

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 17.07.2012

+ **W.P.(C) 4176/2012**

COMMISSIONER OF POLICE & ORS

... Petitioners

versus

PRADEEP KUMAR

... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr Vinay Kumar Garg.

For the Respondent : Mr Sachin Chauhan.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

Caveat No.703/2012

The learned counsel for the Caveator is present hence, the Caveat stands discharged.

CM No.8689/2012

Allowed subject to all just exceptions.

W.P.(C) 4176/2012 & CM No.8688/2012

1. This writ petition is directed against the order dated 07.03.2012 passed in OA No.4292/2011 by the Central Administrative Tribunal, Principal Bench, New Delhi.
2. The issue, once again, relates to the question of appointment of a Constable (Executive) Male to the Delhi Police on the ground that he had not mentioned his alleged involvement in a criminal case in the attestation form submitted by him. The Tribunal has placed reliance on the decision of the Supreme Court in the case of **Commissioner of Police vs Sandeep Kumar:** (2011) 4 SCC 644 and has taken a decision in favour of the respondent.
3. The facts of the case are that the respondent had applied for the post of Constable (Executive) Male to the Delhi Police in early 2009. It is an admitted position that at that point of time there was no alleged criminal involvement insofar as the respondent Pradeep Kumar was concerned. As such, in the application form he had rightly answered that he had not been involved in any criminal case.
4. Subsequent to his application, Pradeep Kumar was selected and he had joined as Constable (Executive) Male with the Delhi Police on 06.01.2010 which was, however, subject to verification of his antecedents and moral

character etc. For this purpose a verification report was sought from the District Magistrate, Alwar, Rajasthan. The said District Magistrate reported that there had been a criminal case registered in which the respondent Pradeep Kumar had been allegedly involved. The said criminal case was registered by virtue of FIR No.365/2009 on 06.07.2009 at PS Behror, Alwar, Rajasthan under Section 323/341/452/427 IPC. It was further indicated that the respondent Pradeep Kumar had been acquitted by the Additional Chief Judicial Magistrate, Behror, Alwar, Rajasthan by virtue of the order dated 21.12.2009.

5. Anyhow, on receipt of the said verification report from the District Magistrate, Alwar, Rajasthan, a Show Cause Notice was issued by the petitioner to the respondent Pradeep Kumar on 27.07.2010 purportedly under Rule 5(1) of the CCS (Temporary Service) Rules, 1965 requiring the respondent Pradeep Kumar to show cause as to why his services should not be terminated for failure to mention the fact of his involvement in the said criminal case.

6. The respondent Pradeep Kumar furnished a reply dated 04.08.2010 wherein he stated that the FIR No.365/2009 had been registered as a counter-blast after there were petty disputes in which the respondent Pradeep Kumar

lodged an FIR No.363/2009 on the same date i.e. on 06.07.2009 under Section 323/341/325 IPC against the alleged aggressor party. Anyhow it was pointed out that at the time when the application was furnished by the respondent Pradeep Kumar this alleged incident had not taken place and, therefore, there was no question of the respondent Pradeep Kumar stating anything in the application form with regard to the alleged criminal case.

7. Insofar as the attestation form is concerned, it is clear that the respondent Pradeep Kumar had not mentioned the alleged involvement in the criminal case although, by then, the FIR No.365/2009 had come to be registered. The reason given in the reply was that at the time of filing the attestation form a compromise had already been entered into between the alleged aggressor party and the respondent and he (Pradeep Kumar) was under the impression that the matter had ended there. He also pointed out that ultimately the Court also acquitted all the accused under the said FIR No.365/2009 by virtue of the order dated 21.12.2009. It was only subsequent to that, that he joined as Constable (Executive) Male with the Delhi Police on 06.01.2010. Therefore, the respondent sought that the Show Cause Notice be withdrawn.

8. However, the petitioner did not agree with the reply submitted by the respondent Pradeep Kumar and went on to pass the order dated 24.10.2010 whereby the services of the respondent were terminated under the said Rule 5(1) of the CCS (Temporary Service) Rules, 1965. It is against that order that the respondent Pradeep Kumar filed the said Original Application No.1204/2011 whereby the Tribunal, by virtue of the order dated 28.04.2011, directed the petitioner to reconsider the question of termination. Thereupon the petitioner reiterated the termination order by virtue of a fresh order dated 31.05.2011, which was the subject matter of Original Application No.4292/2011 which has culminated in the impugned order dated 07.03.2012.

9. The learned counsel for the petitioner sought to argue on the point of suppression and concealment of information on the part of the respondent Pradeep Kumar being the reason for termination itself. He placed reliance on the decision of the Supreme Court in the case of **Daya Shankar Yadav v. Union of India & Ors.**: JT 2010 (13) SC 791 and also on the decision of this Court in the case of **Manoj Kumar v. Commissioner of Delhi Police**: 180 (2011) DLT 640 (DB) (DHC). However, we find that the decision in

the case of *Sandeep Kumar (supra)* has been relied upon by the Tribunal in allowing the respondents said Original Application.

10. In *Sandeep Kumar (supra)* the person concerned had not disclosed the fact of his involvement in a criminal case. As a result, his candidature for the post of Head Constable (Ministerial) in 1999 with the Delhi Police had been cancelled. The person concerned, namely, Sandeep Kumar, had filed a petition before the Central Administrative Tribunal which was dismissed. Against that, the said Sandeep Kumar filed a writ petition before the Delhi High Court which had been allowed. It was against the order of the Delhi High Court that the Commissioner of Police preferred the appeal before the Supreme Court which came to be decided by the said decision in *Sandeep Kumar (supra)*. The Supreme Court observed as under:-

“8. We respectfully agree with the Delhi High Court that the cancellation of his candidature was illegal, but we wish to give our own opinion in the matter. When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often be condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

9. In this connection, we may refer to the character “Jean Valjean” in Victor Hugo’s novel *Les Miserables*, in which for committing a minor offence of stealing a loaf of bread for his hungry family Jean Valjean was branded as a thief for his whole life. The modern approach should be to reform a person instead of branding him as a criminal all his life.”

The Supreme Court further observed:-

“11. As already observed above, youth often commits indiscretions, which are often condoned.

12. It is true that in the application form the respondent did not mention that he was involved in a criminal case under Sections 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified. At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter.”

11. Since the offences in the present case are also not major offences, and in any event as the respondent Pradeep Kumar had already been acquitted, the reasoning adopted in *Sandeep Kumar (supra)* would be more relevant and the Tribunal has rightly adopted the same. We have also considered several decisions on this subject in the case of *Devender Kumar Yadav v.*

Govt. of NCT of Delhi & Anr. in **W.P.(C) 8731/2011** decided on 30.03.2012

wherein a similar line of reasoning has been adopted.

12. Consequently, we do not see any reason to interfere with the order passed by the Tribunal. The writ petition is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

JULY 17, 2012

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