

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

+ **W.P.(C) 1576/2015**

AKASH DHAMA Petitioner
Through **Mr. U. Srivastava, Advocate**

versus

GOVT. OF NCT OF DELHI AND ORS. Respondents
Through **Mr. Amitabh Marwah, Advocate**

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

% **12.03.2015**

KAILASH GAMBHIR, J. (ORAL)

1. By the instant Writ Petition filed under Article 226 of the Constitution of India, the petitioner questions the tenability of the impugned order dated 07.11.14 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi, whereby the learned Tribunal dismissed the Original Application preferred by the petitioner.

2. We would now turn to the facts of the case for better comprehension:-

“The petitioner was selected as Constable (Executive) Male in Delhi Police. He was called for Medical Test and Police Verification on the basis of the Written Test. The Petitioner was asked to wait for the appointment order and in the

meanwhile the Respondents issued an order vide its order dated 24.09.12 asking him to submit the certified copies of criminal case FIR No. 178/2007 registered against him along with the certified legible copy of the judgment deciding the matter, to proceed further into the matter. The petitioner duly filed the requisite documents viz. the FIR and the judgment dated 02.06.2010 issued from the Court of Sr. Session Judge Ghaziabad. Being aggrieved by the inaction of the respondents in not issuing the appointment order and amazed at the fact that his other batch mates were issued appointment orders and he was not, he filed an O.A No. 3631/12 seeking directions to the respondents to consider and finalise his case for appointment order with all consequential benefits. The said O.A was disposed of on 31.10.2012. The order issued by the Ld. Tribunal was served on the Respondents; thereafter the respondents issued a show cause notice vide order no. 217352/Rectt. Cell (R-IV) NPL, dated 6.11.12 to the petitioner asking as to why his candidature should not be cancelled, for the reasons mentioned therein, and that his reply, if any, should reach the Office of the Respondent No.2 within 10 days from the date of receipt of that notice, failing which it will be presumed that he has nothing to say in his defence, and his case will be decided ex parte on its merit. The petitioner submitted his reply, and prayed for being permitted to join Delhi Police. However, after considering his representation, the respondents passed the order dated 15.11.12, and not having found his reply to be satisfactory, keeping in view the observations of the Screening Committee, the respondents cancelled his candidature for the post of Constable (Executive) Male in Delhi Police. Being aggrieved by this the Petitioner filed an O.A before the Ld. Tribunal, which was dismissed by the Ld. Tribunal vide order dated 7.11.14.”

3. Assailing the legality and correctness of the impugned order dated 07.11.2014 passed by the learned Tribunal, Mr. U. Srivastava, learned counsel for the petitioner submits that the petitioner has been truthful in apprising the respondents about the criminal case registered against him and also the fact of his acquittal from the criminal case registered against

him vide FIR No. 178/2007 but, nevertheless the respondents cancelled the candidature of the petitioner.

4. The learned counsel avers that the petitioner has become the victim of adverse circumstances without any rhyme or reason as it is established that the petitioner has already been acquitted from the criminal charges levelled against him by Sr. Session Judge, Ghaziabad, vide order dated 02.06.10.

5. The learned counsel also submits that the respondents had issued a show cause notice dated 6.11.2012 to the petitioner asking as to why his candidature should not be cancelled, to which the petitioner submitted a detailed reply, but the respondents confirmed the proposed show cause notice and cancelled the candidature of the petitioner, on the advice of the Screening Committee, to which Committee the petitioner's case was referred and he further contends that this cancellation of candidature was done without application of mind by a perverse, non-speaking and cryptic order, as the defense submitted by the petitioner has not been discussed at all.

6. Counsel also argued that the learned Tribunal has also not appreciated the facts of the case in its proper perspective and also the

established principles of law laid down by the Hon'ble Supreme Court and by various other High Courts holding the field on the subject matter.

