

(2005) 04 DEL CK 0019

In the Delhi High Court

Case No : Writ Petition (Civil) No. 1672 of 2004

Vinay Kumar

APPELLANT

Vs

The Commissioner of Police

RESPONDENT

Date of Decision : 05-04-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 324, 34, 394, 452

Citation : (2005) 120 DLT 182 : (2005) 82 DRJ 221

Hon'ble Judges : Rekha Sharma, J;Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : Manoj K. Mishra, for the Appellant; George Paracken, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, J.—The present petition is filed challenging the order dated 19th November, 2003 passed by the Central Administrative Tribunal, Principal Bench in OA No. 1660/2003. The said petition was filed by the writ petitioner praying for quashing of the order dated 30.5.2003 whereby his claim for appointment as Head Constable on compassionate grounds was rejected by the respondent.

2. The father of the writ petitioner while serving in Delhi Police died in harness on 20.5.2000. After his death Smt. Chando Devi, the widow made a request for appointment of her son Shri Vinay Kumar, the present petitioner in the Delhi Police on compassionate ground. On receipt of the aforesaid application filed on behalf of the petitioner by his mother, the application was processed along with other cases of the dependents of deceased Delhi Police personnel for consideration by the Screening Committee for appointment in Delhi Police on compassionate grounds. The Screening Committee was headed by the Commissioner of Police, Delhi, which met on 27th April, 2001. The case of the petitioner was approved by the Screening Committee for appointment as Head Constable in Delhi Police on compassionate grounds by giving him relaxation in

height and chest. The petitioner was thereafter called for completion of codal formalities such as filling up of Attestation Form and medical papers etc. The petitioner filled up the Attestation / Medical forms on 3.1.2002. On receipt of the Attestation Form, the same was sent to Deputy Commissioner of Police (Special Branch) by letter dated 4.1.2002 for necessary verification. While the same was under process of verification, the petitioner submitted an application mentioning therein that he was involved in a case FIR No. 503/98 under Sections 452/394/324/34 IPC, Police Station Gokul Puri, Delhi, which he could not mention in the Attestation Form. It was also stated by him that the case was false and he was acquitted by the court of Shri M.R. Sethi, M.M. Delhi on 1.9.2000.

3. On the verification made on the basis of the Attestation Form, it also came to light that the petitioner was involved in the aforesaid case and that he was acquitted by the Metropolitan Magistrate. The respondent thereafter examined the case of the petitioner by Constituting a Committee to examine a large number of such cases relating to the concealment of facts by the candidates selected for the various posts in Delhi Police. The case of the petitioner was also included with other 22 cases. The said Committee examined all the 23 cases of concealment of facts and their criminal involvements keeping in view the various instructions issued by the Police Headquarter on the subject. While considering the same, the Committee also considered the judgment of the Supreme Court dated 4.10.1996 in Civil Appeal No. 13231/1996 titled D.A.D. v. Sushil Kumar. The Committee after considering the case of the petitioner did not find him eligible and deserving to be appointed in the Delhi Police as Head Constable.

4. As against the aforesaid decision of the respondent finding him not eligible to join the department, a representation was filed by the petitioner which was not disposed of. Accordingly the petitioner filed an original application registered as OA No. 1015/2003 in the Central Administrative Tribunal. The Tribunal by an order dated 24.4.2003 directed the respondent to consider the said representation and dispose of the same by a speaking order.

5. Consequently the respondent considered the aforesaid representation filed by the petitioner requesting for his appointment on compassionate grounds. He noticed the fact that the petitioner was involved / arrested / acquitted in case FIR No. 503/98 under Sections 452/394/324/34 IPC, Police Station Gokul Puri, Delhi but the said fact that he was involved and arrested in the said case was not mentioned in column 13(a) of the Attestation Form by which information regarding involvement / arrest / conviction in a criminal case for any offence was sought. The respondent deduced that the said fact was deliberately not mentioned by the petitioner and suppressed in the Attestation Form by mentioning clear "no" despite the fact of a clear warning given at the top of the form that furnishing of false information or suppression of any factual information in the attestation form would be disqualification and is likely to render candidate unfit for employment under the government. It is also disclosed

from the records that the process of verification of his Attestation Form was initiated on 4.1.2002 and on coming to know about the said fact, he moved an application on 16.1.2002 informing the department about his involvement / acquittal in the above said criminal case just to cover up this concealment in the Attestation Form. The said representation was disposed of by the Commissioner of Police taking a view that the petitioner had deliberately concealed the fact of his involvement in the criminal case to seek appointment in Delhi Police by adopting a deceitful means and, Therefore, he was found to be not a desirable person to appointed as Head Constable in Delhi Police even on compassionate grounds. Accordingly his prayer for appointment was refused and the said representation was disposed of by order dated 30.5.2003. The petitioner thereafter filed the aforesaid OA No. 1660/2003 wherein he prayed for quashing of the order dated 30.5.2003 passed by the respondent whereby his claim to be appointed as Head Constable was rejected.

6. It was contended before us by the learned counsel for the petitioner that although the petitioner did not mention about his involvement in the criminal case in the Attestation Form in column 13 of the Attestation Form yet on 16.1.2002 he immediately informed about the same and, Therefore, the said omission on the part of the petitioner should be considered as a bona fide mistake on the part of the petitioner in filling up column 13 and since he had corrected the said mistake by sending an application, Therefore, the respondent should have held that it was only a case of bona fide mistake and not a case of suppression of material facts. In support of the said contention, the counsel relied upon the decision of the Supreme Court in Commissioner of Police, Delhi and Another Vs. Dhaval Singh, .

