

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

% *Date of Decision : March 09, 2015*

+ **W.P.(C) 6606/2013**

SANJAY KUMARPetitioner
Represented by: Mr.V.K.Anand, Advocate with
Mr.Suresh Kumar and Mr.Shekhar
Aggarwal, Advocates

versus

UOI & ORS.Respondents
Represented by: Ms.Abha Malhotra, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. The writ petitioner sought appointment under the Border Security Force and being successful was offered employment. The petitioner was required to fill up an enrollment form, which he did on August 17, 2010.
2. Required to furnish information, as per Serial No.12 of the enrolment form, which sought the information : *‘Have you ever been arrested, prosecuted, imprisoned, bound over, interned, externed or otherwise dealt with under any law in force in India or outside? If so, State particulars’*, the petitioner wrote : *‘No’*. Meaning thereby, to the information : whether the petitioner had ever been arrested, prosecuted or imprisoned under any law in force in India, the petitioner replied in the negative.
3. Based on the information given the petitioner was enrolled as a Constable. Completing basic training he was attached to a Battalion, when information was received by the department that the petitioner was an

accused in FIR No.307/2009 PS Mauaima, District Allahabad (UP) (Offences punishable under Sections 147/148/149/307/452/323/504 IPC and was arrested and sent to judicial custody. He was admitted to bail after about 9 days. Taking cognizance of the challan filed, charges have been framed against the petitioner and other co-accused.

4. Taking cognizance of the information which was put up before the Commandant in the form of an offence report, the Commandant directed a Record of Evidence to be drawn up, at which the witnesses of the department proved various documents which showed that the petitioner and 11 others were charged for having committed offences punishable under Sections 147/148/149/307/452/323/504 IPC and that the petitioner was arrested and sent to judicial custody before he was admitted to bail as also that the Court of the District Judge Allahabad had framed charges against the accused who were facing trial. The incident in question had taken place at around 5:30 PM on July 03, 2009 in the house of Amrit Lal Patel : the complainant, who was assaulted with lathis, hockey and an axe and when Anita Devi and Baij Nath, the wife and uncle of the complainant intervened even they were assaulted. A box containing silver and cash was removed.

5. Taking cognizance of the evidence recorded at the Record of Evidence the Commandant was of the opinion that a case was made out to try the petitioner for the offence punishable under Section 23 of the BSF Act, 1968, which Section makes it an offence to give false information when enrolled in the force and provides punishment of up to 5 years.

6. At the trial the petitioner pleaded guilty and thus proceedings at the Record of Evidence were read at the trial and annexed with the record.

7. Holding the petitioner guilty, the penalty of termination from service was inflicted upon the petitioner, against which appeal filed was rejected.

8. At the hearing of the writ petition, learned counsel for the petitioner restricted the challenge to the service of the petitioner being terminated on the plea that coming from a humble socio-economic background the petitioner did not understand the language of column 12 of the enrollment form and highlighted that at the trial before the Court of Sessions the petitioner was acquitted vide decision dated November 01, 2012. The argument was that out of fear the petitioner did not disclose the relevant information. Learned counsel argued that for petty offences a young man should not be condemned for life.

9. The petitioner and 11 other co-accused were charged for offence punishable under Sections 147/148/149/307/452/323/504 IPC, and we simply highlight that the charges are not for committing petty offences. The charge includes the offence punishable under Section 307 IPC.

10. The petitioner got two opportunities to make his defence of not understanding the language of column 12 of the enrollment form : firstly during Record of Evidence proceedings and secondly at the trial. The petitioner never took this defence.

11. In the decision reported as 2010 (2) SCC 169 Kamal Nayan Mishra Vs. State of MP & Ors., the Supreme Court has dealt with an issue where the petitioner raised the plea that the language of the enrollment form, being rolled over and one sentence dovetailed into the other, had caused confusion.

12. In para 19 of the decision the Supreme Court highlighted that if Kamal Nayan Mishra, whose services were terminated when he was a probationer and hence without an inquiry or show cause notice, was denied the opportunity to explain the reason for giving the information in column 12 of his enrollment form when he joined service. It was in this context that the Supreme Court quashed the order terminating Kamal Nayan

Mishra's employment, who prima-facie established before the Court that the complexed queries in column 12 (a), (b) and (c) of the enrollment form confused him.

13. In the instant case the services of the petitioner have not been terminated without an inquiry. The petitioner was tried before a Summary Security Force Court and he had every opportunity to take said defence and thereafter make it good. The petitioner had not done so.

14. In the decision reported as 2013 (7) SCC 685 Commissioner of Police Vs. Mehar Singh the Supreme Court set aside a decision of this Court granted in favour of Sh.Mehar Singh and one Sh.Shani Kumar. The former being an accused for offences punishable under Sections 323, 341 and 427 IPC and the latter for offences punishable under Sections 307, 504 and 506 IPC.

15. The benevolent view taken by this Court keeping in view the young age of Sh.Mehar Singh and Sh.Shani Kumar which was founded on the fact that both of them were acquitted at the trial, was set aside by the Supreme Court, observing as under in paragraphs 26 and 35 of the decision. They read as under:-

“26. In light of the above, we are of the opinion that since the purpose of the departmental proceedings is to keep persons, who are guilty of serious misconduct of dereliction of duty or who are guilty of grave cases of moral turpitude, out of the department, if found necessary, because they pollute the department, surely the above principles will apply with more vigour at the point of entry of a person in the police department i.e. at the time of recruitment. If it is found by the Screening Committee that the person against whom a serious case involving moral turpitude is registered is discharged on technical grounds or is acquitted of the same charge but the acquittal is not honourable, the Screening Committee would be entitled to cancel his candidature. Stricter norms need to be applied while appointing persons in a disciplinary force because public interest is involved in it.

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 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 the trust reposed in it and must treat all candidates with an even hand."*

16. The decision also highlighted that mere acquittal at a criminal trial is no reason to hold that the accused did not commit the wrong. Though not expressly stated in the decision, the view is rested on the premise that acquittal at a trial does not mean that it is proved that the accused did not do the wrongful act. It only means that the prosecution failed to lead evidence to discharge the onus of conclusively proving that the accused committed the offence.

17. In the instant case we have perused the decision dated November 01, 2012 passed by the Court of Sessions acquitting the petitioner and the other 11 co-accused for the charges framed against them.

18. The decision would evince that the witnesses were suborned. The complainant Amrit Lal Patel, who had named the petitioner and other accused in his complaint, turned hostile, inasmuch as he deposed in Court that the goons had muffled their faces and thus he could not recognize them. He otherwise stood by his complaint that the assailants were armed with lathis, sticks, hockey and axe. His wife Anita Devi and Baij Nath, while supporting the incident also turned hostile when it came to naming the accused. Confronted with their statements recorded by the police i.e. the complaint of Amrit Lal and the statements under 161 Cr.P.C. of the other two, the three said that they named the accused as were told to them by the villagers.

19. The MLCs of the three victims and the x-ray report of Amrit Lal Patel, coupled with the testimony of the three witnesses simply prove that the three were assaulted with dangerous weapons by an unlawful assembly of 12 persons. But sans the accused being identified as the said 12 persons.

20. Under the circumstances the impugned decision to terminate the employment of the petitioner after giving him full opportunity to state and thereafter prove his defence cannot be faulted.

21. The writ petition is dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

MARCH 09, 2015/mamta