

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

Date of Decision: 24.02.2016

1. CWP No.3532 of 2013 (O&M)

**Union Territory, Chandigarh and othersPetitioners
Vs
Pardeep Kumar and othersRespondents**

2. CWP No.17956 of 2013 (O&M)

**Union Territory, Chandigarh and othersPetitioners
Vs
Paramjeet Singh and anotherRespondents**

3. CWP No.18228 of 2013 (O&M)

**Union Territory, Chandigarh and othersPetitioners
Vs
Ajay Kumar and anotherRespondents**

4. CWP No.18232 of 2013 (O&M)

**Union Territory, Chandigarh and another.....Petitioners
Vs
Ombir and anotherRespondents**

5. CWP No.14854 of 2014 (O&M)

**Union Territory, Chandigarh and another.....Petitioners
Vs
Bhagwan Singh and anotherRespondents**

**CORAM:HON'BLE MR. JUSTICE M. JEYAPPAUL
HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

**Present:Mr. Sanjiv Sharma, Senior Advocate with
Mr. A.P. Setia, Advocate
for the petitioner(s).**

**Mr. R.K. Malik, Senior Advocate with
Mr. Bhupinder Malik, Advocate**

for the respondents in CWP No.3532 of 2013 and
for respondent No.1 in CWP No.17956 of 2013 &
CWP No.18228 of 2013.

Mr. Vishwajit Singh, Advocate for
Mr. Vikram Singh, Advocate
for respondent No.1 in CWP No.18232 of 2013.

Mr. G.S. Opera, Advocate
for respondent No.1 in CWP No.14854 of 2014.

Mr. Rohit Seth, Advocate
for the applicant in CWP No.14854 of 2014.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

[1]. Vide this common judgment we propose to decide CWP Nos.3532, 17956, 18228, 18232 of 2013 and CWP No.14854 of 2014 as the legal proposition involved in these cases is common.

[2]. Facts are being taken from CWP No.3532 of 2013 titled as Union Territory, Chandigarh and others vs. Pardeep Kumar and others.

[3]. The respondents No.1 and 2 namely Pardeep Kumar and Narender Kumar in CWP No.3532 of 2013 were prosecuted in case bearing FIR No.188 dated 18.11.2009 registered under sections 148, 149, 323, 506 IPC at P.S. Nangal Chaudhary. They were acquitted by the competent Court on 21.01.2010.

[4]. Similarly Paramjeet Singh, respondent No.1 in CWP No.17956 of 2013 was also involved in FIR No.508 dated 20.12.2010, registered under Sections 323, 506 IPC at Police Station Gharaunda, District Karnal and he was acquitted by the Judicial Magistrate Ist Class, Karnal vide judgment dated 26.02.2011. Ajay Kumar respondent No.1 in CWP No.18228 of 2013 was involved in FIR No.68 dated 31.05.2003, registered under Sections 148, 149, 323, 307, 34 IPC at P.S. Ateli and he was acquitted by the Sessions Judge, Narnaul vide judgment and dated 14.07.2004.

[5]. In the all aforesaid three cases the respondents pleaded that they did not conceal the factum of their involvement in the criminal cases at one point of time and acquittal thereof, while filling relevant column of attestation and verification. However, in CWP No.18232 of 2013 and CWP No.14854 of 2014, there are allegations of concealment regarding involvement in criminal cases and acquittal thereof while filling relevant column of verification.

[6]. On 23.04.2007, the Inspector General of Police, UT, Chandigarh had issued the Standing Order No.36/2007 for recruitment of Constable (Executive male and female) in Chandigarh Police. Procedure for selection of candidates for the said post was laid down so as to attract suitable candidates.

The Standing Order prescribed physical efficiency test, physical measurement test, written test and interview.

[7]. The aforesaid Standing Order contained necessary details of vacancy positions and qualifications with reference to reservations of vacancies in recruitment process and yardstick for final result. The Standing Order also contained provisions as regards medical examination and verification of character and antecedents of the candidates. After the selection i.e. declaration of final list, the selected candidates were required to be called for medical examination and were also called to fill up attestation forms of verification of their character and antecedents from the places where they last resided and also from their permanent home addresses. The competent authority was empowered to consider the verification report and to take decision after forming opinion with regard to desirability of the candidates to be appointed to the post in disciplined force or otherwise.

