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

% *Date of Decision: February 13, 2013*

+ **W.P.(C) 8499/2011**

COMMISSIONER OF POLICE AND ANR Petitioners
Represented by: Dr.Ashwani Bhardwaj and Ms.Anisha
Gupta, Advocates.
versus

NARENDER KUMAR SINGH Respondent
Represented by: Mr.B.K.Berera, Advocate.

W.P.(C) 8142/2011

HAWA SINGH Petitioner
Represented by: Ms.Jyoti Singh, Senior Advocate
instructed by Ms.Saahila Lamba, Advocate.

versus

COMMISSIONER OF POLICE AND ANR Respondents
Represented by: Mr.Hemant Singh, Advocate for
Ms.Sonia Arora, Advocate.

W.P.(C) 8807/2011

THE COMMISSIONER OF POLICE AND ANR Petitioners
Represented by: Dr.Ashwani Bhardwaj and Ms.Anisha
Gupta, Advocates.
versus

PRAVESH KUMAR Respondent
Represented by: None.

W.P.(C) 2069/2012

GOVT OF NCT OF DELHI & ORS Petitioners
Represented by: Dr.Ashwani Bhardwaj and Ms.Anisha
Gupta, Advocates.

versus

PARVEEN KUMAR Respondent
Represented by: Mr.Sachin Chauhan, Advocate.

W.P.(C) 5140/2012

COMMISSIONER OF POLICE AND ANR Petitioners
Represented by: Dr.Ashwani Bhardwaj and Ms.Anisha
Gupta, Advocates.

versus

JAGJEEVAN RAM Respondent
Represented by: None.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE VEENA BIRBAL

PRADEEP NANDRAJOG, J. (Oral)

1. The facts pertaining the above captioned five writ petitions may be noted by us:-

(a) WP(C) No.8499/2011 : In the year 2008 pertaining to a dispute involving neighbours, on a complaint filed Narender Kumar Singh, the respondent was named as an accused along with the other male family members in FIR No.152A/2008 for offences punishable under Section 323/325/504/506/34 IPC PS Aligarh and we note that as is usual in India, when neighbours fight, all family members of the opposite group are named

as accused. Narender Kumar Singh was 18 years old as of the date when FIR in question was registered. As usual, when tempers cooled, and the complainant/neighbour realized that he had exaggerated a trivial incident, the matter was compromised resulting in all accused being acquitted. Two year later the sister-in-law of Narender Kumar Singh, i.e. his brother's wife made a complaint to the police alleging dowry harassment against her husband, her in-laws, her brothers-in-law and her sisters-in-law i.e. the entire family; as we find in every case. FIR No.36/2010 for offences punishable under Section 498A/323/506 IPC read with Sections 3 and 4 of the Dowry Prohibition Act was registered at PS Gonda District Aligarh and in respect of the FIR the matter stood closed when the husband and wife patched up resulting in the Court concerned accepting the closure report filed by the police on March 17, 2010. Narender Kumar Singh was then aged 20 years.

(b) WP(C) 8142/2011 : Petitioner Hawa Singh was aged 21 years when FIR No.61/2007 for offences punishable under Section 323/354/451/34 PS Khetri was registered by a neighbour pertaining to a trivial dispute in which all the male family members of Hawa Singh were named as accused; and pertaining to Section 354 IPC we may simply note that when jostling took place amongst neighbours, a female member of the opposite family joined the fray and thus offence punishable under Section 354 IPC was added. As is usual, when tempers cooled, the dispute got settled and all, including Hawa Singh were acquitted.

(c) WP(C) No.8807/2011 : Another case of rivalry in the village and the usual story of all and sundry in the family being named as accused. Aged 18 years, respondent Pravesh Kumar was named as an accused in FIR

No.91/1998 for offences punishable under Section 147/148/323/324/504/506 IPC PS Kharkauda and needless to state the dispute pertained to a plot in village Phaponda. A half-hearted compromise took place at which the complainant denied he or anyone else being beaten and similar was the statement of another person statedly beaten. Both of them claimed that there was jostling and pushing by a crowd. They retracted from any life threatening and intimidating statements being made by anybody. The result was all accused being acquitted.

(d) WP(C) 2069/2012 : Respondent Praveen Kumar at the age of 18 years was named as an accused along with his other family members for offences punishable under Section 323/324/34 IPC when FIR No.133/2005 was registered at PS Koshli, and needless to state when tempers cooled, a compromise was arrived at and all accused were discharged.

(e) WP(C) No.5140/2012 : Respondent Jagjeevan Ram was caught cheating when he was aged 19 years at an examination being conducted by Rajasthan University and FIR No.59/1995 for the offence of cheating under Section 3/6 Rajasthan Examination Act PS Tijara was registered against him and on being convicted he was let off on probation on April 29, 1995.

