

(2011) 03 DEL CK 0142
In the Delhi High Court
Case No : Writ Petition (C) 9314 of 2009

Ram Het Meena

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-03-2011

Acts Referred:

Constitution of India, 1950 — Article 311

Penal Code, 1860 (IPC) — Section 120A, 121A, 122, 123, 124

Citation : (2011) 03 DEL CK 0142

Hon'ble Judges : Suresh Kait, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : U. Srivastava, for the Appellant; Naina Kejriwal, for the Respondent

Judgement

Pradeep Nandrajog, J.—Vide order dated 13.1.1990, it has been intimated to the Petitioner that the Appointing Authority finds him unsuitable for service in CISF, a Central Para-Military Force.

2. Petitioner successfully cleared the selection process for appointment as a Constable-Driver under CISF but on account of being convicted for an offence punishable u/s 336 IPC, was let off on probation, has been rendered a person of questionable antecedents by the Appointing Authority of CISF.

3. It would be noted that the Petitioner was charged for offences punishable u/s 323, 324, 325, 336 and 341 IPC. There were 3 other co-accused. It was alleged that the 4 accused had attacked one Anil on a boundary dispute in the village. Pertaining to the offences punishable u/s 323, 324, 325 and 341 IPC, the parties entered into a compromise since the said offences were compoundable. As regards the offence punishable u/s 326 IPC, the 4 accused voluntarily pleaded guilty and were let off on probation. This is as per order dated 29.6.2006 passed by a learned Judicial Magistrate.

4. We may note that the Petitioner did not suppress any information when he applied for the job. Filling up the application form he truthfully disclosed that he

was prosecuted in a Criminal Court and when asked to clarify as to the nature of the prosecution he truthfully disclosed his being convicted and being let off on probation. He enclosed a copy of the judicial verdict.

5. We highlight that it is not a case where the Petitioner suppressed the truth or tried to hide relevant facts which had a bearing on his character verification.

6. On the issue whether any kind of brush with the process of the criminal law resulted in a conviction should render a citizen of this country ineligible for public employment on the ground that a brush with criminal law is indicative of immoral character or a character which renders a person ineligible for public employment or renders it undesirable to induct said person in public employment, in the decision reported as Govt of NCT of Delhi and Another Vs. Robin Singh, , in paras 16 to 38 it was observed as under:

16. It is no doubt true that police plays an essential role of enforcement of law and order in modern societies. Without an efficient police force, a society would become anarchic. To ensure that the police force of a state is efficient, the state must ensure that each individual recruited to the police force, at whatever level, must possess the following attributes:

(a) Physical Strength and fitness/Free from medical diseases.

(b) Emotional maturity, and ability to remain calm in emotionally charged situations.

(c) Ability to exercise initiative in their work.

(d) Good moral character and integrity.

(e) The ability to carry a great deal of responsibility in handling difficult situations alone/ dependability.

(f) Good Judgment.

17. Keeping in view the above attributes, which are the minimum required of a person who becomes a member of the police force, it becomes the duty of the State to carefully screen the candidates with reference to the aforesaid attributes. But, what we find in India is that the only screening done is with respect to the moral character and integrity, physical strength and free from medical disease. Evidenced by the instant case, the first attribute is sought to be verified by archaic means i.e. checking on the police dossiers or relying upon information provided by the candidate himself and the second, of physical strength, by subjecting the candidates to a physical test, and of being free from medical disease by conducting the medical examination. No evaluation pertaining to the emotional maturity, ability to remain calm in emotionally charged situations, ability to handle difficult situations and be responsive and the ability of initiative in work is conducted.

18. We find that in some jurisdictions abroad, such as United States of America,

Canada, Philippines, to name a few, a psychological test is conducted to ascertain the suitability of candidates commensurate to the nature of job they are being inducted to. At times a polygraph test is also conducted to check the deceiving tendencies of candidates. Because so much public trust is placed in peace officers, candidates for these positions are carefully screened to rule out emotional instability, poor judgment, lack of dependability, or other problems which might negatively affect their law enforcement work.

