

(2002) 01 DEL CK 0004

In the Delhi High Court

Case No : CW 5321 of 2001 and CM 9108 of 2001

Virender Pal Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-01-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 294, 323, 324, 325, 504

Citation : (2002) 2 AD 461

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : Suresh Sharma, for the Appellant; V.K. Tandon, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—This writ petition is filed against the impugned judgment dated 16.10.2000 passed by the Central Administrative Tribunal (Principal Bench) New Delhi in O.A.No.1915/1998 whereby application filed by the petitioner herein was dismissed.

2. The basic fact of the matter is not in dispute.

3. Pursuant to an advertisement issued for appointment in the post of Constable, the petitioner filed an application. It is accepted that the petitioner in his application did not fill up the column 11 wherein he was required to disclose as to CWP.No.5321/2001:

whether as on the date of filing of the said application any case was pending in the court of law and, if so, he was required to give details of number of cases, his date of arrest, fine of conviction etc. The respondent proceeded on the basis that no case was pending and the petitioner was selected. However, later on it was found that he had failed to disclose a material fact and as such his appointment was cancelled.

4. The petitioner contended that the criminal case FIR No.110 of 1992 was filed

u/s 323/324/325/504 IPC and he was acquitted on 17.2.1994.

5. Against the said order of cancellation of candidature the petitioner filed an O.A. No.1446 of 1995 in the Central Administrative Tribunal, Principal Bench, New Delhi. The said OA was allowed by the Tribunal by order dated 22.11.1996. Being aggrieved, the respondents filed Civil Appeal No.5510 of 1997 arising out of SLP No.10403 of 1997. However, subject to decision in the above mentioned SLP, petitioner was appointed as temporary constable on 4.7.1997. By order dated 11.8.1997 the Apex Court in the Civil Appeal No.5510/97 arising out of SLP No.10403 of 1997 made the following observation:

"without laying down any law in the facts of the case, we are of the view that in all fairness a show cause notice should be given"

6. The Apex Court on 11.8.1997 also set aside the order dated 2.11.1996 passed by the Central Administrative Tribunal in O.A.No.1446/95. Pursuant to direction of the Apex Court, show cause notice was issued to the petitioner. The reply filed by the petitioner to the said show cause notice was rejected by the respondents on 19.5.1998. The petitioner thereafter filed O.A. before the Central Administrative Tribunal which was marked as O.A.1915/98. This O.A. was dismissed by the CAT on 16.10.2000 by making the following observations:

"It is an admitted fact, in the instant case that there was a criminal case pending against the applicant at the time when he filed the Attestation Form required by the respondents, which information was not given correctly by him in the Attestation Form as the applicant had deliberately left the concerned column blank. In the facts and circumstances of the case, we, Therefore, find force in the submissions made by Shri Harvir Singh, learned counsel of respondents, that the ultimate result of the criminal case pending against the applicant, at the time when he had applied for the post of Constable, Delhi Police, would not affect the details to be given by him in the Attestation Form.

In the present case, as noted above, the principles of natural justice have been fully complied with by the respondents in pursuance of the Hon"ble Supreme Court"s order dated 11.8.1997 in Civil Appeal No.5510 of 1997".

7. The petitioner filed SLP against the said order dated 16.10.2000 which was permitted to be withdrawn on 11.7.2001 as the petitioner wanted to move this Court. Thereafter this writ was filed.

8. Learned counsel appearing on behalf of the petitioner contends that having regard to the fact that the petitioner had been acquitted from the charges, the learned Tribunal went wrong in passing the impugned judgment. The learned counsel in support of his contention has relied upon the decision of the Central Administrative Tribunal in the cases of Satyender Singh Maan Vs. Commissioner of police reported in (1993) 23 A.T.C. 274; Shishpal Vs. Union of India and others (1993) 25 A.T.C. 311 and a decision of the Supreme Court in the case of Pawan Kumar Vs. State of Haryana reported in 1996 (2) ASJ 19.

9. A person who is to be appointed as Constable, in our opinion, should disclose all material facts. It was for the appointing authority to consider as to whether the details provided by the candidate are true or false. Concealment of material facts for the purpose of obtaining appointment itself may be a ground for cancellation of the appointment. In the Application Form itself the petitioner was required to give a declaration to the effect that the endorsement therein is true to the best of his knowledge and belief and in the event of any information found wrong, he can be dismissed from service. He thus knew that any wrong information or concealment of fact may entail his dismissal from service. It is, Therefore, not a case where the court is called upon to pose a question as to whether despite conviction in a trickling matter, a person should be denied appointment or not. In *Shishpal* (supra) the decision was rendered in the peculiar facts of the case. It was stated in that case that the concerned employee was provisionally selected subject to police verification. The police found his involvement in two cases which facts he did not disclose in his application. The Tribunal found that he had served for long 5 years and there had been no adverse report against the conduct of the applicant. The Tribunal came to the conclusion that the applicant was not such a character that he is in the habit of committing crimes. In *Satyender Singh Maan* (supra) the fact of the matter was that the concerned employee was charged for merely shouting slogans. In any event, we have reservation about the correctness of the case. In *Pawan Kumar* case (supra) the question which arose for consideration before the Apex Court was as to whether a conviction u/s 294 IPC involve moral turpitude. The Criminal Court, having regard to the fact that the applicant pleaded guilty, imposed a fine of Rs.20/-. It was observed by the Supreme Court as under:

"Assuming that the conviction is not open to challenge at the present juncture, we cannot but deprecate the action of the respondents in having proceeded to adversely certify the character and antecedents of the appellant on the basis of the conviction per se, opinion to have involved moral turpitude, without satisfying the test laid down in the policy decision of the government. We are rather unhappy to note that all the three courts below, even when invited to judge the matter in the said perspective, went on to hold that the act/s involved in conviction u/s 294 IPC on today's society and its standards, and its changing views of obscenity. The matter unfortunately was dealt with casually at all levels".

10. In the instant case, we are not concerned with the question as to whether the offence purported to have been made for which the petitioner was charged involved moral turpitude or not. The question which arose for consideration in this writ petition has directly been answered and is covered by the decision of the Apex Court dated 4.10.1996 in Civil Appeal No.13231 of 1996 (arising out of SLP(c) No.5340 of 1996) titled as *DAD vs Sushil Kumar*. The Supreme Court made following observations:

"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, had passed the written test and interview and was provisionally selected on account of his antecedents 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 focused this aspect and found him not desirable to appoint him to the service."

11. Keeping in view the aforesaid pronouncement, we are of the opinion that no case is made to interfere with the impugned judgment. This writ petition is dismissed accordingly.