

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No.3566/2010**

% **Date of Decision: 24.05.2010**

GOVT. OF NCT OF DELHI & ANR. PETITIONERS
Through Ms. Jyoti Singh, Advocate

Versus

JAI PRAKASH RESPONDENT
Through Mr. V.K. Tandon, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

MOOL CHAND GARG, J.

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1. This petition under Article 226 of the Constitution of India has been filed by the petitioner against the order dated 15.01.2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the Tribunal) whereby the Tribunal has allowed the OA filed by the petitioner.

2. The Original Application was filed by the petitioner who was sought to be deprived of his employment with Delhi Police on the ground that in his application filed before the authorities he had disclosed that a criminal case vide FIR No. 134/2006 under Section 32/33 of the Forest Act, 1927 read with Section 379 IPC was in progress. On 17.10.2008, he also informed the authorities that he was

acquitted in those proceedings. In the circumstances, the respondent was informed that the matter will be examined afresh and he will be advised of the decision taken. It may be observed here that as per the order passed by the Criminal Court, the order of acquittal was passed in favour of the respondent by observing that the prosecution has miserably failed to establish its case through cogent or direct evidence. However, the petitioner instead of taking a positive stand in favour of the respondent decided to cancel his candidature as Sub-Inspector in Delhi Police for which he was selected during the year 2007 as an Ex-Serviceman.

3. It was informed to the respondent that a Screening Committee constituted by the Commissioner of Police examined the gravity of the offence against the candidate and also relied upon a judgment of the Hon'ble Supreme Court in the case of Govt. of NCT of Delhi Vs. Sushil Kumar 1996 (11) SCC 605 and, thus, decided to cancel the candidature of the respondent.

4. This decision was challenged by the respondent alleging that the Screening Committee was not within the jurisdiction to sit in the judgment over the matter *denovo*, more so when the respondent has been acquitted on merits. Reliance was placed on a judgment of Punjab & Haryana High Court reported as Bhag Singh Vs. Punjab & Sind Bank 2006 (1) SCT 175. It was also submitted that the decision of the petitioner had put the respondent at a great disadvantage inasmuch while waiting for his appointment in Delhi Police he had not accepted

the offer of appointment as Cashier in Bank and Sub-Inspector in Railway Protection Force, which postings were offered to him. It was also submitted that the absence of any rules denying a appointment in respect of acquittal of the criminal case, shows arbitrariness as no such power was conferred on the petitioners by any statutory provision.

5. The Tribunal allowed the OA by making the following observations:

7. In appropriate cases, the administration, of course, has the discretion to come to bonafide finding, whether or not unsuitability for a posting especially in an organization which is to enforce law and order. An acquittal in a case, cannot, therefore always be considered as a situation, binding hands of the prospective employer. However, we find that in the case cited before us every aspect of the situation had been discussed in detail by the criminal court. There was no evidence sufficient enough to show that the applicant had misbehaved or committed crime or offence as suggested in the FIR. But nevertheless it had been stressed that there was nothing to connect the applicant with the alleged offence. Notwithstanding to contend that applicant required to be penalized by denying him appointment appears to be arbitrary. Of course, we do not think that the Committee especially constituted for the purpose has the power to decide individual which are presented before it, but in the present instance, the issue has been approached mechanically and without due application of mind. The applicant had become undesirable for appointment not for good reason.

8. Therefore, we quash the impugned orders and direct that the applicant is to be conferred appointment. We remit the matter to the respondents so that appropriate orders are to be passed giving appointment to the applicant to the post of SI(Fix.). This should be done within a period of two months from the date of receipt of a copy of this order. Applicant should be given seniority notionally from the date of his acquittal, namely, 5.6.2009 but he will not be entitled to any arrears of pay.

6. In another judgment delivered by the Tribunal vide its order dated 3.3.09 in OA No. 2413/2008 in the case of Vivek Mathur Vs. Commissioner of Police & Anr. it was held that merely because an FIR was lodged against the applicant ipso facto cannot lead to a conclusion that the concerned person is to be considered unsuitable for public service.

7. In so far as the case of Sushil Kumar is concerned, it was not a case where the Hon'ble Supreme Court was dealing with a situation where the candidate stood already acquitted in the criminal case and in fact that was a case where there was concealment of facts which is not so in the present case. It is also a matter of record that persons who were also in similar situation were granted appointments earlier. Therefore, the case of the respondent cannot be treated differently.

