

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on : 28.08.2012

Judgment pronounced on: 03.09.2012

+ **W.P.(C) 5274/2012**

COMMISSIONER OF POLICE

... Petitioner

Versus

LALIT KUMAR

... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr Sumit Chander

For the Respondent : None

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

SIDDHARTH MRIDUL, J.

CM No.10774/2012 (exemption)

Allowed subject to all just exceptions.

W.P.(C) 5274/2012 & CM No.10773/2012 (stay)

1. The present petition assails the order dated 07.03.2012 in O.A. No.1839/2011 delivered by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the Tribunal). By way of the

impugned order the Tribunal has quashed the order dated 11.04.2011 issued by the petitioner herein (Delhi Police) whereby the candidature of the respondent to the post of Constable (Executive) Male in Delhi Police was cancelled. The facts giving rise to the present petition are as follows:-

- (i) The respondent had applied for selection to the post of Constable (Executive) Male pursuant to an advertisement published by the petitioners herein on 13.11.2009. The respondent herein having cleared all the tests was provisionally selected for appointment to the said post subject to verification of his character, antecedents and medical fitness etc.
- (ii) It is an admitted position that the respondent had duly disclosed about his alleged involvement in a criminal case registered vide FIR No.03/2006 dated 10.01.2006 under Sections 332/353/34 of the Indian Penal Code, 1860 (hereinafter referred to as IPC) at PS Salhawas, District Jhajjar, Haryana.
- (iii) Since the respondent had disclosed about his alleged involvement in the criminal proceedings, his matter was duly forwarded to the Screening Committee of the petitioners for the purpose of adjudging his suitability for appointment to the post

of Constable (Executive) Male in Delhi Police. The Screening Committee considered the case of the respondent and found him unfit for appointment solely on the basis of his alleged involvement in the said FIR. It is relevant to note here that there was no independent enquiry report or any other relevant material against the respondent before the Screening Committee, apart from the contents of the FIR and story of the prosecution.

- (iv) Pursuant to the recommendations of the Screening Committee, the Deputy Commissioner of Police issued a Show Cause Notice dated 14.03.2011 asking the respondent to furnish reasons why his candidature be not cancelled.
- (v) The respondent replied to the said Show Cause Notice by a reply dated 21.03.2011. In his reply, the respondent submitted that he had been duly acquitted of all criminal charges after due consideration of the facts and evidence by the Trial Court, Jhajjar and, therefore, no reason subsisted with the department to cancel his candidature.

- (vi) However, the petitioner rejected the reply of the respondent and cancelled the candidature of the respondent vide order dated 11.04.2011. Aggrieved by the order of the concerned department, the respondent approached the Tribunal by way of the said O.A.
- (vii) The Tribunal while allowing the said O.A. of the respondent observed in the impugned order that the incident leading to registration of the criminal case against the respondent and others appeared to be a minor one. The Tribunal further stated that no one appeared to have been injured in the said incident nor was there any proof of damage to property. The Tribunal observed:-

“3. In number of matters, like the one in hand, which have been coming before us, the pattern of the orders is simply making brief mention of the prosecution version, the inputs of the charge required to be looked into, and then by simply accepting the prosecution version, to reject the candidature of the concerned candidate. This, we have held on number of occasions, is no way to do administrative justice. The applicant at the time he was alleged to have committed the crime would be a young person, and his age was one of the relevant considerations, which does not find even a remote mention in the impugned order. We have found in

number of cases that whatever be the nature of offence and whatever may be the manner of acquittal, the respondents would simply take the prosecution version as gospel truth, and without discussing the required inputs, would cancel the candidature of the concerned candidate.”

2. Before us, the learned counsel for the petitioner has urged that the appointment was to be made for the post of Constables in Delhi Police and, therefore, only those candidates who possess an impeccable character could be recruited for the said post.

3. Before advertng to the dispute in the present case, it is relevant to note that the respondent was tried on the basis of allegations, as made by the prosecution, that an application came to be given to SDO, UHBVN Ltd., Matanhail, by one Shamsher Singh, Junior Engineer alleging therein that while he was performing his official duties on 09.01.2006, some miscreants of village Maliyawas came to the sub-station and manhandled him and one Sita Ram. It was further alleged that the miscreants tried to cause damage in the office of the complainant and also damaged the telephone of the complainant.

4. The respondent as well as all the other accused persons were acquitted of the criminal charges by the Trial Court vide judgment dated 19.02.2007. The primary reason which resulted in acquittal of the respondent was the fact

that all the witnesses produced by the prosecution did not support the story put forth by the prosecution. Consequently, the respondent was acquitted of all the charges. Here it is observed that the acquittal by the Trial Court cannot be said to be acquittal on technical grounds as the same was pronounced after conducting a full-fledged trial and after examination of all the witnesses produced by the prosecution.

5. It is also observed that the Tribunal held that the respondent herein was a young person, and his age was one of the relevant considerations, which did not find even a remote mention in the cancellation order. The Tribunal further held that in a number of cases, whatever be the nature of the offence and whatever may be the manner of acquittal, the petitioner would simply take the prosecution's version as gospel truth, and without discussing the required inputs, would cancel the candidature of the concerned candidate.

6. The issue that arises from the aforementioned facts is no longer *res integra*. In **Commissioner of Police & Others v. Sandeep Kumar : (2011) 4 SCC 644** the respondent had applied for the post of Head Constable (Ministerial) in 1999. The respondent had already been acquitted on 18.01.1998, pursuant to a compromise with the injured, in the case registered

against him under Sections 325/34 IPC. The Supreme Court made the following observations:-

“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.”

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11. As already observed, youth often commit 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 Section 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.”

7. The decision of a Coordinate 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. First

FIR was under Section 325/506 IPC and the other FIR was under Section 323/325/34 IPC. It was held as follows:-

“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.....”

8. In **Commissioner of Police v. Ramanuj Upadhyay** : W.P.(C) 3926/2012 decided on 09.07.2012 this Court followed its decision in **Devender Kumar** (*supra*) and 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.”

9. In view of the decisions cited above and the facts and circumstances of the case, the decision of the Tribunal cannot be faulted. It is reiterated that the petitioner did not even conduct an independent enquiry so as to ascertain the character of the respondent and relied solely upon the contents of the FIR and prosecution's story to cancel the candidature of the respondent. It is

further observed that the approach adopted by the department in not giving any weightage to the tender age of the respondent at the time when his name was included in the alleged criminal offences is clearly untenable. The reasoning of the petitioner that merely because the name of the respondent figured in a FIR, his candidature is liable to be cancelled, cannot be sustained in law.

10. Consequently, the present writ petition being devoid of merits is dismissed. Pending application also stands disposed of. There shall be no order as to costs.

SIDDHARTH MRIDUL, J.

BADAR DURREZ AHMED, J.

SEPTEMBER 03, 2012

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