

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

+ **Date of Decision: 24<sup>th</sup> July, 2017**

% **W.P.(C.) No.6012/2017**

SANDEEP JHAJHRIA ..... Petitioner  
Through: Mr.Sachin Chauhan, Advocate

versus

GOVT. OF NCTD & ANR. .... Respondents  
Through: Mr.Devvrat, Adv.

**CORAM:**  
**HON'BLE MR. JUSTICE VIPIN SANGHI**  
**HON'BLE MS. JUSTICE REKHA PALLI**

**REKHA PALLI, J. (ORAL)**

**CM No.24989/2017**

Exemption allowed subject to all just exceptions.

The application stands disposed of.

**W.P.(C.) No.6012/2017**

1. The Petitioner has, vide the present writ petition, impugned the orders dated 21.05.2015 and 02.11.2015 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 2181 of 2013 and R.A. No. 204 of 2015, whereby both his Original Application and Review Application have been dismissed. The Petitioner had preferred the aforesaid Original Application challenging the cancellation of his candidature for the post of Constable (Exe.).

2. The admitted facts, as noticed by the Tribunal, are that on 24.08.2012 the Petitioner's name was approved by the Police Establishment Board for his appointment as a Constable (Exe.) on compassionate grounds. The Petitioner was accordingly asked to submit his attestation form in which he had mentioned about his involvement in a criminal case arising from FIR No. 11/2011 dated 12.01.2011 u/s 302/34 IPC, P.S. - Surajgarh, District - Jhunjhunu (Rajasthan). In the form, the Petitioner also mentioned that after the trial, he had been acquitted by the learned Sessions Judge vide his Judgment dated 09.12.2011.

3. Upon the Petitioner disclosing the factum of his involvement and acquittal in a criminal case, his case was placed before the Screening Committee of the Police Headquarters. Based on the conclusions arrived at by the Screening Committee, Respondent No. 2 issued a show-cause notice dated 16.04.2013 to the Petitioner, proposing to cancel his candidature for the post of Constable (Exe). The show cause notice specified that the Respondents had received the Petitioner's Character and Antecedents Report from the S.P. -Jhunjhunu, Rajasthan and, after considering the entire material including the judgment of the learned Sessions Court, the Screening Committee did not recommend his case for appointment to the said post.

4. In response to the show-cause notice dated 16.04.2013, the Petitioner submitted his reply, pleading therein, that the decision of the Screening Committee was not correct and proper. In his reply the Petitioner also brought out that initially his name did not figure in the F.I.R and, even otherwise, after completion of the trial, he stood acquitted by the learned Sessions Court vide order dated 09.12.2011 after coming to the conclusion

that the evidence on record did not prove the case against him. The Petitioner had contended that once he had been found innocent by the learned Sessions Court, it could not be said that he was a criminal minded person and, therefore, requested that he may be appointed to the said post of Constable (Exe).

5. The Respondents however, after considering the reply of the Petitioner, reiterated their decision not to appoint the Petitioner and accordingly, vide order dated 02.05.2013, informed him that he had not been found suitable for the post of Constable (Exe.) in the Delhi Police and his candidature for the said post on compassionate grounds was cancelled.

6. Aggrieved by the cancellation of his candidature, the Petitioner approached the Tribunal with a prayer to quash the order dated 02.05.2013 whereby his candidature for the post of Constable (Exe.) had been cancelled and also prayed that the Respondents be directed to appoint him as Constable (Exe.) with all consequential benefits. In response to the Original Application, the Respondents filed their reply before the Tribunal, wherein they contended that the decision taken by the Screening Committee was just and proper. It was contended that the Screening Committee had carefully taken into consideration all the relevant facts, including the nature of the Petitioner's involvement in the case, the gravity of the offence, the judgment of the learned Sessions court, and the grounds of his acquittal.

7. The respondent contended that the Delhi Police, being a disciplined force, should not encourage entry of such a criminal minded person who is involved in a murder case. The Respondents relied upon the observations of

this Court in the case of ***Government of NCT of Delhi & Anr. Vs. Robin Singh***, 171 (2010) DLT 705 which read as follows:

“The police force is disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force.”