8. We may observe here that merely because a person is prosecuted in respect of any criminal offence and is acquitted of the offences so alleged against him, he cannot be disqualified for public appointment. Admittedly, there are no such rules and regulations framed by Delhi Police or by Govt. of India whereby merely criminal proceedings had been initiated against a person that he would be debarred from joining public service.

9. At this juncture, we may also refer to a judgment delivered by the Constitution Bench in the case of G. Narayanaswami Vs. Pannerselvam (1972) 3 SCC 717. It was also referred to with approval in a subsequent judgment of the hon'ble Supreme Court in the case of Shrikant Vs.

Vasant Ram & Ors. 2006 (2) SCC 682 regarding disqualifications to become a member of the Legislative Council/ Assembly in the light of the Article 121 of the Constitution of India and specific provisions in the relevant Act.

10. The observation made in G. Narayanaswami (supra) which are relevant are reproduced hereunder:

9. Coming to the Legislative Council, we find that the qualifications for the four “electorates” are indicated by Article 171(1)(a), (b), (c) and (d). And, the qualifications of candidates for seats in a Legislative Council are given in Section 6 of the Representation of People Act, 43 of 1951, which lays down:

“6. *Qualifications for membership of a Legislative Council.*—(1) A person shall not be qualified to be chosen to fill a seat in the Legislative Council of a State to be filled by election unless he is an elector for any assembly constituency in that State.

(2) A person shall not be qualified to be chosen to fill a seat in the Legislative Council of a State to be filled by nomination by the Governor unless he is ordinarily resident in the State.”

10. A look at Article 171(2), set out above, indicates that the composition of the Legislative Council of a State was a matter to be also provided for by law made by Parliament. It is evident that the Constitution-makers had directed their attention specifically towards the methods of election and composition of the Legislature of each State. They themselves prescribed some qualifications to be possessed by members of each House of the Legislature. Article 173 lays down:

“173. A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he—

(a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;

(b) is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age and,

in the case of a seat in the Legislative Council, not less than thirty years of age; and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.”

15. In the case of the graduates’ constituency, it is provided in Article 171(3)(b) that the electors must have held their degrees for at least three years before they become qualified as electors. Thus, in laying down the test of competence of voters of such a constituency, mere possession of degrees by them was not considered sufficient. Moreover, graduates are not an occupational or vocational group but merely a body of persons with an educational qualification. It would, therefore, not be correct to describe the additional representation sought to be given to them as an attempt to introduce the “functional” or “vocational” principle. On the face of it, Article 171 appears to be designed only to give a right to choose their representatives to those who have certain types of presumably valuable knowledge and education. If the presumption of their better competence to elect a suitable representative is there, as we think that there must be, it would be for the members of such a constituency themselves to decide whether a person who stands for election from their constituency possesses the right type of knowledge, experience, and wisdom which satisfy certain standards. It may well be that the Constitution-makers, acting upon such a presumption, had intentionally left the educational qualifications of a candidate for election from the graduates’ constituency unspecified.

16. A test laid down by Blackburn, J. in *R. v. Cleworth* (1864) 4 Band S 927,934 to determine what the correct presumption, arising from an omission in a statute should be, was whether what was omitted but sought to be brought within the legislative intention was “known” to the law-makers, and could, therefore, be “supposed to have been omitted intentionally”. “It makes no difference,” says Craies in “Statute Law”(Craies on Statute law, 6th Edn. 1963.p.72) “that the omission on the part of the Legislature was a mere oversight, and that without doubt the Act would have been drawn otherwise had the attention to the Legislature been directed to the oversight at the time the Act was under discussion”. In the case before us, it could not possibly be said

that the question to be dealt with was not “known” to the legislators. It could not even be said that qualifications of the electors as well as of those to be elected were not matters to which the attention of the law-makers, both in the Constituent Assembly and in Parliament, was not specially directed at all or that the omission must be by mere oversight. The provisions discussed above demonstrate amply how legislative attention was paid to the qualifications of the electors as well as of the elected in every case. Hence, the correct presumption, in such a case, would be that the omission was deliberate.

11 A bare reading of the observations made by the Apex Court in this judgment goes to show that when one has to consider the question of disqualification, the reason for disqualification must follow from the rules at least in the case of public employment. If there is some prohibition under the rules for such disqualification, the disqualification may be considered in accordance with the rules so prescribed.