[8]. In the year 2009, Deputy Inspector General of Police, UT, Chandigarh advertised 600 posts of Constables (Male/Female) for Executive in UT, Chandigarh including 162 posts in OBC Category in the pay scale of Rs.3120-5160 with usual allowances admissible from time to time under the Rules. The essential qualifications were prescribed thereby fixing age

between 18 to 23 as on 01.01.2009 with minimum educational qualification of 10+2 pass as on 01.01.2009. The physical standards were also fixed in terms of height and chest. Some provisions were also made for relaxation in the cases of eligible candidates. The process of selection culminated in its logical end.

[9]. On 14.03.2010, advertisement was also issued by the office of Deputy Inspector General of Police, UT, Chandigarh inviting application from the candidates to fill up 1200 temporary posts of Constable (Executive) in Chandigarh Police with essential qualification as prescribed in the advertisement. The candidates were asked to go through the guidelines/instructions for filling the application forms online as well as Standing Order governing the recruitment of Constables.

[10]. On 23.06.2010, the Inspector General of Police, UT, Chandigarh issued Standing Order No.44 of 2010 laying down the guidelines to consider cases of candidates selected in Chandigarh Police on having been found involvement in criminal cases in the past. This Standing Order deals with the cases of candidates before issuance of appointment and after issuance of appointment letter and joining. For ready reference aforesaid guidelines are reproduced as under:-

“2. GUIDELINES”

(A) CASES BEFORE ISSUE OF APPOINTMENT

- (a) *The Candidature will be cancelled in case the candidate does not disclose the fact of his involvement and/or arrest in criminal case(s), complaint case(s), preventive proceedings etc. in the attestation form and the fact is subsequently found out from any verification report received from the District authorities or for any/other source.*
- (b) *If a candidate has disclosed his involvement and/or arrest in criminal case(s), complaint case(s), preventive proceedings etc. the case will be referred to the Screening Committee to assess his suitability for appointment in Chandigarh Police irrespective of the fact that the case is under investigation, trial or decided in conviction or acquittal.*
- (c) *As per section 19(1) of the Juvenile Justice (Care and Protection of Children) a juvenile who has committed an offence and has been dealt with under the provisions of the Juvenile Justice Act shall not suffer any disqualification on account of conviction in an offence under the said law.*
- (d) *Cases of candidates who have a past record of being “juveniles in conflict with law” who were dealt with under Juvenile Justice (Care and Protection of Children) Act will be decided keeping in mind the above provisions of law. Involvement or subsequent conviction of such a juvenile shall have no effect on his recruitment and joining service.*

(B) CASES AFTER ISSUE OF APPOINTMENT AND JOINING

In case it is detected at a later stage, after the candidate has joined the Chandigarh Police, that a candidate had concealed his involvement and/or arrest

in criminal case(s) etc. as above or has furnished false information/false or bogus or forged documents, in the application form and attestation from, such cases shall be dealt as under:-

- (a) *In case the declaration is found false/bogus after appointment but before the individual has completed three years of service, he shall be discharged under Rule 12.21 of Punjab Police Rules.*
- (b) *In case the declaration is found false/bogus after completion of three years, he shall be dealt with departmentally under Chapter 16 of Punjab Police Rules and in case found guilty will be dismissed from service after following procedure under Chapter 16 of PPR. Besides, such an official will also be liable to face criminal proceedings.”*

[11]. Perusal of aforesaid guidelines shows that guideline No.2(A)(a) deals with the circumstance when the candidate does not disclose the factum of his involvement in the attestation form and the same is found subsequently from the verification report. The candidature of such candidate will be cancelled as per aforesaid guideline without making any reference to any Committee for further probe into the conduct of the candidate. In Guideline No.2(A)(b) it is prescribed that if a candidate has disclosed his involvement in some criminal case in the attestation form, then such case will be referred to Screening Committee to assess his suitability for appointment in Chandigarh Police irrespective of the fact that the case is under investigation, trial or resulted in conviction or acquittal.

