

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K. SURENDRA MOHAN
&
THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

WEDNESDAY, THE 23RD DAY OF DECEMBER 2015/2ND POUSHA, 1937

O.P. (CAT).No. 22 of 2015 (Z)

AGAINST THE ORDER IN O.A. NO.496/2013 of CENTRAL ADMINISTRATIVE
TRIBUNAL, ERNAKULAM BENCH DATED 14-08-2014.

PETITIONER(S):

1. C.B.I, REPRESENTED BY DIRECTOR,
CENTRAL BUREAU OF INVESTIGATION, BLOCK NO. 5B,
CGO COMPLEX, 7TH FLOOR, LODHI ROAD,
NEW DELHI -110 003. (REPRESENTED BY THE RETAINER COUNSEL
HIGH COURT OF KERALA)
2. UNION OF INDIA, REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF PERSONNEL & TRAINING,
MINISTRY OF PUBLIC GRIEVANCES AND PENSIONS,
NEW DELHI - 110 001. (ORIGINAL 1ST RESPONDENT).

BY ADV. SRI.P.CHANDRASEKHARA PILLAI, RETAINER COUNSEL FOR C.B.I.

RESPONDENT(S):

SHRI.BASHEER, AGED 38 YEARS,
S/O. SHRI. MOIDEEN KUTTY,
R/O.PALLIYALIL HOUSE, SOUTH PALLAR, VYRAMCODE POST,
THIRUNAVAYA, MALAPPURAM DIST., KERALA- 676 301.
(ORIGINAL APPLICANT)

BY ADVS. SRI. S. SREEKUMAR (SR.)
SRI.A.JAYASANKAR
SRI.C.V.MANUVILSAN
SRI.MANU GOVIND

THIS O.P. (CAT) HAVING BEEN FINALLY HEARD ON 16-12-2015, THE COURT ON
23.12.2015 DELIVERED THE FOLLOWING:

P.T.O.

OP (CAT).No. 22 of 2015 (Z)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT P1- CERTIFIED COPY OF ORDER IN OA.NO.496/13 DATED 14.8.2014

EXHIBIT P2- TRUE COPY OF THE ORIGINAL APPLICATION NO. 496/13 DATED 29.5.2013

EXHIBIT P3- TRUE COPY OF THE REPLY STATEMENT

EXHIBIT P4- TRUE COPY OF REJOINDER STATEMENT

EXHIBIT P5- TRUE COPY OF ADDITIONAL REPLY STATEMENT

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

St/-

**K. SURENDRA MOHAN
&
SHAJI P. CHALY, JJ.**

O.P.(CAT) No.22 of 2015

Dated this the 23rd day of December, 2015

JUDGMENT

Shaji P. Chaly, J.

The captioned Original Petition is filed by the Respondents against the order of the Central Administrative Tribunal, Ernakulam Bench in O.A.No.496 of 2013 dated 14.08.2014, by which the Tribunal has directed the petitioners to appoint the Respondent to the post of Public Prosecutor based on his merit and rank in Annexure-A3 list of candidates published by the U.P.S.C from the date of his entitlement.

2. The facts required for the disposal of this Original Petition are that, the Respondent applied for the post of Public Prosecutor under the 1st petitioner in response to the Special Recruitment Advertisement No.51/2012. Respondent appeared for the written test, thereafter he was called for interview and accordingly he participated in the interview on 04.09.2012 and he was ranked at Sl.No.29 in the list of candidates recommended for appointment to the post of Public

Prosecutor in the Central Bureau of Investigation (CBI).

3. At the time of interview, Respondent was required to submit an attestation form containing the details as to whether the candidate had ever been arrested or prosecuted or kept under detention, among other details. Annexure-A4 in Ext.P2 is the attestation form in which various details were sought for and among the same, Clause 12(a) to (e) were suggested for furnishing certain details with regard to arrest, prosecution, detention, bound down and fine by a Court of Law. In response to the said query as to whether the Respondent was convicted by a Court of Law for any offence, he has answered in the negative. To the queries regarding arrest, prosecution and detention, Respondent has answered "Yes". Thereafter, Respondent has received a letter from the U.P.S.C intimating that he has been recommended to the post of Public Prosecutor in the CBI. It was stated in the said letter that the offer of appointment was made to him subject to the satisfaction of the Government in an enquiry with regard to the health condition and any physical defects likely to interfere with the discharge of his duties.

