 2017

Rahul Bansal

APPELLANT

Vs

Commissioner Of Police And Others

RESPONDENT

Date of Decision : 18-03-2020

Acts Referred:

Indian Penal Code, 1860 — Section 323, 341, 427, 509
Eve Teasing Act, 1998 7mdash; Section 4

Citation : (2020) 03 CAT CK 0080

Hon'ble Judges : Aradhana Johri, Member (A); R.N. Singh, Member (J)

Bench : Division Bench

Advocate : Ajesh Luthra, Asiya Khan

Final Decision : Dismissed

Judgement

Aradhana Johri, Member (A)

1. The applicant Sh. Rahul Bansal was approved for appointment to the post of Head Constable (Ministerial) in Delhi Police on compassionate grounds by the Police Establishment Board in its meeting held on 01.02.2016 subject to verification of character and antecedents, medical fitness and final check up of documents. During the course of verification it was found that he was involved in a criminal case vide FIR No. 31/2009 in which he was later acquitted by the Trial Court on the basis of a compromise vide order dated 23.11.2011. The involvement in the said criminal case had been disclosed in the relevant column of the attestation form filled by the applicant. On scrutinising/perusing the records it was revealed that the applicant was involved in a case of house trespass armed with deadly weapon, rioting, causing grievous hurt and criminal intimidation and that his acquittal in the above said criminal case was on technical grounds i.e., due to a compromise and turning hostile of witness(s), which was not a clean acquittal.

2. Applicant was given a show cause notice on 19.11.2015 as to why his

candidature for the post of Head Constable (Ministerial) should not be cancelled. The applicant replied to the same. The screening committee comprises of Special C.P/Vigilance Delhi, Special CP/DG/Scale Admn. Coordinator Delhi, and Joint C.P/HdQRS Delhi, which considered the matter of the applicant along with many others, and after considering his reply to the show cause notice, the committee found it not convincing. The remarks made by the committee in this case are as follows :-

"(2) Sh. Rahul Bansal S/o. Rajendra Prasad (Compassionate Grounds) [Head Constable (Ministerial) Year - 2015]

Gist of the FIR and judgment of the court

Candidate's reply

to the show cause notice

Recommendation

The case FIR No. 31 u/s. 147/148/323/504/506 IPC PS. Jarcha Noida, Distt. Gautam Budh Nagar (U.P.) dated 17.07.2009 was registered on the complaint of Sh. Kishan Chand. He stated that on 16.07.2009 at about 8.30 PM, Zile Singh, Rajendra of his village came in front of his shop drunken and asked to bring liquor for them to which he refused. On this, they got angry and went from there. At 09 PM, Zile Singh S/o. Mam Chand, Rajendra S/o. Mam Chand, Dukki S/o. Karma, Pawan S/o. Zile, Chaman S/o. Zile, Rahul S/o. Rajender (candidate), Parvender S/o. Suraj and Amit S/o. Dukki came carrying lathi, sariya (iron bar), danda, farsa (axe) and katta (country-made revolver) and they started beating him and his son. On raising alarm, his wife Kanti, his son Mukesh came along with Madhu & Kamlesh, the wives of his sons. The accused persons also beat and used filthy language against them. At the place of incident, some villagers gathered who rescued them. The accused fled away from spot threatening to kill.

The accused including candidate were charge sheeted u/s 147/148/323/325/504/506/452 IPC in the Court of Additional Chief Judicial Magistrate-1st, Gautam Budh Nagar (Uttar Pradesh). During the trial, the victims and eyewitnesses of the case including complainant did not support the prosecution version. They stated that on date day there was huge gathering and during scuffle he fell and received injuries. The accused persons did not cause hurt and also did not threaten of life. They denied giving any statement to the police. The complainant stated that his wife and daughter-in-laws had not received any inquiry from the hands of the accused. The prosecution failed to prove charges against the accused and the accused were acquitted of the offences vide judgment dated 23.11.2011.

1. An acquittal is acquittal

and unless some insinuation or indictment is reflected in the judgment, the

same cannot be constituted otherwise.

