

(2017) 07 AP CK 0021
In the Andhra Pradesh High Court
Case No : 11532 of 2017

V. Veeraswamy

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 10-07-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 161](#) - Examination of witnesses by police
[Indian Penal Code, 1860](#), [Section 302](#),
[Section 201](#), [Section 1767](#)-

Citation : (2017) 07 AP CK 0021

Hon'ble Judges : Suresh Kumar Kait, U.Durga Prasad Rao

Bench : DIVISON BENCH

Advocate : S.V.Indira

Judgement

1. Vide the present petition, the petitioner has assailed order dated 10.07.2015 passed O.A.No.5724 of 2013, whereby the petition filed by the petitioner before the A.P. Administrative Tribunal, was dismissed.

2. Brief facts of the case are that the petitioner participated in the recruitment process for appointment to the post of Stipendiary Cadet Trainee Police Constable (Civil) and was provisionally selected to the said post. He was directed to appear before the Deputy Commissioner for undergoing physical measurement and efficiency test. The 3rd respondent, i.e., the Director General of Police, Andhra Pradesh, Hyderabad, issued proceedings C.No.1210/E4/SIB(Int)/2005 dated 20.06.2005, granting relaxation to the petitioner, insofar it relates to age and physical efficiency test, to participate in the recruitment process for appointment to the said post. Subsequently, 3rd respondent, vide proceedings dated 21.04.2008, cancelled the relaxation given to educational qualifications, height and age on the sole ground that the petitioner was involved in a criminal case. It is pertinent to note here that the petitioner filed the aforesaid O.A., along with other similar candidates and all the O.As., were decided by common judgment dated 10.07.2015.

3. The case of the petitioner is that, in similar cases, the Government issued G.O.Rt.No.2422 dated 16.09.1994 and G.O.Rt.No.312 dated 13.08.1996 not only granting relaxation of age, but also issuing appointment orders to the candidates, that too, without going through the procedures, for appointment to the post of Stipendiary Cadet Trainee Police Constable (Civil). In those circumstances, O.A.No.2383 of 2010 was filed before the Tribunal and the learned Tribunal directed the respondents to appoint the applicants as Police Constable (Civil) with all consequential benefits as they were already acquitted by the Sessions Judge, Warangal, along with others. The Tribunal in O.A.No.2383 of 2010 passed interim order dated 20.04.2010 directing the 3rd respondent to pass orders on the representation of applicants, by taking into account the judgment of the III Additional Sessions Judge, Warangal dated 06.02.2009 in S.C.No.793 of 2000. The 2nd respondent rejected the case of the applicants, in compliance to the above interim orders, and issued speaking orders on the ground that the appointing authority was not satisfied with the character and conduct of the applicants and found that they were not suitable to hold the post. Thereafter, applicants filed O.A.No.382 of 2011 and another O.A., seeking to set aside the Memo in Rc.No.235/R&T/Admn.2/2010 dated 16.12.2010 issued by the 3rd respondent. The learned Tribunal disposed of the O.As., on 28.04.2011, by setting aside the said memo and directed the respondents to consider the case of the applicants and pass appropriate orders after giving opportunity to the applicants and after assigning sufficient reason.

4. In furtherance of the above order, the 2nd respondent called all the applicants to submit as to why their candidature should be considered, as they suppressed their involvement in Cr.No.107 of 2000 under Sections 302, 201 read with 34 IPC on the file of Atmakur Police Station. Thereafter, the applicants submitted detailed representation to the 2nd respondent ventilating their grievance, however, the 2nd respondent rejected the case of the applicants for appointment to the post of Stipendiary Cadet Trainee Police Constable (Civil) and reiterated the same reasons and grounds as stated in the speaking order dated 16.12.2010.

5. The case of the applicants before the Tribunal was that, the only ground on which their case was rejected, was that their character and conduct were not satisfactory for their appointment in Police force. In fact, in similar situation, other candidates along with whom the applicants faced charges, were acquitted and, out of them, one candidate named N.Mogili, also approached the Tribunal by way of O.A.No.7467 of 2012 and the respondents deputed him for training as per the orders of the Tribunal.

