

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

+ **W.P.(C) 5935/2016**

Reserved on: 8th December 2016
Date of decision: 3rd February, 2017

JEETU WEDE

..... Petitioner

Through Mr. Saurabh Ahuja, Advocate.

Versus

UNION OF INDIA & ORS

..... Respondent

Through Mr. Vikram Jetly, Central
Government Standing Counsel for R-1.
Mr. Rahul Sharma and Mr. C.K. Bhatt, Advocates
for R-2 to 5.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. CHANDER SHEKHAR

SANJIV KHANNA, J.

Jeetu Wede, in this writ petition, impugns the order dated 17th December, 2015, whereby OA No. 2360/2014 filed by him has been dismissed by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short).

2. The petitioner had joined the Delhi Police as a Constable on 15th July, 1996. His services were terminated by the order dated 28th February, 1997, passed by the Additional Deputy Commissioner of Police, West District, for having concealed his involvement in FIR No.37/1992 registered under Sections 147/148/149/302/323/34 of the Indian Penal Code, 1860 at Police

Station Ambajogai, Maharashtra. The petitioner was acquitted in the said FIR vide judgment of the Additional Sessions Judge, Ambajogai dated 19th April, 1995. Against the aforesaid order of termination, the petitioner made a representation to the Appellate Authority- the Commissioner of Police on 20th April, 1997, to which he did not receive any response. The petitioner had then filed OA No.713/1998, which was disposed of by order dated 22nd April, 1998, directing the authorities to dispose of the petitioner's representation against the termination order by a speaking and reasoned order within one month. The petitioner submitted other representations on 17th June, 1998 and on 13th July, 1998. Consequent to the representations, the Additional Deputy Commissioner of Police, West District, New Delhi vide the order dated 24th August, 1998 issued directions for reinstatement of the petitioner as a temporary Constable and that the intervening period, i.e. from the date of termination of service on 28th February, 1997 till 24th August, 1998, would be treated as period spent on duty. Simultaneously the Commissioner of Police issued Memorandum dated 20th July, 1998 which was followed by the Memorandum dated 17th August, 1998 from the Police HQ directing that departmental enquiry be initiated against the petitioner. By the order of the Additional DCP, West dated 27th January, 1999 departmental proceedings were initiated against the petitioner on account of misconduct, negligence and concealment of facts at the time of recruitment. Charge sheet was issued, enquiry officer appointed submitted his report and the disciplinary authority thereafter vide order dated 9th September, 1999, imposed penalty of withholding of two increments for two years without cumulative effect. The penalty order attained finality, as no appeal was preferred by the petitioner.

3. After about 14 years, vide order dated 22nd May, 2013, services of the petitioner were terminated again on the ground the petitioner had made a wrong declaration by concealing his involvement in a criminal case at the time of induction. Reference was made to the petitioner's involvement in FIR No. 32/1992, Police Station Ambajogai, in which he was acquitted by the Sessions Court vide judgment dated 19th April, 1995. This order refers to the directions given by the Lieutenant Governor while deciding the mercy petition/representation filed by one Vikas Kumar, a former Constable in Delhi Police, whose services had been terminated vide order dated 23rd April, 1997 under Rule 5(1) of the CCS (Temporary Service) Rules, 1965 for concealment of facts at the time of recruitment. The Lieutenant Governor while dealing with the representation/mercy petition of Vikas Kumar had observed:-

“the case of Shri Jeetu Shesherao and two other similar cases wherein termination had ensued but subsequently the persons were reportedly reinstated. It is quite apparent that the default of Sh. Jeetu Shesherao who was involved in a case of murder is clearly graver than that of Shri Vikas Kumar who was involved in only a case of hurt. The fact of concealment by Shri Jeetu Shesherao therefore has far more serious implications for the well laid down recruitment procedure and it would certainly be unfair and against the public interest to condone such serious aberrations. The then Commissioner of Police has evidently made an error of Judgment while considering the matter and has shown leniency not deserved in this case, especially in view of the consistent practice and the large number of precedents to the contrary. In my considered view, the needs of consistency, fairness and transparency in the recruitment procedure and the public interest will be adequately served if, like all other similar defaulters, Shri Jeetu Shesherao is also removed from service.”

