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(2012) 05 DEL CK 0603

Delhi High Court

Case No: Writ Petition (C) 3306 of 2012

Commissioner of Police and Anr	APPELLANT
Vs	
Vijay Kumar Malik	RESPONDENT

Date of Decision: May 29, 2012

Acts Referred:

- Arms Act, 1959 - Section 25
- Juvenile Justice (Care and Protection of Children) Act, 2000 - Section 19
- Penal Code, 1860 (IPC) - Section 120B, 148, 149, 25, 302

Hon'ble Judges: V.K. Jain, J; Badar Durrez Ahmed, J

Bench: Division Bench

Advocate: S.P. Sharma with Dr Ashwani Bhardwaj, for the Appellant; Ajesh Luthra, for the Respondent

Final Decision: Dismissed

Judgement

Badar Durrez Ahmed, J

1. This writ petition is directed against the order dated 06.02.2012 passed in OA 2481/2011 by the Central Administrative Tribunal, Principal Bench, New Delhi. The respondent (Vijay Kumar Malik) had applied for the post of Sub-Inspector (Executive) Male in the Delhi Police. However, his candidature in respect of the said post was cancelled on the ground that he was involved in a criminal case pertaining to FIR No. 277 dated 20.08.2005 under Sections 302/148/149/120-B IPC and Section 25 of the Arms Act, 1959 registered at Police Station City Sonepat, Haryana. It is an admitted position that the said Vijay Kumar Malik had disclosed his involvement in the said case in both the application form as also in the attestation form. In point of fact, the said Vijay Kumar Malik had already been acquitted on 17.10.2006 by the Juvenile Justice Board. Thus, there are two aspects to this case. One, that the respondent Vijay Kumar Malik had already been acquitted of all charges even before he applied for the said post of Sub-Inspector

(Executive) Male with the Delhi Police. The other being that he was, in any event, a juvenile.

2. It has been pointed out in the impugned order that a show cause notice had been issued to the said Vijay Kumar Malik on 28.04.2011 to explain as to why his candidature ought not to be cancelled. He submitted a reply dated 05.05.2011. The same was considered and an order dated 16.06.2011 was passed by the Deputy Commissioner of Police cancelling the candidature of the said Vijay Kumar Malik with immediate effect. The operative portion of the said order dated 16.06.2011 reads as under:-

His written reply in detail has been considered and found that the candidate has been involved in a heinous case of murder and conspiracy. He was named in the FIR and the circumstances clearly show that it was a case of pre-planned brutal murder, done with common intent and preparation. The accused was acquitted only due to the witnesses turning hostile and this was not an honourable acquittal. His involvement in a case like murder amounts to a very serious matter and shows criminal propensity without any element of fear of law. Such type of candidate has no place in a disciplined force and law enforcing agency like police. As such, the candidature of candidate Vijay Kumar Malik, Roll No. 601306 for the post of Sub-Inspector (Exe.) Male in Delhi Police, 2009 (Phase-II) is hereby cancelled with immediate effect.

3. A plain reading of the above extracted portion of the order dated

16.06.2011 clearly discloses that the observations are contrary to law. The fact that the said Vijay Kumar Malik has been acquitted by the Juvenile Justice Board meant that there is no evidence of his having been involved in the so-called heinous case of murder and conspiracy. Just because he was named in the FIR does not mean that he was guilty of committing the offence mentioned in the FIR. Once there is an acquittal from a court of law after a full-fledged trial, the police authorities cannot, ignoring such acquittal, consider the accused to be a convict and it cannot be assumed that the said accused was, in fact, involved in the offences mentioned in the said FIR. Furthermore, since the respondent was a juvenile, it was all the more necessary for the petitioner to have ignored the fact of the alleged involvement of the respondent in the said criminal case. This is so because of the very provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as "the said Act"). Similar situations were examined by us in the case of Government of NCT of Delhi v. Sumit Kumar (WP(C) 2671/2012) decided on 07.05.2012 as also in the case of Govt. of NCT of Delhi & Ors v. Pradeep Hooda (W.P.(C) 2268/2012) decided on 08.05.2012. In the latter decision, we had noted that even where a juvenile is found to have committed an offence, he shall not suffer any disqualification and even the records are to be obliterated after a specified period of time. This conclusion was arrived at on the basis of the provisions of Section 19 of the said Act.

4. In the said decision in the case of Pradeep Hooda (supra), we had observed that the intention of the Legislature was absolutely clear that insofar as juveniles were concerned,

their criminal record was not to stand in their way in their future lives. However, in the present case, even that aspect need not to be considered because the respondent Vijay Kumar Malik was not even found to have committed any offence by the Juvenile Justice Board and he was acquitted by the same. Therefore, there was all the more reason for the petitioner not to have taken into account the contents of the said FIR. As such, the candidature of the respondent could not have been cancelled in law. The Tribunal having held in favour of the respondent Vijay Kumar Malik, has proceeded in terms of law and in view of the various decisions of the Supreme Court as also of this Court. Consequently, the same cannot be faulted. The writ petition is dismissed. There shall be no order as to costs.