[12]. Perusal of aforesaid guideline gives unbridled power to the Screening Committee to assess the suitability of the candidate even on acquittal by the competent Court. In all the cases before this Court the aforesaid situation arises. On noticing the acquittal of the candidates the cases of respondents No.1 and 2 were referred to the Screening Committee.

[13]. The Court of Judicial Magistrate 1st Class, Narnaul while recording acquittal of the respondents No.1 and 2 found that the prosecution had miserably failed to prove the guilt of the accused beyond the shadow of reasonable doubt and the case was found to be based on falsehood as the eyewitnesses had not supported the prosecution case and even their cross-examination yielded no incriminating material. The Court formed an opinion that there was no *iota* of evidence on record to establish the charges levelled against the accused. In that background it was held that the prosecution could not prove the guilt of the accused beyond shadow of reasonable doubt. The character verification done by the office of Superintendent of Police, Mahendergarh at Narnaul found the antecedents of the respondents to be proper.

[14]. In **Delhi Administration and others vs. Sushil Kumar, 1996 (11) SCC 605**, the Hon'ble Apex Court had dealt

with the case with reference to verification of character and antecedents of the candidate viz-a-viz. his suitability in the force. Verification of character and antecedents is one of the important criteria to test whether the selected candidate is suitable for the post or not? Despite finding the candidate to be physically fit, having passed the written test and interview and was provisionally selected, the Appointing Authority found him not desirable to be appointed as suitable in disciplined force. The Hon'ble Apex Court held that acquittal in criminal case has nothing to do with the suitability of the candidate. What would be relevant is the conduct or character of the candidate to be appointed to the 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 consequence. The consideration relevant to the case is of antecedents of the accused. The Appointing Authority formed the opinion with regard to desirability of the candidate to be appointed to the service.

[15]. It would be necessary to have a glance over the relevant rules of recruitment as contained in Vol. II of Punjab Police Rules, 1934 as applicable to the State of Haryana, which reads as follows:-

“12.12. Supervision of recruitment:- 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.

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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 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 also complete the information required by form 12.18 (1)."*

[16]. The aforesaid Rules would show that the standard of performance and reputation of the police force depends upon the quality of its Constables. Rule 12.14 of the Rules

contemplates that the recruit should be of good character and great care shall be taken in selecting man of a type suitable for police service from candidates presenting themselves for enrollment. Similarly Rule 12.18 of the Rules refers to the character and suitability for enrollment of every recruit and that a search slip has to be sent to the Finger Print Bureau in order to establish his freedom or otherwise from the conviction.

[17]. The above Rules would show that the emphasis is on good character and suitability. The question arises as to whether determination of suitability of a candidate for being appointed as Constable in the disciplined force can be a subject matter of judicial review when the decision making process is not found to be lacking in *bona fide* or based upon irrelevant and inadmissible consideration?

[18]. In **Delhi Administration and others vs. Sushil Kumar'** case (supra) the Hon'ble Apex Court held that the relevant is the conduct and character of the candidate and not the actual result of criminal proceedings. The acquittal of the candidate in criminal offence has nothing to do with the determination of the suitability of the candidate for appointment as a Constable. Now the only thing which is to be appreciated is whether the Screening Committee has formed its opinion on the basis of relevant consideration and in consonance with the

guidelines or it was for extraneous purposes.

[19]. On 18.02.2013, this Court directed the petitioners to obtain a fresh report regarding antecedents of respondents No.1 and 2 which shall essentially be based upon the information other than the criminal cases in which they have been acquitted.

[20]. On 23.08.2013, pendency of **Civil Appeal No.2325 of 2009** titled as **Joginder Singh vs. Union Territory of Chandigarh & Ors.** was relied and on 25.09.2013, the case was adjourned to await the decision in the said case. After decision in the said case, the petitioner-Authorities were directed to re-consider the cases on case to case basis and form an opinion positively and dispassionately in the light of decision rendered in **Joginder Singh's** case (supra) which was binding on all and one.