6. The case of the respondents as per the counter-affidavit filed before the Tribunal is that, the petitioner along with other applicants was granted relaxation by the Director General of Police, i.e., the 3rd respondent in age, height and educational qualifications in the recruitment process in the year 2005 in exercise of powers delegated to him in G.O.Rt.No.1457 Home (Police.A1) Department dated 22.06.1998, for providing useful information about extremists. The

petitioner was provisionally selected to the post of Stipendiary Cadet Trainee Police Constable (Civil), however, during verification of antecedents, it came to light that he was involved in Cr.No.107 of 2000 under Sections 302, 201 read with 34 IPC along with other accused, on the file of Atmakur Police Station. Hence, provisional selection was cancelled for suppression of involvement in criminal case.

7. Further case of the respondents is that the relaxation given to them was to participate in the recruitment process in the year 2005, which was cancelled on 21.04.2008 and they were not allowed to participate in the selection process in the subsequent recruitment process. In compliance to the direction issued in O.A.No.2383 of 2010, the representation of the applicants was examined, considered with reference to Rule 12(1) (a) (ii) of A.P. State and Subordinate Service Rules and the law laid down by the Apex Court in Delhi Administration through its Chief Secretary and others Vs. Susheel Kumar reported in (1996) 11 SCC 605 and rejected vide Memo Rc.No.235/R&T/Admn.2/2010, stating that the applicants were involved in a brutal murder in Cr.No.107 of 2000 under Sections 302, 201 read with 34 IPC on the file of Atmakur Police Station and they were arrested. However, they were acquitted due to failure of the prosecution. The acquittal order is not a criteria relevant for consideration. The character and conduct of the candidate is the prime factor to consider the candidature for selection to the post under the State, more particularly in a disciplined organization like Police.

8. By considering the rival contentions of the parties, the learned Tribunal recorded in its order that the petitioner was involved in Cr.No.107 of 2000 under Sections 302 and 201 read with 34 IPC on the file of Atmakur Police Station and was arrested along with others, but he was acquitted on 06.02.2000 along with others. In the attestation form submitted by the petitioner, in Column No.12, i.e., Have you ever been arrested by the Police, convicted by Court or detained in any offence, petitioner stated NO, whereas, in the order passed by the 2nd respondent on 16.12.2000, respondents rejected the request of the petitioner for appointment, on the ground that, after careful consideration of the character and conduct with reference to the background and thorough assessment and analysis about the suitability to the post of SCT PCs., in a disciplined force, like Police Department, the appointing authority was not satisfied and thus the petitioner is not suitable for the said post.

9. It is not in dispute that petitioner participated in the recruitment process in the year 2005 and 2006, however, could not be selected on the ground that he could not acquire the required marks in the said two recruitments. He applied in the recruitment process dated 19.03.2008, however, before participating in the recruitment process, vide order dated 21.04.2008, respondents passed the following order: In the proceedings 2nd and 3rd read above, the following candidates were given relaxation in education qualification, height and age to enable them to participate in the recruitment process of SCT Police Constables

(Civil/AR/APSP), 2008.

1. V.Veeraswamy of Warangal District

2. T. Ravi of Warangal District

Since it has come to notice that the above said candidates were involved in criminal case, the relaxation granted to them to participate in the recruitment process of SCT Police Constables (Civil/AR/APSP), 2008 is cancelled.

10. In the above noted proceedings, it is the admitted case of the respondents that in proceedings dated 25.02.2008, the petitioner along with another candidate was given relaxation of age, height and educational qualifications, enabling them to participate in the recruitment proceedings in the year 2008. All of a sudden, what came in the mind of the respondents to withdraw the relaxation granted earlier vide proceedings dated 21.04.2008 is not explained, except stating that, as the petitioner is involved in criminal case, he is not suitable for the post in question.

11. We have perused the judgment dated 06.02.2003 passed in S.C.No.793 of 2000, wherein there are three accused, including the petitioner herein. The learned trial court in the said judgment observed as under: The entire case is based upon suspicion. Suspicion is a ground for investigation but cannot be a substitute for legal proof. The irony of fate is that P.Ws.1 to 4 did not even express any suspicion against there accused in their complaint and in their 161 Cr.P.C. statements or before the M.R.O. during inquest. On the contrary, it is categorically stated in the complaint as if some unknown persons committed murder of the deceased and necessary action may be taken against them after ascertaining the presence. In this context, it appears that the accused were falsely implicated by whatever means possible. The so-called diary said to be in possession of P.W.2 is not produced before the Court, nor recovered by the Police, for the reasons best known to themselves. No finger print impressions were taken from the M.O.1 cement brick and M.O.2 iron rod, to ascertain whether A.1 to A.3 were in possession of it and whether they have used the same for the commission of offence. In Ex.P.29, Chemical Examiner Report blood was detected only on the iron rod, but not on the brick. Even in that, it is not stated whether the blood on the iron rod is human blood or not. In this context, the use of the iron rod and cement brick itself appears to be somewhat doubtful.

