

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA No.228 of 2015(O&M)
Date of Decision: July 21, 2015

Central Industrial Security Force and another ...Appellants

Versus

Yogesh Kumar ...Respondent

**CORAM: HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: - Mr. Vivek Singla, Advocate
for the appellants.

Mr. R.K. Malik, Sr. Advocate with
Mr. Vijay Dahiya, Advocate
for the respondents.

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HARINDER SINGH SIDHU, J.

This intra Court appeal under Clause X of the Letters Patent has been filed against the judgment dated 18.12.2014 passed by the learned Single Judge whereby the writ petition (CWP No.939 of 2014) challenging the order dated 20.11.2013 (Annexure P-3) declaring the respondent as not suitable for appointment in CISF as Constable has been quashed and the appellant has been directed to consider the claim of the respondent for appointment as per merit.

The Central Industrial Security Force advertised 343 posts of Driver Constable (Pump Operator). Last date for submission of the application was 25.08.2012. The respondent

being fully eligible applied for the said post. The physical and written test was held on 3.12.2012 at Chandigarh in which the respondent was successful. Thereafter, he was called for driving test on 04.12.2012 where also he was successful. He was selected and placed at merit No.113 amongst the 136 candidates selected. He was informed vide letter dated 15.03.2013, that his selection is subject to clearance from CISF Directorate due to his involvement in a criminal case. Vide letter dated 20.11.2013, he was informed that he has been not found suitable for appointment in CISF. He filed the CWP laying challenge to the aforesaid order, which has been allowed. Hence the present appeal.

It was argued on behalf of the respondent before the learned Single Judge that though the respondent was involved in FIR No.166 dated 27.08.2009 under Section 147, 323, 452, 506 and 149 IPC registered at Police Station Ateli, he was acquitted in the said case vide judgment dated 08.09.2010 by the Judicial Magistrate Ist Class, Narnaul which is well before the date of the submission of applications. The respondent had specifically pointed out this fact in his application form while applying for the post in question. Despite this fact being to the knowledge of the Selection Committee, he was duly selected and placed at Sr. No.113 of the selection list, hence, denial of appointment by way of the impugned order was arbitrary. The appellants to the contrary stressed upon his involvement in the criminal case and

argued that in that background the decision of the Screening Committee, holding him not suitable for appointment in view of his involvement in the criminal case cannot be faulted.

The Learned Single Judge, taking note of the fact that the involvement of the petitioner in the criminal case had been disclosed by him in the application form itself, observed that the selection making authority while making the selection was not only to examine the physical fitness of the candidates but also assess their overall suitability, otherwise, the entire selection process would amount to a futile exercise. It was observed that the order holding the respondent not suitable for appointment was a cryptic and non-speaking order and made no mention of the fact that the respondent was not found suitable because of his involvement in criminal case as was sought to be justified in the written statement.

Learned Single Judge held that the petitioner being a truthful candidate, who had disclosed everything about his involvement and acquittal in the criminal case could not be made to suffer and treated at par with a candidate who had concealed material facts from the authorities at the time of submission of the application form. In support, learned Single Judge relied on a Division Bench decision of this Court in ***Arvind Kumar v. Kendriya Vidyalaya Sangathan and others, 2010 (4) SCT 718*** and a decision of Hon'ble the Supreme Court in ***Commissioner of Police and others v. Sandeep Kumar*** (Civil Appeal No.1430

of 2007), which view was reiterated in ***Joginder Singh v. Union Territory of Chandigarh and others*** (Civil Appeal No. 2325 of 2009), decided on 11.11.2014 and ***State of M.P. and others v. Hazarilal, 2008(2) SCT 148***.

