
(2013) 01 DEL CK 0041
In the Delhi High Court
Case No : WP (C) 3522 of 2001

Sanjeev Yadav

APPELLANT

Vs

Uoi and Others

RESPONDENT

Date of Decision : 17-01-2013

Acts Referred:

Citation : (2013) 01 DEL CK 0041

Hon'ble Judges : Veena Birbal, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : S.K. Sharma, Mr. Puneet Relan and Mr. Prayas Aneja, for the Appellant; S.D. Salwan, Advocate for GNCT of Delhi, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Petitioner, Sanjeev Yadav, applied for being appointed as a Constable in Delhi Police and cleared the physical test conducted on June 20, 1998. On July 19, 1998 he was successful at the written examination. Unfortunately for him, before he could receive the letter offering appointment and he accepting the same and proceeding to fill up the enrolment form, on July 31, 1998, he was booked for an offence punishable u/s 279/ 337 IPC in respect whereof FIR No. 486/1998; naming him as the offender was registered at PS Saraswati Vihar. Required to fill up the enrolment form after he was issued letter offering appointment on probation pending verification of his character antecedents, he filled up the enrolment form on September 17, 1998 and while doing so wrote against Serial Number 11A and 11B of the Enrolment Form, as per him: "NO" with a cross preceding the word "NO". Needless to state, the information required to be supplied was whether the petitioner was an accused; or summoned by any Court; whether the petitioner was ever arrested; whether the petitioner was an accused for having committed an offence?

2. But we would note that in the enrolment form, photocopy whereof has been annexed as Annexure R-2/3, following (in Hindi and loosely translated) is written: "X No. But a Case Number 486-98 u/s 279 /337 IPC PS Saraswati Vihar

has been registered on 1.8.98."

3. Even a cursory visual glance at the writing, on being compared with the rest of the writing, would make it clear to the reader that the entire writing is in the hand of the writ petitioner. The original would reveal that whereas "X No" has been written in one ink, the remainder has been written in a different ink; meaning thereby two different pens were used. The ink and the pen used to fill the remainder form is the same as was used to write "X No".

4. Since the character verification was taking time the petitioner was inducted in service on the strength of an undertaking, which he submitted on December 01, 1998. The undertaking reads as under:-

UNDERTAKING

I, SANJEEV YADAV, ROLL NO. 318906 do hereby solemnly affirm that I have not concealed any facts in the application form as well as in the attestation form, I hereby further declare that I was neither involved nor arrested/prosecuted/convicted, bound over, interned, externed (sic) nor dealt with under any law in force in any criminal case and that no criminal case or court proceeding is pending against me at present.

I do hereby also state that my selection to the post of constable (Exe) in Delhi Police is purely provisional and temporary subject to the verification of my character and antecedent and the documents submitted by me in support with my application form. In case if any documents/certificates/declaration is found false or adverse character antecedents report is received, my aforesaid selection shall be liable to be cancelled and my service shall be liable to be terminated. Further, in the event of above, I shall not claim anything for the post of constable (Exe.) in Delhi Police.

5. Now the dispute.

6. The character verification done by the Delhi Police was carried out with reference to the fact that the record of Delhi Police with respect to petitioner's appointment was on the assumption that he was not an accused in any FIR; and the result was information surfacing through evidence aliunde that the petitioner was an accused in afore-noted FIR.

7. Being on probation, services of the petitioner were terminated in exercise of the power u/s 5 of the CCS (Temporary Service) Rules 1965, after issuing a show-cause notice to the petitioner on November 22, 1999 as to why his services be not terminated on account of intentionally concealing the fact that petitioner was an accused in FIR No. 486/1998. In response the petitioner took the stand that he never gave any wrong information and relied upon the fact that in the enrolment form he had mentioned the fact of his being an accused in FIR No. 486/1998.

8. With reference to the undertaking furnished by the petitioner on December

01, 1998, in which there was no reference to his being an accused in an FIR, the Competent Authority dismissed petitioner from service for deliberately withholding information relevant to character verification.

9. Challenge to the order passed by the Competent Authority failed before the Central Administrative Tribunal when OA No. 88/2001 filed by the petitioner was dismissed in limine on January 11, 2001.

10. As per the Original Application the petitioner pleaded that in the enrolment form filled up by him on September 17, 1998, since he had already furnished the relevant information, he deemed it appropriate not to refurnish the same when he submitted the undertaking on December 01, 1998.

11. However, the argument did not cut ice before the Tribunal resulting in O.A. No. 88/2001 filed by the petitioner being dismissed in limine on January 11, 2001.

12. Same contention as was urged before the Tribunal was reiterated before us during arguments in the writ petition on January 11, 2013.

13. But, with respect to the enrolment form, an issue of greater relevance has cropped up. The same is the different pen used in recording the information sought vide serial No. 11A of the attestation form. The difference has already been noted by us hereinabove in para 4.

14. Now, we have already noted that the antecedent verification exercise pertaining to the character of the petitioner was carried out on the basis that the petitioner had informed the department that he was not involved in any criminal case.

15. It is apparent that after he realized that the department had detected that the petitioner had withheld the relevant information, the petitioner managed to somehow or the other managed access to the enrolment form and wrote: "But a Case Number 486-98 u/s 279 /337 IPC PS Saraswati Vihar has been registered on 1.8.98." This explains the said writing to be with a different pen and in a different ink.

16. When this issue cropped up, learned counsel for the petitioner stated that being a matter of disputed fact, an inquiry should be conducted.

17. Now, for each and every fact in dispute an inquiry need not necessarily be conducted and in the context of a probationer whose right to be confirmed in service is conditional upon everything being in order pertaining to the appointment, where facts emerge of a kind that *res ipsa loquitur* is attracted, inferences can be drawn with respect to the admitted facts speaking for themselves and telling their own story.

18. Conscious of the fact that various Benches of the Supreme Court have taken divergent views on withholding, probably due to fear of not being given employment, information of being involved in petty offences; some have taken

the view that intentional suppression of a fact relevant to character verification and especially in a police force would by itself disentitle the person concerned to be appointed in a police force, some opinions have held that for petty offences withholding relevant information should be ignored, and that in the decision reported as Jainendra Singh Vs. State of U.P. Tr. Prinl. Section Home and Others, the matter has been referred by a Division Bench of the Supreme Court to a larger Bench to resolve the conflict in the opposite views taken by different Benches of the Supreme Court and thus it could be said that as of today the law on the subject has yet to be crystallized in a decisive opinion from the Supreme Court, we are inclined to dismiss the writ petition for the reasons:-

(i) It is not a simple case where relevant information was withheld but is a case where petitioner has accessed the enrolment form and made interpolations therein.

(ii) In the year 2013 it would serve no public purpose to direct that petitioner should be given employment as a Constable, for the reason Constables are enrolled when they are young men aged between 20 years to 25 years and as members of the force keep themselves fit; being required to do so. As per the enrolment form the petitioner was born on March 14, 1975 and today would be turning 38 years of age. Even assuming that the wrong committed by him was not very serious, but still, being a wrong, it has to be put in the scale against him to decide whether an equitable relief should be granted to him.

The writ petition is dismissed but without there being any order as to costs.