

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

% *Judgment Reserved On: 6th August, 2010*
Judgment Delivered On: 25th August, 2010

+ **W.P.(C) NO.2068/2010**

GOVT OF NCT OF DELHI & ANR. Petitioners
Through: Ms.Jyoti Singh, Advocate with
Ms.Rashi Bansal, Advocate

versus

ROBIN SINGH Respondent
Through: Mr.Anil Singal, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. Pendency of a criminal proceeding or for that matter a conviction by a competent court of law may justify eyebrows being raised but do they justify the shutting of ones eyes? Is the question which we need to decide in the instant writ petition.

2. Would the pendency of a criminal proceeding or a conviction or for that matter a criminal proceeding which has already terminated either in conviction or an acquittal be a justified ground to dismiss a Government servant from service or deny entry into Government service is a facet of the

question which we need to answer. It may be highlighted that in the instant case the respondent, when aged 19 years, was accused of committing offences punishable under Section 323/504/506 IPC and was acquitted. This is the solitary brush he had with penal law and that too at the young and immature age of 19 years.

3. In response to an advertisement inviting applications to fill up the post of Sub-Inspector (Executive), the respondent submitted his application on 10.11.2007 and was called to participate in the selection process. He was meritorious and found his name in the select list. The respondent was intimated of his provisional selection with a rider that the same was subject to his being declared medically fit and his character and antecedents verified, for which the respondent was required to fill up and submit an attestation form which incorporated a warning:-

"The furnishing of false information of suppression of any factual information in the attestation form would be disqualification and is likely to render candidate unfit for employment under the Government.

If detained, convicted, debarred etc. subsequently on completion and submission of this form the detail as should be communicated immediately to the Deputy Commissioner of Police/4th Bn., DAP, New police lines, Kingsway Camp, Delhi-110009, failing which it will be deemed to be suppression of factual information.

If the fact that false information has been furnished of that this has been furnished of that this has been suppression of any factual information in the attestation form comes to notice at any time during the service of a person, his service should be liable to be terminated."

4. The complete attestation form being not relevant, we extract below only the relevant columns of the attestation

form and the information provided thereto, which sets the factual backdrop for the litigation between the petitioners and the respondent. Vide serial No.13(a), (b) and (c), information sought and response given was as under:-

13.	(a)	Have you been arrested/prosecuted kept under detention of bound down/fined, convicted by a court or law for any offence or debarred/disqualified by any public service commission from appearing at its examination selection or debarred from any other educational authority/institution?	No
	(b)	Whether any FIR was ever registered against you in any Police Station? If yes, give complete details.	No
	(c)	If any case pending against you in any court of law university or any other education authority/institution at the time of filling up this attestation form. (If the answer to (a) and (b) is yes, full particulars of the case arrest, detention, fine, conviction sentence etc. in the nature of the case pending in the country, university/education authority etc., at the time of filling up this form should be given.	No.

5. Notwithstanding the respondent giving information in the negative, on 8.7.2008, the respondent himself informed petitioners that on a private complaint filed by a complainant before a learned Magistrate pertaining to the offence punishable under Section 323/504/506 IPC, he was acquitted on 9.6.2008. Taking on record said information and contrasting it with the information provided by the respondent against column No.13 in the attestation form and charging him with acting deceitfully and with mala-fide intention in not

furnishing the relevant information, a show cause notice dated 30.7.2008 was issued as under:-

“You, candidate Robin Singh s/o Sh.Dharampal Singh have applied for the post of Sub Inspector (Exe.) Male in Delhi Police during the recruitment conducted by Delhi Police in the year 2007 band selected provisionally, subject to verification of your character and antecedents and medically fitness.

On receipt of your character and antecedents report from the authority concerned, it reveals that you were involved in a case of non cognizable report No.18/2006, dated 25.10.2006 u/s 323/504/506 IPC, PS Dardhana, Distt. Meerut (UP). Later on, the above said case was decided by the Hon’ble court vide its order dated 09.06.2008 and you were acquitted of the charge.