19. A criminal record is a record of a person's criminal history, generally used by potential employers to assess the candidate's trustworthiness. The information included in a criminal record varies between countries and even between jurisdictions within a country. In most cases it lists all non-expunged criminal offenses and may also include traffic offenses such as speeding and drunk-driving. In some countries the record is limited to actual convictions (where the individual has pleaded guilty or been declared guilty by a qualified court) while in others it also includes arrests, charges dismissed, charges pending and even charges of which the individual has been acquitted. The latter policy is often argued to be a human rights violation since it works contrary to the presumption of innocence by exposing people to discrimination on the basis of unproven allegations.

20. It is unfortunate that in India we are not marching ahead in the comity of nations and prefer to be governed by the recruitment processes which are a legacy of the British era; ignoring that the purpose of governance then was to rule and the purpose of governance now is to serve.

21. We have prefaced our decision with the statement whether pendency of a criminal proceeding or for that matter a conviction by a competent court of law may justify eyebrows to be raised, but would it justify the shutting of one's eye?

22. Now, a man can be booked for the offence of over-speeding and perhaps may be convicted for parking his motor vehicle in a non-parking area. Would this man be of a character, compelling in public interest and for public good, not to induct him in public service? The answer would be in the negative. As against that, a man has committed murder or has broken into a departmental store and stolen cash. Would this man be of a character, compelling in public interest and for public good, not to induct him in public service. The answer would be in the affirmative.

23. Not to induct persons with a criminal background in public service, is based on the premise that considerations of public policy, concern for public interest, regard for public good would justify a prohibition. Thus, the primary consideration is, whether public interest and public good would be jeopardized if a person with a criminal background is inducted in public service. And this takes us straight to the core of the issue, whether brush with penal law would justify the eyes to be closed against the offender or only such brush with penal law which is of a higher degree of criminality. If the answer is in the negative, the

further question: what should be the higher degree of criminality which would justify the eyes being shut to such person needs to be addressed.

24. With respect to the first two examples given by us in para 22 above, none would argue that for such trivial offences the eyes must be shut against the offender, and with regard to the next two, everybody would agree that the eyes should be shut to such a person who has to be ignored. We concede that the examples are in the extreme, but they certainly help us in understanding as to the process of reasoning required to be adopted to decide as to on which side of the border-line a case would fall.

25. A look at the penal laws in India would show that most of the penal offences can be categorized under two broad categories i.e. felony and misdemeanour. A further look at the sections stipulating penalties would show that felonies are treated as more grave vis-?-vis misdemeanours. Further, by classifying offences as cognizable and non-cognizable, higher and lower degrees of criminality to the offences can be discerned. Further, by classifying offences as bailable and non-bailable, the degree of criminality can be further discerned.

26. The civil concept of an offence being of a depraving character is to look at whether the act complained of suffers from the tag of a moral turpitude or not.

27. We do not intend to make a catalog of reported decisions as to what misdemeanours should normally attract the penalty of removal or dismissal from service. We may simply state that with respect to conviction for grave and serious offences alone, on the anvil of public interest and for public good, Courts have held that the offender has rendered himself unfit to continue in office and in extreme cases summary dismissal or removal from service by invoking Article 311 of the Constitution is also held justified.

28. Thus, we have a guideline of serious and grave offences being the touchstone in case of the door being shown to the government servant.

29. Looking through the prism of case law pertaining to when can the door be shown to a government servant and by doing reverse engineering we can safely say that what is good for the door to be shown, is good for prohibiting entry through the door, and thus while denying public employment with respect to the offence committed by a person, it can be said, and we say so, that it may be a serious violation of the constitutional right of a citizen to be fairly treated in the matter of public employment if trivial offences committed by the citizen would justify the State shutting its eyes and denying employment.

30. Having answered the question posed in para 1 above, and the answer being in favour of the citizen, we need to answer the further question as to which offences or brush therewith, would justify non entry into public service.

31. We have a clue; of offences being grave, serious and involving a moral turpitude justifying public employment not being given. These would certainly not justify the offender being inducted into public service. None would disagree

that convicted and fined for parking a car in a no-parking area or convicted for over-speeding would attract the de minimis principle, but the problem would be in cases closer to the borderline. For therein would lie the problem as to in which side of the boundary line should they be categorized.

