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

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Decided on: 29.09.2015

+ W.P. (C) 1612/2015

BRIJESH KUMAR SAHU

..... Petitioner

Through: Mr Praveen Swarup and Mr R.K. Singh,
Advocates

versus

CENTRAL INDUSTRIAL SECURITY FORCE AND ORS.

..... Respondents

Through: Mr Abhay Prakash Sahay, Advocate and
Mr Noor Anand, Government Pleader

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MS. JUSTICE DEEPA SHARMA (OPEN COURT)

1. In response to an advertisement to the appointment to the post of Sub-Inspector/Executive in CISF through Staff Selection Commission (SSC) Examination, 2012, the petitioner had applied and also qualified for the said post. He was provisionally appointed vide order dated 03.07.2013 to the post of Sub-Inspector/Executive and was directed to report to Director, National Industrial Security Academy (NISA), Hakimpet, Hyderabad on 09.08.2013

for training, subject to the verification of his character and antecedents. According to the directions, he produced the necessary documents along with character certificate and also submitted a copy of the Court order/judgment dated 15.06.2009 of Judicial Magistrate, First Class, Waidhan, Sidhi (MP) in criminal case No. 680/2005, whereby he was acquitted of the offence under Section 294/506/323/325/34 IPC in FIR No. 353/2005 and another order of the Court of Judicial Magistrate, First Class, Singrauli (MP) passed in criminal case No.1297/2006, whereby he was acquitted of the offences under Sections 294/506/427/34 IPC in FIR No.726/2006 dated 13.12.2006.

2. The petitioner was issued a letter dated 28.08.2013 by the Commandant/TRG, CISF, NISA, Hyderabad asking him not to report for duty since his matter was pending before the Standing Screening Committee. He was also asked to submit a readable copy of the FIR and final report and other documents to the academy which were duly submitted by him. However, by impugned order dated 23.11.2013, provisional letter of appointment was withdrawn on the ground that he was not found suitable for appointment in CISF. The petitioner has challenged the said act of the

respondent on the ground that he had truly and faithfully and without any concealment submitted all the requisite information relating to his involvement in criminal case at the time of furnishing questionnaire. It is further submitted that FIR No.353/2005 of P.S.Baidan dated 23.08.2005 as well as another FIR No. 726/2006 dated 13.12.2006 of P.S. Baidan were registered against him due to the village rivalry and he had been falsely implicated in these cases along with others and that both the cases were compromised and he was acquitted by the Court.

3. The petitioner submits that in view of various orders of this Court as well as of the Supreme Court in ***Commissioner of Police & Ors. vs. Sandeep Kumar*** (2011) 1 SCC (LS) 734, past antecedents of a candidate showing his involvement in a criminal case which had resulted in acquittal should not be taken as a reason for cancellation of the candidature. It is submitted that this Court in the case of ***Rahul Yadav vs. CISF and Anr*** in *W.P. (C) No.8094/2010* enumerated the parameters for the Screening Committee while considering the cases of the candidates involved in criminal cases. It is contended that the Screening Committee has not considered the case of the petitioner in the right perspective and had not

applied its mind objectively to the facts of the case and had passed a mechanical order. It is further submitted that earlier too he had filed a writ petition W.P.(C) No.1293/2014 where the respondents had filed their counter-affidavit and had stated that the case of the petitioner along with 12 other candidates was referred to the Standing Screening Committee which decided as to his suitability in CISF and had also relied on the guidelines to the notification of MHA dated 01.02.2012. It is submitted that these guidelines do not govern the petitioner as he was not an enrolled member of the Force, and so not governed by CISF Act and Rules. The said writ petition was withdrawn by the petitioner by order dated 22.01.2015 with liberty to file a fresh writ petition. Hence, the present writ petition.

4. On these facts, it is urged that the impugned order be set aside and the respondents be directed to employ the petitioner to the post of Sub-Inspector. To support his contention the petitioner has relied on Supreme Court order in **Sandeep Kumar** (supra) and contended that the Supreme Court has clearly held that “*young people often commit indiscretions and approach should be to condone such indiscretions rather than branding them as criminals for rest of their lives. Besides, it was not a serious offence*”

and hence, more lenient view should be taken” and on that principle urged to set aside the order of cancellation of his candidature. It is submitted that petitioner was not involved in any serious offence and hence, he cannot be condemned only for the reason that he was involved in a criminal case.

5. The undisputed facts of the case are that the petitioner was involved in two criminal cases and two FIRs i.e. (1) FIR No. 353/2005 P.S.Baidan dated 23.08.2005 for the offences under Sections 294/323/324/506/34 IPC and (2) FIR No. 726/2006 P.S. Baidan dated 13.12.2006 under Sections 294/506/427/34 IPC. They were registered against him in the years 2005 and 2006. In both the cases his acquittal was the result of the compromise with complainant. It is also apparent that although at the time when he filled his questionnaire (whereby in terms of clause 12, he was required to disclose about his antecedents and registration of any FIR) he had disclosed particulars of FIR No.353/2005 only and intentionally concealed registration of second FIR No.726/2006. That he got involved in two criminal cases, registered, on the complaint of two different complainants clearly reflects upon his conduct, and had to be disclosed. It is not a case where candidate was found involved in one incident of a minor nature which could be

attributed to village or family rivalry on account of some property or other dispute which is common in villages or small communities. The first FIR No.353/2005 was registered against him as he along with co-accused had beaten the complainant, his wife and other persons, threatened to kill them and force them to remove their hut from some land and inflicted injuries for which he was charged for the offences under Section 294/323/506/34 IPC. Second FIR No.726/2006 also shows that that the petitioner, along with his co-accused entered into the shop of the complainant and damaged the articles therein and also threatened to kill him and for which he along with his co-accused was charged for the offences under Sections 294/506/427/34 of IPC.