2. The department was fully

aware of his involvement in the criminal case and was selected for the post. Mere involvement in a criminal case is not a impediment for appointment.

3. He was acquitted by the trial court due to absence of any incriminating evidence.

4. The plea of the department declares him unfit for the post and it is nothing but violation of his fundamental right to life including to earn livelihood since nature of the crime in which a person was booked cannot be a ground to make a person unfit for any job rather it is result of the same that makes the different.

The accused including the candidate were involved in the offences for rioting with arms/deadly weapon, causing grievous hurt, breach of the peace, criminal intimidation and house trespass. The MLCs of the victims including women clearly show that they had suffered injuries. The accused and complaint/victims were from same village and known to each other. The accused named them in the FIR but the complaints/PWs turned hostile/resiled from statements and denied their roles in the incident.

The candidate's involvement in the case shows his attitude towards indulging in crime without fear of the law. Such type of attitude renders him unsuitable for appointment in a law enforcing agency and in a disciplined force like Delhi Police. His reply dated 04.12.2015 to the show cause notice is not convincing.

Hence, not recommended

3. Thereafter, the applicant's candidature was cancelled vide Dy. Commissioner of Police Recruitment Cell, NPL, Delhi letter No.1464/Rectt.Cell (SI) (DA-II), NPL dated 14.03.2016.

4. The applicant has contended that he had declared the factum of his involvement in the case and was acquitted by the Trial Court, therefore, his candidature cannot be cancelled. He has prayed for setting aside the show cause notice dated 19.11.2015 and the order dated 14.03.2016 and for restoration of his candidature to the post of Head Constable (Ministerial) of Delhi Police.

5. Respondents have denied the claim of the applicant. They have stated that first of all, his appointment is on compassionate grounds which was approved subject to qualifying the typing test and completion of codal formalities i.e., medical fitness and satisfactory police report on his character and antecedents. Since his involvement in the criminal case was found, even though he was acquitted by the Trial Court, seeing the gravity of the matter, the nature of the charges, the factum of the other party which included women suffering injuries, a show cause notice was given to him. Subsequently, his representation was considered by the appropriate forum, i.e., the screening committee, comprising of senior officers who considered his case along with others, and did not

recommend his case for appointment. Therefore, his appointment was cancelled.

6. They have cited several judgments in support of their claim. These include Hon'ble Supreme Court of India order dated 04.10.1996 in Civil Appeal No. 13231 of 1996 (arising out of SLP (C) 5340 of 1996) titled DAD Vs. Sushil Kumar and dated 24.11.2010 in Civil Appeal No. 9913 of 2010 (arising out of SLP (C) no. 16989 of 2006) titled Daya Shankar Yadav Vs. UOI & Ors. They have also cited orders of the Hon'ble Supreme Court of India in Civil Appeal No. 4842/2013 titled C.P., Delhi Vs. Mehar Singh and Civil Appeal No. 4965 of 2013 titled C.P. Delhi Vs. Shani Kumar.

7. They have further cited a case of Rakesh Kumar Meena in O.A No. 564/2014 and 36 other related O.As.

8. Respondents have stated that the applicant's case was examined in view of judgments of Hon'ble Supreme Court and Hon'ble High Court of Delhi in Civil Appeal No.5671/2012 titled Jainendra Singh Vs. State of U.P. and Civil Appeal No. 4965 of 2013-C.P. titled Delhi Vs. Shani Kumar and W.P. (C) No. 4052/2012 titled C.P., Delhi Vs. Mukesh Kumar.

9. Heard Mr. Ajesh Luthra, learned counsel for applicant and Ms. Asiya proxy for Ms. Rashmi Chopra, learned counsel for respondents.

10. It is an admitted fact that the applicant disclosed his involvement in the said criminal case in his attestation form. The order of the Trial Court in the said acquittal was on technical grounds of witnesses turning hostile and the compromise having been reached. The respondents duly issued a show cause notice and considered the reply/representation of the applicant. High level screening committee which examined the matter, recorded the gist of the FIR and judgment of the Court. It is only after considering the reply of the applicant that order dated 14.03.2016 cancelling the appointment was issued.