The Ld. Single Judge allowed the appeal by concluding as under:

“Had the petitioner concealed the material fact regarding his involvement in a criminal case, despite his acquittal, matter would have been different. In that situation, respondents would have levelled allegation of concealment against the petitioner, which is not the fact situation in the present case. Petitioner had courage to speak the truth which ought to have been appreciated by the respondent authorities. Under these circumstances, it can be safely concluded that a truthful candidate like the petitioner cannot be made to suffer only for the reason that he has disclosed the actual truth at the time of submitting his application form for seeking appointment. Truth is the constant source of strength. Truth must get due appreciation at every level in the justice delivery system as well as with the administrative authorities. Truthful act is not to be punished but rewarded.

Further, the selection making authority also must own its responsibility to examine, consider and adjudge the suitability of the candidates, at the time of making the selection, on the basis of facts as given in application form and other supporting documents. If the selection making authority would not own its responsibility, then the public time and

money would be wasted in the process. Since respondent No.2 has not at all adverted to all the above-said material aspects of the matter, while passing a non-speaking and cryptic order, the same cannot be sustained, for this reason also.”

The appellants were directed to consider the claim of the respondent for the post in question as per his merit. It was directed that the respondent would be entitled for consequential service benefits and would be granted the benefit of length of service on notional basis with effect from the date candidates lower in merit than the respondent were appointed.

Learned counsel for the appellants has argued that the learned Single Judge has ignored the fact that the respondent was not found suitable for appointment in CISF after his case was examined by the Seventh Standing Screening Committee in the light of the policy/guidelines/instructions issued by Ministry of Home Affairs. Referring to the judgment of acquittal, it is argued that the respondent was not honorably acquitted but was acquitted due to the fact that all the prosecution witnesses had turned hostile. It is stated that apart from the offences under Section 147, 149, 323, 506 IPC, the respondent also faced charges under Section 452 IPC, which was non-bailable and non-compoundable offence punishable with imprisonment for seven years and fine. This being a serious offence, the decision of the Screening Committee in adjudging the respondent as unsuitable because of his involvement in such

an offence has to be respected and the mere fact that the respondent has disclosed his involvement and subsequent acquittal in that offence would not make any difference on the question of suitability for the post in question.

On the other hand, the learned counsel for the respondent has stated that there is no infirmity in the judgment of the learned Single Judge and once the respondent has been acquitted he cannot be held to be not suitable for the job.

We have heard learned counsel for the parties and are of the view that there is no merit in the present appeal.

The Hon'ble Supreme Court in ***Joginder Singh v. Union Territory of Chandigarh and others, (2015) 2 SCC 377*** has held that when the accused has been acquitted after full consideration of the prosecution evidence and the charge levelled have not been proved then it can be said that the accused was honourably acquitted.

It is instructive to refer to the observations of the Hon'ble Supreme Court in that case in extenso as that provides a complete answer to the contentions and arguments on behalf of the appellants:

“14. On the basis of the aforesaid rival legal contentions urged on behalf of both the parties, the following points would arise for our consideration:

(i) Whether the denial of the benefit of appointment to the appellant by the High Court is legal and valid in the light of the fact that the appellant was acquitted from the criminal case pending against him?

(ii) What order?

15. To answer Point (i), we must first consider whether the

acquittal of the appellant from the criminal case was an honourable acquittal. It is the contention of the respondent that even though the appellant was acquitted in the criminal case, the appointment of the appellant by the appointing authority to the post of Constable in Chandigarh Police, which is a disciplined force was not desirable. The High Court has held that what would be relevant is the conduct and character of the candidate to be appointed in the service of the State police and not the actual result thereof in the criminal case as claimed by the appellant. Further, the relevant consideration to the case is the antecedents of the candidate for appointing him to the post of Constable.

16. However, advertent to the criminal proceeding initiated against the appellant, we would first like to point out that the complainant did not support the case of the prosecution as he failed to identify the assailants and further admitted that the contents of Section 161 CrPC statement were not disclosed to him and his signatures were obtained on a blank sheet of paper by the investigating officer. Further, Sajjan Singh, who was an eyewitness of the case, who was also injured, had failed to identify the assailants. Both the witnesses were declared hostile on the request of the prosecution.

