

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on : 18.07.2012

Judgment delivered on: 30.07.2012

+ **W.P.(C) 4198/2012**

COMMISSIONER OF POLICE AND ANR

... Petitioners

versus

AJAY KUMAR DHAMA

... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr Anjum Javed

For the Respondent : Mr Ajesh Luthra

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

SIDDHARTH MRIDUL, J.

1. The present writ petition raises a challenge to the order dated 07.03.2012 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, whereby the Tribunal allowed the Original Application No.545/2012 filed by the respondent herein and set aside the order dated

22.03.2011 passed by the petitioner herein cancelling the candidature of the respondent to the post of Constable (Exe.) Male in the Delhi Police.

2. The respondent had applied for being considered for appointment to the post of Constable (Exe.) Male in Delhi Police pursuant to an advertisement published in the year 2009. At this juncture, it is observed that it is an admitted position that while filling the application form, the respondent had disclosed in the relevant column of the said form about his alleged involvement in a criminal case.

3. The candidature of the respondent was approved for appointment by the petitioner subject to verification of his antecedents, moral character, medical fitness etc.

4. On seeking a verification report from the concerned authority about the respondent, the Delhi Police was informed that the respondent had been involved in a criminal case bearing FIR No.506/2008 under Section 307/34, 323 Indian Penal Code, 1860 (hereinafter referred to as IPC) registered at Khekda, District Bagpat, U.P., in which the respondent had been acquitted by the Sessions Court, Bagpat on 08.10.2009.

5. According to the petitioner, in accordance with the guidelines formulated for such candidates, the case of the respondent was sent to the

Screening Committee for determination of his suitability for appointment. After the case of the respondent was considered by the Screening Committee, a Show Cause Notice dated 14.03.2011 was issued to the respondent to explain why his candidature should not be cancelled. The respondent duly replied to the said Show Cause Notice by stating therein that a false FIR was registered against him and that he had no active role to play in the crime committed but had been falsely implicated in the said crime which was in fact a counterblast to the complaint filed on behalf of the respondent.

6. The petitioner, however, after taking into account the reply of the respondent, rejected the same and cancelled the candidature of the respondent with immediate effect vide a termination letter dated 22.03.2011.

7. It would be pertinent to note that a bare perusal of the termination letter reveals that there is no independent material other than the contents of the FIR on which the petitioner have relied to cancel the candidature of the respondent.

8. Aggrieved by the said termination letter dated 22.03.2011 the respondent approached Central Administrative Tribunal praying for an order to quash the said termination letter dated 22.03.2011.

9. The Tribunal allowed O.A. No.545/2012 vide the impugned order dated 07.03.2012 and set aside the termination letter dated 22.03.2011.

10. Before advertng to the rival contentions and decisions relied upon by the parties it would be appropriate to narrate the circumstances in which the respondent came to be acquitted of the charges levelled against him under Section 307/34, 323 IPC. It is seen that the Sessions Court vide judgment dated 08.10.2009 acquitted the respondent after giving him benefit of doubt as the complainant and the material witnesses did not support the case of the prosecution. A plain reading of the said judgment itself reveals that the allegations against the respondent of opening fire against one Mohit, had not been proved, inasmuch as, the MLC report conducted on the said Mohit did not refer to any injuries that may have been sustained by Mohit. It is, therefore, observed that the respondent came to be acquitted after the examination of all the witnesses and upon due appreciation of evidence by the Trial Court and that the present is not a case of acquittal on technical grounds.

11. Counsel appearing on behalf of the petitioner relied on the decision of a Division Bench of this Court in the case of **Nawab Khan v. Govt. Of NCT of Delhi & Ors.** dated 20.04.2010 in W.P.(C) No.2260/2012 of which one of

us (Badar Durrez Ahmed, J.) was a member. Predicated upon the aforesaid decision, counsel for the petitioner canvasses that in similar circumstances where a candidate had been involved in a criminal offence under Section 307 IPC, this Court had upheld the cancellation of the candidature of the applicant. However, we observe that in the facts of that case a clear distinction can be drawn from the facts involved in the present case. In ***Nawab Khan's*** case (*supra*) the candidate was not only charged under Section 307 IPC but also under Section 354 IPC, which is an offence of grave nature involving moral turpitude. In ***Nawab Khan's*** case (*supra*) the Division Bench relied upon the decision of **Commissioner of Police & Ors. v. Sandeep Kumar** : (2011) 4 SCC 644 and stated that a distinction has to be kept in mind between grave and serious offences on the one hand and offences which are not of a very serious nature, on the other hand. It was, therefore, observed in that decision that “*insofar as the present case is concerned the offences in which the petitioner was allegedly involved included not only the charge under Section 307, but, also the charge under Section 354 IPC, which is an offence of a grave nature involving moral turpitude.*” Consequently, in ***Nawab Khan's*** case (*supra*) the Division Bench distinguished the facts from that of ***Sandeep Kumar*** (*supra*). It is

