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

% *Judgment Reserved on: April 23, 2013*
Judgment Delivered on: April 29, 2013

\+ **W.P.(C) 4052/2012**

COMMISSIONER OF POLICE ..... Petitioner
Represented by: Mr.V.K.Tandon, Advocate with
Mr.Yogesh Saini, Advocate

versus

MUKESH KUMAR ..... Respondent
Represented by: Mr.L.R.Khatana, Advocate

W.P.(C) 3549/2012

COMMISSIONER OF POLICE DELHI AND ANR ..... Petitioners
Represented by: Mr.S.Q.Kazim, Advocate with
Mr.M.H.Usmani, Advocate

versus

MANDEEP ..... Respondent
Represented by: Mr.Sachin Chauhan, Advocate

W.P.(C) 3925/2012

COMMISSIONER OF POLICE DELHI AND ANR ..... Petitioners
Represented by: Mr.A.K.Trivedi, Advocate for
Dr.S.P.Sharma, Advocate

versus

BHAWANI ..... Respondent
Represented by: Mr.Sachin Chauhan, Advocate

W.P.(C) 3932/2012

GOVT. OF NCT OF DELHI AND ORS ..... Petitioners

Represented by: Mr.A.K.Trivedi, Advocate for
Dr.S.P.Sharma, Advocate

versus

HARIPAL ARYA ..... Respondent
Represented by: Mr.Sourabh Ahuja, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR.JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG , J.

1. 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 deny entry into Government service is a question which has repeatedly been debated before the Central Administrative Tribunal, the Delhi High Court and even the Supreme Court. In spite of a near unanimity of opinion, we find that various Benches of the Central Administrative Tribunal have not understood the correct position in law nor have they understood how law has to be applied to the facts of each case, and thus notwithstanding an exhaustive opinion pronounced by this Court reported as 171 (2010) DLT 705 *Government of NCT of Delhi & Anr. vs. Robin Singh*, since the issue keeps on resurrecting our endeavour therefore, while writing this opinion, would be to lay down principles on which facts of each case have to be applied to the law.

2. Since we are concerned in the four captioned petitions with appointment to the post of a Constable (Executive) in the Delhi Police, we highlight 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.

3. Keeping in view the above attributes, which are the minimum required of a person who becomes a member of the police force, it is the duty of the State to carefully screen the candidates on the above attributes.

4. 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.

5. But in India the moral character and integrity is determined by the archaic method of checking on the police dossiers. No evaluation whatsoever is done pertaining to the emotional maturity; the ability to remain calm in emotionally charged situations' the ability to handle difficult situations and be responsive.

6. 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 countries it contains information pertaining to 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 (whether the individual had pleaded guilty or been declared guilty by a qualified court) while in some countries 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.

7. 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.

8. A man can be booked for the offence of over-speeding and perhaps may be convicted for parking a 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.

9. 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.

10. With respect to the first two examples given by us in para 8 above, everybody would agree that for such trivial offences public employment should not be denied and would agree with respect to the next two examples that public employment should be denied. No doubt the examples are in the extreme but they 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.

11. In the decision in *Robin Singh*'s case in paras 25 to 35 it was observed by a Division Bench of this Court as under:-

> *"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 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."

12. In the decision of the Supreme Court reported as (1996) 4 SCC 17 *Pawan Kumar & Ors. vs.State of Haryana,* the Supreme Court had noted the policy decision taken by the Government of Haryana as notified vide OM dated February 02, 1973, to which a reference was made by the

Division Bench in para 32 of the opinion in *Robin Singh's* case (supra). The Supreme Court, in said decision, held that conviction for offences not involving moral turpitude should not result in services of a Government servant being terminated; and we are of the opinion that the same could be applied when issue of giving public employment arises.

13. The decision in *Robin Singh*'s case noted that 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. It was observed by the Division Bench that 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 bar for entry or retention in government service. It was opined that 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.

14. We have reached far enough to understand that denial of appointment to a public post to a citizen for all times to come is indeed a serious matter and at the same time public interest pertaining to public employment has also to be kept in mind.

15. Thus, if a person who seeks public employment is found to be convicted for a penal offence, the nature of the act which resulted in the commission of the offence, the circumstance under which the act was committed and the age of the wrongdoer have to be kept in mind.

16. But what happens, if the person is acquitted by a Court of competent jurisdiction.

17. We find certain decision of a few Benches of this Court where the view taken is that once a person is acquitted, that would be the end of the inquiry and public employment must follow if the person concerned has found himself being selected at the selection process.

