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

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Date of Decision: December 05, 2013

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W.P.(C) 4304/2013

COMMISSIONER OF POLICE Petitioner

Represented by: Mr.V.K.Tandon, Advocate with
Mr.Yogesh Saini, Advocate

versus

PREM SINGH CHOUDHARY Respondent

Represented by: Mr.Anil Singal, Advocate

W.P.(C) 4308/2013

COMMISSIONER OF POLICE Petitioner

Represented by: Mr.V.K.Tandon, Advocate with
Mr.Yogesh Saini, Advocate

versus

RAJ KUMAR Respondent

Represented by: None

W.P.(C) 4315/2013

COMMISSIONER OF POLICE Petitioner

Represented by: Mr.V.K.Tandon, Advocate with
Mr.Yogesh Saini, Advocate

versus

SHIV SINGH Respondent

Represented by: Mr.Anil Singal, Advocate

W.P.(C) 4939/2013

GOVT OF NCT OF DELHI & ORS Petitioners

Represented by: Ms.Avnish Ahlawat, Advocate

versus

DEEPA TOMAR

..... Respondent

Represented by: Mr.Sachin Chauhan, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V. KAMESWAR RAO

PRADEEP NANDRAJOG, J. (Oral)

W.P.(C) Nos.4304/2013, 4308/2013, 4315/2013 & 4939/2013

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. An exhaustive opinion was pronounced by this Court which is reported as 171 (2010) DLT 705 Government of NCT of Delhi & Anr. vs. Robin Singh.

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. Whereas 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.

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.]”*

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. Since learned counsel for the petitioners have referred to a decision dated July 02, 2013 pronounced by the Supreme Court reported as (2013) 7 SCC 685 Commissioner of Police & Anr. Vs. Mehar Singh, we note that the said decision does not take a view contrary to what we have noted hereinabove except for the fact that it lays great emphasis to a proper scrutiny being done where the prospective candidate seeking appointment to a post in a police force has been charged for a serious offence but has been acquitted. In paragraph 36 the expression used by the Court, with reference to Screening Committees verifying antecedents is '*Public Interest Demand and in-depth examination of the allegation at the highest level*'.

26. Thus, in each case the complaint constituting the FIR, evidence gathered during investigation, statements of persons recorded under Section 161 Cr.P.C. forensic evidence if any collected have to be taken into account ignoring witnesses turning hostile and this being the cause for acquittal. The reason is the endemic disease in India of witnesses being suborned.

27. Guided as aforesaid we now turn to the facts of the four cases.

28. By a common judgment dated March 06, 2013, 5 Original Applications have been disposed of by the Tribunal declining relief in OA No.4499/2011 to Rajesh Kumar Meena but granting relief to the respondents of the four captioned writ petitions, who were the applicants before the Tribunal in OA No.2503/2011, OA No.4219/2011, OA No.245/2012 and OA No.958/2012. The applicants before the Tribunal were aggrieved by the fact that having successfully cleared the selection process to be appointed as a Constable in Delhi Police and appointment given, the same was withdrawn on account of the fact that the 5 applicants before the Tribunal were accused in various FIRs, notwithstanding they being ultimately acquitted.

29. Since Rajesh Kumar Meena, to whom relief has been declined by the Tribunal has not chosen to further litigate, we would be noting the particulars of the cases against the 4 respondents.

30. Prem Singh Choudhary, the respondent of W.P.(C) No.4304/2013 was the applicant in OA No.4219/2011. An FIR No.39/2007 dated February 15, 2007 was registered at PS Laxman Garh, District Alwar for offences punishable under Section 143/323/341 IPC. He and four other persons named Brij Lal, Shiv Lal, Kajori and Seeta Ram were named by the complainant, Mukesh for having formed an unlawful assembly. Alleged to be carrying lathis and jeli (a farm implement), as per Mukesh, Prem Singh Choudhary and the four other persons assaulted him. The FIR, it is important to highlight, did not include the offence punishable under Section 325 IPC for the obvious reason Mukesh Kumar had not suffered any serious, much less grievous hurt. The offence was of voluntarily causing hurt for the reason Mukesh Kumar was found to be suffering from a simple hurt. It is

apparent that he was simply beaten and not with lathis and jelis. We would be failing not to highlight that the challan filed included the offence punishable under Section 325 IPC and the reason thereof is that the complainant stated that the accused were armed with lathis and jelis. But, we simultaneously highlight that no material or evidence whatsoever was presented wherefrom it could be gathered that the complainant suffered grievous injuries. Prem Singh Choudhary was aged 22 years. The complaint would reveal the usual story of a village feud amongst neighbours taking a somewhat ugly turn.

