

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

**Date of decision:** 11<sup>th</sup> August, 2011

+ **W.P.(C) 5782/2011**

SANJEEV KUMAR

..... Petitioner

Through: Mr. Shankar Raju, Adv.

versus

GOVT. OF NCT OF DELHI AND ORS

..... Respondents

Through: Ms. Reeta Kaul, Mr. Sandeep Khatri,  
Advocates

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

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|--------------------------------------------------------------------------|-----|
| 1. Whether reporters of the local papers be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporter or not?                                | Yes |
| 3. Whether the judgment should be reported in the Digest?                | Yes |

**DIPAK MISRA, CJ**

The present writ petition frescoes a different situation and projects the chequered history it has. The petitioner was selected for the post of Constable (Executive) in Delhi Police during the recruitment held in the year 2002. Regard being had to his antecedents, the respondent did not extend the benefit of appointment in his favour. Being dissatisfied with the same,

he invoked the jurisdiction of the Central Administrative Tribunal, Principal Bench, New Delhi (for short 'the tribunal') in OA No.639/2004 and the tribunal lanced the order passed by the authorities declining to take him on service and issued a command to appoint him.

2. Aggrieved by the aforesaid order, the respondents preferred the writ petition No.8016-17/2005. It is worth noting, the said writ petition was disposed of along with other writ petitions keeping in view the commonality of the factual matrix. A Division Bench of this Court, taking into consideration the concept of signification of antecedents in a disciplined force, passed the following order:

“The findings recorded by the Tribunal in the present case that whether it is an honourable acquittal or on benefit of doubt has little impact in the service career of the said person is in our considered opinion not appropriate as in the service law, a distinction is always made with regard to the honourable acquittal and acquittal on benefit of doubt, particularly in respect of payment of consequential benefits of some of the service employees, wherein it is provided that if it is honourable acquittal the concerned person will be entitled to full arrears of pay and wages whereas it is provided that if it is honourable acquittal the concerned person will be entitled to full arrears of pay and wages whereas if it is only acquittal on benefit of doubt, he may be deprived of payment of arrears of pay and allowances for the period during which he was under suspension. The same is recognized under law and also approved and upheld by the Supreme Court for which we may appropriately refer

to the decisions of this Court in the case of S.P. Thukral v. Delhi Development Authority, LPA No.2066/2005 decided on 6<sup>th</sup> October, 2005. However considering the facts and circumstances of this case and also the fact that in some other cases the Commissioner of Police has allowed the applicants to join the post considering the gravity of the offence in which they were involved and also the nature of the order passed by the criminal court, we feel that it would be appropriate, if all these matters are remitted back to the Commissioner of Police who shall appreciate the nature and gravity of the offence in which the respondents were involved and the manner in which they were acquitted. Upon consideration of such facts if it is found that they could be allowed to join and work against the post of Constables, they should be allowed to join their posts but their order of appointment would be effective from their joining with no claim at all with regard to the arrears of pay and allowances or seniority. Even after such appreciation of all the facts and circumstances of the cases, if it is found by the Commissioner of Police that respondents cannot be so appointed as they are not suitable and desirable persons to be appointed to the post of Constable, he shall pass an appropriate order giving reasons for such decision.”

3. After the said order came to be passed, the Commissioner of Police passed an order by ascribing reasons that the petitioner is not suitable to be appointed in a disciplined force.

4. Being grieved by the said decision of the competent authority, the petitioner preferred OA No.2429/2006 and the tribunal disposed it initially on 24.4.2008 along with several original applications. The OA preferred by

the petitioner faced dismissal. The same came to be assailed in WP(C) No.8059/2008, whereby this Court remanded the matter to the tribunal for fresh adjudication on the foundation that the case of the petitioner was not considered by the tribunal on merits.

5. After the remit by the impugned order dated 26.4.2011, the tribunal taking note of the fact that a criminal prosecution was launched against the petitioner for offences punishable under Sections 302/307/148 of the Indian Penal Code and keeping in view the nature of the acquittal because certain witnesses had become hostile, declined to interfere with the order passed by the competent authority.

