
(2008) 03 P&H CK 0089
In the Punjab And Haryana At Chandigarh

Union Territory, Chandigarh Administration and Others	APPELLANT
Vs	
Central Administrative Tribunal, Chandigarh Bench and Another	RESPONDENT

Date of Decision : 24-03-2008

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Arms Act, 1959 — Section 25
Penal Code, 1860 (IPC) — Section 148, 149, 302, 304, 307

Citation : (2008) 2 PLR 565

Hon'ble Judges : Mohinder Pal, J; Hemant Gupta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Hemant Gupta, J.—This order shall dispose of three writ petitions i.e C.W.P. Nos. 5908-CAT of 2003, 5909-CAT of 2003 and 7754-CAT of 2004, arising out of the similar facts and involving the identical questions of law. However, for facility of reference, the facts are taken from C.W.P. No.5908-CAT of 2003.

2. The petitioner invited applications for recruitment of constables in the year 1997. The said selection was quashed by this Court and in the fresh selection processes per. the decision of the Administration, the candidates who had applied in response to the previous advertisement, were exempted from applying afresh. The applicant before the Tribunal, namely, Shri Munish Kumar was called for medical examination on 15.1.2002, but the latter of appointment was not issued though the same was issued to other similarly situated candidates. Since the representation submitted by the applicant was not decided, the applicant invoked the jurisdiction of the Central Administration Tribunal, Chandigarh Bench, Chandigarh (for short "the Tribunal") by filing an application under ?; Section 19 of the Administrative Tribunals Act, 1986 (for short "the Act")

3. It was inter-alia pleaded that 40 candidates were selected in the selection process for the post of constable including the applicant, but the applicant has

not been given the letter of appointment. It is also pointed out that a false criminal case was registered against the applicant on 5.3.1999 for the offences under Sections 332/324/325/34 IPC. The applicant has been acquitted by the competent court on 5.3.2002. Relying upon a Division Bench judgment of Allahabad High Court in Awadesh Kumar Sharma v. Union of India 2000 (4) R.S.J. 60; it was pleaded that the factum of acquittal is that the applicant is deemed to be never involved in any criminal case.

4. Reference was also made to the judgment of this Court in C.W.P. No. 15455 of 2000 (Major Singh v. State of Haryana) In the said case, the petitioner challenged the appointment of respondent Nos.6 and 7, inter-alia, on the ground that they have suppressed the material fact of criminal case against them and, therefore, their selection should be set aside. It was found that the Inspector General of Police, Ambala range has passed an order in appeal that respondent No. 6 is a very good candidate and bears a good moral character, though he was an accused in a case for the offences under Sections 302/323/148/149 IPC, before an application was submitted for appointment to the post of constable.

5. This Court has found that once a decision has been taken that it is for the authorities to consider whether such person is suitable to be taken in service and recruited as such, this Court will not interfere despite reasoning not upto the mark. Therefore, this Court found that the facts of the present case do not fall within the parameters of the scope of the judicial review.

6. In reply to the application, it has been pointed out by the respondents that the applicant was involved in FIR No. 73 dated 6.3.1999 offences under Sections 332/324/325/34 IPC. Though he was discharged in the above said case, but the Appointing Authority has found that keeping in view the antecedents of the applicant on verification, his appointment to the post of constable in the Chandigarh Police, a disciplined force, is not desirable. It was further pleaded that it is settled by the Hon"ble Supreme Court that the Appointing Authority can deny the appointment to a person in case his antecedents are found as not desirable for appointment and the acquittal or discharge in a criminal case has nothing to do with this decision.

7. Before the Tribunal, the petitioner herein referred to a judgment of the Hon"ble Supreme Court in Delhi Administration through its Chief Secretary and Others Vs. Sushil Kumar, . In the said case, the Court has held to the following effect:

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.

8. On the other hand, reliance by the applicant was placed upon the judgment of the Hon'ble Supreme Court in *Jagtar Singh v. The Director, Central Bureau of Investigation* 1993 (3) R.S.J. 296, wherein, the Court issued the directions for appointment after examining the material produced to return the finding that the conclusion that the applicant is not suitable for the post of Senior Public Prosecutor in the CBI is not good. After considering the aforesaid judgment, the Tribunal found that the applicant has not withheld or concealed any information or was not in any manner guilty of concealment. The FIR was lodged on 6.3.1999 i.e. After the application for appointment was submitted. The applicant was acquitted on 5.3.2002 just after he was declared successful for appointment to the post of constable.

9. Similarly, in C.W.P. No. 5909-CAT of 2003 (*Union of India v. Jagtar Singh*), an FIR was lodged against the applicant on 14.4.1998 after he had applied for the post of constable and acquitted on 4.10.1998. Therefore, both the applicants, who were involved in the criminal case stand acquitted and the police authorities cannot be allowed to sit in judgment over the findings recorded by the Sessions Court. Therefore, on acquittal, allegation of criminal nature totally stand effaced.