18. Said decisions do not take note of the decision of the Supreme Court reported as (1996) 11 SCC 615 *Delhi Administration vs. Sushil Kumar* in which it was opined that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State and that an acquittal or discharge pertaining to a criminal offence would not be conclusive.

19. In an unreported decision pronounced on November 28, 2005 deciding a batch of writ petitions, lead matter being WP(C) No.6042-43/2005 *Government of NCT of Delhi & Anr. vs. Deepak Kumar* a Division Bench of this Court noted the decision of the Supreme Court in *Sushil Kumar* case (supra) and held that the nature of the acquittal; the attendant

circumstances pertaining to the acquittal; the nature of the crime alleged and the circumstance under which it was allegedly committed have to be taken note of.

20. 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(2007) 9 SCC 755 *Management, Pandiyan Roadways Corporation Ltd v N. Balakrishnan* 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.*
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> *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) I LLJ 1094 SC Capt. Paul Anthony v. Bharat Gold Mines Ltd. & Anr. and (2006) III 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.]"

21. 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 turn 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 the concern is not with the consequence of a man being acquitted but is on the subject of character verification.

22. Where an acquittal is on the finding that a false complaint was lodged i.e. the best evidence led by the prosecution failed under the weight of admissions extracted during cross-examination of witnesses, whatsoever may be the offence alleged, it has to be held that the innocent accused cannot be made to suffer for the second time by denying him public employment merely because in the past a false complaint; proved to be false, was registered against him. But where the acquittal is on account of the high standard of proof required at a criminal trial or is based upon some critical facts not being proved or is the result of witnesses turning hostile, one has to be careful. Further facts have to be considered.

23. While considering the nature of acquittal, it would not be enough to simply observe that the witnesses had turned hostile and therefore

it would be presumed that the accused had created a terror twice over; firstly when the offending act constituting the crime was committed and secondly when the witnesses were suborned. The judgment of the criminal court has to be taken into consideration with all the aspects leading to acquittal. The manner of acquittal and in particular whether it is on a benefit of doubt. Insofar as the nature of offence is concerned, the facts disclosed in the FIR supported with other material has to be considered. The gravity of the acts alleged the narration of the facts in the FIR and medical evidence has to be considered. Witnesses may not depose in tune with their statements made before the police and thus it would have to be looked into as to whether it was a case where the Investigation Officer did not seek full and complete version from the witness. It being settled law that while appreciating the deposition of witnesses, vis-à-vis their statements made before the police, on the issue of variation and improvements it has to be kept in mind that many a times a person informs facts which he thinks are relevant and ignores to tell facts which he thinks are irrelevant, but in law the relevance or irrelevance may be in converse and hence the duty of he who seeks information to elicit all relevant information.

24. To put it pithily, on the subject of antecedent behaviour and past conduct the exercise to be performed is not like a mechanist but as a person who has to take an informed decision.

25. With the aforesaid legal position we now turn to the facts of the four cases before us.

26. **WP(C) 4052/2012** : An FIR No.59A/2006 for offences punishable under Sections 147/148/336/341/427/436 IPC was registered at P.S.Rampur, U.P. on the statement of the S.H.O. of the Police Station. As per the statement, a truck bearing registration No.HR 38E 3395 and a

Matador Van bearing No. UP 43C 5137 were transporting buffalos/calves in a cruel manner and upon being noticed by the villagers, a crowd of 450-500 persons whose name he did not know resorted to acts of arson. As per the statement, the SHO stated that he could recognize some members of the crowd if brought before him because they were residents of a nearby village. Nobody was named as an accused. Respondent Mukesh Kumar was then aged 16 years. The Public Prosecutor withdrew the challan filed in the Court of the competent jurisdiction with respect to the FIR in question. After respondent Mukesh Kumar, successfully cleared the recruitment process to be appointed as a Constable and had been issued letter offering appointment, which he accepted and started working, a show cause notice was issued to him on March 22, 2011, alleging therein that while applying for the post and thereafter when he filled up the enrolment form, required to furnish information whether he was ever accused of having committed an offence he replied in the negative; and thereby committed the wrong of suppressing relevant information. Mukesh Kumar responded by informing that he was unaware of his being an accused in the FIR in question. On July 6, 2011, an order was passed recording therein that evidenced from the fact that he had received a summons dated June 06, 2007 issued by the Judicial Magistrate directing him to appear in Court on June 21, 2007, it was apparent that he had deliberate withheld relevant information. Holding so, Mukesh Kumar's appointment has been cancelled when he was still a probationer.