On scrutiny of Application Form & Attestation Form filled up by you on 10.11.2007 and 28.03.2008 respectively, it has been found that you did not disclose the facts of your involvement in the above said criminal case in the relevant columns of Application Form and Attestation Form and concealed the facts deliberately despite clear warning given at the top of these forms that furnishing of any false information will be treated as disqualification. Thus you have concealed the facts of your involvement in the above-said criminal case in the relevant columns of Application Form & Attestation Form and tried to seek appointment in Delhi Policy by adopting deceitful means and mala fide intention.

You candidate Robin Singh, Roll No.410796 are, therefore, called upon to Show Cause as to why your candidature for the post of Sub Inspector (Exe.) in Delhi Police should not be cancelled for the reasons mentioned above. Your reply, if any should reach this office within seven days from the date of receipt of this notice, failing which it will be presumed that you have

nothing to say in your defense and the case will be decided ex-parte on its merit.”

6. Needless to state, the factual foundation of the show cause notice was that the respondent did not correctly give the relevant information in his application form submitted when he applied for the post and on being provisionally selected and required to fill up the attestation form, he responded to the information sought vide serial No.13 of the attestation form and deceitfully withheld information of his being an accused for an offence punishable under Section 323/504/506 IPC and hence attempting to gain employment by deceit.

7. The respondent gave a detailed reply to the show cause notice, supplementing the same with case laws, in his support. Eschewing reference to the case laws cited in the response, the respondent replied as under:-

“Sir,

The applicant respectfully submits as under:-

1. That the applicant came to know about the NCR No.18/06 dt.25.10.2006 on 8.1.2008. Thereafter, he appeared and granted bail on 12.1.2008 by the concerned court though the applicant was never arrested. Thus, there was no concealment of facts about involvement in NCR No.18/06 when the applicant filled up Application Form on 10.11.2007.

2. That it is not the case where any FIR was registered against the applicant by Police regarding a cognizable offence but it was criminal complaint case filed in the court U/S 323/504/506 IPC. Thus, till date there is neither any FIR against the applicant nor he was ever arrested in any criminal case.

3. That the charges were framed by the court in NCR dt.25.10.2006 only on 6.6.2008. Therefore, only on 6.6.2008 the criminal case can be said to have been pending but not before that day.

4. That in view of the above, even as on 28.3.2008 when the applicant filled up Attestation Form, no FIR had been registered against him, nor he had been arrested by the Police in any criminal case nor any criminal case was pending against him, information of which was required to be furnished by him in the Attestation Form since there was no FIR in existence against the applicant nor he was ever arrested by the Police nor any charge-sheeted had been filed against the applicant under Section 173 Cr.P.C. nor any charges had been framed against him in NCR No.18/06. Therefore, the applicant did not mention the same in the Attestation Form on 28.3.2008.

5. That there was no concealment on the part of the applicant since the applicant was never arrested by the Police nor he ever received any communication/notice from the court/police in this regard till 8.1.2008 due to which this non-mentioning of NCR No.18/06 took place in the Application Form on 10.11.2007 since the concealment means knowledge of something, which the applicant did not have about the NCR No.18/06.

6. That there was no concealment on the part of the applicant while filing up the Attestation Form on 28.3.2006 for the following reasons, which cannot be disputed also:-

- A. There was no FIR in existence against the applicant.
- B. The applicant was never arrested by the police.
- C. No charge-sheeted had been filed against the applicant under Section 173 Cr.P.C.

D. No Charges had been framed against the applicant in the NCR No.18/06.

7. That the SCN on the ground that applicant concealed the facts about involvement in the NCR at the time of filling up of his Application Form & Attestation Form is liable to be withdrawn since the applicant voluntarily informed the department about the NCR vide Written Application submitted in the office of 4th Bn.DAP and diarized vide Diary No.1649 dt.8.7.2008.

8. That the inadvertent mistake of the applicant in not mentioning about the NCR in the Attestation Form cannot be a ground to cancel his candidature since the applicant had informed about the same vide Application dt.8.7.2008. Therefore, this information given by the applicant vide Application dt.8.7.2008 ought to be treated as curing the defect, which had occurred in the Application Form & Attestation Form. Thus, the Show Cause Notice for cancellation of his candidature without taking into consideration the same is bad in law and is liable to be withdrawn.