31. The dispute was compromised and this was the reason why all five accused were acquitted.

32. In a mechanical manner, the Screening Committee, highlighting that the offence charged of was for causing grievous hurt and use of dangerous weapons, withdrew the appointment offered to Prem Singh Choudhary, overlooking the facts which we have noted hereinabove. Suffice it to state that there was no material to support the charge for the offence punishable under Section 325 IPC which was gathered by the police during investigation and on the contrary the MLC of the complainant was as good as conclusive evidence that he was not severely assaulted and not dangerous weapon was used, the injury was simple hurt and not a grievous hurt. It is writ large on the face that the complainant Mukesh Kumar had given an exaggerated version to falsely implicate the accused for a graver offence. Thus, if we accept Mukesh Kumar's version after removing the taint, we would have that Prem Singh Choudhary and four others inflicted a simple hurt to Mukesh Kumar. In the opinion reported as (2011) 4 SC 644 Commissioner of Police & Ors. Vs. Sandeep Kumar the Supreme Court held

that indiscrete acts by the youth should not result in the youth being condemned for all times to come.

33. Thus, pertaining to Prem Singh Choudhary, we uphold the view taken by the Tribunal that OA No.4219/2011 filed by him had to be allowed. Thus, we dismiss W.P.(C) No.4304/2013.

34. Raj Kumar the respondent of W.P.(C) No.4308/2013, was the applicant in OA No.958/2012. An FIR No.283/2007 PS Shri Madhopur was registered for offences punishable under Section 143/323/336/451 IPC naming him as also one Pushkar Singh, Balbir, Hari and Purshottam. As per the complainant Ram Chander, there were 14/15 other persons who entered his house armed with lathis and jelis and snatched the jewellery of his brother's daughter-in-law. There was a scuffle resulting in injuries. It needs to be highlighted that it was family dispute between Ram Chander and his brothers. The matter was compromised resulting in acquittal.

35. In a mechanical manner, as in the previous case, the Screening Committee has highlighted that as per the complaint the accused were armed with lathis and jelis, overlooking the fact that nobody used the lathis and the jelis, if at all the accused were carrying the same with them. This explains the fact that the complainant was found to be suffering from a simple hurt which was occasioned by some pushing followed by fist blows. Raj Kumar was aged 20 years. He would be entitled to the benefit of the law declared by the Supreme Court in Sandeep Kumar's case (supra). Thus, pertaining to Raj Kumar we uphold the view taken by the Tribunal that OA No.958/2012 filed by him had to be allowed. Thus, we dismiss W.P.(C) No.4308/2013.

36. Shiv Singh, the respondent of W.P.(C) No.4315/2013 was the original applicant in OA No.2503/2011. An FIR No.410/2009 for offences

punishable under Section 143/323/341/379 IPC was registered at PS Sewar, District Bharatpur, Rajasthan on October 17, 2009 on the statement made by one Bahadur Singh Jadav naming apart from Shiv Singh, Amar, Jagdish, Satish, Manoj and Jal Singh as the accused. As per the complaint all accused who were armed with lathis criminally trespassed into his house and assaulted him and his family members and stole ₹10,000/- from his house. They also tried to outrage the modesty of his sister-in-law. It was yet another incident of neighbours fighting. We only need to highlight that the allegation in the complaint that the modesty of his sister-in-law was attempted to be outraged was not supported even before the police by the alleged victim and this explains the fact that neither the FIR nor the charge sheet alleged commission of an offence punishable under Section 354 IPC. Shiv Singh was aged 20 years when the incident took place. The dispute was compromised and this explains all accused being acquitted.