10. The Tribunal found that except for stray case against the applicants in which they were acquitted, there is nothing to indicate on the record that their past conduct was not upright or was in any manner shady. Thus, the Tribunal found that on selection, they have acquired a vested right for being appointed and thus, the application was allowed and a direction was issued to appoint the applicants as constables. 8. In C.W.P. No.7754-CAT of 2005, the applicant-respondent was involved in a criminal case arising out of FIR No.47 dated 4.4.1998 under Sections 148, 149, 323, 302, 307, 427, 429, 452 IPC and 25 of the Indian Arms Act. The trial ended into acquittal of the applicant on 11.9.2000. In the application for verification of the character antecedents, the applicant disclosed the criminal case for the offences aforesaid and the resultant acquittal on 11.9.2000, but the competent authority passed an order on 29.7.2003 that it is not desirable to appoint the applicant as a constable. The original application filed by the applicant-Joginder Singh was allowed by the Tribunal on 26.2.2003 relying upon the judgment in *Munish Kumar's* case (*supra*).

11. In the reply to the writ petitions, the respondent-applicants have relied upon an order passed by a Single Bench of this Court in C.W.P. No. 5092 of 1991 *Ram*

Chander v. State of Haryana decided on 8.5.2001. In the said case, the matter was remitted to the authorities for considering the case of the candidate as it was argued that the offences did not involve moral turpitude. Reliance is also placed upon an order dated 5.5.1999 in C.W.P. No.867 of 1999, wherein a candidate, who was involved in a criminal case for the offences under Sections 148, 149, 323 and 324 IPC was given appointment as constable. Reliance is also placed upon an order dated 27.2.2004 in C.W.P. No.14028 of 2003, wherein the candidate was given appointment even though he has not disclosed in his application form about his involvement for an offence u/s 498A IPC.

12. We have heard learned Counsel for the parties and have also gone through the judgments referred to by the learned Counsel representing the parties. However, before examining the judgments, it would be necessary to reproduce the relevant Rules of recruitment as contained in Vol.11 of Punjab Police Rules, 1934, as applicable to the State of Haryana, which read as under:

12.12. Supervision of recruitment.- The standard of performance and the reputation of the whole police force depend above all upon the quality of its constables. Standards for recruits are laid down in the rules which follow, but, over and above, these constant attention and effort to raise the general standard of recruitment are essential. Gazetted officers shall at all times devote special attention to discovering and encouraging men of a thoroughly good stamp to enroll themselves.

x x x x 12.14. Recruits-Status of.- (1) Recruits shall be of good character and great care shall be taken in selecting men of a type suitable for police service from candidates presenting themselves for enrollment.

x x x x 12.18. Recruits.- Verification of character of.-

(1) The character and suitability for enrollment of every recruit shall be ascertained by a reference to the lambardar of the village or ward member of the town of which the recruit is a resident. A search slip shall be sent to the Finger Print Bureau in order to establish his freedom or otherwise from conviction. Such lambardar or ward member shall, if the recruit is of good character, furnish a certificate to that effect which shall be verified and attested by the Sub-Inspector in charge of the local police station. The sub-Inspector shall also complete the information required by form 12.18(1).

13. A perusal of the Rules extracted above would show that the standard of performance and reputation of the entire police force depend upon the quality of its constables. Rule 12.14 of the Rules, contemplates that recruit should be of a good character and great care shall be taken in selecting men of a reputed suitable for police service from candidates presenting themselves for enrolment. Rule 12.18 of the Rules again refers to character and suitability for enrolment of every recruit and that a search slip has to be sent to the Finger Print Bureau, in order to establish his freedom or otherwise from conviction. The lambardar or ward member shall, if the recruit is of good character, furnish a certificate to that

effect which shall be verified and attested by the Sub-Inspector in charge of the local police station. A perusal of the above Rules would show that the emphasis is on the god character and suitability. The question which arises is whether determination of the suitability of a candidate for being appointed as a constable in the disciplined force can be subject matter of judicial review, when the decision making process is not said to be lacking any bonafide or based upon irrelevant and inadmissible considerations. The police constable is representative of might of the State. Whether a candidate who has a history of a criminal case against him, which might have resulted in his acquittal is entitled to wield a State batten is the question involved in the present set of writ petitions.

13. A perusal of the judgment in Jagtar Singh's case (supra), does not show the nature of the allegation against the candidate. The Court has examined the record on the basis of which he was denied appointment. The Court after perusing such record, returned a conclusion that the respondents are not justified in reaching to a conclusion adverse to the candidate. Therefore, the said order does not help the respondents to arrive at a conclusion that the applicants are entitled to be appointed, irrespective of the nature of criminal case.

14. A perusal of the judgment of a Division Bench of the Allahabad High Court, in Awadesh Kumar Sharma's case (supra) shows that the judgment in Sushil Kumar's case was not brought to the notice of the Court. In Sushil Kumar's case (supra), it has been found that acquittal in the criminal case is not relevant. The relevant is the conduct and character of the candidate and not the actual result of the criminal proceedings, therefore, the said judgment is of no help to the respondents therein.