9. Because the information regarding involvement in the NCR No.18/06 was given by the applicant himself voluntarily in the office of the 4th Bn. DAP before the Delhi Police coming to know about the same vide Application dt.8.7.2008. Therefore, the action of department to issue Show Cause Notice on the basis of verification report is illegal and totally unjustified in the facts and circumstances of the case and the Show Cause Notice is liable to be withdrawn.

10. **Case law cited but not reproduced as not relevant.**

11.

12.

13. That the department has nothing to show that apart from the alleged NCR, the antecedents of the applicant are not good or any other adverse material was found

against the applicant. Moreover, mere involvement of the applicant in an alleged NCR if makes him unfit for police force, then, the same is nothing but a premium paid to the persons who illegally filed criminal complaint case against the applicant falsely for committing a crime that the applicant had never committed. Further, it is clear from the order passed by the trial court that in absence of any incriminating evidence brought on record against the applicant, the order of acquittal has been passed. Therefore, the SCN is liable to be withdrawn and the applicant deserves to be appointed."

8. To summarize, the respondent stated in the reply that there was no concealment on his part while filling up the Application Form on 10.11.2007 as at that time he was not aware about any complaint lodged against him. He stated that he learnt about the Non-Cognizable Report (NCR) No.18/2006 filed against him only on 8.1.2008. Regarding charge of concealment while filling up the Attestation Form, respondent stated that he was never arrested. He was granted bail when he voluntarily surrendered before the concerned court after learning about the complaint against him. Thus, he had not furnished any wrong information by denying having ever been arrested/detained. Further respondent stated that the matter pertained to non-cognizable offences and no FIR was ever registered against him. The case was instituted on basis of a criminal complaint and not an FIR and hence his answering in the negative to the question regarding any FIR being registered against him was justified. Lastly, he stated that as formal charges were framed against him only on 6.6.2008, the criminal case can be said to be pending against him only from the said date and not from any day before that. Thus, on the date when he filled the attestation form i.e. on 28.3.2008, no criminal case could be said to be pending against him and he

was therefore justified in answering the question regarding the same in the negative. Respondent also stated that he himself voluntarily informed Petitioner on 8.7.2009 about his involvement in NCR 18/2006 within a month of charge being framed against him in the said NCR and he being acquitted therein. The Show Cause notice was issued to him on 30.7.2008, only on the basis of the information furnished by him. He stated that had he intended to conceal the fact, he would never have intimated petitioners in the first place.

9. Without recording any reasons as to why the reply filed by the respondent to the Show Cause Notice was not accepted and baldly stating that the reply to the Show Cause Notice was *"not convincing"*, vide office order dated 22.9.2008, petitioner cancelled the candidature of the respondent with immediate effect.

10. Respondent challenged the said order cancelling his candidature by filing O.A. No.2367/2008 before the Central Administrative Tribunal.

11. Vide order dated 8.9.2009, holding that the respondent has adduced convincing reasons as to why he filled up the Attestation Form in the negative, the Tribunal allowed the Original Application and quashed the office order dated 22.9.2008. The Tribunal also noted that the respondent was acquitted of the charge framed against him on 9.6.2008. The Tribunal directed petitioner to take steps to issue appointment letter to the respondent subject to fulfillment of other conditions by the respondent. It was held that the respondent would be entitled to appointment with retrospective effect

from the date candidates lower to him in merit were appointed.

12. The petitioner has challenged the impugned order dated 8.9.2009 passed by the Tribunal on the principal ground that the charge against the respondent in the show cause notice was one of concealment and in respect thereof the factual foundation was laid by stating that the complaint was filed against him on 25.10.2006 and he applied for the job on 10.11.2007 and he learnt about the criminal case against him on 8.1.2008 and yet inspite thereof while filling up the Attestation Form on 28.3.2008 he deliberately did not disclose the information. It was urged that it hardly mattered if the respondent was ultimately acquitted. It was highlighted that the respondent was seeking employment in the police force which required utmost integrity, propriety and probity of character and that a person who had a brush with criminal law was not suited to be appointed as a member of the police force.

