

(2009) 02 DEL CK 0255

Delhi High Court

Case No: Writ Petition (C) No. 724 of 2009

Government of NCT of Delhi and
Others

APPELLANT

Vs

Jagbir Singh

RESPONDENT

Date of Decision: Feb. 4, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 308, 323, 340, 341

Hon'ble Judges: Suresh Kait, J; A.K. Sikri, J

Bench: Division Bench

Advocate: V.K. Tandon, for the Appellant; Sachin Chauhan, for the Respondent

Final Decision: Dismissed

Judgement

A.K. Sikri, J.

The respondent herein applied for the post of Constable (Executive) in Delhi Police pursuant to advertisement issued for recruitment to the said post in the year 2006 by the petitioner herein.

2. In the application submitted by the respondent against the column as to whether he was involved in any criminal case at any point of time, he had given the answer: "NIL". However, thereafter of his own and before even the selection was made, he sent a letter dated 27.11.2006 stating that he had omitted to give the details of a criminal case instituted against him and informed the petitioner about his involvement in a criminal case i.e. FIR No. 40/2003 dated 13.02.2003 u/s 308, 340 and 323, IPC, P.S. Alipur, which was registered against him on 28.08.2003 and he was acquitted in the said case on 10.03.2004. It is clear from the above that when the petitioner had applied for the said post in the year 2006, he had already been acquitted from the said case.

3. After this information was given by the respondent, the petitioner served upon the respondent show-cause notice dated 15.06.2007 alleging that the respondent

had not disclosed the aforesaid facts while filling the application form and it amounted to concealment of material facts and furnishing false information. On this, he was served with show-cause as to why his candidature be not cancelled. The respondent submitted his reply which was not found satisfactory and vide orders dated 13.07.2007, the candidature of the respondent for the post of Constable (Executive) Male in Delhi Police was cancelled.

4. The respondent challenged this action by filing OA before the Tribunal which has been allowed vide judgment dated 25.07.2008. The Tribunal has concluded, taking note of the aforesaid facts, that there was no willful default on the part of the respondent which was clear from the fact that the respondent suo motu, even before filling of the attestation form, had given the information. Thus, there was no deceit played by the respondent and there was no mala fide or ulterior motive. In such a situation, concluded the Tribunal, the candidature of the respondent could not have been cancelled and the Tribunal for this purpose relied upon the decision of this Court in the case of Kripal Singh v. Union of India and Ors. (W.P.(C) No. 12565/2004 decided on 31.07.2006 and other judgments.

5. The learned Counsel for the petitioner argues that the petitioners herein had referred and relied upon the judgment of Supreme Court in [Delhi Administration through its Chief Secretary and Others Vs. Sushil Kumar](#), wherein the Apex Court held that antecedents of a candidate could be looked into for cancelling the candidature and the ratio of the said judgment has not been properly appreciated by the Tribunal. In the present case, there was serious charge u/s 308 framed against the respondent in the aforesaid case and the judgment of the Criminal Court would reveal that respondent was acquitted only because the witnesses were turned hostile. He, thus, submitted that having regard to the pronouncement in Sushil Kumar (supra), it was open to the petitioner to take these facts into consideration and cancel the candidature.

6. We are afraid, we cannot agree with the aforesaid submissions of the learned Counsel for the petitioner, in the facts of this case. There is no quarrel regarding the principles of law laid down in Sushil Kumar (supra). What is important in the present case is that the candidature of the respondent was not cancelled on account of alleged antecedents. On the contrary, the only reason for cancelling the candidature was that the respondent had concealed the fact regarding his involvement in a criminal case deliberately. It is clear from show-cause notice dated 15.06.2007 in which it was inter alia stated as under:

On scrutiny of Application Form filled up by you on 24.03.2006, it has been found that you did not disclose the facts of your involvement in the above said criminal case in the relevant column of Application Form and concealed the facts regarding your involvement in a CrI. Case deliberately by mentioning "Nil" despite clear warning given at the top of the form that furnishing of any false information will be treated as disqualification. Later-on, you have disclosed your involvement in the

above said Crl. Case in the relevant columns of the Attestation Form filled up by you on 07.12.2006 that a criminal case FIR No. 40/2003 u/s 308/341/323 IPC was registered and you are acquitted on 10.03.2004 in the above said case by the Hon"ble Court. Further, you have submitted an application dated nil in this office on 27.11.2006 stating therein that when you are studying in a college a quarrel had taken place and the above said criminal case was registered against you. Thus, you have concealed the facts of the above said criminal case deliberately at initial stage in the application form with malafide intention and tried to seek appointment in Delhi Police by adopting deceitful means, which amounts to grave misconduct on your part. The concealment of facts at initial stage clearly reflects you malafide intention.

7. There is not even a whisper in the entire show-cause notice regarding the antecedents of the respondent. The entire allegation predicates on the concealment. The respondent was thus supposed to answer this allegation only and he had submitted the explanation pleading that there was no deliberate or intentional for concealment of facts. Even while cancelling the candidature of the respondent by the impugned order, the only reason is given is the concealment of facts regarding involvement of the respondent in the criminal case. When the purported antecedents of the respondent is not the foundation of the impugned order, it is not permissible for the petitioner to justify the order of termination on this extraneous ground when the said order is challenged in a Court of law. The law on this aspect is well settled in the case of [Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others](#), . The Supreme Court held that an administrative order is to be defended on the basis of reasons contained therein and no additional reasons can be supplemented or pressed.

8. We, therefore, do not find any merit in this writ petition and dismiss the same in limine.