The Lieutenant Governor had also observed that:-

“this is not being dealt as a case of delinquency by a serving official as the said offence pertains to the stage of recruitment. As such, the Delhi Police (Punishment & Appeal) Rules, 1980 are not attracted. The question of validity or otherwise of Rule-25 (B) of the said rules also is not germane to the case. So, the orders of the Central Administrative Tribunal striking down rule 25(B) of the said rules in specific cases has no bearing on the issue which essential is to uphold the sanctity, fairness and consistency of the recruitment process, especially of a disciplined and uniformed force, and to deal effectively and objectively with any violation which may threaten to upset or vitiate it.”

4. The Deputy Commissioner of Police in this termination order dated 22nd May, 2013 had held:-

“And whereas, the directions of Hon’ble Lt. Governor, Delhi conveyed by Govt. of NCT of Delhi vide Letter No. F.21/01/2001/HP-I/Estt./9067 dated 19.03.2013, received in this office through PHQ’s U.O. No. XII/216/97/2963-79/R.Cell (AC-VII)/PHQ, dated 10/05/2013, the matter has already been examined in PHQ in consultation with L.A. to C.P, Delhi and it has been decided that the orders of the Hon’ble Lt. Governor Delhi dated 04/09/2002 may be implemented thereby removing Constable Wede Jeetu Shesherao, No.2079/W (Now 2496/DAP) from service with immediate effect after withdrawing the earlier punishment of withholding of two increments for a period of two years without cumulative effect earlier awarded to him by Addl. DCP/West Distt., Delhi vide order No.12618-58/P(W), dated 09/09/99.

Therefore, in compliance of PHQ’s direction received vide U.O. No.XII/216/97/2963-79/R.Cell (AC-VII)/PHQ, dated 10/05/2013, the earlier order of

punishment of withholding of two increments for a period of Shesherao, No.2079/W, now 2496/DAP by Addl. DCP/WestDistt., Delhi vide order No.12618-58/P(W), dated 09/09/99, is hereby withdrawn. Further, I, Shibesh Singh, Deputy Commissioner of Police, III Bn. DAP, Delhi, do hereby order to remove Constable Wede Jeetu Shesherao, No.2079/W, now 2496/DAP (PIS No.28960439) from service with immediate effect.”

5. The petitioner filed an appeal before the Special Commissioner of Police, which was rejected vide order dated 24th December, 2013, observing that the earlier punishment of withholding of two increments for a period of two years without cumulative effect vide order dated 9th September, 1999 was withdrawn and punishment of removal from service was imposed vide order dated 22nd May, 2013. The petitioner’s contention that the order dated 22nd May, 2013 was passed without reference or notice to him was rejected on the ground that no departmental enquiry was initiated against the petitioner and that he was removed from service pursuant to the direction given by the Lieutenant Governor which had been conveyed to the Government of NCT of Delhi. The Delhi Police (Punishment & Appeal) Rules, 1980 were not violated as the said statute was not attracted. The order passed by the Lieutenant Governor records that *“this is not being dealt with as a case of delinquency by a serving official as the said offence pertains to the stage of recruitment”*. For the sake of completeness, we would like to reproduce the reasoning given by the Special Commissioner of Police, while rejecting the appeal, in entirety:-