13. It is not in dispute that on 8.1.2008 the respondent learnt about the non-cognizable case No.18/2006 being taken cognizance of by the learned Magistrate who issued a process for the respondent to appear before him and as admitted by him in his reply to the show cause notice he voluntarily appeared before the learned Magistrate on 12.1.2008 and after technically surrendering obtained bail. It may be noted that the offences alleged against the respondent were even otherwise bailable.

14. There is no evidence that the respondent knew about the Non-Cognizable Case No.18/2006 filed before a

learned Magistrate till 10.11.2007 when he submitted his application in response to the public advertisement to apply for the post of a Sub Inspector (Executive). He obviously knew about it when he filled the Attestation Form on 28.3.2008.

15. Now, let us look to the information sought under serial No.13(a) of the Attestation Form. It sought information: *"Have you been arrested/prosecuted kept under detention of bound down/fined, convicted by a court or law for any offence or debarred/disqualified by any public service commission from appearing at its examination selection or debarred from any other educational authority/institution?"*. By replying in the negative, the respondent concealed nothing and has misstated nothing pertaining to information sought qua arrest, detention, being bound down, fined or convicted for the reason he was neither arrested nor detained nor bound down nor fined nor convicted. But, he knew he was being prosecuted and to this extent it can be argued that he ought to have replied by informing that on the basis of a private complaint a Non-Cognizable Report No.18/2006 was taken cognizance of by the learned Magistrate in which a charge had yet to be framed. We shall be dealing with the justification pleaded by the respondent in reply to the show cause notice that as per law a criminal case is treated as pending on a private complaint when a charge is formally drawn; whether it was deceitful shall be dealt with by us. The information sought under Serial No.13(b) was: *"Whether any FIR was ever registered against you in any Police Station? If yes, give complete details."* The reply in the negative is the correct answer for the reason no FIR was registered against the respondent at any police station. The information sought

under Serial No.13(c) was: *"If any case pending against you in any court of law university or any other education authority/institution at the time of filling up this attestation form. (If the answer to (a) and (b) is yes, full particulars of the case arrest, detention, fine, conviction sentence etc. in the nature of the case pending in the country, university/education authority etc., at the time of filling up this form should be given."* Syntax errors and grammatical mistakes apart, the information sought included whether any case was pending against the respondent and by replying in the negative, whether the respondent has withheld a relevant information and has additionally supplied a wrong information which is deceitful shall be dealt with by us a little later.

16. It is no doubt true that police plays an essential role of enforcement of law and order in modern societies. Without an efficient police force, a society would become anarchic. To ensure that the police force of a state is efficient, the state must ensure that each individual recruited to the police force, at whatever level, must possess the following attributes:-

- (a) Physical Strength and fitness/Free from medical diseases.
- (b) Emotional maturity, and ability to remain calm in emotionally charged situations.
- (c) Ability to exercise initiative in their work.
- (d) Good moral character and integrity.
- (e) The ability to carry a great deal of responsibility in handling difficult situations alone/ dependability.
- (f) Good Judgment

17. Keeping in view the above attributes, which are the minimum required of a person who becomes a member of the police force, it becomes the duty of the State to carefully screen the candidates with reference to the aforesaid attributes. But, what we find in India is that the only screening done is with respect to the moral character and integrity, physical strength and free from medical disease. Evidenced by the instant case, the first attribute is sought to be verified by archaic means i.e. checking on the police dossiers or relying upon information provided by the candidate himself and the second, of physical strength, by subjecting the candidates to a physical test, and of being free from medical disease by conducting the medical examination. No evaluation pertaining to the emotional maturity, ability to remain calm in emotionally charged situations, ability to handle difficult situations and be responsive and the ability of initiative in work is conducted.

18. We find that in some jurisdictions abroad, such as United States of America, Canada, Philippines, to name a few, a psychological test is conducted to ascertain the suitability of candidates commensurate to the nature of job they are being inducted to. At times a polygraph test is also conducted to check the deceiving tendencies of candidates. Because so much public trust is placed in peace officers, candidates for these positions are carefully screened to rule out emotional instability, poor judgment, lack of dependability, or other problems which might negatively affect their law enforcement work.

