

\$~17

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of hearing and order: 08th April 2015

+ W.P.(C) 3368/2015
LAL SINGH

..... Petitioner
Through: Mr. Sachin Chopra,, Mr. Anuj Tyagi,
Advocates

versus

DELHI TRANSPORT CORPORATION

..... Respondent
Through: Ms. Avnish Ahlawat, Ms. Latika
Chaudhary, Advocates

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

% **08.04.2015**

KAILASH GAMBHIR, J. (ORAL)

C.M. Appl. No. 6052/2015 (Exemption)

Exemption allowed subject to just exceptions.

Application stands disposed of.

W.P. (C) No. 3368/2015

1. By this petition filed under Articles 226 and 227 of the Constitution of India, petitioner seeks to question the legality and correctness of the order dated 27.09.2013, passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi dismissing the Original Application preferred by him.

2. Addressing arguments on behalf of the petitioner, Mr. Sachin Chopra, Advocate, submits that the learned Tribunal has failed to appreciate the fact that the petitioner never had any intention to conceal the fact of the pendency of the criminal case registered against him and also the fact that he never filled the application form himself and got the same filled up by one of his relatives. The learned counsel for the petitioner also submits that the petitioner even stands acquitted from the said criminal case and therefore, non-disclosure of pendency of the said criminal case, could not afford to be a ground to take away his service at an age when one cannot get any other employment. Counsel also submits that the judgment of the Apex Court in the case of ***Commissioner of Police and Ors. V. Sandeep Kumar, (2011) 4 SCC 644*** is squarely applicable to the facts of the present case and the same has also not been considered by the learned Tribunal in its right perspective.

3. We have heard the submissions made by the learned counsel for the parties and have perused the impugned order.

4. The petitioner had applied to seek an appointment as a driver in the Delhi Transport Corporation. The selection process was conducted by the Delhi Subordinate Services Selection Board (DSSSB). On being declared successful, he was offered appointment to the post in terms of the order

dated 29.11.2008. he was required to report at the DTC Headquarters, IP Estate, New Delhi on 24.12.2008 at about 11.00 hours along with two passport size colored photographs for medical test as well as the original certificates of educational qualification (indicating therein the proof of the date of birth), caste certificate (in case of SC/ST/OBC), discharge book (in case of ex-serviceman), driving license/PSV badge and any other testimonial of his extra-curricular activities etc.

5. The applicant accepted the offer and joined the services. It was stipulated that the applicant was required to declare the information as prescribed under the Form No.17 and in case of negative character verification report; his services were liable to be terminated without any notice. In clause 13 of the said letter (Offer of appointment), it was further stipulated that in case any information given by him was found incorrect, his services would be liable to be discharged from the threshold and he would not be given any service benefit for the period, as the initial eligibility/requirement would be considered not satisfied.

6. The petitioner was also declared medically fit to be appointed to the post of Driver DTC and on completion of formalities mentioned hereinabove, the DTC issued letter No. PLD-III/DSSSB/Dr. Other

State/200/293 dated 24.1.2009 giving an offer of appointment to the petitioner for the post of Driver in the pay band of Rs.5200-20200 + grade pay of Rs.2000/-, subject to the conditions mentioned in the letter. The said offer of appointment was made to the petitioner subject to the petitioner fulfilling certain terms and conditions contained therein some of the conditions which are germane to the controversy are reproduced as under:

“7. He is required to declare the information as prescribed in Form No.17. in case of negative character verification report, his services will be terminated without any notice.

8. He shall have to submit an undertaking in form of Affidavit clearly stating therein that his service shall be terminated in case he fails to obtain a PSV badge within 3 months from the date of the offer of appointment.

13. In case of finding any information given by him incorrect at any stage, his services are liable to be discharged from the threshold. Thus, he would not be given any service benefit for the period as the initial eligibility/requirement would not stand satisfied.”