[21]. Vide order dated 21.07.2015, this Court heavily commented upon the re-consideration done by the Committee of three officers who had reiterated the earlier decision in totally mechanical manner. The members of the Screening Committee considered the candidature of candidates in most mechanical manner without adverting to even the role attributed to them in the criminal cases. One of the member of the Screening Committee was directed to be present in Court.

[22]. In the subsequent orders passed by this Court, the Screening committee was directed to re-visit the matter and re-consider each case and submit supplementary reports on the record of the case. After the direction passed by this Court an, affidavit has been filed by Sh. A.S. Cheema, IPS, DIG, Chandigarh Police, UT Chandigarh along with proceedings of the meeting of the Screening Committee. The name of respondent No.1 finds mention at serial No.4 of the report of the Committee which has a following recital:-

“4. Case of Sh. Pardeep Kumar s/o Sh. Virender Singh r/o vill. Meghot Halla PO. Nangal Choudhary Teh. Narnaul, Distt. Mohindergarh, Haryana.

Sh. Pardeep Kumar s/o Sh. Virender Singh R/o Vill. Meghot Halla PO. Nangal Choudhary Teh. Narnaul, Distt. Mohindergarh, Haryana was selected against 1200 posts of temporary Constable in Chandigarh Police in OBC category vide Roll No.111474 and Form No.2013597. He was declared medically fit. For the purpose of verification of character & antecedents, he submitted Attestation Forms indicating his involvement in a case FIR No.188 dated 18.11.2009 u/s 148, 149, 323, 506 IPC PS-Nangal Choudhary, Teh. Narnaul, Distt. Mohindergarh Haryana and acquittal therein, on 21.01.2010 by the court of Sh. Satish Kumar, JMIC, Narnaul, Haryana dated 21.01.2010. The Committee has perused the record and found that he has been acquitted by the court by giving the

benefit of doubt.

ii) The matter has been reconsidered has gone through his record including the judgment order of the trial court. It is amply clear that there were only two witnesses who were examined by the prosecution. One was the complainant of the present case who had stated in the FIR that when he came out of the classroom alongwith one Karam Singh, his classmate, all the accused came and beat him and Karan Singh. Moreover, he has explicitly stated in the FIR that the accused Narender Singh gave him a lathi blow at the left hand. The second witness examined was Karam Singh. Moreover, both the key witnesses turned hostile and did not support the version of the prosecution. They also did not support the contents of the FIR which bore their signature stating that police had obtained their signatures on blank papers.

iii) Thus, in the present case, the accused were acquitted solely because of the fact that the star witnesses turned hostile and the accused got the benefit of doubt. This, is the opinion of the committee, cannot be termed as as honourable acquittal. Moreover, it appears that the witnesses had been won over by the accused. Further more, the accused was 19 years of age when the case was registered against him. Thus, it cannot be said that he was mature enough to get into an act of criminal nature.

iv) Under these circumstances, the committee does not find him fit for appointment as constable in the disciplined force as the post of

constable in the Police is a very sensitive post requiring persons of good character. In our view, he is not likely to prove an efficient police officer.”

[23]. Similar opinion has been formed with regard to respondent No.2 in the following manner:-

“4(i) Case of Shri Narender Kumar s/o Sh. Attar Singh R/o VPO Medho Tahala Teh. Narnaul Distt. Mahendergarh, Haryana.

Sh. Narender Kumar has been selected against 600 posts of temporary Constable in Chandigarh Police in OBC category vide Roll No.102953 and Form No.2011881. He was declared medically fit. For the purpose of verification of character & antecedents, he submitted Attestation Forms indicating his involvement in case FIR No.188 dated 18.11.2009 u/s 148, 149, 323, 506 IPC Police Station-Nangal Chaudhary, Haryana and acquittal therein, on 29.01.2010, by the court of Sh. Satish Kumar, Judicial Magistrate 1st Class, Narnaul vide judgment dated 29.01.2010. The Committee has perused the record and found that he has been acquitted by the court by giving benefit of doubt as the material witnesses resiled from their statements.

