

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

% *Judgment Reserved on: August 27, 2013*
Judgment Pronounced on: September 09, 2013

+ **W.P.(C) 4444/2013**

GOVT. OF NCT OF DELHI & ORS. Petitioners
Represented by: Mr.S.P.Sharma, Advocate with
Dr.Ashwani Bhardwaj, Advocate

versus

MAHENDRA SINGH Respondent
Represented by: Ms.Jasvinder Kaur, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR.JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. Being selected in the year 2009 to be appointed as a Constable (Driver) in the Delhi Police, required to fill up an Enrollment Form, the respondent filled up the required columns of the Enrollment Form and honestly informed that he was an accused in FIR No.152/1999, P.S.Kotwali, District Jhunjhunu, Rajasthan for having committed an offence punishable under Sections 19/54 of the Excise Act and Section 353 IPC. He disclosed that he had been acquitted vide judgment dated April 02, 2005.

2. Since character and antecedents verification is important whenever a person is offered a public employment and in particular to a police organization, for purposes of character and antecedent verification of those

who have been acquitted at a criminal trial, the Commissioner of Police has constituted a Screening Committee which looks into: (i) the nature of the acquittal; (ii) nature of the acts alleged to have been committed by the person either as mentioned in the FIR or as per material gathered during investigation; and (iii) any other relevant fact on the subject of the acquittal.

3. The Screening Committee considered the allegation in the FIR No.152/1999 and the evidence led at the criminal trial and the judgment dated April 02, 2005 passed by the learned Chief Judicial Magistrate Jhunjhunu acquitting the respondent.

4. Seven witnesses were examined at the trial. The first prosecution witness, a police officer named Virender Pal, had deposed that on May 07, 1999 he was accompanying the SHO who was on patrolling duty and that they saw a TATA 407 make vehicle coming from Mandava side at around 2:45 and when signaled to stop the vehicle sped towards Churu and on being chased, after some distance the occupants of the vehicle abandoned the vehicle and fled. The van was seized. Beer and foreign made liquor bottles were recovered from the van. SI Hari Singh PW-2 corroborated PW-1 with additional information that 30 cartons of beer and foreign made alcohol were seized. Om Prakash PW-3, another police officer, corroborated PW-1 and PW-2 and so did Ct.Hukmi Chand PW-4. Balbir Singh PW-5, a witness to the seizure memo Ex.P-4 pertaining to the registration documents of TATA 407 make vehicle deposed that he was a witness to the seizure memo when papers of the vehicle bearing registration No.RJ-18G-0407 were seized. Jai Narain PW-6 deposed that he owned the vehicle and that he was not in a position to state as to who was driving the vehicle when the same was seized and liquor recovered from the vehicle. With reference to he having told the police that respondent Mahinder was driving the vehicle on the day of the

incident he stated that he was an illiterate person. Admitting his signatures on Ex.P-5, he stated that the writing therein was not his and that he did not know who wrote it. Phool Chand PW-7, a police officer deposed that during investigation he had prepared the site plan Ex.P-3 and since the vehicle was abandoned he gave a notice to the owner of the vehicle under Section 133 MV Act to which reply Ex.P-5 was received.

5. Applying the standard of proof being beyond reasonable doubt and the evidence should be of a quality pointing only towards the guilt of the respondent and ruling out his innocence, since the only witness who could have proved that it was the respondent who was driving the vehicle on the day in question i.e. Jai Narain, did not support the case of the prosecution, vide decision dated April 02, 2005 the respondent was acquitted.

6. The Screening Committee opined that on the subject to character and antecedent verification the nature of acquittal was of a kind where respondent's character and antecedent could not said to be without a blemish and a taint, and thus the Competent Authority issued a notice to the respondent highlighting that though the respondent was acquitted, but the same was on account of his identity not being established at the criminal trial as the driver of the vehicle; keeping in view the information given by the owner of the vehicle during investigation, from which he resided at the trial, rendered respondent unsuitable for appointment in a disciplined force like Delhi Police due to respondent's active role in illegally transporting huge quantity of liquor.

7. In the reply filed to the notice respondent emphasized his acquittal at the criminal trial.

8. Employment was denied to the respondent who proceeded to the Central Administrative Tribunal under OA No.1577/2012 which was

allowed by the Tribunal vide impugned decision dated March 03, 2013 and for which view the Tribunal has referred to a decision of the Supreme Court reported as 1996 (11) SCC 615 Delhi Administration Vs. Sushil Kumar decided on October 04, 1996.