7. It is an admitted case between the parties that in the application form he had concealed the material information of pendency of a criminal case against him, which was registered against him vide FIR No. 13 dated 20.01.2002 under Section 323/325/34 of IPC at Police Station, Gurgaon and not only that he had also filed a false affidavit dated 15.1.2009 stating

therein that he was never involved in any criminal activity, that he has never been charge sheeted and that there was no criminal case pending against him. In the affidavit, he also stated that he shall be responsible for the consequences if any of the stated facts in the affidavit were found to be wrong. The extracts of the affidavit as filed by the petitioner can be reproduced as under:

“Affidavit

I, Lal Singh S/o Sh. Kartar Singh, R/o Vill. Gadaipur, Tehsil: Pataudi, Post: Pahari, Gurgaon, Haryana do hereby solemnly affirm and declare as under:-

I have a driving licence No.N/260/01 issued from Gurgaon, Haryana for the category of LTV & HTPV & valid upto 05.06.2010 is the genuine one.

I shall be abiding by the norms set up by the authorities to get my license endorsed in Delhi Transport Authority and shall subsequently be getting my Driver's badge issued within three months.

I also declare that I have never been charge sheeted or was ever involved in any criminal activity and there is no criminal case pending against me.

I shall be fully responsible for the consequences if any of the above stated facts are found to be wrong. I also understand that my services are liable to be terminated if any discrepancy is noticed in information/declaration furnished above or and document submitted by the undersigned is found to be fictitious or not genuine.

I am aware that my service shall be terminated if I am unable to obtain a PSV badge within 3 months from the

date of the offer of appointment given to him.”

8. The deceitfulness of the petitioner is not only confined to this, he took a contradictory stand in the representation dated 29.3.2011 addressed to the Deputy Manager, DTC and another representation dated 28.3.2012 addressed to the Regional Manager (West), DTC taking therein inconsistent and contradictory stands. In his representation dated 29.3.2011 he stated that the application form was filled up by him while in his representation dated 28.3.2012, he took a stand that the form was filled up by his relative, who was not aware of the pendency of the criminal case.

9. The Hon'ble Allahabad High Court while deciding ***Writ Petition No. 33296 of 2009, Veer Pal Singh v. State of U.P. and others, decided on 12.2.2015*** relied on the judgment of the Apex Court in ***Jainender Singh vs. State of U.P., (2012) 8 SCC 748***, in which the Court was pleased to lay down the following broad propositions:

"29. As noted by us, all the above decisions were rendered by a Division Bench of this Court consisting of two Judges and having bestowed out serious consideration to the issue, we consider that while dealing with such an issue, the Court will have to bear in mind the various cardinal principles before granting any relief to the aggrieved party, namely:

29.1. Fraudulently obtained orders of appointment could be legitimately treated as voidable at the option of the employer or could be recalled by the employer and in such cases merely because the respondent employee has continued in service for a number of years, on the basis of such fraudulently obtained employment, cannot get any equity in his favour or any estoppel against the employer.

29.2. Verification of the character and antecedents is one of important criteria to test whether the selected candidate is suitable to the post under the State and on account of his antecedents the appointing authority if finds it not desirable to appoint a person to a disciplined force can it be said to be unwarranted.

29.3. When appointment was procured by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer and, therefore, it would create no equity in his favour or any estoppels against the employer while resorting to termination without holding any inquiry.

29.4. A candidate having suppressed material information and/or giving false information cannot claim right to continue in service and the employer, having regard to the nature of employment as well as other aspects, has the discretion to terminate his services.

29.5. The purpose of calling for information regarding involvement in any criminal case or deletion or conviction is for the purpose of verification of the character/antecedents at the time of recruitment and suppression of such material information will have a

clear bearing on the character and antecedents of the candidate in relation to his continuity in service.

29.6. The person who suppressed the material information and/or gives false information cannot claim any right for appointment or continuity in service.

29.7. The standard expected of a person intended to serve in uniformed service is quite distinct from other services and, therefore, any deliberate statement or omission regarding a vital information can be seriously viewed and the ultimate decision of the appointing authority cannot be faulted.

29.8. An employee on probation can be discharged from service or may be refused employment on the ground of suppression of material information or making false statement relating to his involvement in the criminal case, inasmuch as such a situation would make a person undesirable or unsuitable for the post.

29.9. An employee in the uniformed service presupposes a higher level of integrity, as such a person is expected to uphold the law and on the contrary such a service born in deceit and subterfuge cannot be tolerated.

