

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 22nd November, 2011

+

W.P.(C) 8223/2011

RAJESH KUMAR

..... Petitioner

Through: Ms. Manpreet Kaur, Adv.

Versus

COMMISSIONER OF POLICE & ANR

.... Respondents

Through: Mr. Anjum Javed, Adv.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J

1. This petition seeks judicial review of the order dated 5th April, 2011 of the Central Administrative Tribunal (CAT), Principal Bench, New Delhi dismissing O.A. No.3917/2010 preferred by the petitioner under Section 19 of the Administrative Tribunals Act, 1985. The said O.A. was preferred impugning the order dated 20th August, 2010 of the respondents cancelling the candidature of the petitioner for the post of Constable (Executive) Male in Delhi Police.

2. The respondents had in the year 2009 invited applications for the vacancies for the said post. The petitioner applied, cleared the qualifying written test as well as physical test and was declared provisionally selected subject to verification of character and antecedents, medical fitness and final checking of documents etc. During the said verification, it was discovered that the petitioner was involved in criminal case FIR No.51 dated 17th March, 2000 under Sections 323/324/34 IPC, P.S.-Kosli, District-Rewari, Haryana, though had been acquitted vide order dated 28th February, 2009 pursuant to amicable settlement. The respondents nevertheless cancelled the provisional selection of the petitioner for the reason of the petitioner having concealed his involvement in the aforesaid FIR inspite of direction in this regard in the Application Form which he had filled up.

3. The petitioner before the Tribunal relied *inter alia* on judgment dated 17th March, 2011 of the Apex Court in ***Commissioner of Police Vs. Sandeep Kumar*** (2011) 4 SCC 644. Sandeep Kumar also had concealed his involvement in a criminal case under Section 325/34 IPC and which case had also resulted in an acquittal on compromise. The Supreme Court held that Sandeep Kumar at the time of the FIR was about 20 years of age; at that age, young people often commit indiscretions and such indiscretions can

often been condoned; youth will be youth; they are not expected to behave in as mature a manner as older people and minor indiscretions made by young people should be condoned rather than to brand them as criminals for the rest of their lives. Relying upon *Morris Vs. Crown Office* (1970) 2 Q.B. 114, it was held that the non-mentioning of involvement in a criminal case was out of fear inasmuch as if the same had been disclosed, he would have been automatically disqualified. The Supreme Court accordingly held cancellation of provisional selection of Sandeep Kumar to be illegal.

4. The appellant in the present case also is now about 26 years of age; in the year 2000 he was less than 16 years of age; the offence with which he was charged is also not grave. It would thus be seen that the judgment of the Apex Court squarely applied.

5. However the Tribunal held that *Sandeep Kumar* (supra) could not be read as laying down that the factum of furnishing of false information or suppression of any material information in the application form has to be condoned and is not relevant factor for rejection of the candidature. The Tribunal further observed that the Apex Court in the judgment in *Sandeep Kumar* (supra) had not taken note of previous judgments in *Daya Shankar*

Yadav Vs. Union of India (2010) 12 SCALE 477 and in *Kendriya Vidyalaya Sangathan Vs. Ram Ratan Yadav* (2003) 3 SCC 437 laying down that if it is found that the employee had suppressed or given false information in regard to matters which had a bearing on his fitness or suitability to the post, he could be terminated from service without holding any inquiry. The Tribunal accordingly did not give to the petitioner the benefit of the dicta in *Sandeep Kumar* (supra).

6. We are of the opinion that the Tribunal has erred in appreciating the dicta of the Apex Court in *Sandeep Kumar* (supra) and in not following the same. The Apex Court by the said judgment had affirmed the judgment of the Division Bench of this Court reported as *Sandeep Kumar Vs. Commissioner of Police* (2006) 90 DRJ 707. The Division Bench held that though there could be no denying that there should be a complete and honest disclosure of all questions but the same would not prevent the authorities and the Courts from condoning the non disclosure or false disclosure, whether it be on account of *bona fides* or extenuating circumstances. It was further held that the pleas of inadvertent and / or *bona fide* mistakes in non disclosure or wrongful disclosure and of the concealment being not willful also have to be considered. It was yet further held that in view of acquittal

following compromise in the criminal case, the applicant could not be said to be having any reason for withholding the information especially if the incident did not involve any moral turpitude or grave offence and / or was not demonstrative of any propensity to crime. The Supreme Court besides affirming the aforesaid propositions further added that the age at the time of the incident also has to be considered. It was observed that indiscretions committed in youth can be condoned and owing to such indiscretion or minor offences, a young man cannot be branded as a criminal for all his life. It was yet further held that wisdom as in *Morris Vs. Crown Office* (1970) 2 QB 114 ought to be displayed in such matters. The test of seriousness of the offence committed and which was concealed was also evolved.

7. The hard reality cannot also be lost sight of. A disclosure of the FIR, even if leading to acquittal, invariably leads to rejection of the application. The applicants thus cannot be blamed for shying away from making such disclosure and / or from indulging in concealment for fear of rejection at the threshold only without even having any opportunity to explain. We may in this regard also notice that the “Policy For Deciding Cases of Candidates Provisionally Selected in Delhi Police, Involved in Criminal Cases (Facing Trial or Acquitted)” has been framed vide Standing Order No.398/2010

dated 23.11.2010. The said Policy also provides that even where the disclosure has not been made in the application form and the facts are discovered on verification, the case is required to be referred to the Screening Committee to assess suitability for appointment. The concept of minor offences and / or offences not involving moral turpitude has also been evolved. The same indicates that the respondents have themselves accepted the judgment of the Apex Court in **Sandeep Kumar** (supra). The Tribunal has thus erred in ignoring the dicta in **Sandeep Kumar** and in blindly following the earlier judgments in **Daya Shankar Yadav** and **Ram Ratan Yadav** (supra) when the judgment in **Sandeep Kumar** was an advancement in law.

8. We may even otherwise observe that the principle of precedents also require the Tribunal to test the case of the petitioner in terms of the judgment in **Sandeep Kumar** which was later in point of time and had evolved exceptions out of the law earlier laid down in **Daya Shankar Yadav** and **Ram Ratan Yadav**. It was not for the Tribunal to ignore the latest dicta and to decide the *lis* following the earlier judgments holding that the same had not been noticed in the latest dicta. The Supreme Court in **Director of Settlements, A.P. Vs. M.R. Apparao** (2002) 4 SCC 638 held that the decision in a judgment of the Supreme Court cannot be assailed on the

ground that certain aspects were not considered or were not brought to notice of the Court; that when the Supreme Court decides a principles it would be the duty of the High Courts or the Subordinate Courts to follow the decision of the Supreme Court.

9. We may notice that the Tribunal in the impugned order has also relied upon its earlier order dated 25th March, 2011 in ***Jai Singh Vs. GNCTD***. We have in W.P.(C) No.7472/2011 preferred thereagainst, on 2nd November, 2011 set aside the said order of the Tribunal also.

10. We therefore set aside / quash the order of the Tribunal and also quash the order dated 20.08.2010 of the respondents cancelling the candidature of the petitioner for the post of Constable (Executive) Male and direct the respondents to, subject to the petitioner complying with the other requirements / formalities and otherwise being found suitable, consider the case of the petitioner for appointment.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

NOVEMBER 22, 2011/bs..