4. Thereafter, in compliance with the direction of the petitioners, Respondent appeared before a Medical Board and was certified as fit to hold the post. That apart, the Respondent was directed to produce certain documents which were all submitted by the Respondent along with the Medical Certificate. Thereafter, Respondent came to know that even candidates who were lower in rank to him, in the rank list of the U.P.S.C were appointed, overlooking his seniority. In such circumstances, Respondent submitted a representation before the 1st petitioner, also explaining the circumstances under which he happened to be an accused in a crime that ended in his acquittal under Sec.232 of the Code of Criminal Procedure. It is contended by the Respondent that in spite of his earnest efforts, he was not appointed, instead he received a communication dated 17.05.2013 intimating that his case was under consideration of the Department of Personnel and Training and the decision was awaited. Since the Respondent had not received any intimation, aggrieved by the inaction of the petitioners, the Respondent had approached the Tribunal by filing the Original Application.

5. Petitioners have filed reply to the said Application contending that on verification of the character and antecedents of the Respondent through the District Collector, Malappuram and Additional Superintendent of Police, Anti Corruption Bureau, CBI, Cochin, it was understood that the Respondent had been an accused in a crime No.299/97 of Tirur Police Station, for offences under Secs.302, 143, 147, 341 and 324 read with Sec.149 IPC. The said crime, after investigation, was charged by the Police and the same was ultimately committed to the Court of Sessions, Manjeri and numbered as Sessions Case No.238 of 2001. Trial was conducted by the Court of Sessions and ultimately all the accused were acquitted under Sec.232 of the Cr.P.C, holding that the evidence of the material witnesses did not reveal any tangible and material to incriminate the accused persons or to connect them with the murder of said Aboobacker Sidhique. It was held that the evidence did not reveal anything incriminating against the accused persons to make them penally liable for voluntarily causing hurt to PW1, CW1 and CW3. Even the recovery was held to be not corroborated by independent witnesses. It is further contended in the reply

statement that the report of the District Collector and the District Police Chief did not recommend recruitment of the Respondent to the sensitive post of Public Prosecutor in CBI. After perusing the verification report of the Respondent's character and antecedents and severity of the allegations against him, the competent authority did not approve the appointment of the Respondent in CBI, which investigates very sensitive and complex cases. That the post of Public Prosecutor is a very important post in prosecution cadre in which the Public Prosecutor has to discharge his duties outstandingly with high standard and extraordinary quality. Therefore, it was contended that the Respondent was not eligible to be appointed as Public Prosecutor in the CBI.

6. The Respondent filed a rejoinder refuting the allegations and contentions raised by the petitioners. It was further stated by the Respondent that even though he was made an accused in the case, ultimately an honourable acquittal was given by the Sessions Court having found that there was no evidence to implicate the accused in the crime. It was also contended that since a clean acquittal was given by the Sessions Court, that wipes out, with retrospective effect

the adverse consequences if any in the case against the Respondent.

7. The Tribunal after evaluating the facts and circumstances and the law involved in the subject matter, has concluded that since the Respondent was acquitted by the Court of Sessions and also since there are no other instance or cases pending against him, which would render him unsuitable for appointment to the post of Public Prosecutor, the Respondent was entitled to be appointed and accordingly a direction to the petitioners has been given to appoint the Respondent as a Public Prosecutor. It is challenging the said order of the Tribunal, this Original Petition is filed.

8. Heard learned Retainer counsel for the petitioners, Sri. P. Chandrasekharan Pillai and learned Senior Advocate, Sri. S. Sreekumar for the Respondent.

9. The prime contention advanced by the learned counsel for the petitioners is that the Tribunal failed to understand the legal implication of the order of acquittal passed by the Sessions Court. The learned counsel contended that even though the Respondent is acquitted, same is not an honourable acquittal since the Sessions Court had to acquit the

Respondent in view of the prosecution witnesses turning hostile. It is also contended that merely because Respondent was acquitted for want of evidence consequent to the witnesses turning hostile, same will not amount to an honourable acquittal. It is further contended that merely because the Respondent was acquitted, same will not remove the criminal antecedents of the Respondent. That the petitioners are vested with powers even if the candidate was acquitted to examine and satisfy whether the criminal backgrounds are removed by the judgment. That apart, learned counsel contended that the post of Public Prosecutor in a premier investigation agency like the CBI is a very sensitive post and therefore persons with highest order of integrity, character and rectitude are required.