27. Vide impugned order dated March 01, 2012, the Tribunal has held that in view of the law declared by the Supreme Court in the decision reported as (2011) 4 SCC 644 *Commissioner of Police & Ors. vs.Sandeep Kumar* the order cancelling appointment was liable to be set aside.

28. In *Sandeep Kumar*'s case (supra) the Supreme Court held that indiscreet acts by the youth should not result in the youth being condemned for all times to come. Pertaining to non-disclosure of information pertaining to being an accused in the past, the Supreme Court opined that non-disclosure is the result of fear, for if said fact would be disclosed the person concerned would not even be called to participate in the selection process. The withholding of relevant information was opined to be not an act of deceit but one of fear.

29. It is trite that a fact not disclosed in a show-cause notice cannot be used while passing a final order. In a situation where the reply filed to the show cause notice gives birth to a factual adjudication keeping in view the reply filed, if the department is armed with a fact, which if correct demolishes the stand taken in the defence, said fact has to be disclosed to elicit a response from the noticee. The reason being that the noticee may have something to respond.

30. In the instant case, there is no proof that on the alleged summons issued by the Court of the Judicial Magistrate concerned the signatures in token of receipt of the summons were those of Mukesh Kumar. As we have noted above, the complaint made by the SHO based whereon the FIR was registered did not disclose the name of any accused. As per the complaint, 450-500 villagers had gathered on being incensed when they saw a truck and a matador transporting cattle in a cruel manner. As per the SHO, he could identify a few villagers if brought before him. Now, the possibility of young Mukesh Kumar, who was then aged 16 years being, a curious by stander but noticed by the SHO cannot be ruled out. It is possible that to complete the formality of law the SHO entered his name in the column of accused persons when the challan was filed and got issued a summons which

was never received by Mukesh Kumar for the reason the police officer who went to serve the summons forged Mukesh Kumar's signatures or some other Mukesh Kumar received the same. Now, if Mukesh Kumar was served with the summons he was bound to appear in the Court of the Judicial Magistrate and obtain a bail. If in spite of summons being served he did not appear, warrants of arrest would have been issued. Whether either of the two things happened? We do not know. The police authorities have not bothered to verify said facts. Had it been informed to Mukesh Kumar that the department has evidenced of he having received the summons, Mukesh Kumar could have projected a valid defence.

31. Thus, on the facts relevant for adjudication of WP(C) 4052/2012 the only conclusion has to be in favour of Mukesh Kumar; not only as per the reasoning of the Tribunal but our additional reasoning above. We highlight that Mukesh Kumar was aged 16 years when FIR No.59A/2006 was registered. As per the FIR the villagers got incensed when they saw cattle being transported in a cruel condition. Assuming he was a part of the crowd, by throwing a stone or two at the vehicles, Mukesh Kumar could not be said to have committed a wrong which morally taints him. He was a juvenile and even if he was convicted would have got the benefit of the law requiring convictions of juveniles to be ignored pertaining to civil consequences.

32. **WP(C) 3549/2012** : Respondent Mandeep was an accused in two FIRs registered at P.S. Chirawa District Jhunjhunu, Rajasthan. The first was FIR No.137 dated June 24, 2005 for offences punishable under Section 147/148/149/323/336/341/451 IPC in which as per challan filed, twenty seven persons were named as an accused. The second was FIR No.235

dated September 20, 2005 for offences punishable under Section 323/341 IPC.

33. The second FIR resulted in Mandeep being acquitted upon the matter being compromised and as regards the first he and other accused were acquitted on September 04, 2005, partially due to the matter being compromised and partially due to witnesses turning hostile. The compromise pertained to offences punishable under Section 323/451 IPC.

34. As per the FIR in question, it was a dispute between two groups of villagers and pertained to a land dispute. The age of the 27 accused ranges between 18 years to 75 years, and as regards Mandeep we note that he was then aged 18 years. From the parentage of the accused we find that the sons of one Ramji Lal, Mangi Lal, Baijram, Tikuram, Dataram, Babu Lal, Ravi Pal, Balvir, Dhanpat, Sandeep, Omveer and Hawa Singh as also said persons were named as accused. The statedly injured persons from the complainant side were 10. From the challan and the names of the injured persons we find that both groups belonged to the Jaat community. Of the 10 injured persons, 9 had received superficial injuries such as bruises, abrasions, or lacerated wounds numbering between one to three injuries in all. Only one, named Satyaveer Singh, had 12 injuries; being mostly abrasions, one lacerated wound and two contusion wounds.