2. The five young men successfully cleared the selection process to be appointed either as Constables or Sub-Inspector with the Delhi Police, but found employment being denied because Narender Kumar Singh, Hawa Singh, Pravesh Kumar and Praveen Kumar when selected as Constables did not disclose either in the Application Form or the Attestation Form that they were accused in the respective FIRs, an information which they ought to have furnished while filling up Column No.11 of the Attestation Form where information sought was : Whether the applicant was ever an accused

for having committed an offence. As regards Jagjeevan Ram, who sought employment as a Sub-Inspector, notwithstanding he having disclosed being an accused and also being convicted but let off on probation for the offence of cheating at a College Examination when he was 19 years of age, employment was denied because of he being convicted. Whereas Jagjeevan Ram, Narender Kumar Singh, Pravesh Kumar and Praveen Kumar had succeeded before the Central Administrative Tribunal, Hawa Singh has faced defeat.

3. As regards Jagjeevan Ram, vide order dated March 07, 2012 direction issued is to reconsider the matter keeping in view Section 12 of the Probation of Offenders Act 1958 which mandates no adverse consequences of the criminal case to follow if the person concerned on being convicted was let off on probation. As regards Narender Kumar Singh, vide order dated August 24, 2011, the Tribunal has directed to offer him employment i.e. Narender Kumar Singh has secured a clean victory. So is the case with Pravesh Kumar in whose favour vide order dated August 19, 2011 direction issued is to appoint him as a Constable. Similar is the position of Praveen Kumar qua whom vide order dated January 02, 2012 direction issued is to appoint him as a Constable. As noted above, Hawa Singh has lost the battle when vide order dated August 24, 2011 the Tribunal dismissed his claim and upheld his non-appointment as a Constable in Delhi Police.

4. We are conscious of the charge against all, except Jagjeevan Ram i.e. that they suppressed the fact that they were accused in the FIRs which we have noted against the names of each in para 1 above.

5. But we highlight that the five young men were aged between 18 years to 20 years when the FIRs were registered against them and save and except

Jagjeevan Ram who was caught cheating, qua the other four would highlight that it is the usual story of either a land dispute amongst neighbours being blown out of proportion and all male family members of the other group named as accused or, in the case of Narender Kumar Singh, the estranged wife naming each and every member of the family of her in-laws as an accused for dowry harassment.

6. In the latest judgment pronounced by the Supreme Court in CA No.5671/2012 Jainendra Singh v. State of U.P. & Ors. the Supreme Court has noted conflicting opinions rendered by different benches of the Supreme Court on the subject of fraudulent appointments where fact pertaining to a character being withheld by a candidate seeking public employment i.e. not disclosing either being an accused for having committed an offence or not disclosing being convicted for having committed an offence. Some decisions took the view that the nature of the wrong alleged has to be considered and some have taken the view that a non-disclosure or the fact of conviction, if disclosure was made, would be fatal.

7. One decision which has taken the former view and in respect of which we may state could be treated as representative of the benevolent view is the decision reported as 2011 (4) SCC 644 Commissioner of Police v. Sandeep Kumar and a view which is not benevolent would be represented in the decision reported as 2010 (14) SCC 103 Daya Shanker Yadav v. UOI & Ors.

8. Instructing ourselves that in the opinion of the Supreme Court in WP(Crl.) No.26/2011 Ashok Sadarangani & Anr. v. UOI & Ors. decided on March 14, 2012, the Supreme Court held that pendency of a reference to a larger Bench would not mean that as and when an issue arises before a Court the same should be deferred, we venture into the subject by highlighting one

fact. Neither view expressed by the Supreme Court has discussed the matter with reference to the social impact of criminalization when people are kept out of society. The various opinions do not show arguments advanced with reference to offences being petty or serious; cognizable or non-cognizable, compoundable or non-compoundable, bailable or non-bailable, and finally whether involving moral turpitude or not. The decisions which have taken a benevolent view are founded on the theory that the modern approach towards crime is to reform a person rather than branding him as a criminal all his life. The contra view highlights the importance of impeccable character to be possessed by he who seeks a public office.

9. A criminal proceedings pending against a person or a person being named as an accused but later on acquitted or for that matter even being convicted may at best justify eyebrows to be raised. But should one completely shut one's eyes towards said person? Is the question which arises as the core question.

10. Since we are dealing with employment in Delhi Police we recognize the fact that the police play 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

11. These are the minimum attributes of a police officer and the State would be justified in screening the candidates on the said attributes. But we find that in India, screening is effected only to test the physical strength, the medical condition and the moral character. The last by the archaic tool of checking from the police dossier.

12. 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.