“ I have carefully gone through the appeal and considered his oral submissions, impugned order dated 22.5.2013 and all relevant material available on record. The plea of the appellant is devoid of merit. There is

no violation of Article 14, 16, 20, 21 and 311 (2) of the Constitution of India. He has been awarded only one punishment for his misconduct i.e. removal from service. The earlier order of punishment of withholding of two increments for a period of two years without cumulative effect inflicted upon him by Addl. DCP/West Distt. Delhi vide order No.12618-58/P(W), dated 09.09.1999 was withdrawn and he was removed from service with immediate effect vide order No.7009/7108/HAP (P-I)/3rd Bn. DAP dated 22.05.2013, Pleas No.(ii) & (iii) are denied. In this matter, DE was already conducted against the appellant, in which he was awarded the punishment of withholding of two increments for two years without cumulative effect. As regards not calling the appellant in O.R. while passing orders or removal from service, that was so because no departmental enquiry was initiated against him and he was removed from service in pursuance of the directions of Hon'ble L.G., Delhi, conveyed by Govt. of NCT of Delhi vide letter No.F.21/01/2001/HP-I/Estt.9067 dated 19.03.2013, received from PHQ vide U.O No. XII/216/97/2963-79/R.Cell (AC-VII)/PHQ, dated 10.05.2013. There is no violation of Delhi Police (P&A) Rules, 1980 as claimed. Delhi Police (P&A) Rules, 1980 are not attracted in the case of appellant as in the order of Hon'ble L.G., Delhi it has been recorded that "*this is not being dealt with as a case of delinquency by a serving official as the said offence pertains to the stage of recruitment*". His plea No. (iv) is denied. The appellant was selected as Constable (Exe.) in Delhi Police on 15.07.1996 subject to the condition of verification of his character and antecedents. Later on, as per police verification report of the Superintendent of Police, Beed, the appellant was found involved in case FIR No.37/92 u/s 147/148/149/302/323/34 IPC but had subsequently been acquitted by the trial court on 19.04.1995. However, the appellant had initially concealed the fact of his involvement in the criminal

case mentioned above in his attestation form. His plea No. (v) is not admitted because one Shri Vikas Kumar represented before the Hon'ble L.G., Delhi by filing a Mercy Petition for consideration of his own case to reinstate him in service. During the course of his written submission, Shri Vikas Kumar, former Constable, brought on record the appellant's Const. Jeetu Shesherao whose services were terminated from Delhi Police under similar circumstances but who was subsequently reinstated service by the Commissioner of Police. Thereafter, the Hon'ble LG, Delhi also considered the case of the appellant and passed the order of his removal from Delhi Police. Hence, the orders/directions of Hon'ble LG/Delhi are justified and within the ambit of law. The court rulings and various judgments cited by the appellant have no direct bearing upon this case as each and every case is decided on its merits. In view of the above facts, I do not find any reason to interfere with the impugned order. Hence, the appeal is hereby rejected.

6. The petitioner made a representation to the Lieutenant Governor, which was rejected vide order dated 1st May, 2014. This order is non-speaking and records that the representation of the petitioner dated 7th January, 2014 was considered and stands rejected.

7. The petitioner had thereupon filed OA No.2360/2014, which as noticed above has been dismissed by the impugned order of the Tribunal dated 17th December, 2015. The impugned order dismissing the OA holds that the Lieutenant Governor while dealing with the representation in the case of Vikas Kumar had exercised his power under Rule 25-C of Delhi Police (Punishment & Appeal) Rules, 1980. Under the said Rule, the Lieutenant Governor has power to confirm, modify or annul the order passed by the disciplinary authority and the appellate authority. The Tribunal