35. The decision dated September 14, 2005 has been announced within less than 2½ months of the incident. As noted above, parties compromised pertaining to offences punishable under Section 323/451 IPC and the decision pertained to non-compoundable offences. Obviously, the witnesses had turned hostile.

36. Mandeep had furnished information of he being an accused in the two FIRs. He was born on February 11, 1987 and was thus 18 years old as of the year 2005 when he became an accused in the two FIRs.

37. Now, pertaining to FIR No.137 we have found that there were 27 persons named as an accused. As per the FIR the clash was between two groups of the same community (Jaat) in the village. In India, the propensity to falsely implicate all members of the opposite family is not unknown. Since the dispute got settled and witnesses did not depose truthfully, it would be difficult to ascertain the role of Mandeep; if any. But what is relevant to be noted is that as per the FIR he was a part of the group but no role in the assault has been assigned to him. Role assigned in the assault is to Ramji Lal, Babu Lal, Ravi Pal, Balvir, Dhanpat, Sandeep, Omveer and Satyaveer. Pertaining to Mandeep, a role was assigned as per statements recorded during investigation by the Investigating Officer and thus there is every possibility that the so called injured eye witnesses were made to speak in a manner that a role was assigned to 27 persons; all of whom are related either by blood or as neighbours.

38. The nature of the FIR, evidencing a clash between two groups of the same community, and name of Mandeep and few other persons not being disclosed in the FIR and Mandeep and said few persons being named subsequently coupled with the simple injuries on the side of the victims brings out the possibility of Mandeep being falsely implicated.

39. It has to be kept in mind that Mandeep was aged only 18 years.

40. As regards the other FIR, we find that the complainant is one Swaroop Singh, a Jaat, and the accused named therein are Hawa Singh, a stated relative of Hawa Singh whose name was not known to the

complainant, and Mandeep. The matter was disposed of on a compromise between the parties.

41. The two FIRs bring out some kind of conflict between two groups of Jaats in the same village. The two FIRs do not rule out the possibility of false implication of members of the opposite group. We repeat once again that Courts have to take into account rural settings where upon a wrong committed by one or two members of the family the complainant side tends to exaggerate the version and ensnare all and sundry.

42. Keeping in view that Mandeep was merely 18 years of age and as of now has added 8 years to his age i.e. has matured, the law declared by the Supreme Court in the decision in *Pawan Kumar*'s case (supra) as also the law declared by a Division Bench of this Court in *Robin Singh's* case (supra) guides us that WP(C) No. 3549/2012 should also be dismissed and the order passed by the Tribunal upheld.

43. **WP(C) No.3932/2012** : Respondent Hari Pal Arya, had suppressed information while applying for the job as also when he was selected and called upon to fill up the attestation form; of he being an accused in FIR No.45 dated March 01, 1998, for offences punishable under Sections 148/149/323/324/307 IPC P.S.Jhajjar, Haryana. Six accused, including Hari Pal Arya faced trial.

44. FIR Ex.PK/2 registered on the complaint lodged by Sahib Singh examined as PW-9, would reveal that the assault took place at 3.00 P.M. and was pre-meditated inasmuch as all the accused were armed with jellis. (A spear shaped farming tool). The specific role in the assault on Sahib Singh and his brother Mohinder Singh who appeared as PW-10 was given. The MLC of Mohinder Singh as also the MLC of the complainant corroborates the description of the injuries as per the FIR.

45. The injuries on Mohinder Singh were life threatening.

46. Deposition of Sahib Singh and his brother Mohinder Singh would reveal that they made improvements vis-à-vis their statements recorded by the police and tried to possibly ensure a conviction; oblivious of the fact that exaggerated version create a problem at a criminal trial because the credibility of the witness becomes doubtful.

47. The decision acquitting all accused would reveal that the high standard of proof at a criminal trial resulted in the accused being acquitted.

48. Now, law is that character and antecedents is an important criteria while employing a person in public service. The nature of acquittal compels us to hold in favour of the department for the reason, Hari Pal Arya was aged 26 when the incident took place. Tested on the standard of proof for a civil action, unhesitatingly one would reach the conclusion that his acting in concert with 5 co-accused stands established for the serious crime of attempt to murder. That the overzealous injured witness and his brother made improvements while deposing in Court gave benefit to him and other co-accused would only mean that the prosecution failed to attain a high level of standard of proof at the criminal trial and not that Hari Pal Arya was innocent. It has also to be kept in mind that he cannot get the benefit of the observations made by the Supreme Court in *Sandeep Kumar*'s case (supra), which pertained to petty offences and non-disclosures due to fear rather than with the intention to hide the truth.