12. In this regard, we may also take note of the judgment delivered by the Apex Court in the case of Secy. Department of Home Secy. A.P. and Ors. Vs. B. Chinnam Naidu, (2005) 2 SCC 746, where even though the issue was of suppression of truth in the attestation form, yet it was observed that for denying somebody appointment after he is selected though he has no right to be appointed has to be governed by some statutory provisions.

13. It would also not be out of place to mention the judgment delivered by the Hon'ble Apex Court in the case of T.S. Vasudavan Nair Vs. Director of Vikram Sarabhai Space Centre & Ors. 1988 (Supp) SCC 795 wherein it has been held:

2. In the special facts and circumstances of this case we feel that the appellant should not have been denied the employment on the sole ground that he had not disclosed that during emergency he had been convicted under the Defence of India Rules for having shouted slogans on one occasion. We, therefore, set aside the judgment of the High Court and also the order dated August 1, 1983 cancelling the offer of appointment. The respondents shall issue the order of appointment to the appellant within three months appointing him as a Lower Division Clerk, if he is not otherwise disqualified, with effect from the date on which he assumed duty. It is open to the respondents to employ the appellant at any place of their choice. The appeal is disposed of accordingly.

14. It may also be observed here that Central Administrative Tribunal in the case of Shri Anil Vs. Commissioner of Police, Police Headquarters, The Deputy Commissioner of Police (Hd. Quarters), Police Headquarters and The S.O. to CO Police Headquarters decided on 09.04.2010 has discussed the law on the subject and has summarized the legal position as follows:-

22. What is discerned from the reading of the above ratio is that one, who deliberately withheld on suppression certain information, respondents are within their right to either cancel the candidature or terminate the services of the applicant, which would not be interfereable in judicial review by the Court.

23. However, another aspect of the matter is that the appointing authorities, more particularly in the instant case the Delhi Police, are not acting as quasi judicial authorities but are acting as administrative authorities

within their domain to appoint a selectee, who has no indefeasible right of appointment. What is required for adjudging his suitability is laid down under Section 25 of the Delhi Police (Appointment and Recruitment) Rules, 1980 and the only condition precedent for such appointment is that on attestation form if something is disclosed, the person should be found to have borne a good moral character and there is nothing pending against him.

24. Mere involvement in a criminal case or registration of FIR is not a proof of involvement in a criminal offence unless the trial court, which is the only competent forum to record a finding as to the guilt of an accused in a criminal offence, delivers the verdict holding one guilty of the offences. The decision in *Ghurey Lal* (supra) where the Apex Court ruled that once the findings of trial courts are based on fundamental principles of the criminal jurisprudence, the acquittal is a presumption of one being innocent.

25. Insofar as the benefit of doubt and hostility of witnesses are concerned, these are the aspects, which will not be material or relevant to record a finding by the administrative authorities as to involvement of the person in criminal activity or his being guilty of committing the crime. What is allowed to the administrative authorities is to adjudge the suitability of a person but not in the manner that whatever recorded on judicial side by the court of criminal jurisdiction should be overreached and overridden by taking a definite view or reading between the lines in the judgment to arrive at a finding of guilt. It is trite in law that if the acquittal by a trial court is not challenged by the prosecution in higher forum by making an appeal against the acquittal, the decision of the trial court acquitting the accused stands final and cannot be questioned or interpreted otherwise by administrative authority, which is *coram non iudice* in the circumstances.

15. In the case of *Ghurey Lal Vs. State of Uttar Pradesh, (2008) 10 SCC 450*, the Apex has held that the accused is presumed innocent until proven guilty. The trial court's acquittal bolsters the presumption

that he is innocent. On proper analysis of the ratio and findings of this case, it is revealed that the findings of the trial court are based on the fundamental principles of the criminal jurisprudence. Presumption of innocence in favour of the accused further gets reinforced and strengthened by the acquittal of the trial court. Due or proper weight and consideration must be given to the trial court's decision.

16. Thus, taking into consideration the legal position as enunciated above, the decision of the authorities in having refused to give the respondent employment despite his selection merely because he was involved in a criminal case though he was acquitted much before his date of appointment and for which he had given all the information to the authorities as is required under the law, cannot be upheld and therefore, the decision of the Tribunal in allowing the OA cannot be faulted with in any manner whatsoever. Accordingly, the writ petition is dismissed with no orders as to cost.

17. All the pending applications are also disposed of.

MOOL CHAND GARG, J.

MAY 24, 2010
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ANIL KUMAR, J.