

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

+ **W.P.(C) 8620/2010**

% ***Date of Decision: 13.01.2011***

GOKUL RAM MEENA *.... Petitioner*
Through Mr. V.K.Tandon, Adv.

Versus

GOVT. OF NCT OF DELHI & ORS. *.... Respondents*
Through Mr.Nirbhay Sharma, Advocate for
Mr. Anjum Javed, Advocate

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MS. JUSTICE VEENA BIRBAL

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

VEENA BIRBAL, J. (oral)

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1. By way of this petition under Article 226 of the Constitution of India, petitioner has prayed for quashing of order dated 11.08.2010 passed in R.A. No. 209/2010 and order dated 04.05.2010 passed in O.A. No. 2497/2009 both passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'the Tribunal') whereby the prayer of the petitioner for cancellation of order dated 04.08.2009 issued by the respondents cancelling the candidature of the petitioner for recruitment to the post of Constable

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Male (Executive) in Delhi Police has been rejected.

2. In the year 2008, an advertisement was issued by the respondents wherein applications were invited for recruitment to the post of Constable Male (Executive) in Delhi Police. Petitioner applied for recruitment to the said post under ST category. He was put through physical endurance and measurement test, written test, interview. Petitioner was declared provisionally selected against Roll No. 515945, subject to verification of character and antecedents, final checking of documents and medical fitness.

On 15.07.2009, petitioner received a show cause notice from respondents wherein it is stated that on receipt of his character and antecedents report from DCP/Special Branch, Delhi it is revealed that a criminal case FIR No. 45, dated 04.05.2007 u/s 143/341/323/354-IPC, P.S. Thana Gazi, District Alwar (Rajasthan) was registered against him. It is further stated that the said criminal case was decided by the aforesaid Court on 01.06.2009 wherein petitioner and co-accused persons were convicted for the offence u/s 143 IPC and were given benefit u/s 3 of Probation of Offenders Act, 1958 after admonishing. For the offence u/s 323, 341, 354 and 451 IPC, they were acquitted as the matter was compromised. It was also stated in the show cause notice that the petitioner was involved in the case and had an active role as such was unfit for Delhi Police and was asked to give reply to show cause as to why his candidature for the post of Constable Male

(Executive) in Delhi Police be not cancelled. Petitioner gave a reply on 28.07.2009 stating that there are judicial directions of the court that conviction would have no adverse effect on petitioner as well as one Shri Gopi Ram in future in their Government services or otherwise. In view of above directions, the Government service of petitioner would not be affected. The reply of the petitioner was not found convincing by respondents as such vide order dated 04.08.2009 the candidature of the petitioner for the post of Constable Male (Executive) in Delhi Police was cancelled.

3. Aggrieved with the same, petitioner filed an O.A. No. 2497/2009 before the Tribunal wherein petitioner had alleged that at the time of filling up of the attestation form, petitioner had disclosed his involvement in the criminal case. Petitioner pointed out about the directions of criminal court which are stated above and contended that respondents are not justified in cancelling his candidature.

4. The Tribunal relying on the judgment of this court in Satraj Singh vs. Union of India & Ors.; 2007 IX AD (DELHI) 241 did not interfere with the order of the respondents dated 4.8.2009 and also observed that the said order had been passed after observing the principles of natural justice. Aggrieved with the same, the present petition is filed.

5. Learned counsel for petitioner has contended that the candidature of the petitioner has been wrongly cancelled on the

ground that he was involved in a criminal case. It is contended that vide judgment dated 1st June, 2009 of Judicial Magistrate, 1st Class, Thana Gazi, Distt. Alwar (Rajasthan), the petitioner was acquitted for the offences under section 323/341, 354 and 451 IPC and as regards conviction under Section 143 IPC is concerned, petitioner was given benefit under Section 3 of Probation of Offenders Act and there is a direction of the Court that it will not affect the future Government service, as such the impugned order passed by the Tribunal is illegal.