19. A criminal record is a record of a person's criminal history, generally used by potential employers to assess the

candidate's trustworthiness. The information included in a criminal record varies between countries and even between jurisdictions within a country. In most cases it lists all non-expunged criminal offenses and may also include traffic offenses such as speeding and drunk-driving. In some countries the record is limited to actual convictions (where the individual has pleaded guilty or been declared guilty by a qualified court) while in others it also includes arrests, charges dismissed, charges pending and even charges of which the individual has been acquitted. The latter policy is often argued to be a human rights violation since it works contrary to the presumption of innocence by exposing people to discrimination on the basis of unproven allegations.

20. It is unfortunate that in India we are not marching ahead in the comity of nations and prefer to be governed by the recruitment processes which are a legacy of the British era; ignoring that the purpose of governance then was to rule and the purpose of governance now is to serve.

21. We have prefaced our decision with the statement whether pendency of a criminal proceeding or for that matter a conviction by a competent court of law may justify eyebrows to be raised, but would it justify the shutting of one's eye?

22. Now, a man can be booked for the offence of over-speeding and perhaps may be convicted for parking his motor vehicle in a non-parking area. Would this man be of a character, compelling in public interest and for public good, not to induct him in public service? The answer would be in the negative. As against that, a man has committed murder or has broken into a departmental store and stolen cash. Would

this man be of a character, compelling in public interest and for public good, not to induct him in public service. The answer would be in the affirmative.

23. Not to induct persons with a criminal background in public service, is based on the premise that considerations of public policy, concern for public interest, regard for public good would justify a prohibition. Thus, the primary consideration is, whether public interest and public good would be jeopardized if a person with a criminal background is inducted in public service. And this takes us straight to the core of the issue, whether brush with penal law would justify the eyes to be closed against the offender or only such brush with penal law which is of a higher degree of criminality. If the answer is in the negative, the further question: what should be the higher degree of criminality which would justify the eyes being shut to such person needs to be addressed.

24. With respect to the first two examples given by us in para 22 above, none would argue that for such trivial offences the eyes must be shut against the offender, and with regard to the next two, everybody would agree that the eyes should be shut to such a person who has to be ignored. We concede that the examples are in the extreme, but they certainly help us in understanding as to the process of reasoning required to be adopted to decide as to on which side of the border-line a case would fall.

25. A look at the penal laws in India would show that most of the penal offences can be categorized under two broad categories i.e. felony and misdemeanour. A further look at the sections stipulating penalties would show that felonies

are treated as more grave vis-à-vis misdemeanours. Further, by classifying offences as cognizable and non-cognizable, higher and lower degrees of criminality to the offences can be discerned. Further, by classifying offences as bailable and non-bailable, the degree of criminality can be further discerned.

26. The civil concept of an offence being of a depraving character is to look at whether the act complained of suffers from the tag of a moral turpitude or not.

27. We do not intend to make a catalog of reported decisions as to what misdemeanours should normally attract the penalty of removal or dismissal from service. We may simply state that with respect to conviction for grave and serious offences alone, on the anvil of public interest and for public good, Courts have held that the offender has rendered himself unfit to continue in office and in extreme cases summary dismissal or removal from service by invoking Article 311 of the Constitution is also held justified.

28. Thus, we have a guideline of serious and grave offences being the touchstone in case of the door being shown to the government servant.

29. Looking through the prism of case law pertaining to when can the door be shown to a government servant and by doing reverse engineering we can safely say that what is good for the door to be shown, is good for prohibiting entry through the door, and thus while denying public employment with respect to the offence committed by a person, it can be said, and we say so, that it may be a serious violation of the constitutional right of a citizen to be fairly treated in the

matter of public employment if trivial offences committed by the citizen would justify the State shutting its eyes and denying employment.

30. Having answered the question posed in para 1 above, and the answer being in favour of the citizen, we need to answer the further question as to which offences or brush therewith, would justify non entry into public service.

31. We have a clue; of offences being grave, serious and involving a moral turpitude justifying public employment not being given. These would certainly not justify the offender being inducted into public service. None would disagree that convicted and fined for parking a car in a no-parking area or convicted for over-speeding would attract the *de minimis* principle, but the problem would be in cases closer to the borderline. For therein would lie the problem as to in which side of the boundary line should they be categorized.