13. The history of a person with reference to criminal record with the police is accessed by a potential employer to assess the trustworthiness of a candidate. In some countries police keeps this information limited to non-expunged criminal offences and in some data is kept of convictions. In a few countries information pertaining to arrest, charges pending and even charges dismissed is kept. The last of the category may arguably be a Human Rights violation because it works contrary to the presumption of innocence and may expose people to discrimination on the basis of unproven allegations. Unfortunately in India, we continue to simply rely upon

information with the police pertaining to FIRs registered, convictions made or acquittals returned.

14. 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, to be denied 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, public employment to be denied. The answer would be in the affirmative.

15. Denying public employment to persons with a criminal background is premised on the considerations of public policy, concern for public interest, regard for public good etc.

16. 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.

17. 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?

18. With respect to the two illustrative situations we have highlighted in para 14 above, not even a fool would argue that for trivial offences public

employment should be prohibited. The two examples are in the extreme but help to decipher the process of reasoning to be adopted to decide borderline cases.

19. Penal laws all over the world and including India broadly categorize offences as felonies and misdemeanours, with the former being treated as grave and the latter as less grave. In India we find further classification of offences with a lower and a higher degree of criminality in the form of bailable versus non-bailable offences and cognizable versus non-cognizable offences.

20. 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.

21. If we look at case law pertaining to summary dismissal or removal from service without inquiries we find that on the anvil of public interest and public good theory, only in extreme cases constituting grave and serious offences recourse to summary dismissal or removal is accepted by Courts.

22. Now, if a person has already obtained public employment and does a wrong, we find that not for all offences the door has to be shown. It is the test of moral turpitude in the offence which acts as the anvil to sacrifice the offender. We find that where the wrongs are an offence but not having a moral turpitude, the civil penalty is of a kind where public employment is not lost. Doing reverse engineering and looking at the prism from the other side, it can be gainsaid that such offences which do not attract the taint of a moral turpitude should ordinarily not deny public employment.

23. It is unfortunate that in India, the Government does not publish 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.

24. The common thread we find is the exclusion of offences from the list against women and such offences which are punishable with imprisonment for a term more than three years.

25. 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 320 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.

26. 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.

27. 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.

28. 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.

29. The legal position with respect to the effect of an acquittal of a delinquent employee at a criminal trial vis-à-vis the disciplinary proceedings initiated against him has been succinctly stated by Supreme Court in the decision reported as Management, Pandiyan Roadways Corporation Ltd v N. Balakrishnan (2007) 9 SCC 755 in the following terms:-

“21. However, there is another aspect of the matter which cannot be lost sight of. Respondent, in the meanwhile, has been acquitted. The factum of his acquittal has been taken into consideration by the Division Bench, which was considered to be an additional factor. Ordinarily, the question as to whether acquittal in a criminal case will be conclusive in regard to the order of punishment imposed upon the delinquent officer in a departmental proceeding is a matter which will again depend upon the fact situation involved in a given case.

22. There are evidently two lines of decisions of this Court operating in the field. One being the cases which would come within the purview of (1999) 1 LLJ 1094 SC Capt. Paul Anthony v. Bharat Gold Mines Ltd. & Anr. and (2006) 3 LLJ 1075 SC G.M. Tank v. State of Gujarat & Ors. However, the second line of decisions show that an honourable acquittal in the criminal case itself may not be held to be determinative in respect of order of punishment meted out to the delinquent officer, inter alia, when: (i) the order of acquittal has not been passed on the same set of fact or same set of evidence; (ii) the effect of difference in the standard of proof in a criminal trial and disciplinary proceeding has not been considered. [See AIR 2006 SC 1800 Commissioner of Police, New Delhi v. Narender Singh], or; where the delinquent officer was charged with

something more than the subject-matter of the criminal case and/or covered by a decision of the Civil Court. [See (2007) 1 SCC 566 G.M. Tank (supra), Jasbir Singh v. Punjab & Sind Bank and Ors. and Noida Enterprises Assn. v. Noida and Ors.]”

(Emphasis Supplied)

30. The aforesaid view would hold good even when a person has to be considered for employment and pertaining to heinous offences even if the person has been acquitted, would not mean that the person is of good character. We highlight that a person being acquitted at a criminal trial may not necessarily mean that the person is innocent. It would only mean that the prosecution could not muster sufficient and credible evidence to sustain a conviction. In today’s environment where witnesses are suborned and hence turned hostile, one has to be careful. Thus, the fact of mere acquittal by itself may not be relevant and the background under which an acquittal took place may also become relevant for the reason we are not concerned with the consequence of a man being acquitted but are concerned on the subject of character verification. But at the same time the circumstance under which the complaint was made and who was the complainant becomes important, for the reason in India we find that disputes between neighbours relating to land are blown out of proportion in nearly every case and all adult members of the opposite family are roped in. In the field of domestic law, we find the dowry harassment laws being misused by the offending spouse naming each and every adult family member of her husband. Experience shows that when tempers cool and good sense prevails, the exaggerated versions are withdrawn. This is the fate suffered by Narender Kumar Singh who was named as an accused along with all his family members in FIR No.36/2010 filed by his estranged sister-in-law and unfortunately he was