In the light of above analysis, I am of the clear opinion that the deceased was murdered by somebody else and not by the accused. Therefore, the accused are found not guilty of the offence under Section 302 I.P.C., and they are entitled to clean acquittal.

12. It is not in dispute that the petitioner clearly mentioned in the application, pursuant to proceedings dated 19.03.2008, that he was involved in Cr.No.107 of 2000 wherein he was arrested, however, acquitted. Thus, the case of the petitioner is not that he has concealed this fact from the respondents. It is also

not in dispute that relaxation in age, height and educational qualifications is meant for the candidates who acted as Police informers and the petitioner also acted as informer during the period 1980 to 1985, thereby assisted the Police Department, providing valuable inputs on Maoists, their movements and activities; thus helped the respondent-department in anti-extremists operation, at the cost of his life. It is not also in dispute that, with the help and assistance of the petitioner, Police captured P.W.G. extremists, few were killed in the cross-firing, including seizure of huge arms and ammunition on 24.04.2000, which resulted in the death of top Maoist cadre personnel, in the process, the petitioner became hot target of Maoists. It is the admitted case of the respondents that petitioner was appointed as Home Guard on 09.08.2001 and while working as Home Guard also, the petitioner was instrumental in providing important and crucial information to higher authorities and because of such tactics, P.W.G. naxalites decreased their operations.

13. It is pertinent to note that the 1st respondent issued G.O.Rt.No.1457, Home (Police-A1) Department dated 22.06.1998, creating employment opportunity to such informers by recruiting them in the Police Department, relaxing service conditions in respect of education, age and physical qualifications. Taking into account the excellent services, sincerity, dedication and performance, the 4th respondent, vide letter dated 25.04.2005, requested the 3rd respondent to permit the petitioner to participate during the recruitment of Stipendiary Trainee Cadet Police Constable (Civil) in Warangal District. Consequently, the petitioner participated in the recruitment process dated 20.06.2005. There is no explanation as to why, all of a sudden, vide proceedings dated 21.04.2008, the relaxation given to the petitioner was withdrawn and the petitioner was not allowed to participate.

14. Learned Government Pleader submits that, since the petitioner did not participate in the recruitment process pursuant to the notification dated 09.03.2008, therefore, there is no question of recruiting the petitioner for the post in question. We do not find substance in the submission of the learned Government Pleader, for the reason that, since relaxation given to the petitioner vide proceedings dated 11.04.2008, was withdrawn, there was no occasion for the petitioner to participate in the recruitment process.

15. Further, we note that the learned Tribunal vide para-9 of the order dated 10.07.2015 observed that, in the attestation form submitted by the petitioner in column No.12, have you ever been arrested by the Police, convicted by Court or detained in any case, the petitioner replied NO. It is submitted by the learned counsel for the petitioner that the aforesaid observation made by the Tribunal is out of the record, which is not disputed by the learned Government Pleader for the respondents, who would clearly state that, whatever is noted by the Tribunal in para-9 of the order dated 10.07.2015, the same is not the ground on which the relaxation earlier given to the petitioner was withdrawn. We are of the considered opinion that the Tribunal dismissed the O.A., filed by the petitioner,

without application of mind. Keeping in view the rival contentions of the parties, we are of the opinion that proceedings dated 21.04.2008, is arbitrary and without any cogent reason and the same is liable to be set aside. The said proceedings is accordingly set aside.

16. It is submitted by the learned Government Pleader for the respondents that after the formation of State of Telangana on 02.06.2014, the batch of Stipendiary Cadet Trainee Police Constables (Civil) pertaining to the year 2016, has already been sent for training in May, 2017.

17. Having regard to the facts and circumstances of the case, we hereby direct the respondents to afford an opportunity to the petitioner in the coming recruitment of Stipendiary Cadet Trainee Police Constable (Civil), by giving him relaxation, as given earlier in the recruitment process in the years 2005 and 2006 with regard to age, height and educational qualifications.

18. In view of the above directions, the petition is allowed. As a sequel, miscellaneous petitions if any pending stand disposed of. No order as to costs.