11. The applicant has cited judgment of the Hon'ble High Court in W.P. (C) 5675/2017-Sandeep Singh Vs. Govt. of NCTD & Anr., in support of his contention. However, in the cited case, the acquittal was not on account of any benefit of doubt but on the basis of no evidence. Such is not the case in the current O.A wherein acquittal is on technical grounds i.e., on the basis of the compromise and witnesses turning hostile.

12. Similar matters were considered in a batch of O.As, the leading O.A of which was O.A 546/2014. Some of these O.As are State of MP Vs. Parvez Khan (2015) 2 SCC 591, Sanjeev Kumar Vs. GNCTD and Others (WP (C) 5782/2011) decided on 11.08.2011, Akash Dhama Vs. Govt. of NCT of Delhi and Ors in WP (C) No. 1576/2015, In Commissioner of Police Vs. Ranvir Singh W.P. (C) No. 6518/2011, Commissioner of Police, New Delhi and Another Vs. Mehar Singh with Commissioner of Police, New Delhi and Another Vs. Shani Kumar (2013) 7 SCC 685, wherein both the issue of declaration / non declaration of involvement in a criminal case as well as subsequent acquittal, have been dealt with. It was held

that even after declaration, depending on the nature of the charges, where there is acquittal on compromise or prosecution witnesses turning hostile, the screening committee can consider the seriousness of the charges, and take a view regarding cancellation of the candidature and the employer has a right to withdraw the appointment.

13. In the case of Commissioner of Police, New Delhi and Another Vs. Mehar Singh with Commissioner of Police, New Delhi and Another Vs. Shani Kumar (ibid), Hon'ble Supreme Court upheld the validity of the procedure adopted by Delhi Police in assessing the suitability of the candidates involved in criminal cases. It was observed that it could be specifically ruled that the Screening Committee could keep in view:- (i) Nature and extent of involvement of candidate in the criminal case. (ii) The propensity of becoming a cause for worsening the Law and order situation rather than maintaining it. (iii) Seriousness of the charge. (iv) Whether the acquittal is honourable or on technical ground.

14. In the aforementioned case of Mehar Singh (supra), the selection in question was for the post of Constable (Executive). The offences alleged were under Section 341, 323 and 427 of the IPC. He arrived at a compromise with the complainant and in terms of the compromise Mehar Singh and other co-accused were acquitted. Mehar Singh had disclosed the factum regarding his involvement and acquittal. His candidature was however cancelled in terms of the Standing Order. The challenge raised by him was accepted by this Tribunal and by Delhi High Court but was turned down by the Hon'ble Apex Court which held the following:-

" 23. A careful perusal of the policy leads us to conclude that the Screening Committee would be entitled to keep persons involved in grave cases of moral turpitude out of the police force even if they are acquitted or discharged if it feels that the acquittal or discharge is on technical grounds or not honourable. The Screening Committee will be within its rights to cancel the candidature of a candidate if it finds that the acquittal is based on some serious flaw in the conduct of the prosecution case or is the result of material witnesses turning hostile. It is only experienced officers of the Screening Committee who will be able to judge whether the acquitted or discharged candidate is likely to revert to similar activities in future with more strength and vigour, if appointed, to the post in a police force. The Screening Committee will have to consider the nature and extent of such person's involvement in the crime and his propensity of becoming a cause for worsening the law and order situation rather than maintaining it. In our opinion, this policy framed by the Delhi Police does not merit any interference from this Court as its object appears to be to ensure that only persons with impeccable character enter the police force.

24. We find no substance in the contention that by cancelling the respondents' candidature, the Screening Committee has overreached the judgments of the criminal court. We are aware that the question of co-relation between a criminal

case and a departmental enquiry does not directly arise here, but, support can be drawn from the principles laid down by this Court in connection with it because the issue involved is somewhat identical, namely, whether to allow a person with doubtful integrity to work in the department. While the standard of proof in a criminal case is the proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities. Quite often criminal cases end in acquittal because witnesses turn hostile. Such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on a par with a clean acquittal on merit after a full-fledged trial, where there is no indication of the witnesses being won over. In *R.P. Kapur v. Union of India*⁶ this Court has taken a view that departmental proceedings can proceed even though a person is acquitted when the acquittal is other than honourable.

