

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on : 24.08.2012

Judgment pronounced on: 03.09.2012

+ **W.P.(C) 5156/2012**

COMMISSIONER OF POLICE

... Petitioner

Versus

KRISHAN KUMAR

... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr V.K. Tandon

For the Respondent : Mr Ajesh Luthra

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

SIDDHARTH MRIDUL, J.

1. The present writ petition is directed against the order dated 20.10.2011 in O.A. No.1820/2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the Tribunal) by virtue of which the Tribunal set aside the order dated 22.03.2011 by which the petitioner herein (Commissioner of Police) had

cancelled the candidature of the respondent herein to the post of Constable (Executive) Male in Delhi Police.

2. The facts in brief are as follows:-

- (i) The respondent had applied for the post of Constable (Executive) Male pursuant to the recruitment held by the Delhi Police in the year 2009 against the post reserved for the OBC category. Thereafter, the respondent was provisionally selected for appointment to the said post subject to verification of his character and antecedents, medical fitness and final checking of all documents etc.
- (ii) It is not in dispute that the respondent while filling the application form as well as the attestation form had disclosed in the relevant column about his alleged involvement in a criminal case registered as FIR No.166 dated 25.09.2007 under Sections 147/149/323/324/506 of the Indian Penal Code, 1860 (hereinafter referred to as IPC) at PS Kasola, District Rewari (Haryana).

- (iii) The respondent had been acquitted by the concerned Trial Court vide judgment dated 22.04.2008. The alleged incident which resulted in the registration of FIR was that the respondent along with others had formed an unlawful assembly and in prosecution of the common object, had been allegedly rioting with deadly weapons. It was also alleged that the respondent was guilty of causing hurt to several persons while being part of the unlawful assembly.
- (iv) However, as the name of the respondent was involved in a criminal case, his matter was forwarded to the Screening Committee to determine the suitability of the respondent for appointment to the post of Constable (Executive) Male as per guidelines formulated in that behalf.
- (v) The Screening Committee found the respondent unfit for appointment to the said post and declared him unfit for appointment. It is pertinent to note here that no independent enquiry was conducted by the Screening Committee in this behalf and it solely relied upon the contents of the said FIR and

the prosecution's story. Consequently, a Show Cause Notice dated 03.03.2011 was issued by the Deputy Commissioner of Police, directing the respondent to show cause why his candidature for the post of Constable (Executive) Male in Delhi Police be not cancelled. The respondent replied to the said Show Cause Notice vide his reply dated 14.03.2011. However, the petitioner rejected the reply of the respondent and passed an order dated 22.03.2011 cancelling the candidature of the respondent to the post of Constable (Executive) Male in Delhi Police.

3. At this juncture, it is relevant to point out that a plain reading of the cancellation letter reveals that there was no independent material other than the contents of the FIR and prosecution's story, based on which the petitioner relied to cancel the candidature of the respondent.

4. Aggrieved by the cancellation order dated 22.03.2011, the respondent approached the Tribunal by way of O.A. No.1820/2011. The said O.A. was allowed by the Tribunal resulting in the same being impugned before us in this writ petition.

5. At this juncture, it would be relevant to advert to the circumstances resulting in the acquittal of the respondent from the criminal charges levelled against him. The Trial Court vide judgment dated 22.04.2004 acquitted the respondent by giving him the benefit of doubt as the complainant, one Amarjeet, himself, did not support the case of the prosecution. Therefore, the learned Trial Court after conducting a full-fledged trial and due examination of all witnesses, came to this conclusion and the same was not an acquittal on any technical ground.

6. This issue is no longer *res integra*. The decision of a Division Bench of this Court in **Devender Kumar Yadav v. Govt. of NCT of Delhi & Anr.:** **W.P.(C) 8731/2011** decided on 30.03.2012 in which one of us, namely, Badar Durrez Ahmed, J. was a member, can be cited with profit. In this case the candidature of the candidate was cancelled due to his alleged involvement in two FIRs. The first FIR was under Sections 325/506 IPC and the other FIR was under Sections 323/325/34 IPC. The Division Bench observed as under:-

“12. Such acquittals, where the material witnesses are produced during trial, but, they do not support the case of the prosecution, to our mind cannot be said to be technical acquittals. We cannot accept the contention that only a case,

where the accused is acquitted despite material witnesses supporting the case of the prosecution on merits, would be a case of acquittal other than technical acquittal. We cannot presume that a witness, who does not support the case of the prosecution is necessarily doing so in collusion with the accused, in order to save him from punishment, despite his actually having committed the offence, with the commission of which he is charged. It may be true in some cases, but may not necessarily be so in each case. What has to be seen in such cases is as to whether the material witnesses were examined or not. If they are examined, but do not support the prosecution and consequently it is held that the charge against the accused does not stand proved, that would not be a case of technical acquittal. We would like to note here that no independent inquiry was held by the respondents to verify the truthfulness or otherwise of the allegations which were made against the petitioner in the FIRs that were registered against him.

The Screening Committee which considered the case of the petitioner had no material before it which could give rise to an inference that the petitioner had actually committed the offences for which he had been prosecuted. As noted earlier, there is a presumption of innocence attached to an accused in a criminal case and the onus is on the prosecution to prove the charges levelled against him. Acquittal of the accused, after trial, only strengthens and reinforces the statutory presumption, which is otherwise available to him. We, therefore, hold that the view taken by the Screening Committee was not based on some legally admissible material and therefore cannot be sustained in law.....”

7. The decision in ***Devender Kumar’s (supra)*** case was followed by a Division Bench of this Court in ***Commissioner of Police v. Ramanuj***

Upadhyay : W.P.(C) 3926/2012 decided on 09.07.2012 wherein it was observed:-

8. It is obvious from the facts as indicated above that the sole reason as to why the respondent's candidature has been cancelled was the fact that his name found mention in the said FIR. We have, time and again, reiterated that once a person has been acquitted in a criminal case, the factum of his name being mentioned in FIR cannot stand in the way of his employment with the Delhi Police. Here, we find that although the respondent had been clearly acquitted after a full fledged trial by the Trial Court, the petitioner still took into account the fact that his name has been mentioned in the FIR and concluded that, he had been involved in the alleged incident. This course of conduct is clearly untenable. It was open for the Screening Committee and for that matter the petitioner to have rejected the candidature of the petitioner on some other valid ground based on some other inquiries made by them but they could not have cancelled the candidature of the respondent solely on the ground that the petitioner's name found mentioned in the said FIR which culminated in an acquittal by the criminal court."

8. In the light of the decisions cited above and the facts and circumstances of the present case, the reasoning of the Tribunal cannot be faulted with. It is reiterated that the respondent had been acquitted by the Trial Court after conducting a full-fledged trial and that the Screening Committee did not conduct an independent enquiry prior to cancelling the candidature of the respondent. Therefore, the order of the Tribunal does not

warrant interference. Consequently, the writ petition is dismissed as being devoid of merit and the petitioner is directed to consider the appointment of the respondent for the post of Constable (Executive) Male, as early as possible, preferably within a period of six weeks from today, subject to his otherwise being fit and completing all other formalities and requirements. There shall be no order as to costs.

SIDDHARTH MRIDUL, J.

BADAR DURREZ AHMED, J.

SEPTEMBER 03, 2012
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