9. The Tribunal has opined that the Screening Committee had not correctly appreciated the facts pertaining to respondent's acquittal. The Tribunal has also faulted the procedure followed by the Commissioner of Police. The Tribunal has highlighted, in paragraph 5 of its opinion, that the Screening Committee consisted of senior officers and the said committee took a prima facie view that the respondent was unsuitable to be appointed as a Constable (Driver) in Delhi Police. The Tribunal observed that the notice given to the respondent proposing to cancel his candidature was issued by the Deputy Commissioner of Police, an officer junior to some officers who constituted the Screening Committee. The Tribunal has opined that issuance of the notice and considering the reply thereto was an empty formality because the junior officer would be influenced by the prima facie view taken by the Screening Committee.

10. In the decision reported as 171 (2010) DLT 705 Government of NCT of Delhi & Anr. Vs. Robin Singh, a Division Bench of this Court had highlighted that to be recruited in the police force, at whatever level, a candidate 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. The decision highlighted that not to induct persons with a criminal background in public service is based on the premise that considerations of public concern, concerned for public interest and regard for public good would justify said prohibition. Thus, the primary consideration would be: Whether public interest and public good would be jeopardized if a person with a criminal background is inducted in public service. The decision took note of the law declared by the Supreme Court in Sushil Kumar's case (supra) wherein 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 pertaining to a criminal offence would not be conclusive. The Division Bench noted that the nature of the acquittal and the attendant circumstances pertaining to the acquittal as also the nature of the crime alleged and the circumstances under which it was allegedly committed have to be taken note of. Legal position with respect to the acquittal as per law declared by the Supreme Court in the decision reported as (2007) 9 SCC 755 Management, Pandyan Roadways Corporation Ltd. Vs. N.Balakrishnan was noted (as per para 21 and 22 of the said decision) and it was highlighted that a person being acquitted would not necessarily mean that the person is of a good character. It would only mean that the prosecution could not muster sufficient and credible evidence to sustain a conviction. It was highlighted that in the current environment where witnesses are suborned and hence turn hostile, one has to be careful. The decision highlighted that the mere fact of acquittal by itself may not be relevant. The background under which the

acquittal took place would also be relevant for the reason the concern is not with the consequence of a man being acquitted but with the subject of character verification.

12. Suffice would it be to state that eligibility and suitability are two distinct concepts. Being acquitted at a criminal trial would render a person ineligible to apply for a public post. But that would not necessarily translate itself into the person being suitable for public employment.

13. 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.

14. In a recent decision reported as 2013 (9) SCALE 444 Commissioner of Police New Delhi Vs. Mehar Singh a Division Bench of the Supreme Court observed in paragraph 17 as under:-

17. We must first deal with the submission that under the Delhi Police Rules, past involvement of a person in a criminal case is not a disqualification for appointment. It is true that Rule 6 thereof which provides for grounds for ineligibility, criminal antecedents of a person is not mentioned as a ground for ineligibility. But, to conclude from this that instances of moral turpitude, however grave, could be overlooked because they do not find mention in Rule 6, would be absurd."

15. In para 19 it was observed as under:-

"A careful perusal of the policy leads us to conclude that the Screening Committee would be entitled to keep persons involved in grave cases of moral turpitude out of the police force even if they are acquitted or discharged if it feels that the acquittal or discharge is on technical grounds or not honourable. The Screening Committee will be within its rights to cancel the candidature of a candidate if it finds that the acquittal is based on some serious flaw in the conduct of the prosecution case or is the result of material witnesses turning hostile. It is only experienced officers of the Screening Committee who will be able to judge whether the acquitted or discharged candidate is likely to revert to similar activities in future with more strength and vigour, if appointed, to the post in a police force. The Screening Committee will have to consider the nature and extent of such person's involvement in the crime and his propensity of becoming a cause for worsening the law and order situation rather than maintaining it. In our opinion, this policy framed by the Delhi Police does not merit any interference from this Court as its object appears to be to ensure that only persons with impeccable character enter the police force."