7. Refuting the said contentions, the learned counsel for the respondents contends that vide order dated 15.11.2012, after re-examining the case of the Petitioner, the respondents observed that the offences alleged against the Petitioner were heinous in nature and as per the policy framed vide Standing Order No. 398/2010, the charges framed against the petitioner fell in the category of serious offences involving moral turpitude and though later the petitioner was acquitted by extending the benefit of doubt or because of the witness having turned hostile, found that the petitioner was not suitable for appointment in a disciplined force like the Delhi Police, and accordingly, cancelled the candidature of the petitioner.

8. The counsel further submits that the duly constituted Screening Committee of the Respondents, keeping in view the attending circumstances, which lead to the commission of offence, grounds of acquittal, court judgment and the role of the petitioner, found that the petitioner is not suitable for appointment as Constable (Exe.) in Delhi Police and therefore, the Respondents cancelled the candidature of the

petitioner. He further contends that the candidature of the petitioner was not cancelled on the ground of concealment of his involvement in a criminal case but on the ground of his unsuitability for appointment to the post of Constable (Exe.) in Delhi Police, a disciplined Force, in view of his involvement in a heinous crime of moral turpitude, though acquitted on benefit of doubt. Counsel for the respondents has placed reliance on two of the recent judgments of the Supreme Court titled as ***State of M.P & Ors v Parvez Khan, in Civil Appeal no. 10613 of 2014, decided on 1.12.2014 and Commissioner of Police, New Delhi and Anr. v. Mehar Singh (2013) 7 SCC 685.***

9. Based on the aforesaid submissions, the learned counsel for the respondents submits that the order passed by learned Tribunal is well reasoned and the same may not be interfered with by this Hon'ble Court.

10. We have heard the submissions made by learned counsel for the parties and also gone through the impugned judgment passed by learned Tribunal and the material placed on record.

11. The Ld. Tribunal placed reliance on the judgment in the case of ***Commissioner of Police, New Delhi and Anr. v. Mehar Singh (supra)*** wherein the question was whether the candidature of the respondent who

had made a clean breast of his involvement in a criminal case by mentioning the said fact in his application/attestation form while applying for the post of Constable in Delhi Police, who was provisionally selected subject to verification of his antecedents and who was subsequently acquitted/discharged in the criminal case, could be cancelled by the Screening Committee on the ground of non-suitability for appointment to the said post. After considering the policy of the Delhi Police, it held that the policy framed does not merit any interference as its object appears to be to ensure that only persons with impeccable character enter the police force.

12. In the case of ***Commissioner of Police v. Mehar Singh (supra.)***, the Hon'ble Supreme Court laid strong emphasis on recruiting persons of impeccable character and integrity in the Delhi Police and said that persons having criminal antecedents were misfit for appointment in the police. Relevant para of this judgment is also reproduced as under:-

“The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has

been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee. The decision of the Screening Committee must be taken as final unless it is mala fide. In recent times, the image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in public domain and are a matter of concern. The reputation of the police force has taken a beating. In such a situation, we would not like to dilute the importance and efficacy of a mechanism like the Screening Committee created by the Delhi Police to ensure that persons who are likely to erode its credibility do not enter the police force. At the same time, the Screening Committee must be alive to the importance of trust reposed in it and must treat all candidates with even hand”.

13. Delhi Police has also issued a separate standing order i.e. Standing Order No.398/2010 laying down policy guidelines for deciding the cases of candidates provisionally selected in Delhi Police, involved in Criminal Cases (Facing Trial or Acquitted) and relevant paragraphs of which are reproduced as under:-

*“STANDING ORDER NO. 398/2010
POLICY FOR DECIDING CASES OF CANDIDATES
PROVISIONALLY SELECTED IN DELHI POLICE,
INVOLVED IN CRIMINAL CASES (FACING TRIAL OR
ACQUITTED)*

During the recruitments made in Delhi Police, several cases come to light where candidates conceal the fact of their involvement in criminal cases in the Application form/Attestation form in the hope that it may not come to light and disclosure by them at the beginning of the recruitment process itself may debar them from participating in the various recruitment tests. Also the department is hard put to decide

whether candidate should be offered appointment if he/she has been acquitted but not honourably.

In order to formulate a comprehensive policy, the following rules shall be applicable for all the recruitments conducted by Delhi Police.