7. Counsel for the respondent however, submitted before us that similar plea was also raised before the learned Central Administrative Tribunal and the decision of Dhaval Singh (supra) was also placed before the learned Tribunal. It was pointed out by the counsel that the records of the case were considered by the Tribunal in the light of the aforesaid ratio of the decision of the Supreme Court and the decision in Delhi Administration through its Chief Secretary and Others Vs. Sushil Kumar, and thereafter the learned Tribunal held that verification of character of a person is an important ingredient before that person can be so appointed and that it is for the authority to consider the same and decide if a person is a desirable person to be appointed in Police Force or not. It was also held by the learned Tribunal that the omission to mention about the involvement of the petitioner in a criminal case in the Attestation Form despite clear warning in that regard in the form itself could not be said to be an inadvertent mistake, which was corrected and, Therefore, the case of Dhaval Singh (supra) would not apply. It was also submitted by the counsel for the respondent that the learned Tribunal correctly and rightly concluded on the facts of this case that the administrative authorities were justified in concluding that the petitioner was not a suitable person to be appointed.

8. In the light of the aforesaid submissions of the counsel for the petitioner and the respondent we have carefully perused the records and also the ratio of the aforesaid decisions of the Supreme Court. Filling up of the Attestation Form is an important and responsible act which has to be duly, correctly and faithfully done by an employee seeking for public service and appointment. Paragraph 13(a) of the said form contained a clause whereunder the petitioner was required to disclose as to whether he was ever arrested / prosecuted. As against the aforesaid, the petitioner had mentioned an emphatic "no". It is required to be mentioned at this stage that the said Attestation Form also contained a warning at the top of the form to the effect that furnishing of false information or suppression of any factual information in the attestation form would be disqualification and is likely to render a candidate unfit for employment under the government. It was also stated therein that if a fact, that false information had been furnished or that there had been suppression of any factual information in the Attestation Form, comes to the notice of the respondent at any time during the service of a person, in that event the service would be liable to be terminated. Although the petitioner did not mention about his involvement in the criminal case in the Attestation Form as against column 13(a) of the Attestation Form despite the warning, yet he submitted an application after about 12 days to the respondent bringing to their notice that he was in fact involved in such a criminal case. In view of the same it cannot be a plea that omission to mention about his involvement in the criminal case in the Attestation Form is a mistake and an inadvertent omission. The Attestation Form did not contain true and correct facts and information regarding his involvement in the criminal case. Therefore, the petitioner had furnished false information and also suppressed factual information in the Attestation Form which was submitted on 3.1.2002. On 4.1.2002, the said Attestation Form with the particulars filled up by the petitioner was sent for verification. It is also clear from the records that on coming to know that the information submitted by the petitioner in the Attestation Form had been sent for verification, he sent the information regarding his involvement in the criminal case on 16.1.2002. Considering the entire facts and circumstances, the Committee constituted by the respondent came to the conclusion that as the petitioner suppressed material facts and factual information and furnished false information initially and also because of his antecedents, he is not a desirable person to be retained in the police service. The said conclusions have found favor with the learned Central Administrative Tribunal also.

9. We may also refer to a decision of the Supreme Court in Sanjay Kumar Bajpai Vs. Union of India (UOI) and Others, . In the said case also the Supreme Court found that at the time of enrolment, the concerned person did not disclose that a criminal case was pending against him and made a false statement that no case was pending against him at that time and in that context held that the order passed by the army authorities for suppression of material facts cannot be interfered with. In Sushil Kumar (supra), facts were almost similar to the facts of the present case. In the said case also the petitioner although was found

physically fit, passed the written test and interview and was provisionally selected but on account of antecedent records, the appointing authority found it not desirable to appoint a person with such records suitable to the said post. In the light of the facts of the present case and the aforesaid decisions of the Supreme Court, the view taken by the appointing authority in the backdrop of the conduct and antecedents of the petitioner cannot be said to be arbitrary, irrational and unwarranted. In the light of the said two decisions of the Supreme Court, we are of the considered opinion that since the respondent has held that there was not only suppression of material facts by the petitioner in filling up the Attestation Form but his antecedent records establish that it is not desirable to appoint him as a Head Constable to the disciplined force because of such records, we are not inclined to interfere with the aforesaid satisfaction. The said view has also found favor with the learned Central Administrative Tribunal.

10. We find no infirmity in the aforesaid view taken particularly in the light of the decisions of the Supreme Court. The decision in the case of Dhaval Singh (*supra*), which is relied upon by the counsel for the petitioner, is not applicable to the facts and circumstances of this case as in the present case the petitioner came out with correct and the real facts only after initiation of the process of verification on the basis of the statements made by him in the Attestation Form. Besides, the petitioner was provisionally selected to be appointed as a Head Constable, which is a very responsible post in a disciplined force. If due to the antecedent records, the respondent concludes that he is not a desirable person to be appointed to the disciplined force, no fault could be found in the aforesaid view taken by the competent authority. To the aforesaid extent, facts of the present case are distinguishable to that of case of Dhaval Singh (*supra*), which was also so held by the learned Tribunal. We, Therefore, find no merit in this petition and the petition is dismissed.