also pertinent to note that in *Nawab Khan's* case (*supra*) the candidate was not acquitted of the charge under Section 354 IPC on merits by the Trial Court but it was a case of compromise between the prosecutrix and the petitioner therein.

12. Now adverting to the facts of the present case, the respondent herein was only charged under Section 307 IPC, that too with the aid of Section 34 IPC and he has been subsequently acquitted by the concerned Trial Court as the prosecution failed to prove its case beyond reasonable doubt. Therefore, in the absence of any evidence regarding the involvement of the respondent in the assault and also taking into consideration the fact that the respondent had not been involved in any offence involving moral turpitude or an act of crime that shocks the conscience of this Court, we are of the opinion that the reasoning of the Tribunal warrants no interference.

13. It would also be relevant to consider the decision of a Division Bench of this Court dated 11.11.2010, of which one of us namely Siddharth Mridul, J. was a member of, in **Government of NCT of Delhi & Anr v. Dinesh Kumar** : **W.P.(C) 5510/2010** which relied upon the view taken in the decision reported as **171 (2010) DLT 705 : Government of NCT of Delhi and Anr. v.**

Robin Singh. The relevant portion of the decision in ***Government of NCT of Delhi & Anr. v. Dinesh Kumar*** (*supra*) is reproduced herein below:-

“20. As regards Dinesh Kumar, we note that the FIR did relate to an offence punishable under Section 307 IPC. But in the absence of any evidence as to which out of the three accused had assaulted the person who received grievous injuries and noting that Section 34 IPC was taken aid of to make liable all three accused, noting that the acquittal was on merits, no doubt two witnesses turned hostile, further, noting the young age of Dinesh Kumar, applying the law laid down in Robin Singh’s case (*Supra*), we are of the opinion that the impugned decision of the Tribunal which has directed the petitioner to give employment to Dinesh Kumar needs no interference.”

14. Even in the ***Commissioner of Police & Anr v. Sandeep Kumar*** (*supra*) the Supreme Court made a distinction between minor and major heinous offences and observed that:-

“8.At that age young people often commit indiscretions, and such indiscretions can often be condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

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11. It is true that in the application form the respondent did not mention that he was involved in a criminal case under Sections 325/34 IPC. Probably he did not mention

this out of fear that if he did so he would automatically be disqualified. At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter.”

15. In this context it would also be relevant to rely upon the decision of a Division Bench of this Court dated 21.05.2012, of which one of us, namely, Badar Durrez Ahmed, J. was a member, in **Commissioner of Police & Anr. v. Shani Kumar** : W.P.(C) No.3015/2012. In this case, the respondent was situated in identically similar circumstances and had been acquitted of the charge under Section 307 IPC by giving benefit of doubt. The Division Bench expressed the following view:-

“5. We feel that once the respondent had been acquitted after examination of all the witnesses, the complaint and all the contents of the FIR could be looked into for the purposes of cancelling the candidature of the respondent. This is not a case of technical acquittal in the sense that witnesses had not come forward or where the material witnesses had died etc. Hence, there was an acquittal after a full-fledged trial. The prosecution had failed to prove its case beyond reasonable doubt.

6. Furthermore, the petitioners have also not conducted any independent inquiry with regard to the other antecedents of the respondent to assess his suitability for the position of Constable (Executive) in the Delhi Police. What we find is that the order dated 22.03.2011 denies the benefit of appointment to the respondent on the basis of the very same allegations contained in the FIR which could not be substantiated in a court of law. That would,

in our view, be highly unfair apart from the fact that such a stand has no backing of law.”

16. In view of the foregoing discussion, we find no reason to interfere with the impugned order. The writ petition being devoid of merit is hereby dismissed without any order as to costs.

SIDDHARTH MRIDUL, J

BADAR DURREZ AHMED, J

JULY , 2012
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