

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

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Judgment reserved on:07.02.2012
Judgment pronounced on: 10.02.2012

+ W.P.(C) 734/2012

Govt. of NCT of Delhi & Another

... Petitioners

Versus

Daulat Ram

... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr S.P.Sharma with Dr. Ashwani Bhardwaj
For Respondent : Ms Jasvinder Kaur

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K.JAIN

V.K. JAIN, J.

1. This Writ Petition is directed against the order dated 12.10.2011 passed by the Central Administrative Tribunal, Principal Bench (hereinafter referred to as the Tribunal) whereby OA No. 1514/2011 filed by the respondent was allowed. The facts giving rise to this petition are as follows:

On 11.12.2009 the respondent applied for the post of Constable (Executive) in Delhi Police. He appeared in the written test and was provisionally selected for the aforesaid post. Despite his having been selected and found physically fit no appointment letter was issued to him for the reason that he had been involved in a criminal case registered vide FIR No. 351/2007 PS Laxman Garh, District Alwar

(Rajasthan) under Sections 323/341/324/325 read with Section 34 of Indian Penal Code which had resulted in acquittal on 12.2.2009, based on a compromise. A show-cause notice was issued to him as to why his candidature be not cancelled. In his reply, the respondent clarified that complete details of his having been involved in the criminal case had been disclosed by him in the application form as well as in the attestation form. The explanation given by him, however, was not found satisfactory and his candidature was cancelled on 22.3.2011. The Tribunal relying upon the decision of Supreme Court in **Commissioner of Police & Others v. Sandeep Kumar:** (2011) 4 SCC 644 quashed the cancellation of the candidature of the respondent and directed the petitioner to consider him for the post of Constable (Executive).

2. It is an admitted fact that the respondent was involved in a criminal case referred above and he had been acquitted, though pursuant to a compromise, much before he applied for the post of Constable (Executive) with Delhi Police on 11.12.2009. It is also not in dispute that his involvement in the criminal case was disclosed by the respondent not only in the attestation form but also in the initial application form submitted by him. Thus, there was absolutely no concealment on the part of the respondent, while applying to the aforesaid post. In *Sandeep Kumar (supra)*, the respondent before the Supreme Court while replying to Clause 12(a) of the application form whereby he was asked as to whether he had been arrested,

prosecuted, kept in detention or bound down, fined or convicted by Court of law for any offence, had replied in the negative and thereby he made a false statement in the application form. The respondent in that case had applied for the post of Head Constable (Ministerial) in 1999. He had already been acquitted on 18.1.1998, pursuant to his compromise with the injured in the case which was registered against him under Section 325/34 of Indian Penal Code. However, while filling up the attestation form, after he had qualified for the post, the respondent disclosed his involvement in the criminal case, as also his acquittal based on the compromise. The candidature of the respondent having been cancelled he filed an OA before the Tribunal, which was dismissed. The Writ Petition filed by him was allowed by this Court. Dismissing the appeal filed by the Commissioner of Police and Others, it was held by Supreme Court that cancellation of the candidature of the respondent was illegal. Supreme Court noted that the incident had happened at a time when the respondent would be about 20 years old and observed that at that age young people often commit indiscretions, such indiscretions can often be condoned and therefore the approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives. The Court felt that probably while filling up the application form the respondent had not disclosed his involvement in the criminal case out of fear that if he did so, he would automatically be disqualified. The Court was of the view that

since the offence alleged against the respondent was not a serious offence like murder, *dacoity* or rape, a more lenient view should be taken in the matter.

The case of the respondent before this Court, in our opinion, rests on a stronger footing since he did not conceal his involvement in the criminal case even in the initial application form submitted by him, whereas in the case of ***Sandeep Kumar*** (*supra*), the respondent had concealed his involvement while filling up the initial application form. The offences in commission of which he was alleged to be involved were not more serious than the offences in which Sandeep Kumar was involved. We therefore, fail to appreciate, how, in the face of the aforesaid decision of Supreme Court, the Tribunal might have taken a different view in the matter.

