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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 4930/2016
ROHIT YADAV Petitioner
Through Mr.K.K.Tyagi, Adv.

versus

GOVT. OF NCT OF DELHI & ANR Respondents
Through Mr.Devesh Singh, Adv. For R-1 and
R-2.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **27.05.2016**

1. The petitioner is aggrieved by the order dated 21st May, 2015 passed in O.A. No. 4035/2015, whereby the said O.A. has been dismissed. The impugned order by the Tribunal is elaborate and makes reference to several judgments of the Supreme Court and the Delhi High Court on the issue in question.
2. The petitioner has applied for the post of Constable (Executive) Male in the Delhi Police, but his candidature was cancelled on account of concealment of his involvement in the FIR No.606/2009 under Sections 279 and 304A of the Indian Penal Code registered at Police Station Sikandarabad, U.P. The said information was specifically required to be furnished in column No.17 (a to e) of the application form and column 11(B) of the attestation form.
3. Learned counsel for the petitioner accepts that the petitioner had not mentioned about his involvement in the FIR in the column while filling up the application form on 11th November, 2011 and the attestation form on 12th June, 2012. The respondents subsequently ascertained and confirmed that

the petitioner had concealed and stated incorrect facts. Thereupon, the recruitment cell had cancelled the petitioner's candidature by their order dated 17th October, 2014.

4. The Tribunal with reference to the petitioner's case had specifically examined and elucidated on the two decisions of the Supreme Court in *Davender Kumar & Ors. Vs. State of Uttranchal and Others*, (2013) 9 SCC 363 and *Commissioner of Police and Ors. Vs. Sandeep Kumar*, (2011) 4 SCC 644. The decision in the *Davender Kumar* (supra), it was observed, would be applicable to the facts of the present case as the petitioner had suppressed information which would amount to an act of moral turpitude. Non disclosure of the information sought by the employer had resulted in suppression of material facts. Decision in the case of *Sandeep Kumar* (supra) was distinguished on the ground that in the said case the issue was primarily limited and restricted to the nature of charge or the case against the candidate and whether the allegation and offence charged was such that the candidate should be denied employment. In *Sandeep Kumar's* case was of a young boy who had committed an act of indiscretion. After referring to factual matrix of the case, relief was granted.

5. Subsequent, in the judgment in the case of *Davender Kumar* (supra), the primary and core issue was the effect of concealment and suppression of facts by an applicant seeking appointment in police. In *Davender Kumar's* case, the Supreme Court had held:-

“12. So far as the issue of obtaining the appointment by misrepresentation is concerned, it is no more res integra. The question is not whether the applicant is suitable for the post. The pendency of a criminal case/proceeding is different from suppressing the information of such

pendency. The case pending against a person might not involve moral turpitude but suppressing of this information itself amounts to moral turpitude. In fact, the information sought by the employer if not disclosed as required, would definitely amount to suppression of material information. In that eventuality, the service becomes liable to be terminated, even if there had been no further trial or the person concerned stood acquitted/discharged.”

6. After referring to several earlier decisions of misrepresentation and false statements made at the time of appointment in Davender Kumar’s case (supra), it was observed:-

“24. In the instant case, the High Court has placed reliance on the Govt. Order dated April 28, 1958 relating to verification of the character of a Government servant, upon first appointment, wherein the individual is required to furnish information about criminal antecedents of the new appointees and if the incumbent is found to have made a false statement in this regard, he is liable to be discharged forthwith without prejudice to any other action as may be considered necessary by the competent authority. The purpose of seeking such information is not to find out the nature or gravity of the offence or the ultimate result of a criminal case, rather such information is sought 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.

25. More so, if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. “Subla Fundamento cedit opus”- a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar

of any law to frustrate the lawful trial by a competent Court. In such a case the legal maxim Nullus Commodum Capere Potest De Injuria Sua Propria applies. The person violating the law cannot be permitted to urge tht their offence cannot be subjected to inquiry, trial or investigation. (Vide: Union of India v. Maj. Gen. Madan Lal Yadav, AIR 1996 SC 1340; and Lily Thomas v. Union of India & Ors. ; AIR 2000 SC 1650). Nor can a person claim any right arising out of his own wrong doing. (Juri Ex. Injuria Non Oritur).”

7. Suppression and concealment of facts, which are mandated and required to be specifically disclosed, has direct impact and reflects on the character, traits and outlook of the job-seeker. Government employee is a public servant and should be a person of trust and confidence. The respondents cannot have faith and repose trust and confidence in a job seeker, who in the application form and also in the attestation form had concealed material information, suppressed truth and furnished false details. The said conduct was a wrong doing by itself and constitutes an act of moral turpitude. To ignore and condone this wrong conduct, would not be in consonance with law declared in *Davender Kumar (Supra)*. The petitioner should be careful and in future take care not to make this gross error.

8. In view of the aforesaid, we do not find any merit in the present petition. The writ petition is dismissed.

SANJIV KHANNA, J

NAJMI WAZIRI, J

MAY 27, 2016/mr