noticed that similar power given under Rule 25B to the Commissioner of Police had been struck down by the Tribunal and this decision was upheld by the High Court in ***Commissioner of Police Vs. Anil Kumar Yadav***, 2003 (1) AD (Delhi) 486, on the ground that Rule 25B was beyond the scope of the rule making power conferred under the Delhi Police Act, 1978. The ratio of this decision, it was held, would not be applicable as the Lieutenant Governor of Delhi is the Administrator and his powers cannot be subjected to any fetter. Rule 25-C, therefore, was legal and valid. The said Rule does not incorporate the precept of a reasonable time and, therefore, the Lieutenant Governor can confirm, modify or annul any order without being subjected to any time-bound limitation. Referring to the decision of the Supreme Court in ***Commissioner of Police, New Delhi & Anr. Vs. Mehar Singh*** with ***Commissioner of Police, New Delhi & Anr. Vs. Shani Kumar***, (2013) 7 SCC 685, it was held that the petitioner in fact had concealed and made a false declaration and, therefore, he should have been removed from service. The Tribunal did not agree with the decision dated 21st May, 2015 in OA No. 546/2014, ***Rakesh Kumar Meena Vs. Govt. of NCT Delhi & Ors.*** and 35 other connected cases, observing that in the said cases reliance was placed upon Rule 25B and in the present case, the power has been exercised under Rule 25-C. Those decisions, therefore, were not binding. It was observed that the observations of the Coordinate Bench in O.A. No. 2456/2013 titled ***Anand Kumar v. Lt. Governor, Delhi & Ors*** (which was decided with O.A. No. 546/2014- ***Rakesh Kumar Meena v. Govt. of NCTD and Ors.***) were, perhaps simply, obiter dicta.

8. We have heard the learned counsel for the petitioner and respondents, who have also produced before us the original files relating to the mercy petition/representation filed by Vijay Kumar.

9. We are not examining the question of the vires of Rule 25-C for the said Rule was never challenged or questioned in OA No. 2360/2014. The reason for this is obvious and clear. The order of termination dated 22nd May, 2013, which has been quoted above and the Appellate Authority's order dated 24th December, 2013 do not refer to an order or exercise of power under Rule 25-C by the Lieutenant Governor. In fact, the appellate order as quoted above states that the Rules, i.e. Delhi Police (Punishment & Appeal) Rules, 1980, would not be applicable because the charge raised pertains to the stage of recruitment and not to any delinquency post recruitment. The finding of the Tribunal and reliance placed by the Tribunal on Rule 25-C, therefore, is divergent and different from the stand taken in the order of termination, the appellate order or by the authorities before the Tribunal. The Tribunal has not referred to the impugned order or the appellate order, but has preferred to rely upon an entirely different reasoning. It could be argued that if the power is vested by the statute or the rules, failure to mention the relevant rule would not be a good ground to interfere with exercise of a power conferred by the statute. The said principle, which is well settled, to our mind would not have any application to the facts of the present case, for the reasons we would explain.

10. As noted above, the petitioner's services were initially terminated vide order dated 28th February, 1997, but this termination was set aside and the petitioner was reinstated vide order dated 24th August, 1998 as a temporary Constable and the intervening period i.e. from the date of termination of

service till 24th August, 1998 was directed to be treated as the period spent on duty. After holding disciplinary proceedings, penalty of withholding of two increments for two years without cumulative effect was imposed. The Lieutenant Governor of Delhi, subsequently in the year 2002, while examining a mercy petition/representation of one Vikas Kumar, whose services had also been terminated on account of false declaration, had noticed that the said Vikas Kumar had referred to several other cases of “false declaration” and in particular the case of the present petitioner. While examining the representation/mercy petition of Vikas Kumar, the Lieutenant Governor had made observations in his note dated 4th September, 2002, which have been quoted above. It is pertinent to state here that the Lieutenant Governor had not issued any show cause notice to the petitioner. The petitioner was not given any opportunity to present or project his case. We also do not know whether the file relating to disciplinary proceedings and the judgment of the Additional Sessions Judge acquitting the petitioner was before the Lieutenant Governor or not. It may also be pertinent to mention that in the first round, i.e. OA No. 713/1998, the petitioner had submitted that the charge of false declaration was incorrect as the declaration required in the form was confusing and ambiguous. The petitioner had submitted that the question/query in the application was a composite one, i.e. whether the applicant/petitioner was involved or convicted in any criminal case and not whether the applicant/petitioner had been ever named in any FIR and acquitted. In such circumstances, the petitioner had given the answer in negative as no reasonable person would have understood that the query required the petitioner to give an answer in affirmative, given the fact that he had been acquitted. The petitioner, who was schooled in Marathi