3. The learned Counsel for the petitioner has relied upon the decisions of Supreme Court in **Delhi Administration Through Its Chief Secretary And Others v. Sushil Kumar**: (1996) 11 SCC 605, decision of this Court in ***WP(C) No. 5782/2011 Sanjeev Kumar v. Govt of NCT of Delhi And Others*** decided on 11.8.2011 as well as the decision of Supreme Court in ***Civil Appeal No. 7106/2011 Ram Kumar v. State of UP And Others*** decided on 19.8.2011. In the case of ***Sushil Kumar*** (*supra*), the admitted position was that the involvement of the respondent in a criminal case came to be known only on verification by the local police, which led to his provisional selection being cancelled. A perusal of the

judgment would also show that the respondent in that case was involved in the offences punishable under Sections 304 and 324 of Indian Penal Code read with Section 34 thereof. However, in the case before this Court, there has been no concealment on the part of the respondent and he was not involved in a serious offence such as murder, rape, *dacoity*, culpable homicide not amounting to murder, hence, the case before this Court is clearly distinguishable and in fact squarely covered by the decision of Supreme Court in ***Sandeep Kumar*** (*supra*). In the case of ***Sanjeev Kumar*** (*supra*), the petitioner before this Court was prosecuted for the offence punishable under Sections 302/307/148 of the Indian Penal Code and he was acquitted on account of certain witnesses having turned hostile. Considering the nature of the offences in which the petitioner in WP (C) No. 5782/2011 was involved, the case of the respondent before this Court cannot be treated at par with him. Moreover, since there is no reference to the decision of the Supreme Court in the case of ***Sandeep Kumar*** (*supra*) and it appears to us that the aforesaid binding decision of the Supreme Court was not brought to the notice of this Court.

In the case of ***Ram Kumar*** (*supra*), the appellant before the Supreme Court, while applying for the post of a Constable had submitted an affidavit stating therein that no criminal case had been registered against him. It was on a report submitted by Jaswant Nagar Police Station in District Etawah that his involvement in a criminal case registered under Section 324/323/504 IPC came to be known. On

receipt of the aforesaid report the selection of the appellant was cancelled on the ground that he had submitted an affidavit stating wrong facts and concealing correct facts and therefore his selection was irregular and illegal. The appellant filed a Writ Petition before Allahabad High Court challenging the cancellation of his selection. The Writ Petition was dismissed holding that since the appellant before the Supreme Court had furnished false information in his affidavit, the case was squarely covered by the decision of Supreme Court in **Kendriya Vidyalaya Sangathan And Others v. Ram Ratan Yadav:** (2003) 3 SCC 437. The Supreme Court noted that the appellant had been acquitted since the sole eye witness had stated during his examination in the Court that someone from the crowd had hurled abuses and in the scuffle he had got injured when he fell and his head hit a brick platform. Allowing the appeal, Supreme Court set aside the order passed by the learned Single Judge and the Division Bench of Allahabad High Court and directed that the appellant would be taken back in service though he would not be entitled for any back wages for the period he had remained out of service. We fail to appreciate how this judgment can, in any manner, advances the case of the petitioner before this Court. In fact, the Court was of the view that it was the duty of the Senior Superintendent of Police, Ghaziabad as the Appointing Authority to satisfy himself on the point as to whether the appellant was suitable for appointment to the post of Constable, with reference to the nature of suppression

and nature of the criminal case. Instead of doing that he had mechanically held the selection to be irregular and illegal merely because the appellant had furnished an affidavit stating the incorrect facts.

In *Kendriya Vidyalaya (supra)*, which the respondent had relied upon in the case of *Ram Kumar (supra)*, the respondent before the Supreme Court had suppressed in the attestation form the fact that a criminal case had been registered against him under Section 323/341/294 and 506-B read with Section 34 of the Indian Penal Code and that case was pending at that time. It was only subsequently that the criminal case was withdrawn. It was on these facts that the Supreme Court, in the case of *Kendriya Vidyalaya (supra)* held that since he (the respondent Ram Ratan Yadav) was to serve as a Physical Education Teacher he was not suitable for that appointment as his conduct and antecedents will have some impact on the minds of the students of impressionable age and since the authorities had dismissed him from service for suppressing material information in the attestation form, the decisions of the authorities could not be interfered by the High Court. The facts of the case before this court are also materially different from the facts in the case of *Kendriya Vidyalaya (supra)*. In the case before this Court, there has been no concealment on the part of the respondent either in the application form or in the attestation form. Moreover, he had already been acquitted of the charges even before he applied for the post of Constable (Executive) in Delhi Police. Therefore,

the decision of Supreme Court in the case of *Kendriya Vidyalaya (supra)* also does not help the petitioner in any manner.

For the reasons given in the preceding paragraphs, we find no merits in the Writ Petition and the same is hereby dismissed without any order as to costs.

V.K.JAIN, J

BADAR DURREZ AHMED, J

FEBRUARY 10, 2012

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