32. It is unfortunate that in India, the Government does not come out with white papers of the deliberations at various seminars, but we find a reference made to the "All India Seminar on Correctional Service" held at New Delhi in March 1969, to consider and lay guidelines pertaining to the problem of rehabilitation of ex-convicts, with emphasis on the need for their employment under the government. Vide OM dated 2.2.1973, No. 6857-GSI-72-2755, the State of Haryana has listed the penal offences which have been treated as grave, serious and involving moral turpitude. The said OM lists the under-noted penal offences as grave, serious and involving moral turpitude, disentitling the convict to public employment; the offences are:

Sections 120-A, 121-A, 122 - 124, 161, 161-ia, 165, 167, 181, 182, 193 - 201, 205, 209, 293, 302, 304, 307, 354, 359, 362, 363 - 366, 366-A, 366-B, 367 - 373, 376, 377, 379, 380, 391, 392, 398 - 400, 403, 404, 406 - 409, 417 - 421, 449, 450, 453 - 458, 465 - 468, 471 - 476, 477-A, 489-A, 489-B, 489-C, 489-D, 489-E, 493 - 498 of the Penal Code.

33. We are a little surprised at the list as it excludes offences such as promoting enmity or doing acts prejudicial to maintenance of harmony i.e. offences punishable u/s 153-A IPC. It excludes offences pertaining to mutiny and its abetment i.e. offences under Sections 131 - 136 IPC. But we do not comment. However, what we find is, the common thread of including all offences against women and such offences which are punishable with imprisonment for life as also imprisonment for a term exceeding three years and above. We get a clue. Offences which do not carry a mandatory sentence of imprisonment and it to be imprisoned the term is less than 3 years and the offender can be let off with payment of fine, are not included in the said list. It is an undisputed fact that there are no rules to guide the authorities in Delhi Police as to in what cases despite acquittal, the person can be kept out of service or can be deprived of employment.

34. That apart, as generically understood, offences involving moral turpitude can be classified with reference to the act being one which shocks the moral conscience of the society in general and this can be determined with reference to the motive of the offender i.e. whether the motive which led to the act was a base one or alternatively whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society.

35. Today, with plea bargaining being a well-recognized facet of the administration of criminal law and a part of criminal jurisprudence in India, we do perceive a large number of cases involving thousands and thousands throughout

the country, appearing before the Summary Courts and paying small amounts of fine, more often than not, as a measure of plea bargaining. Foremost would be amongst them petty crimes committed mostly by the young and/or the inexperienced. Some may even undergo a petty sentence of imprisonment of a week or ten days. We may also notice that Section 302 Code of Criminal Procedure prescribes for taking note of compoundable offences at the instance of the complainant itself and there are cases where compounding can take place with the permission of the Court.

36. Life is too precious to be staked over petty incidents and the cruel result of conviction for petty offences being the end of the career, the future and the present, of young and inexperienced persons cannot blast their life and their dreams.

37. In a growing democracy, where the systems are failing and the weak and the downtrodden are hardly given the opportunity to sharpen their intellect thereby diminishing the ability of their consciousness to act as a mirror to their acts and actions, it is high time that the executive brings into place a policy where summary/ordinary conviction should not be treated as a conviction for entry or retention in government service.

38. Till then, it would be the duty of the Court to interpret the law by harmonizing human sufferings and human wants, delinquencies and criminal tendencies; conscious of the fact that passengers on Spaceship Earth are the rich and the poor, the needy and the well-off, the hungry and the well-fed, the educated and the uneducated. The need of the hour is to understand that criminals are not born and are not irredeemable brutes. Crime may be a disease but not the criminal, who are a kind of psychic patients and to understand, that anti-social maladies are mostly the result of social imbalances. It must be remembered that on the one hand, social stresses, for various reasons, explosively mount in the real world's hard environs and the harsh remedy of heartless incarceration and ouster from society deepens the criminality. The swing of the pendulum to the humanist side requires respect for the worth of personhood and the right of every man and woman in its residual human essence.

7. In the said decision, a person convicted of offences punishable u/s 323/504/506 IPC was held not rendered ineligible for public employment.

8. Accordingly, we dispose of the writ petition quashing the order dated 13.1.2009 and issue a direction to the Respondents to reconsider the candidature of the Petitioner in light of the law laid down in Robin Singh's case (supra), relevant parts whereof have been extracted extensively hereinabove.

9. Necessary decision would be communicated to the Petitioner within four weeks from today and further action would be taken by the parties as per the said decision.

10. No costs.