25. The expression "honourable acquittal" was considered by this Court in *S. Samuthiram*⁷. In that case this Court was concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under Section 509 IPC and under Section 4 of the Eve-Teasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in *RBI v. Bhopal Singh Panchal*⁸, where in somewhat similar fact situation, this Court upheld a bank's action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in the departmental proceedings. This Court observed that the expressions "honourable acquittal", "acquitted of blame" and "fully exonerated" are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression "honourably acquitted". This Court expressed that when the accused is acquitted after full consideration of the prosecution case and the prosecution miserably fails to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

33. So far as respondent Mehar Singh is concerned, his case appears to have been compromised. It was urged that acquittal recorded pursuant to a compromise should not be treated as a disqualification because that will frustrate the purpose of the Legal Services Authorities Act, 1987. We see no merit in this submission. Compromises or settlements have to be encouraged to bring about peaceful and amiable atmosphere in the society by according a quietus to disputes. They have to be encouraged also to reduce arrears of cases and save the litigants from the agony of pending litigation. But these considerations cannot be brought in here. In order to maintain (2013) 1 SCC 598 (1994) 1 SCC 541 integrity and high standard of police force, the Screening Committee may decline to take cognizance of a compromise, if it appears to it to be dubious. The Screening Committee cannot be faulted for that.

34. The respondents are trying to draw mileage from the fact that in their application and/or attestation form they have disclosed their involvement in a criminal case. We do not see how this fact improves their case. Disclosure of these facts in the application/attestation form is an essential requirement. An aspirant is expected to state these facts honestly. Honesty and integrity are inbuilt requirements of the police force. The respondents should not, therefore, expect to score any brownie points because of this disclosure. Besides, this has no relevance to the point in issue. It bears repetition to state that while deciding whether a person against whom a criminal case was registered and who was later on acquitted or discharged should be appointed to a post in the police force, what is relevant is the nature of the offence, the extent of his involvement, whether the acquittal was a clean acquittal or an acquittal by giving benefit of doubt because the witnesses turned hostile or because of some serious flaw in the prosecution, and the propensity of such person to indulge in similar activities in future. This decision, in our opinion, can only be taken by the Screening Committee created for that purpose by the Delhi Police. If the Screening Committee's decision is not mala fide or actuated by extraneous considerations, then, it cannot be questioned.

35. The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the 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 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."

(Emphasis added)

15. The case of Mehar Singh is very similar to the present O.A and would apply squarely to this matter.

16. In the case of Avtar Singh Vs. UOI (supra) among other points the following law point was made :-

"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 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."

17. This ruling also clearly holds that the employer still has a right to consider the antecedents of the candidates even after declaration has been made.

18. Hon'ble Supreme Court in Delhi Administration vs. Sushil Kumar [1996 (11) SCC 605] held that verification of the character and antecedent is one of the important criteria to test whether the selected candidate is suitable for a post under the State. Though he was found physically fit, passed the written test and interview, provisionally selected on account of his antecedent record and had been acquitted, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force. The Hon'ble Court held that though he was discharged or acquitted of the criminal offences, the same has nothing to 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.

19. It is also to be kept in mind that the present matter is one of compassionate appointment. Therefore, the applicant got preference over many others in his appointment itself. The Apex Court has held time and again that compassionate appointment is not an entitlement but is to be given only to protect the family of the deceased employee from financial hardship.

20. In light of rulings cited above, the seriousness of the charges of offence, and the fact that many persons including women, suffered injuries, and that the acquittal in the case was on technical grounds i.e., due to witnesses turning hostile and there was a compromise, the employers are within their rights to cancel the candidature of the applicant.

21. It is also observed that a show cause notice was given and tenets of natural justice were followed. The screening committee gave detailed consideration to the points raised by the applicant in reply to the said notice and only thereafter was the order of cancellation passed.

22. I find the O.A devoid of merit and is accordingly dismissed. No order as to costs.