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

+ W.P.(C) 3610/2017

AJIT SINGH

..... Petitioner

Through: Mr Yashpal Rangi, Adv.

versus

COMMISSIONER OF POLICE & ORS

..... Respondents

Through: Mr Kavindra Gill, Adv. for UOI

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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28.04.2017

1. The petitioner assails the order dated 20.12.2016 in OA No. 3061/2016. The Tribunal has dismissed the said Original Application of the petitioner. The petitioner was appointed as a Constable (Executive) in Delhi Police with effect from 15.07.1996. He was thereafter appointed as Head Constable (Ministerial) vide order dated 23.07.2001 by way of direct recruitment. Under Rule 7 of Delhi Police (Appointment & Recruitment Rules), 1980, the direct recruitment to the post of Sub-Inspector (Executive) Male in Delhi Police were made by Delhi Police. The petitioner participated in the said examination. The written examination was conducted on 19.08.2012 by the SSC and the results were declared on 13.09.2012. The Physical Endurance & Measurement Test was conducted and the results were declared by the Regional Director/Deputy Director, SSC. The SSC conducted the interviews of the qualified candidates and the

final results were declared. The applicant was declared selected provisionally, subject to verification of his character and antecedents. The petitioner was called to complete the codal formalities and while filling up the Attestation Form, he disclosed that he was involved in case FIR No. 73/2013 under Sections 120-B/420/511/34 IPC registered at P.S. Crime Branch, Delhi on 21.04.2013. The said case was pending trial in the Court of CMM, North-West, Rohini. The charge-sheet in this case already stands filed before the Court. In view of the said position, by resort to Standing Order No.398/2010, the petitioner's candidature was kept in abeyance till the final decision of the said case, by withholding his selection. The petitioner approached the Tribunal by way of the aforesaid Original Application to seek a declaration that he was wrongly deprived of his appointment to the post of Sub-Inspector (Exe.) despite his selection. He also sought a direction to the respondent that consider and appoint him to the post of Sub-Inspector (Exe.) with consequential benefits, including seniority and monetary benefits. This Original Application was dismissed by the Tribunal.

2. The submission of the learned counsel for the petitioner is that even the charges have not been framed before the Trial Court till date. The petitioner is languishing on the post of Head Constable and has not been given his due selection as Sub-Inspector (Executive). Learned counsel for the petitioner submits that he is not responsible for the delay in the progress of the criminal case, and there is every likelihood of his being acquitted. He further submits that, initially, he was suspended for about two years but, thereafter, he was reinstated

in service while treating the period of his suspension as spent on duty. Learned counsel also submits that the policy in relation to departmental candidates is different from that applicable to fresh recruits. Since the petitioner is already serving as a Head Constable in Delhi Police, there is no bar to his being granted the higher post of Sub-Inspector (Executive) upon his selection on merit.

3. We find that the Tribunal has considered all these submissions of the petitioner in depth in the impugned order. The Tribunal has extracted paragraphs 3 and 6 of Standing Order No.398/2010 which stipulate the policy for deciding the cases of candidates provisionally selected in Delhi Police who were involved in criminal cases. Para 3 and 6 of Standing Order No.398/2010, as extracted in the impugned order, read as follows:-

“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 be 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.

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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 cases 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'."

(emphasis supplied)

4. The Tribunal has also referred to several decisions bearing the same issue, including the decision of the Supreme Court in ***Commissioner of Police and Anr. vs Mehar Singh*** (2013) 7 SCC 685. In this case, the Supreme Court considered the Standing Order 398/2010. There is two other decisions of this Court in ***Gugan vs. Commissioner of Police and Ors.***, W.P.(C) No. 3182/2015, decided on 27.03.2015 and ***Rajeev vs. Commissioner of Police and Anr.*** in W.P.(C) No. 7342/2015, decided on 25.10.2016, which have also been taken note of. The discussion found in the impugned order reads as follows:-

"12. The law as settled by the Hon'ble Supreme Court and the Standing Order No.398/2010 dated 23.11.2010 clearly provide that the appointing authority has the right to consider whether a candidate is suitable for appointment in the Delhi Police, keeping in view the fact that the applicant was worthy of confidence and a person of utmost rectitude, impeccable character and integrity. Moreover, stricter norms need to be applied while appointing persons in a disciplinary force because public interest was involved in it. Though the applicant has been exonerated by the Disciplinary Authority, a criminal case is still pending against him. In a departmental proceeding, the principle of preponderance of probability is the deciding factor, whereas in a criminal proceeding the court goes into every minute detail of the facts of the case to determine whether

the accused has a criminal liability and the process of criminal trial is much more detailed and onerous than that which is followed in the departmental proceeding. Acquittal/exoneration in a departmental proceeding does not automatically mean that the criminal case also will lead to acquittal or vice-versa. Therefore, the respondents have not only a right but a duty to scrutinise such cases and decide that whether the applicant would be suitable for appointment in the Police Force. That is why the Standing Order No.398/2010 provide for setting up of a Screening Committee, which comprises of senior officers of Delhi Police, to scrutinise such cases and then recommend whether the person is suitable or not.

*13. The only argument of the learned counsel for the applicant is that these rules and judgments cited by the respondents deal with the cases of fresh recruitment to the Delhi Police, whereas the applicant is already functioning as Head Constable in Delhi Police. This is not wholly factually correct. In WP(C) No.7342/2015 - Rajeev vs. Commissioner of Police and Anr., the petitioner was a departmental candidate who had appeared in the limited departmental examination for the post of Sub-Inspector (Exe.) and he was not appointed as he was awarded punishment on grave and serious charges of corruption. **Secondly, responsibilities of Head Constable and of Assistant Sub-Inspector are not comparable and, therefore, at each stage of promotion or direct recruitment, the respondents have to be careful that the candidate is indeed suitable for that post. Use of the, word "Suitability for appointment in Delhi Police" cannot be interpreted to mean that it is only for fresh recruitment. Suitability has to be decided at all levels. Even for normal promotion, suitability is decided at each stage of promotion. Therefore, we reject this argument of the learned counsel for the applicant that Standing Order No.398/2010 and other judgments cited by the respondents do not apply in the present case."***

(emphasis supplied)

5. In our view, the reasoning adopted by the Tribunal is unexceptionable and does not call for interference by us. The submission of the petitioner that since he is already serving as a Head Constable, the pendency of the criminal proceedings against him—which involve moral turpitude, should not be considered as a factor against his occupying the higher post of Sub-Inspector (Executive) has no merit. Undoubtedly, the petitioner would acquire higher responsibilities coupled with the higher powers, if he was permitted to discharge duties and functions as Sub-Inspector (Executive). Till the name of the petitioner is cleared of the serious charges levelled against him, it would be most undesirable to let him function as a Sub-Inspector (Exe.) in Delhi Police.

6. For the aforesaid reasons, we find no merit in this petition and the same is dismissed.

VIPIN SANGHI, J

DEEPA SHARMA, J

APRIL 28, 2017

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