8. The Respondents also contended that candidates involved in criminal cases are not rejected merely because of their involvement in a criminal case in which they are ultimately acquitted, but pointed out that a mechanism had been set-up vide their standing order No. 398 of 2010 to assess the suitability of candidates who have been involved in criminal cases by a body of experts by taking into consideration all relevant facts.

9. The Tribunal clubbed the OA of the Petitioner with other OAs relating to similar issues and vide its order dated 21.05.2015 dismissed the batch of OAs. Vide Para 42 of its judgment, the Tribunal also summarized the criteria to deal with cases of candidates involved in criminal cases. Para 42 of the Tribunal's order reads as under :-

“42. In view of the guidelines laid down in para 23 of the said judgment, the Screening Committee will be within its right to cancel the candidature of a candidate in the wake of the following:

(1) If the acquittal is based on some serious flaw in the conduct of the prosecution or is the result of material witnesses turning hostile.

(2) Where 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 police force.

(3) The nature and extent of involvement of the candidate in the crime is vital.

(4) The propensity of the candidate is of becoming a cause for worsening the law and order situation rather than maintaining it.

(5) The nature and gravity of the charges”

10. Since the Petitioner's Original Application was clubbed along with a batch of other Original Applications, in some of which, the issue of suppression of information regarding involvement of the candidate in criminal cases had also been raised, the Petitioner preferred a R.A No. 204 of 2015 before the tribunal, pointing out that he had not concealed the fact of his involvement in the criminal case while filling in the attestation form and therefore prayed that the OA be allowed. The Tribunal vide its order dated 02.11.2015 once again considered the matter and, after holding that though it was correct that the Petitioner had not concealed the fact of his involvement in the criminal case while filling in the attestation form, still came to the conclusion that in view of the gravity of the charge against the Petitioner, coupled with the circumstantial factual background-including recovery of blood stained clothes at his instance, the Screening Committee could not have adjudged him suitable upon application of the criteria laid down in Para 42 of its order dated 21.05.2015. The Tribunal, therefore, was

of the view that remitting the matter back to the department for taking a fresh decision would be a useless formality and, accordingly , disposed of the review application with the direction that the factual position indicated in the order dated 21.05.2015 - that the Petitioner concealed his involvement in the criminal case in the attestation form, shall not be read as part of the order.

11. Aggrieved by the order of the Tribunal, rejecting his Original Application and Review Application, the Petitioner has preferred the present writ petition assailing the orders passed by the Tribunal by mainly contending that the Tribunal had failed to consider the fact that the Screening Committee had not actually gone into the material aspects in respect of the Petitioner's case. It is contended that the Tribunal failed to consider that the Screening Committee had, in fact, selectively picked up some observations of the learned Sessions Court, in coming to the conclusion that the Petitioner was not suitable for appointment to the post of Constable (Exe.) despite his acquittal in the criminal case.

12. During arguments, Mr.Sachin Chauhan, learned counsel for the Petitioner while submitting that the Screening Committee had failed to consider the vital aspects which were recorded in the judgment of the Sessions Court, also placed reliance on the judgment of the Apex Court in **Avtar Singh vs. UOI**, (2016) 8 SCC 477 and prayed that the matter be remanded back to the Respondent-authority to take a decision on the Petitioner's candidature in the light of guidelines laid down by the Apex Court in the aforesaid case, and further contended that the case of the Petitioner was squarely covered by the aforesaid judgment.

13. Counsel for the Petitioner has further relied upon judgment of this Court in **Deepa Tomar vs. Union of India & Ors.**, 216 (2015) DLT 266 (DB) and submitted that once it was an admitted fact, that the Petitioner had not concealed the factum of his involvement in the criminal case in which he stood acquitted, the mere use of the word 'benefit of doubt' by the Court could not be a ground for the Screening Committee to reject his candidature for appointment of Constable (Exe.) and he has, therefore, prayed that the impugned order be set aside.