6. Criticizing the legal substantiality of the order, it is submitted by Mr.Raju that the tribunal should not have scanned the order of acquittal with an x-ray as the same is binding on it. It is his further submission that while considering the factum of antecedents, neither the competent authority nor the tribunal could have entered into the reasons of acquittal or the nature of acquittal whether it is an honourable acquittal or an acquittal on a technical ground. Learned counsel has submitted that the conclusion of the tribunal rests on the pronouncement in *Delhi Administration Through its Chief Secretary & Ors. v. Sushil Kumar*, (1996) 11 SCC 605, though the said

decision has not taken into consideration Rules 6 and 25 of the Delhi Police (Appointment and Recruitment) Rules, 1980 and as the decision has been rendered totally ignoring and overlooking the relevant statutory rules, it is per incurium and cannot have the binding precedential value under Article 141 of the Constitution of India.

7. The learned counsel for the respondent would submit that the order passed by the tribunal is absolutely impregnable being founded on sound reasons and does not warrant any interference in exercise of power of judicial review under Articles 226 and 227 of the Constitution of India and further the submission that the decision in *Sushil Kumar* (supra) is per incurium does not deserve any acceptance.

8. To appreciate the rivalised submissions raised at the Bar, we have carefully scrutinized the order passed by the tribunal. It has analyzed the facts, the responsibility of a person in a disciplined force, the gravity of the offences with which the petitioner was implicated, the nature of acquittal, the responsibility of the public authority and how such a person becomes unsuitable and undesirable to be appointed to the post in question and thereafter declined to interfere with the order passed by the competent authority. In the case of *Sushil Kumar* (supra), a two-Judge Bench of the

Apex Court was dealing with recruitment of a constable in Delhi Police service. While dealing with the suitability and desirability after acquittal, their Lordships have opined thus:

“3. This appeal by special leave arises from the order of the Central Administrative Tribunal, New Delhi made on September 6, 1995 in OA No. 1756/91. The admitted position is that the respondent appeared for recruitment as a Constable in the Delhi Police Services in the year 1989-90 with Roll No. 65790. Though he was found physically fit through endurance test, written test and interview and was selected provisionally; his selection was subject to verification of character and antecedents by the local police. On verification, it was found that his antecedents were such that his appointment to the post of Constable was not found desirable. Accordingly, his name was rejected. Aggrieved by proceedings dated December 18, 1990 culminating in cancellation of his provisional selection, he filed OA in the Central Administrative Tribunal. The Tribunal in the impugned order allowed the application on the ground that since the respondent had been discharged and/or acquitted of the offence punishable under Section 304 IPC, under Section 324 read with 34 IPC and under Section 324 IPC, he cannot be denied the right of appointment to the post under the State. The question is: whether the view taken by the Tribunal is correct in law? It is seen that 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, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as Constable to the disciplined force. The view taken by the appointment 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 focussed this aspect and found him not desirable to appoint him to the service.”

9. The submission of Mr. Raju, learned counsel for the petitioner is that the said decision is per incuriam as Rule 6 and 25 of the 1980 Rules have not been considered. Rules 6 and 25 read as follows:

“6. **Ineligibility.** – (a) No person who is not a citizen of India shall except with the consent of the central Government to be obtained in writing in advance, be appointed, enrolled or employed in Delhi Police.

(ii) No person, who has more than one wife living or who having a spouse living marries in any case in which such marriage is void by reason of its taking place during the life time of such spouse, shall be eligible for appointment, enrolment or employment in Delhi Police.

(iii) Every candidate shall make a declaration in form No.B about his marital status before he is enlisted.

(iv) No person shall be appointed to any post in Delhi Police unless he has been certified on as physically fit for police service by form D & F by a medical authority to

be appointed for the purpose by the Commissioner of Police.