10. So also, it is contended by the learned counsel that the Tribunal went wrong in not considering the legal propositions put forth by the petitioners relying on various judgments of the Apex Court in the facts and circumstances of the case. It is the further contention of the learned counsel that the Tribunal has failed to consider the documents produced by the petitioners along with the reply inclusive of

the report of the District Collector, Malappuram and the Superintendent of Police, CBI, Kochi, wherein adverse report was made against the Respondent. It is also contended that even if Respondent was acquitted, the petitioners were vested with every power to evaluate the situation and the complicity of the Respondent in the criminal proceedings instituted against him and arrive at an objective satisfaction different from the one arrived at by the Sessions Court. Therefore, it is contended that, it was after a detailed evaluation that the decision was taken by the petitioners not to appoint the Respondent as a Public Prosecutor. It is also contended by the learned counsel that even though the decision contained in Annexure-R3 of Ext.P3 is only one-line, the same was done after a detailed evaluation conducted by the competent authority.

11. In this regard, the learned counsel has invited our attention to the judgment of the Apex Court in '**Commissioner of Police, New Delhi and another v. Mehar Singh**' [(2013) 7 SCC 685] and canvassed the proposition that the selection was made subject to the enquiry with regard to the antecedents of the Respondent. Learned

counsel has invited our attention to paragraph 24 of the said judgment and contended that the Screening Committee for selection is not bound by the judgment of the Criminal Court and that the petitioners were at liberty to discard a person of doubtful integrity to work in the Department. Therein, it is held that the standard of proof in a criminal case is the proof beyond all reasonable doubt, whereas the proof in a departmental proceeding is preponderance of probabilities. It is also contended by the learned counsel that in the said case, the Apex Court was considering a very similar question wherein a candidate after acquittal sought for appointment which was allowed by the Tribunal and the High Court and the Apex Court after evaluating the facts and circumstances has found that so far as the appointment was concerned, it was a disciplined force like Police and therefore the appointing authority was at liberty to take a decision not to appoint the candidate therein. It was also held in that judgment that unless *malafides* are attributed and proved against the Screening Committee, the decision of the Committee cannot be substituted by the decision of the Tribunal.

12. In this regard, learned counsel also invited our attention to the judgments of the Apex Court in '**Delhi Administration through its Chief Secretary and Others v. Sushil Kumar**' [(1996) 11 SCC 605], '**Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal**' [(1994) 1 SCC 541] and also the judgment in '**State of M.P. & Others v. Parvez Khan**' in Civil Appeal No.10613 of 2014 dated 01.12.2014.

13. In the judgment in '**Parvez Khan**' *supra*, the Apex Court had taken into consideration the other judgments cited *supra* and arrived at a conclusion that the refusal of the competent authority to recruit the Respondent on the ground of criminal antecedents was not liable to be interfered with.

14. That apart, learned counsel has contended that the Tribunal relied on the judgment in '**Sulekh Chand and Salek Chand v. Commissioner of Police and Others**' [1994 Supp.(3) SCC 674] to arrive at a finding that once acquittal was on merits, the necessary consequence would be that the Respondent was entitled to get the appointment. Inviting attention to paragraph 2 of the judgment in the said case, learned counsel contended that the acquittal was clearly on

merits whereas in the case at hand, it is an acquittal under Sec.232 of Cr.P.C., since all the prosecution witnesses turned hostile. In that circumstances, learned counsel contended that the Tribunal has failed to differentiate the acquittal, with an honourable acquittal which prevailed upon the Tribunal to issue direction to appoint the Respondent.

15. On the other hand, learned Senior Counsel for the Respondent contended that so far as the judgment of the Sessions Court is concerned, the finding is that of an honourable acquittal, when the Court has categorically found in the said judgment that there is no evidence against the Respondent to incriminate him or connect him with the offences alleged. That apart, it is contended by the learned Senior Counsel that even the recovery of the material object in the case, was held by the Sessions Court, not corroborated and therefore the circumstance lead to an absolute inference that the acquittal made by the Sessions Court was an honourable acquittal.

16. Learned Senior Counsel has invited our attention to Annexure-A13 of Ext.P4, which is the Administration Manual of the CBI and invited our attention to paragraph 2.2 dealing with

regular appointment. Learned counsel has invited our specific attention to paragraph 2.2.7 dealing with Verification of Character and Antecedents. Clauses (a) and (c) are read out and the learned counsel contended that the appointing authority should satisfy itself that the character and antecedents of the person proposed to be appointed are such that they do not render him/her unsuitable for appointment to Government service and that while normally a person convicted for an offence involving moral turpitude should be regarded as ineligible for Government service, but in cases where the appointing authority feels that there are redeeming features and reasons to believe that such a person has cured himself of the weakness, he can be considered for appointment after obtaining specific approval of the Government. Relying upon the said provision, learned Senior Counsel has contended that even in a case of conviction, the petitioners are vested with powers to make appointments applying the principles of reformatory theory.