32. It is unfortunate that in India, the Government does not come out with white papers of the deliberations at various seminars, but we find a reference made to the '*All India Seminar on Correctional Service*' held at New Delhi in March 1969, to consider and lay guidelines pertaining to the problem of rehabilitation of ex-convicts, with emphasis on the need for their employment under the government. Vide OM dated 2.2.1973, No.6857-GSI-72-2755, the State of Haryana has listed the penal offences which have been treated as grave, serious and involving moral turpitude. The said OM lists the under-noted penal offences as grave, serious and involving moral turpitude, disentitling the convict to public employment; the offences are:- Sections 120-A, 121-A, 122 to 124, 161, 161-

1A, 165, 167, 181, 182, 193 to 201, 205, 209, 293, 302, 304, 307, 354, 359, 362, 363 to 366, 366-A, 366-B, 367 to 373, 376, 377, 379, 380, 391, 392, 398 to 400, 403, 404, 406 to 409, 417 to 421, 449, 450, 453 to 458, 465 to 468, 471 to 476, 477-A, 489-A, 489-B, 489-C, 489-D, 489-E, 493 to 498 of the Penal Code.

33. We are a little surprised at the list as it excludes offences such as promoting enmity or doing acts prejudicial to maintenance of harmony i.e. offences punishable under Section 153-A IPC. It excludes offences pertaining to mutiny and its abetment i.e. offences under Sections 131 to 136 IPC. But we do not comment. However, what we find is, the common thread of including all offences against women and such offences which are punishable with imprisonment for life as also imprisonment for a term exceeding three years and above. We get a clue. Offences which do not carry a mandatory sentence of imprisonment and it to be imprisoned the term is less than 3 years and the offender can be let off with payment of fine, are not included in the said list. It is an undisputed fact that there are no rules to guide the authorities in Delhi Police as to in what cases despite acquittal, the person can be kept out of service or can be deprived of employment.

34. That apart, as generically understood, offences involving moral turpitude can be classified with reference to the act being one which shocks the moral conscience of the society in general and this can be determined with reference to the motive of the offender i.e. whether the motive which led to the act was a base one or alternatively whether on account of the act having been committed the perpetrator could be

considered to be of a depraved character or a person who was to be looked down upon by the society.

35. Today, with plea bargaining being a well-recognized facet of the administration of criminal law and a part of criminal jurisprudence in India, we do perceive a large number of cases involving thousands and thousands throughout the country, appearing before the Summary Courts and paying small amounts of fine, more often than not, as a measure of plea bargaining. Foremost would be amongst them petty crimes committed mostly by the young and/or the inexperienced. Some may even undergo a petty sentence of imprisonment of a week or ten days. We may also notice that Section 302 Cr.P.C. prescribes for taking note of compoundable offences at the instance of the complainant itself and there are cases where compounding can take place with the permission of the Court.

36. Life is too precious to be staked over petty incidents and the cruel result of conviction for petty offences being the end of the career, the future and the present, of young and inexperienced persons cannot blast their life and their dreams.

37. In a growing democracy, where the systems are failing and the weak and the downtrodden are hardly given the opportunity to sharpen their intellect thereby diminishing the ability of their consciousness to act as a mirror to their acts and actions, it is high time that the executive brings into place a policy where summary/ordinary conviction should not be treated as a conviction for entry or retention in government service.

38. Till then, it would be the duty of the Court to interpret the law by harmonizing human sufferings and human wants, delinquencies and criminal tendencies; conscious of the fact that passengers on Spaceship Earth are the rich and the poor, the needy and the well-off, the hungry and the well-fed, the educated and the uneducated. The need of the hour is to understand that criminals are not born and are not irredeemable brutes. Crime may be a disease but not the criminal, who are a kind of psychic patients and to understand, that anti-social maladies are mostly the result of social imbalances. It must be remembered that on the one hand, social stresses, for various reasons, explosively mount in the real world's hard environs and the harsh remedy of heartless incarceration and ouster from society deepens the criminality. The swing of the pendulum to the humanist side requires respect for the worth of personhood and the right of every man and woman in its residual human essence.