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**25. Verification of character and antecedents. – (1)**

Every candidate shall, before appointment, produce an attestation form, duly certified by two gazette officer, testifying that the candidate bears a good moral character and they are not aware of anything adverse against him. The candidate may be provisionally enrolled pending verification of his character and antecedents which shall be done by making a reference to the concerned police station. Standing instructions in this regard laying down the procedure for getting such verifications shall be issued by the Commissioner of Police.

(2) An entry about the result of verification of character and antecedents shall be made in the service book/character Roll of the police officer concerned. The papers of such verification shall be filed with his Miscellaneous Personal File.”

10. Relying on the said Rules, it is urged by Mr. Raju that a case of the present nature comes within the compartment of Rule 6 as such a person does not become ineligible. As far as Rule 25 is concerned, the learned counsel would submit that what is required is that there should be verification of character and antecedents by the police at the initial stage and once an affirmative report is submitted, it is final and beyond that nothing

remains to be done.

11. At this juncture, we must note with profit that when the matter was remanded by this Court on the first occasion, this Court was aware of this fact and referring to Rule 25, had directed remit and thereafter the tribunal has considered the matter in entirety. Quite apart from the above, it is worth mentioning that the High Court cannot advert to or state that because certain rules have not been taken note of or there would have been a different impact had they been taken note of by the Apex Court and, hence, the ratio is per incuriam.

12. In this context, we may profitably refer to the case of Cassell & Co. Ltd., vs. Broome & Anr., (1972) AC 1027. In the said case, this question was considered by the House of Lords and Lord Hailsham at page 1052 spoke as follows:-

“But the decision of appeal did not stop at dismissing the appeal on these grounds. Whether or not they were encouraged by the zeal of plaintiff’s counsel, they put in the forefront of their judgments the view that Rookes vs. Barnard (1964) A.C. 1129 was wrongly decided by the House of Lords and was not binding even on the Court of Appeal. It was, so they said, arrived at per incuriam, and without argument from counsel.”

Lord Hailsham further spoke at page 1054 as follows:-

“The fact is, and I hope it will never be necessary to say so again, that, in the hierarchical system of courts which exists in this country, it is necessary for each lower tier, including the Court of Appeal, to accept loyally the decision of higher tiers, where decision manifestly conflict the decision in Young Vs. Bristol Aeroplane Co. Ltd., (1944) K.B. 718 offers guidance to each tier in matters affecting its own decisions. It does not entitled it to question considered decisions in the upper tiers with the same freedom. Even this House, since it has taken freedom to review its own decisions, will do so cautiously.”

Lord Reid in his separate speech in the same case at page 1084 spoke as follows:-

“It seems to me obvious that the Court of Appeal failed to understand Lord Devlin’s speech, but, whether they aid or not, I would have expected them to know that they had no power to give any such direction and to realize the impossible position in which they were seeking to put these judges in advising or directing them to disregard a decision of this House. That aberration of the court of Appeal has made it necessary to re-examine the whole subject and incidentally has greatly increased the expense to which the parties to this case have been put.”

Lord Diplock, in the said case, in his lucid speech, at page 1121 wrote as follows:-

“My Lords, there is little that I should wish to add to what Lord Hailsham of St.Marylebone L.C. and my noble and learned friend, Lord Reid, have already said about the way the instant case treated in the court of Appeal. It is inevitable in a hierarchical system of courts that there are decisions of the Supreme appellate tribunal which do not attract the unanimous approval of all members of the judiciary. When I sat in the Court of Appeal I sometimes thought the House of Lords was wrong in over-ruling me. Even since that time there have been occasions, of which the instant appeal itself is one, when, alone or in company. I have dissented from a decision of the majority of this House. But the judicial system only works if someone is allowed to have the last word and if that last word, once spoken, is loyally accepted. The Court of Appeal found themselves able to disregard the decision of this House in *Rookes V. Barnard* by applying to it the label *per incuriam*. That label is relevant only to the right of an appellate decision should not be weakened or irriterred away by fine distinctions, and an erroneous decision of the House upon a question of law can be set right only Act of parliament. A decision of the House of Lords occasioned by members of the House being equally divided is as binding on the House and on all inferior tribunals as if it had been unanimous. Decisions of the House of Lords are binding on every court inferior to it. It is not open to the Court of Appeal to advise judges to ignore House of Lords decisions on the ground that they were decided per