17. It is also contended by the learned counsel that the provision in the Manual is not an absolute rule, but only a guiding factor. The Respondent in this case even though

arrayed as an accused in a crime and later in a Sessions Case, that by itself is not a ground to disregard him for appointment. According to the learned counsel, the tenor of Annexure-A9 order of the Sessions Court reveals that the acquittal was made by the Sessions Court having found that there is no evidence at all against the Respondent to incriminate him in the offences alleged against him. It is also contended that the competent authority has not considered the case of the Respondent in its proper perspective by taking into account the entire documents and therefore the Tribunal was right in interfering with the action of the petitioners. The learned Senior Counsel also contended that since the action of the petitioners was totally illegal in not appointing the Respondent, the Tribunal had every power to make the direction issued in its order. Learned Senior Counsel also contended that the judgments of the Apex Court cited by the learned counsel for the petitioners were confining to its own facts and therefore a universal principle cannot be adopted from the principles derived by the Apex Court in the said judgments. The principles laid down in the said judgments, contends the learned Senior Counsel, can only be relative to facts and

circumstances of each and every case. Therefore, the learned counsel contends that the facts and circumstances of the case in hand if tested against the principles of law evolved by the Apex Court in the cases cited *supra*, it can be seen that since the Respondent was held to be innocent by the Sessions Court for want of any evidence, the same is an honourable acquittal and therefore the action of the petitioners can never be sustained under law.

18. Learned Senior Counsel has invited our attention to the judgment of the Rajasthan High Court in '***Shyokaran and Others v. State of Rajasthan and Others***' [2008 KHC 5512], to canvass the proposition that in every case, authorities are bound to apply the reformatory theory and arrive at an objective satisfaction. Learned Senior Counsel has taken us through paragraphs 9, 10, 11 and 12 wherein the Rajasthan High Court considered the question of reformatory theory of punishment and held that the purpose of imprisonment is not to lock up the criminal and forget about him. But the purpose is to transform him from the antisocial to a social, from a law breaking to law abiding, from an unruly to a disciplined member of the society. Therefore, the counsel

contends that the Respondent was in every sense entitled for appointment as a Public Prosecutor. Merely because he was implicated in a crime, the Respondent cannot be seen to be a criminal throughout his life. In that view of the matter, learned Senior Counsel contended that the Tribunal was right in exercising its power and directing the petitioners to appoint the Respondent.

19. We have considered the rival submissions, perused the pleadings and the records made available. The point that emerges for consideration is whether the acquittal of the Respondent under Sec.232 of the Cr.P.C by the Sessions Court in offences involving moral turpitude is entitled to be considered for appointment to a public post on the said sole ground. It is true that the judgments of the Apex Court cited *supra* lay down the principle that the judgment rendered by the criminal Court can be taken into account if it is found that an honourable acquittal was made by the Court. In order to find out as to whether acquittal is an honourable acquittal, the competent authority is always vested with powers, to go through the relative documents which led to the implication of the Respondent in the crime and other materials on record. So

far as a criminal case is concerned, proof beyond reasonable doubt is the law settled for securing conviction, whereas in a quasi-criminal and other civil proceedings, the principle that is to be followed to ascertain the guilt by the Court is preponderance of probabilities. No doubt, if the Sessions Court after trial proceedings entered into a finding that after evaluation of the entire evidence and circumstances, there is absolutely no evidence to incriminate the accused, then it can be considered as a case of honourable acquittal, and in that regard the competent authority may be justified in relying absolutely on the said judgment, since the same was rendered by a competent Court of Law. In the case at hand, it is true that the Respondent was acquitted under Sec.232 of the Cr.P.C, holding that there was no evidence to connect the Respondent and other accused with the murder of the deceased therein. But on going through the judgment of the Sessions Court, it can be seen that all the witnesses examined by the prosecution had turned hostile, which made the prosecution give up the other witnesses. It is in that context, that the Sessions Court has entered into a finding that there was no evidence to incriminate the Respondent to the crime.