17. The learned Additional Sessions Judge, Bhiwani held that the prosecution has not been able to prove in any way the allegations against the appellant. Thus, the learned Judge held that the prosecution had miserably failed to prove the charges levelled against the appellant in the criminal proceedings. Therefore, we are in agreement with the findings and judgment of the learned Additional Sessions Judge and are of the opinion that the acquittal of the accused from the criminal case was an honourable acquittal.

18. The learned counsel has rightly placed reliance upon the decision of this Court in *Inspector General of Police v. S. Samuthiram* of which relevant paragraph is extracted as under: (SCC p. 609, para 24)

“24. The meaning of the expression ‘honourable acquittal’ came up for consideration before this Court in *RBI v. Bhopal Singh Panchal*. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions ‘honourable acquittal’, ‘acquitted of blame’, ‘fully exonerated’ are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression ‘honourably acquitted’. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.”

19. Further, an acquittal of the appellant is an “honourable”

acquittal in every sense and purpose. Therefore, the appellant should not be deprived from being appointed to the post, in the public employment, by declaring him as unsuitable to the post even though he was honourably acquitted in the criminal case registered against him.

20. *Further, undisputedly, there has been no allegation of concealment of the fact that a criminal case was registered against him by the appellant. Thus, the appellant has honestly disclosed in his verification application submitted to the selection authority that there was a criminal case registered against him and that it ended in an acquittal on account of compromise between the parties involved in the criminal case, he cannot be denied an opportunity to qualify for any post including the post of a Constable.*

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23. *Further, a bare perusal of Rules 12.12, 12.14 and 12.18 of the Rules, which would indicate that the recruit should be of a good character and suitability. The said Rules are extracted hereunder:*

“12.12.Supervision of recruitments.—The standard of performance and the reputation of the whole police force depend above all upon the quality of its Constables. Standards for recruits are laid down in the rules which follow, but, over and above these, constant attention and effort to raise the general standard of recruitment are essential. Gazetted officers shall at all times devote special attention to discovering and encouraging men of a thoroughly good stamp to enrol themselves. Efforts shall be made to enrol a proportion of men belonging to communities or classes, whose representation in the force is desirable, but who appear reluctant to offer themselves. The examination and measuring of candidates for enrolment shall invariably be carried out by a gazetted officer, who shall concern himself specially to prevent the victimisation of, or the taking of illegal gratification from, candidates by subordinate government servants concerned in the conduct of their examination. Superintendents shall personally satisfy themselves that the arrangements for the reception of new recruits in the Lines, and for providing them with bedding and warm clothing, whether as a sanctioned government issue or under a system whereby the cost is recovered later in instalments from pay, are adequate, and that recruitment is not discouraged by initial and avoidable hardships. Deputy Inspectors General, in addition to exercising a careful control over recruitment generally, and preventing the enrolment of undesirable types, shall, at their inspections, formal and informal, pay special attention to the observance of this rule.

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12.14. Recruits—Status of.—(1) Recruits shall be of good character and great care shall be taken in selecting men of a type suitable for police service from

candidates presenting themselves for enrolment.

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12.18. Recruits—Verification of character of.—(1)
The character and suitability for enrolment of every recruit shall be ascertained by a reference to the lambardar of the village or ward member of the town of which the recruit is a resident. A search slip shall also be sent to the Finger Print Bureau in order to establish his freedom or otherwise from conviction. Such lambardar or ward member shall, if the recruit is of good character, furnish a certificate to that effect which shall be verified and attested by the Sub-Inspector in charge of the local police station. The Sub-Inspector shall complete the information required by Form 12.18 (I).”

It is the submission made on behalf of the respondents that the above referred rules lay down the criteria that clean antecedents and good moral character is indispensable for a candidate to even fall within the zone of consideration.