49. Writ petition filed by the Department pertaining to Hari Pal Arya has to be allowed because the Central Administrative Tribunal has over-simplified the decision by granting relief to Hari Pal Arya whose appointment was cancelled after show cause notice was issued when he was still a probationer because it got detected subsequently that he had

suppressed relevant information. The nature of acquittal and the relevant evidence having a bearing thereon has not been considered by the Tribunal.

50. **WP(C) 3925/2012** : Respondent Bhawani Singh, was an accused in FIR No.93 dated June 26, 2007, for offences punishable under Sections 148/149/323/325/307/341 IPC P.S.Kosli, District Rewari. He omitted to disclose said facts when he applied for the post of a Constable but so disclosed in the attestation form and thus on the charge of suppression would be entitled to the benefit of Standing Order No.371/2009 issued on May 05, 2009 by the Commissioner of Police, to the effect that if a person does not disclose of involvement/arrest/being an accused for having committed an offence in the application form but discloses the same in the attestation form, candidature would not be cancelled on the ground of suppression. But even in his case the attending circumstances pertaining to FIR being registered and he being acquitted has to be kept in mind. Regretfully, the Tribunal has allowed the Original Application filed by him without carrying out said exercise.

51. The decision taken by the Department pertaining to candidature of Bhawani Singh being cancelled evidences that guided by the decision of the Division Bench of this Court in *Robin Singh's* case (supra) a Screening Committee has been constituted which looks at the nature of the acquittal and the offence of which the accused was charged with. But the decision has not seen the light of the day. The contents of the FIR have not been produced before us, nor were they produced before the Tribunal. The decision dated February 22, 2008, acquitting Bhawani Singh would reveal that there were as many as 8 accused. The decision would reveal that two injured eye witnesses named Arvind Kumar PW-6, and Virender PW-7, turned hostile. What were the statements made by the injured eye witnesses

to the police are not known to us. Learned counsel for Bhawani Singh urged that his client's name is not to be found in the FIR and that later on witnesses brought in the name of his client.

52. The decision in favour of Bhawani Singh by the Tribunal is perfunctory and is based primarily on the decision of the Supreme Court in *Sandeep Kumar*'s case (supra).

53. The decision passed by the Tribunal has to be set aside because it has not appreciated the issue as required by law. Regretfully, even we are unable to engage ourselves meaningfully any further because the primary material has not been filed before us. The FIR; the statements of the eye witnesses recorded by the police; the injuries on the injured eye witnesses as disclosed in the MLC; the testimony of the witnesses who turned hostile and their cross-examination by the Public Prosecutor. None have been filed. All are relevant to be considered as per law noted by us.

54. The writ petition filed by the Department pertaining to Bhawani Singh has to be allowed and the matter remanded to the Tribunal for a proper investigation by directing the Tribunal to direct the parties to file the relevant material and thereafter consider the same.

55. Before passing formal orders we wish to bring on record that as per a decision dated July 23, 2008, disposing of OA No.178/2008, a Division Bench of the Tribunal had correctly noted the manner in which aspects of acquittal have to be dealt with. In paragraph 7, the Tribunal had noted the law and applied the same to the facts of the case before it, and we find the analysis of law to be correct and also the application of facts to the law and if it is believed that peer pressure works better, we quote from the decision of the Tribunal itself for guidance of the successor Benches of the

Tribunal as to what the law is and how the same needs to be applied to cases of acquittal. The observations of the Tribunal reads as under:-