20. In this regard, the judgment of the Apex Court in **'Mehar Singh'** supra is relevant and according to us, paragraph 25 contained therein is more explanatory and therefore we think that it is only appropriate that the said paragraph is narrated for reference:

"25. 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 IPC 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 RBI v. Bhopal Singh Panchal, where in 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 the departmental proceedings. This Court observed that the expressions "honourable acquittal", "acquitted of blame" and "fully exonerated" are unknown to the Criminal Procedure Code 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 the prosecution case and the prosecution miserably fails to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted."

21. Therefore, the principle of honourable acquittal depends on facts and circumstances of each and every case. The core consideration of the Court of Law while considering the question of honourable acquittal should be relating to the entire proceedings that have taken place in a criminal Court from the beginning to the end and then arrive at a decision by a competent authority whether the acquittal made by the Court was after evaluating the entire evidence let in by the prosecution as well as the defence.

22. No doubt in our mind that, a competent authority is always vested with powers to arrive at an objective satisfaction in the matter of selection of its employees. The degree of consideration depends upon the post to which such a person was considered. Here, in this case, the post is a very sensitive post as that of a Public Prosecutor in a premier investigation agency, i.e. the CBI. Therefore, the competent authority is

always justified in making a threadbare enquiry with regard to the antecedents and background of the candidate in arriving at a conclusion as to whether such a person is entitled to be appointed to a post of this nature. The question now before us is whether the Tribunal while considering the issue was able to consider whether the competent authority was justified in arriving at a decision not to appoint the Respondent. According to us, the evidence that was placed before the Tribunal was Annexures-R1 to R3, which we discussed earlier, which are reports of the District Collector, Malappuram and Superintendent of Police, CBI and a communication of Department of Personnel and Training dated 13.01.2014, which reads as follows:

***"Department of Personnel & Training
AVD-II***

*Subject: Approval for appointment to the post of
Public Prosecutor in CBI - reg.*

*CBI may please refer to their ID
No.DP/PERS.1/2013/738/3/90/20 dated 28.02.2013 on the
above subject.*

*2. Approval of the competent authority is conveyed for
cancellation of candidature of Shri Basheer P. as Public
Prosecutor in CBI.*

*3. CBI is requested to take necessary action in this
matter accordingly under intimation to this Department.*

4. CR dossiers of Shri Basheer P. received along with the proposal is returned herewith, the receipt of which may please be acknowledged.

Sd/-
Rajiv
Under Secretary.

DD (Pers.), CBI, CGO Complex, New Delhi.

DoP&T ID No.202/66/2012-AVD-I Dated 13 January, 2014."

23. In our view, the satisfaction of the competent authority is rendered in one sentence to the effect that the approval of the competent authority is conveyed for cancellation. According to us, what guided the Tribunal in arriving at a conclusion was the judgment of the Sessions Court by which the Respondent was acquitted of the offences. We have already held that if the acquittal is to be considered as a sole criteria for arriving at a decision, the same should be an honourable one. The Tribunal did not consider the question in the right perspective. Even if a person is acquitted, the competent authority is always at liberty to evaluate the facts and circumstances to arrive at a different conclusion and decision with regard to the appointment of a person involved in the said crime. Therefore, the prime duty of a Court of Law considering a question like this, is to find out whether there is an honourable acquittal and thereafter, whether the competent

authority has considered the whole issue in order to arrive at a conclusion with regard to the competency of the candidate to secure employment. Here, in this case, we are of the considered opinion that the Tribunal did not attempt at all to enter into a finding with regard to the nature of acquittal and then evaluate conduct of the authority., especially when there are no allegations of *malafides* made against the competent authority. Such a procedure adopted by the Tribunal, in our view, cannot be sustained under law, in any manner. But, at the same time, exercising jurisdiction under Article 227 of the Constitution of India, we do not propose to substitute our findings for the findings of the Tribunal.

24. Resultantly, we set aside the order of the Tribunal and remand the matter to the Tribunal to take a decision after providing reasonable opportunity to the rival parties and taking into account the principles laid down by the Apex Court in the subject matter, within a period of two months from the date of receipt of a copy of this judgment. Needless to say, the observations made in this judgment shall not be a fetter to the Tribunal for arriving at its own independent conclusions.

This Original Petition is allowed accordingly.

Sd/-
**K. SURENDRA MOHAN
JUDGE**

Sd/-
**SHAJI P. CHALY
JUDGE**

//true copy//

P.S. to Judge

St/-
23.12.2015