- 1. If a candidate does not disclose his/her involvement and/or arrest in criminal case(s), complaint case(s), preventive proceedings etc. in the application form but discloses the same in the attestation form, the candidature will not be canceled only on this ground.*
- 2. However the candidature will be cancelled in case the candidate does not disclose the fact of his/her involvement and/or arrest in criminal case(s), complaint case(s), preventive proceedings etc. both in the application form and in the attestation form and the fact is subsequently found out from the verification report received from the District authorities or otherwise.*

Before taking any action against the candidate, a show cause notice will be issued and the candidate will be given reasonable opportunity to submit his/her reply. If sought, a personal hearing must be given to the candidate. Thereafter a speaking order should be passed regarding cancellation of the candidature.

- 3. If a candidate had disclosed his/her involvement and/or arrest in criminal case(s), complaint case(s), preventive proceedings etc. and the case is pending investigation or pending trial, the candidature will be kept in abeyance till the final decision of the case. After the Court's judgment, if the candidate is acquitted or discharged, the case will be referred to the Screening Committee of the PHQ comprising of Special commissioner of Police/Administration, Joint commissioner of Police/Headquarters and Joint Commissioner of Police/Vigilance to assess his/her suitability for appointment in Delhi Police.*
- 4. If a candidate had disclosed his/her involvement and/or arrest in criminal case(s), complaint case(s), preventive proceedings etc. both in the application form as well as in the attestation form but was acquitted or discharged by the Court, his/her case will be referred to the Screening Committee of PHQ to assess his/her suitability for appointment in Delhi Police.*

5. *As per Section 19(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000 a juvenile who has come in conflict with law and has been dealt with under the provisions of the Juvenile Justice Act, he/she shall not suffer any disqualification on account of conviction in an offence under the said law.*

However, if a candidate who was a juvenile in conflict with law and who does not disclose such information in the Attestation form, his/her candidature will be cancelled on account of concealment.

6. *Such candidates against whom chargesheet in any criminal case has been filed in the Court and the charges fall in the category of serious offences or moral turpitude, though later acquitted or acquitted by extending benefit of doubt or the witnesses have turned hostile due to fear of reprisal by the accused person(s), he/she will generally not be considered suitable for government service. However, all such case will be judged by the Screening Committee of PHQ to assess their suitability for the government job. The details of criminal cases which involve moral turpitude may kindly be perused at Annexure 'A'.*
7. *Such cases in which a candidate had faced trial in any criminal cases which does not fall in the category of moral turpitude and is subsequently acquitted by the Court and he/she discloses about the same in both Application form as well as Attestation Form will be judged by the Screening Committee to decide about his/her suitability for the government job.*
8. *Minor offences, traffic violations, juvenile in conflict with law tried in open courts (Juvenile Justice Boards) and accident cases [not applicable for candidates provisionally selected as constable (Driver)] should not be a bar for recruitments in Delhi Police in view of the various CAT/Court judgments.*
9. *If any candidate is discharged by extending the benefit of Probation of Offenders Act, 1958 this will also not be viewed adversely by the department for his/her suitability for government service.*
10. *If a candidate was involved in a criminal case which was withdrawn by the State Government, he/she will generally be considered fit for government service, unless there are other extenuating circumstances."*

14. In the facts of the present case, we find that the petitioner was not “honourably acquitted” from the criminal case registered against him under various offences vide FIR No. 178/2007 but was acquitted because of the fact that the prosecution side had not completely succeeded in proving the charges, beyond doubt, against the petitioner, based on which the learned Trial Court had no option but to hold that the petitioner was not found guilty of charges framed against him. And the Trial Court acquitted the petitioner as the prosecution had failed to prove the guilt of the petitioner beyond reasonable doubt.