14. We have heard the learned counsel for the Petitioner and given our thoughtful consideration to the facts which have emerged from the record. Having considered the various judgments of the Apex Court, as also of this Court on the issue raised, we find that the common thread running through all these judgments is that, even in cases where a truthful declaration of concluded criminal case has been made, the employer still has a right to consider the antecedents of the candidate and cannot be compelled to appoint a candidate, merely because he stands acquitted in the criminal case. The character, conduct and antecedents have a direct bearing on the nature of employment, and the only requirement is that before deciding about the suitability of the candidate for employment, there has to be due consideration of the various aspects by the employer. What is relevant is that the employer must consider the nature of the acquittal, the attendant circumstances pertaining to the acquittal, the nature of crime and the circumstances under which it was allegedly committed, and a mere acquittal or discharge pursuant to a criminal proceeding cannot be taken as conclusive. It would be apt to refer to the observations of the Coordinate

Bench of this Court in the case of **Commissioner of Police vs. Prem Singh Choudhary**, *W.P.(C) No.4304/2013*:-

“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.”

15. The judgment of the Apex Court in the case of **Avtar Singh** (*supra*), on which reliance has been placed by learned counsel for the Petitioner, also reiterates that mere acquittal in a criminal case is not the conclusive test and the employer may consider all the relevant factors before taking an appropriate decision. The Apex Court while summarising its conclusions in Paras 30 and 38 of the judgment held as under:-

“**30.** The employer is given “discretion” to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an incumbent for services in question. In case the employer comes to the conclusion that suppression is immaterial and even if facts would have been disclosed it would not have adversely affected fitness of an

incumbent, for reasons to be recorded, it has power to condone the lapse. However, while doing so employer has to act prudently on due consideration of nature of post and duties to be rendered. For higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However, same standard cannot be applied to each and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed, to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully, the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence, etc. have to be considered. Even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or of dubious character. In case employer comes to conclusion that conviction or ground of acquittal in criminal case would not affect the fitness for employment, incumbent may be appointed or continued in service.

**38.** We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:

**38.1.** Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

**38.2.** While passing order of termination of services or cancellation of candidature for giving false information, the

employer may take notice of special circumstances of the case, if any, while giving such information.

**38.3.** The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

**38.4.** In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:

**38.4.1.** In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

**38.4.2.** Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

**38.4.3.** If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

**38.5.** In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

**38.6.** In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.”

**38.7.** In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

**38.8.** If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

**38.9.** In case the employee is confirmed in service, *holding* departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

**38.10.** For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

**38.11.** Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.

16. We have also considered the judgment of the co-ordinate Bench in the case of **Deepa Tomar** (*supra*) on which the reliance has been placed by the learned counsel for the petitioner and find that in this case, the Division Bench of this Court after considering the judgment whereby the employee had been acquitted, had come to a categorical conclusion that there was no evidence to prove the charges against her and, therefore, no aspersion could

be cast on her character regarding her alleged involvement in the criminal case. In view of these special facts alone the Court had come to the opinion that there was no justification for cancellation of the candidature of the Petitioner therein. Thus, it becomes evident that it is not the mere use of words 'benefit of doubt', or otherwise, which is conclusive to decide as to whether the candidate should be considered for employment or not.

17. We have also carefully examined the judgment of the learned Sessions Court and find that as rightly observed by Tribunal, the Petitioner has been acquitted in a case relating to very grave charge of murder, only after being given benefit of doubt. The judgment of the Sessions Court clearly shows that the prosecution witnesses, including the complainant himself, had turned hostile, which led to the Petitioner's acquittal in the criminal case. There had been recovery of incriminating materials viz. the knife and blood stained clothes at the instance of the Petitioner. In the facts of the case, we do not think that there was anything arbitrary or unfair on the part of the Screening Committee in coming to the conclusion, that the Petitioner was not fit for employment in Delhi Police.

18. We find absolutely no infirmity in the order of the Tribunal. The present writ petition has no merit and the same is hereby dismissed with no order as to costs.

**REKHA PALLI, J**

**VIPIN SANGHI, J.**

**JULY 24, 2017/gm**