ii) The above said Sh. Narender Kumar was also earlier selected in Chandigarh Police vide Roll No.102953 and Form No.2011881 in OBC Category and was considered not fit for job in Chandigarh Police for concealing the facts regarding his involvement in the criminal case. The Committee has gone through his record. He

has faced trial in the above criminal case and acquitted by giving benefit of doubt. Such a person who earlier tried to mislead the department by concealing his involvement in criminal case and also such a person who remained involved in such criminal activities, though, acquitted on benefit of doubt cannot prove to be a good and efficient police official.

iii) The matter has been re-considered has gone through his record including the judgment order of the trial court. It is amply clear that there were only two witnesses who were examined by the prosecution. One was the complainant of the present case who had stated in the FIR that when he came out of the classroom alongwith one Karam Singh, his classmate, all the accused came and beat him and Karan Singh. Moreover, he has explicitly stated in the FIR that the accused Narender Singh gave him a lathi blow at the left hand. The second witness examined was Karam Singh. Moreover, both the key witnesses turned hostile and did not support the version of the prosecution. They also did not support the contents of the FIR which bore their signature stating that police had obtained their signatures on blank papers.

iv) Thus, in the present case, the accused were acquitted solely because of the fact that the star witnesses turned hostile and the accused got the benefit of doubt. This, is the opinion of the committee, cannot be termed as an honourable acquittal. Moreover, it appears that the witnesses had been won over by the accused. Further more,

the accused was 21 years of age when the case was registered against him. Thus, it cannot be said that he was mature enough to get into an act of criminal nature.

v) Under these circumstances, the committee does not find him fit for appointment as constable in the disciplined force as the post of constable in the Police is a very sensitive post requiring persons of good character. In our view, he is not likely to prove an efficient police officer.”

[24]. Vide order dated 21.09.2011 passed by petitioner No.3, respondents No.1 and 2 were not found desirable to be appointed as Constable in Chandigarh Police and the impugned order attached as Annexures A-1 and A-2 collectively with Annexure P-3 do not show any consideration made by the Screening Committee before passing the order in question. It appears that the petitioner No.3 himself considered the character and antecedents of the respondents No.1 and 2.

[25]. The character verification and antecedents verification are not for the purposes of initiating any departmental proceedings against a candidate, but it is stage of anterior appointment so as to form an opinion whether such candidate is required to be inducted as a member of the disciplined force. Whether the criminal proceedings which led to acquittal of the candidate are relevant for determining the suitability of the candidate or not is left to the discretion of the competent

authority, who in turn will have to base its conclusion on the recommendation of Screening Committee. However, such distinction is not an arbitrary discretion or exercise of powers, but it has to be exercised on some sound principles and logic while exercising the power of judicial review.

[26]. The superior authority is required to examine the decision making process and not the decision itself. The proceedings of the Screening Committee are the replica of earlier considerations wherein the judgment of acquittal rendered by the criminal Court was observed to be based on benefit of doubt and respondents No.1 and 2 were assigned specific role. Whether the proceedings of the Screening Committee amount to sitting over the findings recorded by the criminal Court would be another point to be debated particularly when the criminal Court has observed that there was not even an *iota* of evidence against the respondents No.1 and 2 to establish the charges against them. It is only thereafter it was recorded that the prosecution has filed to prove the guilt of the accused beyond the shadow of reasonable doubt. The judgment of acquittal was recorded after full fledged trial and was on merits.

[27]. In **Joginder Singh**'s case (supra) the Hon'ble Apex Court vide judgment dated 11.11.2014 upheld the judgment of the Central Administrative Tribunal by setting aside the order of

the High Court. A review petition filed by the department on the ground of non-consideration of judgments passed in **Commissioner of Police vs. Mehar Singh** and **State of M.P. And others vs. Parvez Khan, 2015(2) SCC 591** was also dismissed by the Hon'ble Supreme Court.

[28]. In the **Joginder Singh's** case (supra), there was also no concealment of any relevant fact by the candidate. The Hon'ble Apex Court while dealing with the aforesaid case held that the acquittal on account of complainant not supporting the case of the prosecution and failure of the prosecution to prove allegation against the candidate and having miserably failed to prove the charges against the candidate in criminal proceedings was an honourable acquittal. The meaning of expression 'honourable acquittal' as explained in **Deputy General of Police and Another vs. S. Samuthiram, 2013(1) SCT 115** was endorsed. The honourable acquittal is the acquittal based on full consideration of prosecution evidence and that the prosecution has miserably failed to prove the charges. Having considered the parameters laid down in **Delhi Administration and others vs. Sushil Kumar'** case (supra) it was held that the past conduct of the candidate in relation to criminal case will not debar or disqualify the candidate for the post of Constable for which he was successfully selected after qualifying the written

test, medical test and interview.