37. In a mechanical manner the Screening Committee simply highlighted the exaggerated version of Bahadur Singh in the complaint which resulted in the FIR being registered and laid emphasis on the fact that the accused had attempted to outrage the modesty of a woman, overlooking the fact that Bahadur Singh's sister-in-law, the woman whose modesty was allegedly attempted to be outraged did not support said version of the incident as per her statement made to the police soon after the incident and this explains the fact, as noted hereinabove, that the offence punishable under Section 354 IPC was not included in the FIR. No recovery whatsoever was made of the alleged ₹10,000/- stolen in respect of which offence punishable under Section 379 IPC was registered in the FIR. All this has been overlooked by the Screening Committee. Even Shiv Singh would be entitled to the benefit

of law declared by the Supreme Court in Sandeep Kumar's case (supra) and thus pertaining to Shiv Singh we uphold the view taken by the Tribunal that OA No.2503/2011 filed by him had to be allowed. Thus, we dismiss W.P.(C) No.4315/2013.

38. Deepa Tomar, the respondent of W.P.(C) No.4939/2013 was the original applicant in OA No.245/2012. She was named as an accused along with her father in CM No.198/2003 for an offence punishable under Section 120-B/364 IPC. She and her father were accused of having abducted her husband named Jitender Singh. At the trial no witness was suborned. The witnesses of the prosecution stood by their statements made to the police under Section 161 Cr.P.C. during investigation. Vide judgment dated May 04, 2011 she and her father were acquitted by the learned CJM Bhagpat in Trial No.327/2008.

39. Observing that acquittal was by granting benefit of doubt, the Screening Committee opined that Deepa Tomar was unfit to be appointed as a Constable (Female) in Delhi Police because she was accused of having committed a heinous crime i.e. of abduction and that the victim, her husband (Jitender) was still untraceable.

40. The Screening Committee overlooked the fact that while acquitting Deepa and her father the learned Chief Judicial Magistrate took cognizance of the fact that Deepa was married to Jitender on May 06, 2001 and that a missing person complaint was lodged by Jitender's father on May 26, 2002 in which he stated that two days prior his son Jitender had left house at 2:00 PM telling his mother that he was going to attend a marriage at Baraut and did not return even after two days and when the complainant made inquiry in Baraut he learnt that there was no marriage which was attended by his

son. He suspected that his son had gone to the house of his in-laws because 2-3 times in the past he had done so. The learned Chief Judicial Magistrate took cognizance of the fact that in the missing person complaint it was not stated that somebody known to the complainant had seen his son in the company of Sant Ram and Teetu, the persons named by Naresh PW-2, soon before his son went missing. Therefrom the learned Chief Judicial Magistrate has found improvements being made by the prosecution during investigation. The learned Chief Judicial Magistrate has noted that in the missing person's complaint an apprehension was made against the in-laws of having a hand in the disappearance of his son by the complainant. The learned Chief Judicial Magistrate has noted of the strain relationship between the families. Though not expressly stated by the learned Chief Judicial Magistrate the underlying theme appears to be that Deepa, having strained relationship with the family of her in-laws, had to leave for her parents' house and probably the pining by the husband i.e. Jitender to be with Deepa was the suspicion in the mind of Jitender's father when he pointed the finger of suspicion on Deepa's family for his son to be missing.

41. The Screening Committee has lost sight of the fact that meaningfully read, the testimony of Jitender's family members was suggestive of the fact that Deepa and Jitender were not having a strained relationship but because of problems in the house of her in-laws Deepa had to leave for her parental house and stealthily Jitender used to visit Deepa or so his parents suspected. If this be so it would not stand to any logic or reason for Deepa and her parents to have contrived to abduct Jitender and make his disappear. Regretfully, the Screening Committee has gone by the label of the offence and not the facts on which Deepa and her father were acquitted. The

Screening Committee has also overlooked the fact that in her complaint lodged under Section 498-A/406 IPC Deepa has made no accusation against her husband. Thus, we are of the opinion that the Tribunal has correctly allowed OA No.245/2012 filed by Deepa and accordingly we dismiss W.P.(C) No.4939/2013.

42. All four writ petitions are dismissed but without any orders as to costs.

CM No.9999/2013 in W.P.(C) No.4304/2013
CM No.10005/2013 in W.P.(C) No.4308/2013
CM No.10015/2013 in W.P.(C) No.4315/2013
CM No.11168/2013 in W.P.(C) No.4939/2013

Dismissed as infructuous since the writ petitions have been dismissed.
Ex-parte ad-interim stay granted stands vacated.

(PRADEEP NANDRAJOG)
JUDGE

(V. KAMESWAR RAO)
JUDGE

DECEMBER 05, 2013
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