It is admitted position that petitioner was not issued any appointment letter and was only provisionally selected subject to verification of character and antecedents. In the show cause notice dated 15th July, 2009, the necessary details of criminal case given are as under:-

“Sh.Rajinder Prasad s/o Shri Ram Chander Meena reported that on 3.5.2007 at abo ut 7.30/8.00 p.m. he was lying on cot and his wife Smt.Rampati was also sitting with him. Suddenly you along with Narayan, Bharal Lal S.o Ram Nath, Jella Ram S/o Sunder Lal all resident of Bal Ki Dhani, Mundiawas, The. Thana Gazi Distt. Alwar (Raj.) having lathies in their hands came to his house and Pappu Ram, Ramesh, Narayan, Bharat Lal, Jella Ram assaulted the complainant with legs and fists. You along with Gopi Ram and Phelli Ram took his wife out side on the road and threw her chunni and torn her clothes. You and Gopi Ram caught hold her wife and Phelli Ram attempted to outrage her modesty. When the complainant and his wife raised alarm for rescue, Shri Umrao Khatik and Ramdhan Meena intervened the matter. During trial of the case, both the parties have compromised the matter u/s 323/341/354/451 IPC. The Hon’ble Court found them guilty u/s 143 IPC and admonished all the accused by giving benefit u/s 3 of Probation of Offender Act vide

judgment dated 01.06.2009. Keeping in view of the above circumstances, it has been established that you were involved in the case and played an active role. The Hon'ble Court found guilty of all the accused including you candidate u/s 143 IPC and admonished by giving benefit u/s 3 of Probation of Offenders Act, 1958. Since the acquittal in the said case is not honorable and the offence involves grave moral turpitude, which makes you unfit for police force."

6. The stand of the petitioner is that when he submitted the application form, the case registered vide aforesaid FIR was sub judice against him in the court of Judicial Magistrate, 1st Class, Thana Gazi. The petitioner had already mentioned about the case in the application form. The said case has been decided on 1st June, 2009 by the court of Judicial Magistrate, 1st Class, Thana Gazi, Distt. Alwar (Rajasthan) wherein petitioner and co-accused persons are acquitted u/s 323,341, 354 and 451 IPC due to compromise. The petitioner is convicted u/s 143 IPC and the court has given the benefit of section 3 of the Probation of Offenders Act, 1958 and it is ordered that in terms of section 12 of Probation of Offenders Act, the conviction would have no adverse effect on petitioner and one Sh. Gopi Ram in future in their Government service or otherwise. In view of the above directions, respondents are not justified in cancelling his candidature.

The Tribunal has considered the aforesaid aspect of the matter in the light of judgment of this court in Satraj Singh Vs. Union of India & ors reported in 2007 IX AD (Delhi) 241 wherein after relying on the

judgment of the Supreme Court in Commandant, 20th Battalion, ITB Police Vs. Sanjay Binjola reported in (2001) 5 SCC 317, it is held that the directions issued by the Session Judge, Bikaner to the effect that the conviction of the petitioner therein shall not have any adverse effect on his service was held to be without jurisdiction and therefore not binding on the respondents. Following the aforesaid judgment the Tribunal has rejected the contention raised by the petitioner that the direction of the Court of Judicial Magistrate, 1st Class, Thana Gazi, Distt. Alwar, Rajasthan in judgment dated 1st June, 2009 to the effect that the conviction of petitioner would have no adverse effect in future in Government Service is not binding on the Tribunal.

Recently, the Supreme Court in Sushil Kumar Singhal Vs. The Regional Manager, Punjab National Bank reported in (2010) IV LLJ 297 SC after taking note of various decisions on the issue, where after conviction, a person was released on probation, has upheld the dismissal of an employee who was convicted for an offence involving mortal turpitude. Even in the said case, appellant therein was given the benefit of Section 12 of the Probation of Offenders Act by the criminal court. If that is so, there is no reason to uphold the contention of petitioner who is involved in a serious crime.

Further petitioner is seeking employment in Police which requires utmost integrity, propriety and uprightness of character. Considering the nature of offence, material on record, role of

petitioner therein and that there is no honorable acquittal, the Screening Committee has not found him fit for the job. Petitioner was undergoing selection process and was not issued any appointment letter. In view of the judgment in Shankarsan Dash Vs. Union of India reported in **AIR 1991 SC 1612**, petitioner cannot claim any indefeasible right of appointment.

Considering the totality of facts and circumstances, we find no illegality or irrationality in the order of the Tribunal. Present is not a fit case in which we should interfere and grant relief to the petitioner in exercise of discretion under Article 226 of the Constitution of India.

Writ petition is dismissed with no order as to costs.

VEENA BIRBAL, J.

ANIL KUMAR, J.

JANUARY 13th, 2011
kks/ssb