[29]. Learned Senior counsel for the petitioners placed reliance upon **State of M.P. and Ors. vs. Parvez Khan, 2015(2) SCC 591** to contend that the object of verification was to weigh the suitability of the candidate for employment. Mere acquittal for want of evidence or discharge on account of compromise could not have taken to be conclusive for suitability of a candidate. Learned Senior counsel further contended that victim may be prepared to settle the matter for any consideration other than innocence of the accused, but it did not wash off the criminal antecedents of an accused. Entry into the police service requires a candidate to possess character, integrity and clean antecedents. If a candidate is acquitted or discharged, it could not always be inferred that he was falsely involved and he had no criminal antecedents. All that may be inferred is that he has not proved to be guilty.

[30]. The cited judgment was having a background of guidelines framed by the competent authority. In that case Screening Committee was entitled to keep the persons involved in grave cases of moral turpitude out of police force, even if they are acquitted or discharged by the Court on technical grounds and not honourably. The Screening Committee was well within its right to cancel the candidature of such candidate, if it finds

that acquittal was based on some serious flaw in the conduct of prosecution case or the material witness having turned hostile. There cannot be over-reaching by the Screening Committee of the judgment of criminal Court because it has to form its opinion based on material disclosed by the candidate himself. The powers/recommendations of the Screening Committee are unfettered, provided the same are based on sound principles. The criminal case and departmental proceedings are not co-extensive. The standard of proof in a criminal case is the proof beyond all reasonable doubt, whereas proof required in departmental proceedings is based on preponderance of evidence and probability. The acquittal based on benefit of doubt would not stand at par with acquittal on merits after full fledged trial.

[31]. Acquittal from a criminal Court has nothing to do with the question as to whether the candidate should be appointed to the post. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. In order to maintain integrity and high standard of police force, Screening Committee may decline to take cognizance of acquittal of the candidate, if it appears to be dubious. It means that the Screening Committee has all the discretion to discard the candidate provided such

recommendations are based on sound considerations.

[32]. The Standing Order/guidelines have entrusted the task of taking decision to the Screening Committee. The decision of the Screening Committee must be *bona fide*. Importance and efficacy of a mechanism like constitution of Screening Committee are to ensure that persons who are likely to erode the credibility of the force, do not enter the same and that is how the functions of Screening Committee have become more alive to the trust reposed in it. In **State of M.P. and Ors. vs. Parvez Khan's** case (supra) the candidate was involved in heinous crime like offences under Sections 394, 395 IPC.

[33]. The suitability of the candidate has been left to the domain of the Screening Committee. For Screening Committee guidelines have been framed under Standing Order No.44 of 2010. A person who has been acquitted in a criminal case and has furnished the detail in the attestation form is not ruled out from consideration as per guideline No.2(A)(b). It is only a subjective decision which has to be formed by the Screening Committee based on material on record. Offences involved in FIR No.186 dated 18.11.2009 were under Sections 148, 149, 323 506 IPC and were not grave offences in view of allegations in the FIR. The involvement of respondents No.1 and 2 in the aforesaid offences at one point of time was not grave enough to

damage their moral fibre while discharging their public duty. The offences were not of moral turpitude or depravity. Therefore, the Screening Committee was required to form an opinion on the basis of material available.

[34]. The recommendations made by the Screening Committee at the earlier point of time lack sound reasoning. It is only on third occasion, the Screening Committee has simply recited the allegations as reproduced in earlier part of the order. The Screening Committee has given much importance to the fact that the acquittal recorded by the criminal court was not honourable acquittal. As observed earlier the acquittal recorded by the criminal court was based on no evidence against the respondents No.1 and 2. The acquittal was recorded after full fledged trial and was in consonance with the law laid down in **Deputy General of Police and Another vs. S. Samuthiram's** case (supra). The dictum laid down in the aforesaid case was also relied upon by the Hon'ble Apex Court in **Joginder Singh's** case (supra) decided on 11.11.2014.