6. The Supreme Court in the case of ***Delhi Administration through its Chief Secretary vs. Sushil Kumar*** (1996) 11 SCC 605 has clearly held that for appointment into a force, the discharge or acquittal of the criminal offences is not relevant, the conduct or character of the candidate who is to be appointed into the service is what would be relevant. The Court has observed as under:-

“3.It is seen 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. Though he was physically found fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as Constable to the disciplined force. The view taken by the appointment authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant to the case is of the antecedents of the candidate. Appointing Authority, therefore, has rightly focussed this aspect and found him not desirable to appoint him to the service.”

7. In a recent judgment, ***Commissioner of Police, New Delhi and Another vs. Mehar Singh*** (2013) 7 SCC 685, the issue of appointment of provisionally selected candidates who were found involved in criminal cases, subsequently acquitted or discharged, but, whose candidature was cancelled by the Screening Committee on the ground that they were not found suitable for the appointment, had come up for consideration and the Court has observed as under:-

“34. The respondents are trying to draw mileage from the fact that in their application and/or attestation form they have

disclosed their involvement in a criminal case. We do not see how this fact improves their case. Disclosure of these facts in the application/attestation form is an essential requirement. An aspirant is expected to state these facts honestly. Honesty and integrity are inbuilt requirements of the police force. The Respondents should not, therefore, expect to score any brownie points because of this disclosure. Besides, this has no relevance to the point in issue. It bears repetition to state that while deciding whether a person against whom a criminal case was registered and who was later acquitted or discharged should be appointed to a post in the police force, what is relevant is the nature of the offence, the extent of his involvement, whether the acquittal was a clean acquittal or an acquittal by giving benefit of doubt because the witnesses turned hostile or because of some serious flaw in the prosecution, and the propensity of such person to indulge in similar activities in future. This decision, in our opinion, can only be taken by the Screening Committee created for that purpose by the Delhi Police. If the Screening Committee's decision is not mala fide or actuated by extraneous considerations, then, it cannot be questioned.

35. The police force is a 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. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee. The decision of the Screening Committee must be taken as final unless it is mala fide. In recent times, the

image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in public domain and are a matter of concern. The reputation of the police force has taken a beating. In such a situation, we would not like to dilute the importance and efficacy of a mechanism like the Screening Committee created by the Delhi Police to ensure that persons who are likely to erode its credibility do not enter the police force. At the same time, the Screening Committee must be alive to the importance of trust reposed in it and must treat all candidates with even hand."

8. The petitioner has relied on the decisions of this Court in ***Commissioner of Police vs. Prem Singh Choudhary*** W.P.(C) 4304/2013, ***Mintu Mistri vs. Union of India & Ors.*** W.P.(C) 1530/2012, ***Govt. of NCT of Delhi & Anr. vs. Robin Singh*** W.P.(C) 2068/2010 and ***Rahul Yadav vs. CISF & Anr.*** W.P.(C) 8094/2010 and has tried to draw parity with the other candidates who moved this Court and this Court for reasons mentioned therein set aside the order of cancellation of the candidature of those petitioners although they were also found involved in the criminal cases. It is argued on behalf of the respondent that in all those cases, this Court had passed the order in view of the facts and circumstances of those cases which also included the nature of the criminal offences they were found involved in and also the other attending circumstances and all those petitioners were

found involved in solitary cases of minor nature and in view of the principles of Supreme Court, in ***Sandeep Kumar*** (supra), the orders were made and that those principles are not applicable in this case since petitioner was involved in two criminal offences, which add a different dimension. Further, he had intentionally concealed the registration of second FIR No.726/2006 while filling the questionnaire. It is also submitted that the offences with which the petitioner was charged are of serious nature as they relate to obscene acts, causing injury by dangerous weapons, committing mischief and also threatening to kill a person and the Screening Committee has rightly cancelled his candidature. It is apparent that these cases, the petitioner has tried to draw parity with, were decided on the basis of facts and circumstances of each of those cases and the circumstances in this case are different from them. The petitioner had applied for a post for which discipline is of paramount importance. This Force is meant to prevent commission of offences and to provide securities. Suitability of a candidate is contextual- to the post he aspires for as well as the nature of duties expected to be shouldered.

9. It would not be unreasonable to assume that someone who has been repeatedly in conflict with law in force can be trusted with the responsibility of maintaining law and order in society. From the facts of the case, it is apparent that the petitioner was not given honourable acquittal or discharge, but he had been acquitted on account of compromise with two separate complainants. He, therefore, has not been exonerated of the charges. Since the acquittal was not honourable, the Screening Committee was entitled to cancel his candidature. There is nothing on record to show that the Screening Committee had acted *mala fide* against the petitioner.

10. For the above reasons, we find no reason to set aside the impugned order of cancellation of petitioner's candidature. The writ petition is hereby dismissed. There shall be no order as to costs.

(DEEPA SHARMA)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

SEPTEMBER 29, 2015/BG