39. What is the gravamen of the allegation constituting the act committed by the respondent which was treated as voluntarily causing hurt is not known to us. What was the nature of insult heaped upon the complainant which attracted the offence punishable under Section 504 IPC and what was the act which attracted the crime of criminal intimidation is also not known. But from a trinity of the three i.e. the alleged offence punishable under Section 323 IPC, Section 504 IPC and Section 506 IPC we can safely presume that the allegation against the respondent was of abusing the complainant and threatening to beat him followed by simple beating.

40. All these offences are non-cognizable and needless to state are bailable. No moral turpitude, as

generically understood, is involved. The acts do not shock the moral conscious of the society and with reference to the motive do not evidence a person with depraved character. The offences are not of the kind which would justify dismissal or removal from service, if the respondent had committed the same if in service.

41. Thus, being charged with the said offences, of which the respondent has ultimately been acquitted, would not be a bar and cannot be treated as a bar to seek public employment and on being successful at the entrance exam, to be denied the same.

42. As noted in para 5 and para 6 above, the charge was of acting deceitfully by withholding relevant information. With reference to our discussion in para 15 above, it is apparent that the wrong information pertained to only a part of the information sought vide serial No.13 (a) and (c) of the attestation form, by not informing that a criminal complaint pertaining to a Non-Cognizable Report was pending against him. In para 15 above we have recorded that part information was wrong, but was it out of deceit would be dealt with later and hence we discuss said aspect.

43. Though not attracting the *de minimis* principle as explained by us in para 31 above, the offences alleged to be committed by the respondent are fairly trivial and it is in this context the wrong answer has to be considered and appreciated.

44. This takes us to the issue of whether the wrong partakes the character of deception.

45. Now, every wrong information may not necessarily be deception. A person may be wrong, but under the bona fide belief that he is right, he furnishes the information. This would not be deception.

46. As per his reply to the show cause notice, contents of which reply have been noted by us in para 7 above and analyzed in para 8 above do show, though erroneous, the respondent claims forming a bona fide belief that unless a charge is framed in a non-cognizable offence and pursuant to a Non-Cognizable Report, that no case is pending against him.

47. We have no reason to doubt that under a mistaken legal belief the respondent wrote back that no case was pending against him in any court of law. Thus, the charge of deception as laid in the show cause notice dated 30.07.2008 is not sustainable.

48. Hence, the reason for denying employment has to fail.

49. The last issue which we need to discuss is, whether the respondent should be denied employment in the Police department. It was urged by learned counsel for the petitioner that persons who have a brush with criminal law, even if they are acquitted, are undesirable elements to be inducted as Police Officers. As stated above, there are no guidelines available with the petitioner to declare as to who is undesirable element to prohibit his induction in Delhi Police.

50. The respondent is not being inducted in the higher cadre of the Police i.e. the IPS cadre. He is entering

the lower rungs. His address shows his rural background. The same is: *R/o VPO Mulhera, District Meerut, U.P.*

51. We have discussed hereinabove the necessity to harmonize the various social imbalances and in particular in favour of those who have been denied the opportunity of developing their consciousness and thereby being deprived of their conscious acting as a mirror to their acts. We have highlighted as to how in various jurisdictions abroad the issue is dealt with. We have discussed hereinabove the deliberations at the '*All India Seminar on Correctional Service*' where emphasis for re-habilitation of ex-convicts, committing minor offences, by induction in public service was accorded primacy in the deliberations.

52. It would be advisable for the petitioner to devise a selection procedure by subjecting those who are desirous of seeking employment under the Police to the various tests which we have noted in para 16 above and which we have culled out from jurisprudence followed in matured democracies.

53. The respondent was born on 21.05.1987. The age of the respondent when he was made an accused in the Non-Cognizable Report would be 19 years. The trivial offence of what he was charged of, in which he has been acquitted, cannot make him a criminal of a kind where public interest requires his non-induction in the Police force and that too as a Sub-Inspector (Executive) and that means his duties would be clerical and not with arms and surely not on the streets requiring him to deal with public. Assuming that the petitioner did the acts of which he was accused of, the

same is a trivial brawl which he had in the village. Some fist blows with choicest abuses in tandem were hurled at the victim.

54. The writ petition is dismissed and the direction issued by the Tribunal is upheld.

55. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MOOL CHAND GARG)
JUDGE

AUGUST 25, 2010
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