[35]. In **Daya Shankar Yadav vs. Union of India and others 2010 (14) SCC 103** the Hon'ble Apex Court dealt with the issue of verification of character, antecedents, connections and age. When the employee or a prospective candidate aspiring for employment declares in a verification form, answers

to the queries relating to character and antecedents, the verification thereof can, therefore, lead to any of the following consequences:-

- “(a) *If the declarant has answered the questions in the affirmative and furnished the details of any criminal case (wherein he was convicted or acquitted by giving benefit of doubt for want of evidence), the employer may refuse to offer him employment (or if already employed on probation, discharge him from service), if he is found to be unfit having regard to the nature and gravity of the offence/crime in which he was involved.*
- (b) *On the other hand, if the employer finds that the criminal case disclosed by the declarant related to offences which were technical, or of a nature that would not affect the declarant's fitness for employment, or where the declarant had been honourably acquitted and exonerated, the employer may ignore the fact that the declarant had been prosecuted in a criminal case and proceed to appoint him or continue him in employment.*
- (c) *Where the declarant has answered the questions in the negative and on verification it is found that the answers were false, the employer may refuse to employ the declarant (or discharge him, if already employed), even if the declarant had been cleared of the charges or is acquitted. This is because when there is suppression or non-disclosure of material information bearing on his character, that itself becomes a reason for not*

employing the declarant.

- (d) *Where the attestation form or verification form does not contain proper or adequate queries requiring the declarant to disclose his involvement in any criminal proceedings, or where the candidate was unaware of initiation of criminal proceedings when he gave the declarations in the verification roll/attestation form, then the candidate cannot be found fault with, for not furnishing the relevant information. But if the employer by other means (say police verification or complaints, etc.) learns about the involvement of the declarant, the employer can have recourse to courses (a) or (b) above.”*

Therefore, an employee on probation can be discharged from the service and the prospective candidate can be refused an employment on the ground of unsatisfactory antecedents disclosed by him.

[36]. In the aforesaid case, the Hon'ble Apex Court while considering the decisions rendered by it in **Delhi Administration and others vs. Sushil Kumar's** case (supra), **Kendriya Vidhyalaya Sangathan vs. Ram Rattan Yadav (2003) 3 SCC 437**, **R. Radha Krishanan vs. Director General of Police (2008) 1 SCC 660** and **Union of India vs. Bipad Bhanjan Gayen (2008) 11 SCC 314**, held that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to the post or not.

The suppression of material information or making a false statement in the relevant column of attestation had a material bearing on his suitability. Neither the gravity of criminal offence nor the ultimate acquittal was relevant in case of suppression because the standards expected from a person intended to serve the disciplined force are different from other services. Non disclosure of material information would mislead the authority in the matter of verification of character as also suitability of the candidate. In police force, an employment presupposes a higher level of integrity as such a person is expected to uphold the law.

[37]. Even as per the guidelines/Standing Order No.44 of 2010, candidature of such candidates is required to be cancelled where they do not disclose the factum of their involvement in criminal cases. No challenge was made to the guidelines/Standing Order by those candidates at any point of time. Therefore, the classification has to be made from two sets of candidates. First set relates to the category where the candidate does not disclose factum of their involvement in criminal proceedings, even before issuance of appointment or after issuance of appointment and joining. Such category as applicable in the present case i.e. non-disclosure before issuance of appointment would lead to cancellation of candidature as per guideline No.2(A)(a), whereas in case of

second category, the recommendations of the Screening Committee has to be tested by way of judicial review in case the recommendations are found to be not based on sound principles.

[38]. On the other hand learned Senior counsel for the respondents No.1 and 2 has vehemently argued that the case in hand squarely covered by the decision rendered in **Joginder Singh's** case (supra) and at one point of time, even by interim order of this Court it was observed that decision in **Joginder Singh's** case (supra) is binding on all and one. Thereafter it was only left to see the *bona fide* of the Screening Committee in making contrary recommendations.

