

THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 28.08.2012
Judgment pronounced on: 06.09.2012

W.P.(C) No.5273/2012 & CM Nos.10771-72/2012

COMMISSIONER OF POLICE, DELHI

..... Petitioner

versus

MANJEET

..... Respondent

Advocates who appears in this case:

For the Petitioner : Mr Sumit Chander.

For the Respondent : None.

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The instant writ petition assails the order dated 07.03.2012 in O.A. No.1903/2011 rendered by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'Tribunal') whereby the

Tribunal quashed the order dated 11.05.2011 whereby candidature of the respondent for the post of Constable (Exe.) Male in Delhi Police was cancelled.

2. The facts, germane for the adjudication of the present writ petition, are summarised below:-

- (i) The respondent had applied for recruitment to the post of Constable (Exe.) Male pursuant to an advertisement published by the Delhi Police in the year 2009.
- (ii) Consequent upon his application respondent's name was provisionally selected for the said post subject to verification of his antecedents and medical fitness etc.
- (iii) It is an admitted position that the respondent herein had disclosed both in the application and the attestation form about his alleged involvement in a criminal case registered vide FIR No.104 dated 25.07.2002 under Sections 148/149/323/427/506 of IPC at Police Station- Kanina, District Mahendergarh, Haryana. The respondent further disclosed that he had been

acquitted of the criminal charges by virtue of the judgment dated 28.05.2007 passed by the Trial Court.

- (iv) Since the respondent had disclosed about his alleged involvement in the said criminal case, the petitioner referred the matter to the Screening Committee for the purpose of determining suitability of the respondent for appointment to the post of Constable in Delhi Police.
- (v) The Screening Committee after taking into consideration the charges levelled against the respondent in the said FIR, declared the respondent unfit for appointment. It is pertinent to note here that the Screening Committee came to this conclusion only on the basis of the allegation made in the FIR and the story of the prosecution before the Trial Court. There was no independent material before the Screening Committee apart from the above for ascertaining antecedents of the respondent. Thus the Screening Committee arrived at its conclusion solely on the basis of the said FIR against the respondent.

- (vi) Consequently, a show cause notice dated 14.03.2011 was served upon the respondent calling him to explain the reasons as to why his candidature to the post of Constable be not cancelled.
- (vii) The respondent replied to the said show cause notice by a reply that was received by the petitioner on 19.03.2011. In the said reply, the respondent submitted that he had been duly acquitted of all the criminal charges and, therefore, no reason subsisted with the petitioner to cancel his candidature.
- (viii) However, the petitioner was not satisfied with the reply of the respondent and cancelled the candidature of the respondent by virtue of the order dated 11.05.2011.

3. Aggrieved by the said order dated 11.05.2011 the respondent approached the Tribunal by way of the said O.A. No.1903/2011.

4. The Tribunal while allowing the O.A. of the respondent observed as under:-

“We find the impugned order (11.05.2011) passed in this case is similar to several cases which have been dealt with by us, wherein bare minimum facts emanating from the prosecution version are stated, a cryptic mention of the reply filed by the candidate concerned is reproduced, and by accepting the

prosecution version as gospel truth, the order of cancellation of candidature of the candidate is passed.”

5. The Tribunal further observed that even as the petitioner had accepted the story of the prosecution as gospel truth, the petitioner had not even recited correct facts as narrated in the FIR in its order dated 11.05.2011. The Tribunal further took note of the two significant facts:- Firstly, that in the FIR no name of any accused was mentioned whereas the cancellation order mentioned the name of the respondent and other accused and; secondly the allegation as regards beating, as mentioned in the FIR, was not attributable to the respondent and others who were outside the bus.

6. The Tribunal further noticed the fact that the alleged incident which has resulted in the registration of the FIR was of the 2002 and hence, seven years had elapsed since then when the respondent applied for the post of Constable. The Tribunal noted that the respondent was barely 17 years of age when the alleged incident took place. The Tribunal further observed that even if the prosecution story is taken as a gospel truth, still the only offence for which the respondent could be charged was for breaking the window panes and nothing more.

7. The learned counsel for the petitioner has urged before us that the appointment to be made was for the post of Constable in Delhi Police and, therefore, only those candidates who possess an impeccable character can be recruited for the said services.

8. In the present case it is relevant to note that the respondent was tried on the basis of the allegation, as made by the prosecution, that on 22.07.2001, one Amar Singh and Sajjan Singh while working as driver and conductor of bus No.HR 66-0339 were allegedly attacked by the respondent and other miscreants. According to the allegations the respondent and the other miscreants broke the window panes of the bus and also hit the driver on whose complaint the said FIR was registered. It was further alleged that when the complainant raised an alarm and the respondent along with others fled from the site and one bag containing Rs.35,000/- was found missing from the bus.

9. During the trial of the case, none of the material witnesses deposed in tune with the prosecution version and they were thus declared hostile. Subsequently, the respondent as well as the other accused persons were acquitted of all the criminal charges by virtue of the judgement dated

28.05.2007. As observed above the primary reason which resulted in acquittal of the respondent was the fact that the witnesses produced by the prosecution did not support the story put forth by the prosecution. Hence, the acquittal granted by the Trial Court could not be said to be acquittal on technical grounds as the acquittal was pronounced by the Trial Court concerned after conducting a full-fledged trial and after examination of all the witnesses produced by the prosecution.

10. The issue raised in the present petition is no longer *res integra*. The decision in **Devender Kumar Yadav vs. Govt. of NCT of Delhi & Anr., WP(C) No.8731/2011, dated 30.03.2012**, in which one of us, namely, Badar Durrez Ahmed, J. was a member of, can be cited with profit. In this case, candidature of a candidate was cancelled due to his alleged involvement in two FIRs. One FIR was under Section 325/506 IPC and the other FIR was under Section 323/325/34 IPC. It has been held that:-

“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 leveled 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.....”

11. In Commissioner of Police and Anr vs. Ramanuj Upadhyay, WP(C)

No.3926/2012, decided on 09.07.2012, this Court following its decision in

Devender Kumar Yadav’s case (supra) came to the following conclusion:-

“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.”

12. In view of the foregoing discussion and the facts and circumstances of the case, we are of the view that the judgment of the Tribunal cannot be found fault with.

13. It is observed that the petitioner's decision of cancelling the candidature of the respondent was based exclusively on the contents of the said FIR registered against him. The petitioner did not even conduct an independent enquiry so as to ascertain the character of the respondent and cancelled the candidature of the latter by merely relying on the contents of the said FIR and the prosecution story. The petitioner also failed to grant due weightage to the tender age of the respondent at the time of the commission of the alleged offence as also the fact that seven years had elapsed between the alleged incident and time of the application of the respondent for the post of Constable. The action of the petitioner in this behalf is clearly untenable. The reasoning of the petitioner, that just because the name of the respondent

figured in an FIR his candidature is liable to be cancelled, cannot be sustained in law.

14. Resultantly, the writ petition is devoid of merit and is hereby dismissed. There shall be no order as to costs.

SIDDHARTH MRIDUL, J.

BADAR DURREZ AHMED, J.

SEPTEMBER 06, 2012

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