24. *However, in the present case, we have observed that the appellant was involved in a family feud and the FIR came to be lodged against him on 14-4-1998, after he had applied for the post of Constable. Further, he had been acquitted on 4-10-1999 i.e. much before he was called for the interview/medical examination/written test. Further, as per Rule 12.18, emphasis has been laid on the freedom or otherwise from conviction. An interpretation of the Rules referred to supra clearly indicate that an acquittal in a criminal case will qualify him for appointment to the post of Police Constable, as the appellant had successfully qualified the other requisites required for his selection. Thus, as rightly pointed out by the trial court that as the prosecution has failed to prove the charges against the appellant by adducing cogent evidence, therefore, the police authorities cannot be allowed to sit in judgment over the findings recorded by the Sessions Court in its judgment, wherein the appellant has been honourably acquitted. Denying him the appointment to the post of a Constable is like a vicarious punishment, which is not permissible in law, therefore, the impugned judgment and order passed by the High Court is vitiated in law and liable to be set aside.*

25. *Further, apart from a small dent in the name of this criminal case in which he has been honourably acquitted, there is no other material on record to indicate that the antecedents or the conduct of the appellant was not up to the mark to appoint him to the post. The appellant was also among the list of the 40 selected successful candidates, who had fulfilled all the other requirements of the post. Reliance has been placed on the decision of this Court in Jagtar Singh v. CBI which states as under: (SCC pp. 50-51, para 4)*

“4. ... It is not necessary for us to go into the question as to whether the claim of privilege by the respondents is justified or not. We also do not wish to go into the details of the investigations made regarding the

antecedents and character of the appellant. We have carefully examined the material on the basis of which the respondents have come to the conclusion that the appellant is not suitable for appointment to the post of Senior Public Prosecutor in the Central Bureau of Investigation and we are of the view that the respondents are not justified in reaching a conclusion adverse to the appellant. No reasonable person, on the basis of the material placed before us, can come to the conclusion that the appellant's antecedents and character are such that he is unfit to be appointed to the post of Senior Public Prosecutor. There has been total lack of application of mind on the part of the respondents. Only on the basis of surmises and conjectures arising out of a single incident which happened in the year 1983 it has been concluded that the appellant is not a desirable person to be appointed to government service. We are of the view that the appellant has been unjustifiably denied his right to be appointed to the post to which he was selected and recommended by the Union Public Service Commission."

26. *Thus, we are of the opinion that the alleged past conduct of the appellant in relation to the criminal case will not debar or disqualify him for the post of the Constable for which he was successfully selected after qualifying the written test, medical test and the interview conducted by the selection authority. Further, as stated by us earlier, there has been no concealment of any relevant fact from the respondents by the appellant. The respondents were thus not justified in denying the said post to the appellant. The conclusion arrived at by them is not cogent and lacks proper application of mind."*

The allegations against the accused in the present case were that on 27.08.2009, the complainant, who was a B.A. Ist year student, was going home on his motorcycle. He stopped for urinating, and then a Maruti van came from the side of village Ateli and the occupants gave abuses to him. On this, he remonstrated with them and cautioned them to drive safely. After he reached home, 8-10 boys came to his house in Maruti vans and caused injuries to him and his family members. On hearing the noise, villagers gathered and rescued him and his family members. On these allegations, FIR was lodged under

Sections 147/452/323/506/149 IPC. During trial, all the prosecution witnesses did not support the prosecution version and were declared hostile. They deposed that the accused present in court did not cause any injury to them. Despite lengthy cross examination conducted by learned APP for the State, nothing could be elicited from them which could support the prosecution version. Hence, it has to be held that the respondent was honourably acquitted in this case and the action of the appellants in holding him not suitable cannot be sustained.

Thus, in our view the Ld. Single Judge had rightly allowed the writ petition. Accordingly, there is no merit in the appeal and the same is dismissed.

(SATISH KUMAR MITTAL) (HARINDER SINGH SIDHU)
JUDGE JUDGE

July 21, 2015
Atul