29.10. The authorities entrusted with the responsibility of appointing constables, are under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of a constable and so long as the candidate has not been acquitted in the criminal case, he cannot be held to be suitable for appointment to the post of constable."

On the basis of the above law declared and laid down authoritatively by the Hon'ble Supreme Court of India, the Hon'ble Allahabad High Court held as follows:

“This Court is of the opinion that the cancellation of appointment/selection on account of suppression of material fact or deliberate misstatement is liable to be seriously viewed. A deliberate concealment or omission of vital information cannot clothe the selectee with equitable considerations. A deliberate misstatement or omission of vital information made knowingly cannot fault the decision taken by the appointing Authority to annul the selection/appointment. The suppression of material information clearly speaks about the character and the moral fibre of the selectee. Suppression of pendency of a criminal case, if it be a deliberate omission, would clearly justify the action of the employer in cancelling the selection. This aspect assumes additional importance in case the selectee/appointee is seeking entry to a uniformed and disciplined force. A member of a disciplined force is liable to be judged on a higher pedestal. Viewed in light of the above this Court is of the opinion that the respondent No. 3 was clearly justified in passing the impugned order.”

10. In the present case, the learned Tribunal too placed reliance on the judgment of the Apex Court in the case of *Jainendra Singh's case (supra)* and took a view that the candidate having suppressed the material information and/or having given any false information, cannot claim right of

continuance in service and the employer having regard to the nature of the employment, as well as other aspects has the discretion to terminate his services.

11. In view of the aforesaid discussion, we find no infirmity in the reasoning given by the learned Tribunal. The Tribunal is correct in observing that a person, who can be dishonest in disclosing the material information at the time of his employment, cannot be expected to be fair while plying public vehicles on roads. Any person who is seeking public employment has to truthfully disclose all the particulars as are required to be filled in the application form. It is not the case of the petitioner that on the date of his filling the application form, the said criminal case was not registered against him. His later acquittal in the said criminal case is hardly of any consequence as in the facts at hand, we are concerned with his initial suppression and non-disclosure of the pendency of a criminal case against him. The relevant column, which has been reproduced in the application form fully cautioned the petitioner that any wrong information will lead to termination of his services.

12. A person to be recruited to government service must be worthy of confidence and trust and should be a person of utmost righteousness and

impeccable integrity. Persons who are likely to erode the credibility of the Government service ought not to enter it. Reliance in this regard can be placed on the recent judgment of the Apex Court in the case of ***Commissioner of Police v. Mehar Singh, (2013) 7 SCC 385*** where 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. The same view was taken in another recent judgment of the Apex Court in the case of ***State of M.P and Ors. V. Parvez Khan, in Civil Appeal No. 10613 of 2014, decided on 1.12.2014*** , wherein it was held:

“From the above observations of this Court, it is clear that a candidate to be recruited to the police service must be worthy of confidence and must be a person of utmost rectitude and must have 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. No doubt the Screening Committee has not been constituted in the case considered by this Court, as rightly pointed out by learned counsel for the Respondent, in the present case, the Superintendent of Police has gone into the matter. The Superintendent of Police is the appointing authority. There is no allegation of mala fides against the person taking the said decision nor the decision is shown to be perverse or irrational.”

14. In ***Delhi Administration through its Chief Secretary & Ors. v. Sushil Kumar, (1996) 11 SCC 605***, the Supreme Court examined a case where the appointment was refused on the post of Police Constable and it observed as under:

“It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was found physically fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offence, the same has

nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequence. The consideration relevant to the case is of the antecedents of the candidate. Appointing authority, therefore, has rightly focused this aspect and found it not desirable to appoint him to the service.”
(Emphasis added)

15. The rationale behind seeking information relating to criminal antecedents is not to find out the gravity of the offence or the ultimate result of a criminal case, rather such information is required with a view to judge the character and antecedents of the job seeker or suitability to continue in service. Withholding such material information or making false representation itself amounts to moral turpitude and is a separate and distinct matter altogether than what is involved in the criminal case (***Ref: Devendra Kumar v. State of Uttaranchal & Ors. (2013) 9 SCC 363***).

16. Finding no merit in the present petition, we dismiss the present petition with no orders as to costs.

KAILASH GAMBHIR, J

I.S. MEHTA, J

APRIL 08, 2015

pkb