16. In paragraph 21 it was observed as under:-

"21. The expression 'honourable acquittal' was considered by this Court in S.Samuthiram. In that case this Court was

concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under Section 509 of the Indian Penal Code and under Section 4 of the Eve-teasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in (1994) 1 SCC 541 Management of Reserve Bank of India, New Delhi Vs. Bhopal Singh Panchal, wherein somewhat similar fact situation, this Court upheld a bank's action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in departmental proceedings. This Court observed that the expressions 'honourable acquittal' 'acquitted of blame' and 'fully exonerated' are unknown to the Code of Criminal Procedure or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression 'honourably acquitted'. This Court expressed that when the accused is acquitted after full consideration of prosecution case and the prosecution miserably fails to prove the charges leveled against the accused, it can possibly be said that the accused was honourably acquitted. In light of above, we are of the opinion that since the purpose of departmental proceedings is to keep persons, who are guilty of serious misconduct or dereliction of duty or who are guilty of grave cases of moral turpitude, out of the department, if found necessary, because they pollute the department, surely the above principles will apply with more vigour at the point of entry of a person in the police department i.e. at the time of recruitment. If it is found by the Screening Committee that the person against whom a serious case involving moral turpitude is registered is discharged on technical grounds or is acquitted of the same charge but the acquittal is not honourable, the Screening Committee would be entitled to cancel his candidature. Stricter norms need to be applied while appointing persons in a disciplinary force because public interest is involved in it."

17. Guided by the aforesaid law declared, facts of the instant case would reveal that the respondent was acquitted at the criminal trial due to Jai Narain, the owner of the offending vehicle, turning hostile. But it cannot be ignored that when the offending vehicle was seized with illegal alcohol being transported therein, a notice was served upon Jai Narain under Section 133 of the MV Act to inform the police as to who was driving the vehicle when it was seized Jai Narain responded in writing vide Ex.P-5 that respondent Mahinder was driving the vehicle. The Screening Committee has thus rightly opined that on the subject of character and antecedent verification there was enough material to justify denial of employment to the respondent as a Constable (Driver) in Delhi Police. The view taken by the Competent Authority to accept the report of the Screening Committee keeping in view the reply filed by the respondent was also justified.

18. As regards the contra view taken by the Tribunal we would simply highlight that the role of the Tribunal was not to sit as an Appellate Authority over the decision taken by the Screening Committee and the Competent Authority. The Tribunal's job was limited to see whether the Competent Authority had properly drawn its attention to the relevant facts and circumstances; having a bearing on character and antecedents of the respondent. After all, who would be suitable to serve in Delhi Police has to be left to the Competent Authority; of course, the Competent Authority cannot act arbitrarily and whimsically. As long as the Competent Authority takes note of all relevant facts and circumstances to form an opinion and as long as the opinion does not suffer from unreasonableness of the kind which is popularly known as '*Wednesbury's*' unreasonableness, a hands off approach has to be adopted

19. The reasoning of the Tribunal in paragraph 5 of its opinion brings out that there would be a lack of acceptability when senior officers comprise Screening Committees and form prima facie opinions followed by a junior level officer issuing a show cause notice based upon the prima facie opinion of the senior officers and consider the reply filed to the notice. We agree with the Tribunal on said part of the reasoning inasmuch as, if not more, if a junior officer is required to take a final decision with respect to prima facie views formed by a Committee of senior officers there is every possibility of institutional bias creeping in.

20. We would therefore recommend to the Commissioner of Police that henceforth final decisions based upon recommendations of the Screening Committee be taken by an officer higher in rank to the members of the Screening Committee.

21. But, in the facts of the instant case it would be an idle formality to remit the matter requiring an officer senior in rank or equivalent in rank but otherwise senior in the seniority list to the senior most member of the Screening Committee for the reason there is sufficient material to conclude that keeping in view the nature of the acquittal and other relevant evidence on the subject of character verification, the view taken that the respondent would be unsuitable to become a member of a disciplined force is correct.

22. It was sought to be urged that once a person is acquitted at a criminal trial no authority can sit in review over the decision of the criminal court which has attained finality.

23. The argument overlooks the point that the appraisal is not to sit in review over the decision taken by the criminal court which has attained finality. The appraisal is to determine the suitability of a candidate for a public post; and the two operate in distinct domains.

24. The writ petition is allowed. Impugned decision dated March 15, 2012 is set aside and OA No.1577/2012 is dismissed.

25. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

SEPTEMBER 09, 2013

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