also named as an accused along with all other family members in FIR No.152A/2008 which pertained to a fight amongst neighbours and in which all his family members were named as accused. Both complaints were withdrawn upon a settlement. Similar is the fate of Hawa Singh. Even he was a victim of a trivial dispute involving neighbours. He and all male family members were named as accused. Tempers cooled. The dispute got settled. All were acquitted. The same is the fate of Pravesh Kumar and Praveen Kumar who were named as accused along with all other male family members in a petty dispute pertaining to land with neighbours.

31. We are not influenced by the fact that the said four young men were ultimately acquitted or discharged for the reason, the acquittal or discharge was the result of a compromise, but certainly would be influenced by the fact that the complaints would show trivial incidents being blown out of proportion, and this is at the core of what needs to be appreciated. If one can see through and find out that trivial incidents got exaggerated when quarrels took place amongst neighbours and the heat of the passion led to FIRs being registered, no criminality of a kind which justifies public employment being denied attaches to the stated wrong committed; assuming that the wrong was committed.

32. As regards Jagjeevan Ram, it may be true that he was caught cheating at a University Exam, but we cannot overlook the fact that he was let off on probation and the mandate of Section 12 of the Probation of Offenders Act is that the person should not suffer the disability of the conviction. As regards him, the only direction issued by the Tribunal is that the Competent Authority should reconsider the matter keeping in view the mandate of Section 12 of the Probation of Offenders Act.

33. One lasting word. The five young men before us come from humble socio-economic background. The incidents alleged against them have a rural setting. We have already noted above the tendency in rural India, in interpersonal disputes, to rope in all adult male members of the opposite group. Small incidents of pushing, jostling or slapping are converted into alleged offences which seem to be serious. A fist blow directed towards the head is sometimes registered as an offence punishable under Section 308 IPC. A fight between two neighbouring boys in which the sister of one boy intervenes and is pushed by the other boy results in Section 354 IPC being added in the FIR. One should not therefore go by the label of the Sections recorded in the FIRs but should look at the attributes of the act keeping in view the genesis of the quarrel which may sometimes take a serious dimension of pushing and beating. But the seriousness is not of a dimension where one would label the wrongdoer as an evil person unworthy of public employment. It has to be kept in mind that with lack of education and the social pressures in rural India, young men are not able to reason with the same level of logic application as educated youth in the city would. As time passes and experience is gained in life, ones senses of rationality and reaction are chiselled, meaning thereby, the impulsive reaction of the youth cannot be equated with the thought off reaction of an experienced person.

34. As regards the fact that save and except Jagjeevan Ram all other had suppressed the information that in the past they were named as an accused for having committed an offence we note the observations made by the Supreme Court in Sandeep Kumar's case (supra) wherein it was observed that probably the information was not furnished due to fear, that if they did so, they would automatically be disqualified. The Supreme Court noted that

the emphasis should be on the seriousness of the offence for which a person has been alleged to be involved. The tendency of the young and the inexperienced to commit minor indiscretions when they are tender and inexperienced in age has to be ignored. And we may only add that this would include, suppressing an information out of fear but only when the information is of a kind which pertains to a minor indiscretion. In other words, the matter can be looked at from another angle. Had these young men furnished the relevant information and based thereon were held disentitled to be offered the job and they had approached the Court seeking a mandamus that letters offering appointment should be issued. Would the Court not have issued the mandamus on the reasoning afore-noted? The answer would be 'Yes'.

35. Considering the factual allegations which resulted in the five young men being named as accused, and one of them ultimately being convicted but let off on probation we concur with the view taken by the Tribunal in the orders which are a subject matter of WP(C) No.8807/2011, WP(C) No.8499/2011, WP(C) No.2069/2012 and WP(C) No.5142/2012 which we dismiss and disagreeing with the view taken by the Tribunal which is a subject matter of challenge in WP(C) No.8142/2011 we allow the same and restore employment of the writ petitioner Hawa Singh,.

36. Consequential benefits in terms of seniority as per merit position are directed to be accorded with notional pay fixation with increments but without back wages which we deny on account of the application of the principle : *No Work No Pay*. As regards Jagjeevan Ram, necessary decision would be taken by the Competent Authority in terms of the decision dated March 07, 2012 passed by the Tribunal within six weeks from today.

37. Parties shall bear their own costs in all the writ petitions.

(PRADEEP NANDRAJOG)
JUDGE

(VEENA BIRBAL)
JUDGE

FEBRUARY 13, 2013//dkb//