[39]. Learned counsel for the respondents relied upon **Commissioner of Police and others vs. Sandeep Kumar, 2011(2) RSJ 502**, decision dated 12.08.2008 rendered by the Division Bench of this Court in **CWP No.13895 of 2007, Ram Kumar vs. State of U.P. and others, 2011 AIR (SC) 2903, Commissioner of Police, Delhi vs. Dhaval Singh, 1999 AIR (SC) 2326, Dinesh Kumar vs. State of Haryana, 2006(4) SCT 429**, and **A. Sagar vs. The State Level Police Recruit Board, 2003 LIC 1779 (AP)**.

[40]. Having given our thoughtful consideration to the special facts and circumstances of the case, we are of the opinion that

these cases are covered by the dictum laid down in Joginder Singh's case (supra). The alleged mis-conduct in the form of involvement in criminal case in which candidates have been acquitted will not have serious adverse implication on the candidates while discharging their public duty, nor the offence was of moral turpitude or depravity. The acquittal recorded by the criminal Court was based on no incriminating material against the candidates, therefore, the acquittal has to be treated as honourable acquittal after full fledged trial and consideration of allegations.

[41]. In terms of guideline No.2(A)(b) the Screening Committee was required to form an opinion irrespective of acquittal recorded by the criminal court. The provision made in the Standing Order No.44 of 2010 is very significant inasmuch as it lays down categorically that even a candidate who was acquitted by the criminal Court shall undergo the assessment of suitability for appointment by the Screening Committee. The Screening Committee was to screen the antecedent behaviour of the candidates viz-a-viz. their involvement in criminal cases. Every complicity in terms of criminal case may not be potential enough to mature into grave consequence. Routine registration of cases involving petty offences at the instance of disgruntled lot cannot be ruled out. Even otherwise, the respondents were

honourably acquitted. The observations made by the Hon'ble Apex Court in **State of M.P. and Ors. vs. Pavez Khan's** case (supra) were in respect of grave offences in which the candidate was involved and honourable acquittal thereof was not in itself sufficient to influence and convince the Screening Committee.

[42]. In the light of the observations made by the Hon'ble Apex Court in **Daya Shanker Yadav's** case (supra) and in the light of Standing Order No.44 of 2010, it can be safely held that the claim of the respondents in writ petition No.3532, 17956 and 18228 of 2013 except the claim of respondent No.2-Narender Kumar in CWP No.3532 of 2013 are fully covered by the decision rendered in **Joginder Singh's** case (supra), as there is no concealment of criminal antecedents. The concealment, if any, in earlier selection by the respondent No.2 in CWP No.3532 of 2013 cannot be taken into consideration on the ground of parity with respondent No.1, who was tried together in the criminal case. The recommendations of the Screening Committee to that effect amount to double jeopardy as the respondent No.2 had already been made to suffer in his earlier selection as projected in additional affidavit. There cannot be any *estoppel* or *res judicata* in the consideration of candidature of respondent No.2 in fresh selection. Consequently, CWP No.3532 of 2013, CWP No.17956 of 2013 and CWP No.18228

of 2013 are dismissed.

[43]. So far as the CWP No.18232 of 2013 and CWP No.14854 of 2014 are concerned, there was a material concealment in the attestation form by the candidates /respondents regarding their involvement in criminal proceedings. Therefore, we are of the considered opinion that the above writ petitions deserve to be allowed, thereby disentitling the candidates from seeking the appointments in view of guideline No.2(A)(a) of Standing Order No.44 of 2010 which would apply *stricto sensu* to the selection in the absence of any challenge laid to it. Ordered accordingly.

[44]. For the reasons mentioned above, the successful candidates/respondents in CWP No.3532 of 2013, CWP No.17956 of 2013 and CWP No.18228 of 2013 are entitled to be appointed as Constable with effect from the date the selected candidates lower in merits were issued appointment. They shall be entitled to all the consequential service benefits except payment of arrears of salary.

(RAJ MOHAN SINGH)
JUDGE

(M. JEYAPPAUL)
JUDGE

February 24, 2016

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