

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

+ **W.P. (C.) No.8138/2008**

% **Date of Decision: 06.01.2010**

Shailendra Singh ..... Petitioner  
Through Mr.Pradeep Kumar Arya, Advocate.

Versus

Commissioner of Police & Anr ..... Respondents  
Through Mr.Anjum Javed, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE ANIL KUMAR**

**HON'BLE MR. JUSTICE MOOL CHAND GARG**

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|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not?                                | NO  |
| 3. | Whether the judgment should be reported in the Digest?                | NO  |

**ANIL KUMAR, J.**

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The petitioner has impugned the order dated 14<sup>th</sup> July, 2008 in O.A No.1326/2008 passed by the Central Administrative Tribunal, Principal Bench, New Delhi titled Shailendra Singh v. Commissioner of Police dismissing his petition seeking cancellation of the order no. XII – C(110)/2006/R.Cell(R-IV)/4th Bn DAP dated 14<sup>th</sup> June, 2007, cancelling petitioner's candidature for the post of constable.

The petitioner had applied for the post of constable pursuant to advertisement published in 2005. Before the petitioner could be appointed as a constable, he intimated that he was involved in a case of murder in FIR No.37/2006 under Section 147/148/149/302/307/452 of the Indian Penal Code. Later on the petitioner was acquitted in the said murder case on account of benefit of doubt given to him, as the material witnesses had turned hostile.

A show cause notice was given to the petitioner dated 14<sup>th</sup> June, 2007 seeking his explanation as to why his candidature should not be cancelled. After considering his reply dated 2<sup>nd</sup> July, 2007 his candidature was cancelled. The respondents while considering his reply to show cause notice before cancellation of his selection to the post of constable, had categorically noted that though the petitioner was acquitted as the witnesses had turned hostile, however, at the time of the incident the petitioner was in possession of 'katta' which fact has not been denied.

The Tribunal while considering the petitioner's petition for quashing the order of cancellation of the candidature of the petitioner had considered the nature of evidence and manner of acquittal which factors were also considered by the respondents while cancelling the

candidature of the petitioner. Reliance had also been placed while dismissing the petition on the decision of a Coordinate bench of Tribunal and on the decision of the High Court in W.P(C) No.6042/2005.

The learned counsel for the petitioner has emphatically contended that there was no evidence against the petitioner of his involvement in the murder case and consequently the benefit of doubt had been given to him and he had been acquitted. Apparently since the material witnesses turned hostile, therefore, there could not be any evidence against the petitioner, which led to his acquittal, however, the fact which had been taken into consideration by the respondents is that at the time of incident the petitioner was in possession of 'katta' which fact had not been denied.

The respondents have considered the facts and circumstances and the acquittal of the petitioner on account of technical reasons and other relevant consideration and has decided to cancel the candidature of the petitioner. The petitioner was not selected and appointed to the post of constable and therefore, he cannot contend that he has right to be selected and appointed as constable in Delhi Police. No malafides have been alleged against the respondent in cancelling his candidature. In these circumstances the decision of the respondent to cancel the candidature of the petitioner cannot be faulted.

It is also not necessary for the High Court in exercise of its writ jurisdiction to interfere in every case where there is violation of statutory rights. For issuing a writ for any other purpose under article 226 of the Constitution of India, it has always been in the discretion of the High Court to interfere or not, depending upon the facts and circumstances of each case. In *Shangrila Food Products Ltd. Vs Life Insurance Corporation of India* (1996) 5 SCC 54, the Supreme Court had held that " the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. The jurisdiction of the High Court, being extra ordinary, is normally exercisable keeping in mind the principle of equity. One of the ends of the equity is to promote honesty and fair play.

The learned counsel for the petitioner has also not been able to make out any illegality or such irregularity in the order of the respondents and the Tribunal which will entail interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

For the foregoing reasons the petitioner is not entitled for any relief and the writ petition is without any merit and it is, therefore, dismissed.

**ANIL KUMAR, J.**

**January 06, 2010**

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**MOOL CHAND GARG, J.**