> *"We are surprised, rather distressed that even though it has been ordained authoritatively by judicial pronouncement that the nature of offence and the manner of acquittal has to be examined properly, the respondents appear to have ignored both. Denial of appointment to a citizen for all times to come is indeed a serious matter. The same cannot be dealt with so lightly so as not even to consider the attending circumstances leading to commission of crime, nature of offence that may appear from the contents of the first information report, statements of witnesses and the medical evidence. While considering the manner of acquittal, it may not be enough to simply observe that the witnesses had turned hostile, and by simply so observing, to deny appointment to a citizen. The judgment of the criminal court has to be taken into consideration with all the aspects leading to acquittal. The manner of acquittal, and in particular, as to whether the same is a clean acquittal or acquittal on benefit of doubt, has also to be taken into consideration. To elaborate, insofar as, the nature of offence is concerned, we may mention that some times the facts disclosed in the FIR supported with other material, even if taken to be gospel truth, may not constitute an offence under which an FIR is registered, challan presented and the accused tried. In a case of acquittal, where witnesses have not deposed in tune with the statements made by them before the police, the finding of acquittal is recorded without going into any other aspect of the case. If thus in a given case, the offence with which an accused is charged and tried, may not at all be gone into, his plea that the offence with which he was charged was not made out at all even from reading of the FIR and attending circumstances, has to be gone into at some stage. Making a mention of the offence with which a person might have been charged and put to trial is no way to determine the nature of offence. We are of the considered view that nature of*

offence is not exclusively determinable only on the label or sections on which an FIR may be registered. With a view to find gravity of offence for which a person may have faced criminal trial, the narration of facts in the FIR, supporting material and the medical evidence is required to be taken into consideration. Insofar as, the manner of acquittal is concerned, once again, the judgment of the criminal court has to be carefully gone into. In a given case, the witnesses may not have deposed in tune with their statements made before the police, but they may not have been declared hostile and cross-examined by public prosecutor. Such a situation arises when the prosecution witnesses may support the prosecution version to some extent and the public prosecutor may think that to the extent they have supported prosecution version, the finding of conviction can yet to be recorded. He may thus not declare the witnesses to be hostile nor thus cross-examine them. In ultimate analysis, as to whether the accused has been acquitted by giving benefit of doubt or it is a case of clean acquittal, has also to be seen. In the present case, the narration of facts given in the FIR would reveal that four persons, including the applicant gave beatings to Bittoo Singh and Jaipal. Only two, out of four, were put to trial. In the FIR itself, Bittoo Singh appears to have made contradictory statements. In the first instance, he stated that two boys who were armed with dandas were Ajay and Vikas, whereas others had only grappled. He, however, later named the applicant as also one of those who had caused injuries to him. With a view to satisfy ourselves with regard to gravity of offence, we required the counsel representing the parties to produce before us the medico legal report of Bittoo Singh and Jaipal. The same has been made available to us. It appears that Bittoo Singh, the first informant, had received five injuries on his person. Two of the five injuries are swelling of lower wrist and right eye. Even though, two other injuries are of vertex of head and occipital front region, but all the five injuries are simple in nature. Jaipal, the other injured received four injuries, but for injury number (iii) which is one incisor teeth on lower

maxilla broken, other injuries are simple in nature. It is only injury number (iii) on the person of Jaipal which can be said to have brought the offence under section 325 IPC. The provisions contained in section 308 IPC may not have been attracted in the facts and circumstances of the present case. We are conscious that we are not here to determine the controversy with regard to nature of offence, but surely, all these aspects were required to be taken into consideration by the concerned authorities in finding out the nature of offence. The situation where the criminal court may record a finding of conviction is entirely different. The concerned authorities in that even would have no choice but for to follow the judgment of the criminal courts, but in a case where the relevant aspects of the case have not even been touched upon, it becomes duty of the high ranking police officers to take them into consideration while dealing with a serious matter like denial of appointment to a citizen. We may reiterate that the Hon'ble Delhi High Court in Deepak Kumar & Others (supra) held that the nature of offence and manner of acquittal has to be gone into properly."

56. We bring the curtains down on the four writ petitions by passing formal orders as under:-

(i) WP(C) 4052/2012 and WP(C) 3549/2012 filed by the Commissioner of Police pertaining to Mukesh Kumar and Mandeep are dismissed and the orders passed in their favour by the Tribunal on March 01, 2012 and January 20, 2012 respectively, are upheld.

(ii) WP(C) 3932/2012 pertaining to Hari Pal Arya is allowed and impugned order dated March 02, 2012 allowing O.A.No.2626/2011 filed by Hari Pal Arya is dismissed. Order terminating his services as a probationer is upheld.

(iii) WP(C) 3925/2012 stands disposed of setting aside the impugned order dated March 07, 2012, and restoring O.A.No 2367/2011 filed by Bhawani Singh. At the remanded stage the Tribunal would call for the relevant record to be filed as highlighted by us while dealing with the writ petition pertaining to Bhawani Singh and a decision would be taken guided by the law declared and as applied by the Tribunal itself in OA No.178/2008.

57. Parties shall bear their own costs all throughout in all the matters.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

APRIL 29, 2013
mamta/skb