incuriam or are unworkable. But if there is no discernible ratio decidendi the Court of Appeal may adopt any reasoning which appear to it correct provided it supports the actual decision of the House.”

13. In *Ballabhdas Mathuradas Lakhani and Ors. v. Municipal Committee, Malkapur*, AIR 1970 SC 1002, a three-Judge Bench of the Apex Court while dealing with the binding effect of the decision of the Supreme Court under Article 141 of the Constitution of India on the High Court opined thus:

4. The first question is concluded by the judgment of this Court in Bharat Kala Bhandar's case, 1965-3 SCR 499 = (AIR 1966 SC 249). That case arose under the C.P. & Berar Municipalities Act, 1922. The right of a Municipality governed by that Act to levy under Section 66(1)(b) a tax on bales of cotton ginned at the prescribed rate was challenged by a taxpayer. This Court held that levy of tax on cotton ginned by the taxpayer in excess of the amount prescribed by Article 276 of the Constitution was invalid, and since the Municipality had no authority to levy the tax in excess of the rate permitted by the Constitution, the assessment proceedings levying tax in excess of the permissible limit were invalid, and a suit for refund of tax in excess of the amount permitted by Article 276 was maintainable. The decision was binding on the High Court and the High Court could not ignore it because they thought that "relevant provisions were not brought to the notice of the Court".

[Underlining is ours]

14. In *Director of Settlements, AP & Ors. v. M.R. Apparao & Anr.*, (2002) 4 SCC 638, it has been opined thus:

“The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its decision. The decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court (see *Ballabhadas Mathurada Lakhani v. Municipal Committee, Malkapur*, (1970) 2 SCC 267, and AIR 1973 SC 794). When the Supreme Court decides a principle it would be the duty of the High Court or a subordinate court to follow the decision of the Supreme Court. A judgment of the High Court which refuses to follow the decision and directions of the Supreme Court or seeks to revive a decision of the High Court which had been set aside by the Supreme Court is a nullity. (See *Narinder Singh v. Surjit Singh*, (1984) 2 SCC 402 and *Kausalya Devi Bogra v. Land Acquisition Officer*, (1984) 2 SCC 324). We have to answer the first question bearing in mind the aforesaid guiding principles. We may refer to some of the decisions cited by Mr. Rao in elaborating his arguments contending that the judgment of this Court dated 6-2-1986 [(2002) 4 SCC 660] cannot be held to be a law declared by the Court within the ambit of Article 141 of the Constitution. Mr. Rao relied upon the judgment of this Court in the case of *M.S.M. Sharma v. Sri Krishna Sinha*, AIR 1959 SC 395 wherein the power and privilege of the State Legislature and the fundamental right of freedom of speech and expression including the freedom of the press was the subject-matter of consideration. In the aforesaid judgment it has been observed by the Court that the decision in *Gunupati*

*Keshavram Reddy v. Nafisul Hasan*, AIR 1954 SC 536 relied upon by the counsel for the petitioner which entirely proceeded on a concession of the counsel cannot be regarded as a considered opinion on the subject. There is no dispute with the aforesaid proposition of law.”

15. In view of the aforesaid, we are absolutely certain the law laid down in the case of *Sushil Kumar* (supra) apply in full force and the finding recorded by the tribunal cannot be found fault with.

16. In the result, the writ petition, being devoid of merit, stands dismissed without any order as to costs.

**CHIEF JUSTICE**

**SANJIV KHANNA, J**

AUGUST 11, 2011  
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