15. The Ld. Tribunal also placed reliance on the judgment of this Court in the case of *Commissioner of Police v. Prem Singh Chaudhary in W.P (C) No. 4304/2013, dated 05.12.2013*, wherein this Court after considering the judgment in the case of *Mehar Singh* (supra.) and following the same, while holding that the employer is empowered to cancel the candidature of the candidate on the ground of unsuitability, further held that the employer has to assess the suitability of the candidate as observed in the following paras:

“23. While considering the nature of acquittal, it would not be enough to simply observe that the witnesses had turned hostile and therefore it would be presumed that the accused had created a terror twice over; firstly when the offending act

constituting the crime was committed and secondly when the witnesses were suborned. The judgment of the criminal court has to be taken into consideration with all the aspects leading to acquittal. The manner of acquittal and in particular whether it is on a benefit of doubt. Insofar as the nature of offence is concerned, the facts disclosed in the FIR supported with other material has to be considered. The gravity of the acts alleged the narration of the facts in the FIR and medical evidence has to be considered. Witnesses may not depose in tune with their statements made before the police and thus it would have to be looked into as to whether it was a case where the Investigation Officer did not seek full and complete version from the witness. It being settled law that while appreciating the deposition of witnesses, vis-à-vis their statements made before the police, on the issue of variation and improvements it has to be kept in mind that many a times a person informs facts which he thinks are relevant and ignores to tell facts which he thinks are irrelevant, but in law the relevance or irrelevance may be in converse and hence the duty of he who seeks information to elicit all relevant information.

24. To put it pithily, on the subject of antecedent behaviour and past conduct the exercise to be performed is not like a mechanist but as a person who has to take an informed decision.”

16. The Ld. Tribunal further went onto say that as was observed in the Mehar Singh Case (*supra.*), the Courts can't interfere with the decision of the employer in deciding the suitability of a candidate, unless the decision making process is perverse and arbitrary.

17. A candidate to be recruited to the police service must be worthy of confidence and should be a person of utmost rectitude, impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be

presumed that he was completely exonerated. Persons who are likely to erode the credibility of the police ought not to enter the police force (**Ref: State of M.P & Ors v Parvez Khan** (*supra*)). Character of a person is vital for adjudging his suitability for the job. Anne Frank has rightly summed up the "character" in these lines:

"The final forming of a person's character lies in their own hands".

18. It is pertinent for a country to have a morally upright, effective, righteous Police Force. Police are expected to provide security to people. It has to be made sure that right, ethical, upright, principled people find their way into the Police force. People repose a great deal of confidence and trust on Police, therefore, it is imperative that only those people who are worthy of that confidence are drawn into the Police Service. A starting point of cleansing the Police system is to weed out the possibility of infiltration by people with criminal antecedents and a chequered history. The disturbing levels of corruption and misdemeanour in the Police Force have compelled the Courts to prescribe high standards of rectitude and uprightness for people making their way into the Law Enforcement Agency.

19. Endorsing the view taken by the learned Central Administrative

Tribunal, we hardly find any ground to take any contrary view, particularly when nothing has been brought on record to show any kind of malice against the petitioner on the part of the Screening Committee, as the Committee has merely gone into examining the exact trail of facts relating to registration of criminal case against the petitioner and in what background the FIR No. 178/2007 has resulted in acquittal of the petitioner. It is a well acknowledged fact that a large number of criminal cases result in acquittal due to a host of reasons and one of them being that the material witnesses turn hostile and if just based on the orders of acquittals, people having criminal antecedents are given appointment in a police force, who are looked upon by the citizens for their safety, then it will further affect the image of the Delhi Police. As was held in the ***Mehar Singh's case*** (*supra*), the Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee. The decision of the Screening Committee must be taken as final unless it is mala fide perverse and based on extraneous grounds. If it is found by the Screening Committee that the person against whom a serious case involving moral turpitude is registered is discharged on technical grounds or is acquitted of the same charge but the acquittal is not honourable, the

Screening Committee would be entitled to cancel his candidature. Stricter norms need to be applied while appointing persons in a disciplinary force because public interest is involved in it.

20. Therefore, in the light of these facts and circumstances, we find no merit in the present petition, and the Writ Petition as well as the pending application is dismissed, with no orders as to costs.

KAILASH GAMBHIR, J

I.S. MEHTA, J

MARCH 12, 2015

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