medium in Maharashtra, answered the question in Hindi in the negative. Thus, even if we accept that the Lieutenant Governor has power under Rule 25-C to modify the order of punishment, it has to be ensured that the exercise of such power has been done in accordance with law as per the mandate and requirements of principles of natural justice. This is absent in the present case.

11. Recently, the Supreme Court in the case of *Avtar Singh v. Union of India* (2016) 8 SCC 471 had the occasion to examine different decisions of the Supreme Court on the issue whether, and in which circumstances, services of an employee can be terminated on account of the fact that he had failed to mention and disclose his involvement in a criminal case, even if he is acquitted. This decision holds that no strait jacket formula can be applied and the issue has to be examined and decided keeping in mind the following parameters:-

“**38.** We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:

38.1. Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3. The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision

38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.

38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of

a person against whom multiple criminal cases were pending may not be proper.

38.8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. In case the employee is confirmed in service, *holding* departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11. Before a person is held guilty of suppression or suggestion of falsity, knowledge of the fact must be attributable to him.”

12. In the factual matrix of the present case, we would observe that the respondents had proceeded on the basis that the petitioner was involved or chargesheeted in a criminal case along with several others. The charges were grave as Section 302 of the Indian Penal Code, 1860 had been invoked along with provisions pertaining to unlawful assembly. However, the details of the case have not been adverted to by the Disciplinary or Appellate Authority or the Lieutenant Governor. The question would arise regarding

the role of the petitioner in the unlawful assembly and reasons as to why the order of acquittal was passed. These aspects have not been considered and thus, there is an error in the decision making process, which has been exacerbated by the respondents' failure to even issue a show cause notice. We have also referred to the contention of the petitioner, relying on the declaration required, and his submission that the query was vague and ambiguous.

13. One of the options available is to remand the case and leave it open to the Lieutenant Governor to pass a fresh order after considering the said aspects. If an order under Rule 25-C is passed, the petitioner can then challenge the said order including the validity of the said Rule. However, in the facts of the present case, we are not inclined to issue the said direction for the reason that the petitioner vide order dated 24th August, 1998 was reinstated in service and had worked and performed duties for over 14 years till the impugned order dated 22nd February, 2013 was passed. Apparently, the petitioner has performed his duty diligently and properly during this period. It may not be just and fair to revert to an occurrence which had taken place in 1992 and had resulted in an order of acquittal vide the decision dated 19th April, 1995. Another reason why we have taken the said view is that the Tribunal has accepted and adopted the same reasoning in several other cases. The petitioner has filed a copy of the judgment of the Tribunal dated 21st May, 2015 passed in OA No. 546/2014, ***Rakesh Kumar Meena Vs. Govt. of NCT Delhi & Ors.*** and other connected matters. The said decision had also disposed of somewhat identical issues in OA Nos. 2456/2013, 2950/2013, 2463/2013, 2928/2013, 3474/2013 and 2562/2013. The decision refers to the direction given by the Lieutenant Governor that

similarly situated Constables, including the present petitioner, should be re-examined.

14. In view of the aforesaid discussion, we allow the present writ petition. OA No. 2360/2014 filed by the petitioner would be treated as allowed and the impugned orders dated 22nd May, 2013, 24th December, 2013 and 1st May, 2014 will be treated as quashed. The petitioner will be treated as reinstated in service and granted all consequential benefits. In the facts of the present case, there will be no order as to costs.

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(SANJIV KHANNA)
JUDGE

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(CHANDER SHEKHAR)
JUDGE

FEBRUARY 3, 2017
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