

Commissioner of Police, Delhi and Another

Vs

Dhaval Singh

Civil Appeal No. 2537 of 1998

(Dr. A. S. Anand, S. R. Babu JJ)

01.05.1998

ORDER

1. Leave granted.

2. We have heard learned counsel for the parties.

3. Brief facts which are necessary for deciding this appeal are : that the respondent while seeking post of a Constable during the special recruitment drive is alleged to have concealed from mentioning in the Application Form, against the relevant column, that there was a criminal case pending against him. He had put a cross-mark in the relevant column. The Application Form was submitted by him on 21/27-8-1995. He was provisionally selected after passing the written test, physical endurance test and was interviewed, pending verification of his character. However, before any order of appointment could be issued in his favour, he, realising the mistake, wrote a letter to the Deputy Commissioner of Police on 15-11-1995 in which he, inter alia, stated :

"I am to state that I have appeared in the special recruitment held at Moradabad, U.P. on 21-8-1995 against Roll No. 1457 and declared successful. I have also gone through the medical examination and declared fit for the post of Constable (Exe.). I have to point out here that at the time of submission of Application Form I have inadvertently not mentioned the criminal case pending against me in the appropriate column. This has been done due to lack of knowledge. I may be excused for the above lapse and this application may be treated as an information from my side."

4. It appears that in the meanwhile, the appellant had sought police verification on the conduct and character of the respondent. On verification, the Department came to know that a case being FIR No. 1 of 1993 under Sections 147/342/327/504 IPC was registered against the respondent at Police Station Agotta, District Bulandshahr. On the ground that the respondent had concealed a material fact from the Application Form which he had filled in, his candidature was cancelled on 20-11-1995. In the meanwhile, the respondent was acquitted in the said criminal case by the trial court vide judgment dated 8-12-1995. On being so acquitted, the respondent filed a representation before the Commissioner of Police for reconsideration of his case but that representation was turned down. The respondent, thereupon, filed an original application before the Central Administrative Tribunal. Vide order dated 22-11-1996, the original application was allowed by the Tribunal. Both the orders of cancellation of candidature and the rejection of the representation were set aside and the Tribunal directed the appellants to consider offering appointment to the respondent within 3 months from the date of receipt of a copy of that order. Aggrieved by the order of the Tribunal, the appellant filed an SLP in this Court in April 1997. On 7-7-1997, the Court was informed that because of the order of the Tribunal, the respondent had been reinstated in service.

5. That there was an omission on the part of the respondent to give information against the relevant column in the Application Form about the pendency of the criminal case, is not in dispute. The respondent, however, voluntarily conveyed it on 15-11-1995 to the appellant that he had inadvertently failed to mention in the appropriate column regarding the pendency of the criminal case against him and that his letter may be treated as "information". Despite receipt of this communication, the candidature of the respondent was cancelled. A perusal of the order of the Deputy Commissioner of Police cancelling the candidature on 20-11-1995 shows that the information conveyed by the respondent on 15-11-1995 was not taken note of. It was obligatory on the part of the appellant to have considered that application and apply its mind to the stand of the respondent that he had made an inadvertent mistake before passing the order. That, however, was not done. It is not as if information was given by the respondent regarding the inadvertent mistake committed by him after he had been acquitted by the trial court - it was much before that. It is also obvious that the information was conveyed voluntarily. In vain, have we searched through the order of the Deputy Commissioner of Police and the other record for any observation relating to the information conveyed by the respondent on 15-11-1995 and whether that application could not be treated as curing the defect which had occurred in the Form. We are not told as to how that communication was disposed of either. Did the competent authority ever have a look at it, before passing the order of cancellation of candidature ? The cancellation of the candidature under the circumstances was without any proper application of mind and without taking into consideration all relevant material. The Tribunal, therefore, rightly set it aside. We uphold the order of the Tribunal, though for slightly different reasons, as mentioned above.

6. Learned counsel for the appellants has drawn our attention to a judgment rendered by a Bench of this Court on 4-10-1996 in Delhi Admn. v. Sushil Kumar [(1996) 11 SCC 605 : 1997 SCC (L&S) 492]. On the first blush, that judgment seems to support the case of the appellants but there is a material difference between the two cases. Whereas in the instant case, the respondent has conveyed to the appellant that an inadvertent mistake had been committed in not giving the information against the relevant column in the Form much before the cancellation of his candidature, in Sushil Kumar case [(1996) 11 SCC 605 : 1997 SCC (L&S) 492] no such correction was made at any stage by the respondent. That judgment is, therefore, clearly distinguishable on facts.

7. Thus, for what we have said above, the appeal fails and is dismissed but without any order as to costs.