15. The orders appended with the reply in C.W.P. No. 7754-CAT of 2004 again are not helpful to the respondents. In C.W.P. No. 5092 of 1991, the matter was sent back to the authorities on the basis of the consent of the parties. Therefore, the said judgment is not of any binding precedent. In Dharamvir's case (supra), the learned State Counsel conceded that the case for which the candidate was tried was not for an offence involving moral turpitude and, therefore, the writ petition was disposed of as infructuous on the basis of statement of learned State counsel. The said judgment is also of no help to the respondents. In C.W.P. No. 14028 of 2005, the Superintendent of Police has reported that the candidate is fit for appointment as constable. In fact, the criminal case for the offence u/s 498A IPC was registered against the brother of the candidate, (the husband) and other family members. Therefore, even the said order is of no help to the learned Counsel for the respondents.

16. On the other hand, the Hon'ble Supreme Court in Svshil Kumar's case (supra), has held that the discharge and acquittal of the criminal offence has nothing to do with the determination of the suitability of a candidate for appointment as a constable. The relevant is the conduct and character of the candidate to be appointed to a service and not "the actual result thereof. The said judgment has been noted with approval in the case (2006) 1 S.C.C. 799. It

has been found that the view taken by the Appointing Authority in the case of constable not to appoint a person as a constable cannot be said to be unwarranted nor could be interdicted in the judicial review.

17. In *R. Radhakrishnan v. Director General of Police* (2008) 1 S.C.C. 660, the candidate stood acquitted before filing up the verification roll and therefore, an argument was raised that the candidate has not suppressed any material warranting denial from appointment in service.

18. The judgment in *Sushil Kumar's* case (*supra*), was quoted with approval and it was held the following effect:

10. Indisputably, the appellant intended to obtain appointment in a uniformed service. The standard expected of a person intended to serve in such a service is different from the one of a person who intended to serve in other services. Application for appointment and the verification roll were both in Hindi and also in English. He, therefore, knew and understood the implication of his statement or omission to disclose a vital information. The fact that in the event such a disclosure had been made, the authority could have verified his character as also suitability of the appointment is not in dispute. It is also not in dispute that the persons who had not made such disclosure and were, thus, similarly situated had not been appointed.

11. The question came up for consideration before this Court in *Delhi Administration through its Chief Secretary and Others Vs. Sushil Kumar*, , wherein it was categorically held:

3. 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 Section 34 IPC and u/s 324 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 found physically 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.

19. In *Manager, R.B.I., Bangalore Vs. S. Mani and Others*, , the Court found that a judgment of acquittal passed in favour of the employee by giving benefit of doubt, per se, would not be binding upon the employer, by reiterating the principles that approach and objections of the criminal proceedings and disciplinary proceedings are altogether different and distinct. Therefore, the Labour Court is not bound by the finding of the criminal Court. In the present case, the case of the applicant is not the one of the disciplinary proceedings. The verification of the character and antecedents" is prior to the appointment. Such

verification is not required to be examined so as to find out the involvement of the candidate in criminal offence. Such verification is not for the purposes of initiating any departmental proceedings against a candidate, but a stage anterior to appointment so as to frame an opinion whether such candidate is required to be inducted as a member of the disciplined force. Whether the criminal proceedings, which led to acquittal of the candidate are relevant for determining the suitability of a candidate or not is left to the discretion of the competent authority. However, such direction is not an arbitrary discretion but has to be exercised on the principles of sound reasons and logic. While exercising the powers of judicial review, the superior Courts are required to examine the decision making process and not decision itself. Once, the involvement of the candidate in the criminal proceedings is established, its effect for induction in the police force is to be examined by the authorities, who have been assigned duties of maintaining law and order. Each appointment in the police has to be above board. Since the constable has to interact with masses at the grass root level, the decision of appointment of such person to the police force has to be based on unblemished good character after taking great care in selecting the suitable persons.

20. A Division Bench of this Court in *Krishan Kumari Vs. State of Haryana etc.*, , has held that appointment in the Police Department demands a high degree of discipline and only those candidates can be appointed, who have clean antecedents. It was held to the following effect:

The appointment in the Police department demands a high degree of discipline. In fact in the impugned order, it is mentioned that discipline is of paramount importance. It is also mentioned that only those candidates can be appointed, who have clean antecedents. Taking into consideration all the facts and circumstances of this case, we are of the considered opinion that no injustice has been done to the petitioner.

21. Keeping in view the principles of judicial review of an administrative action and the judgments referred to above, we are of the opinion that the learned Tribunal has erred in law in issuing direction to the petitioners for appointment of the applicant as constable in each of the case. In each of the case, the competent authority has framed an opinion in respect of the unsuitability of the candidates to be the members of the disciplined force. Such a decision is in tune with the Punjab Police Rules and the judgments on the question, referred to above. We are of the opinion that the order of the Tribunal suffers from illegality which cannot be sustained in law. There is no allegation of lack of bona-fide or arbitrariness in the decision making process.

22. Consequently, all the writ petitions are allowed. The impugned orders passed by the learned Tribunal are set aside and the Original Applications filed by the applicant-respondents are hereby dismissed with no orders as to costs.

Sd/- Mohinder Pal, J.