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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 06.01.2016

+ W.P.(C) 3815/2015

VIKAS KUMAR

..... Petitioner

Through: Mr.Yashpal Rangu, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Arun Bhardwaj, CGSC
alongwith Ms. Gunjan Bansal,
Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The petitioner's grievance is that after being selected by the Central Industrial Security Force (CISF), the Offer of Appointment initially extended to him was withdrawn by the impugned order dated 09.03.2015.

2. The petitioner had responded to an advertisement for filling up the post of Sub-Inspector in Delhi Police & Central Armed Police Force (CAPF) as well as the post of Assistant Sub-Inspector in CISF. He participated in the recruitment process and qualified in all tests. In their final result declared in April 2014, he was shown to have been selected for the post of Sub-Inspector in the CISF. A letter of Appointment was issued to him dated 19.09.2014. The petitioner had

disclosed at the relevant stage in the recruitment process that he had been in the past implicated in a criminal case and had been alleged to have committed offences punishable under Sections 323/324/325/326/506 read with Section 34 of the Indian Penal Code (IPC). At the same time, he had stated that the criminal charges ended in acquittal on 01.06.2011 by the Judicial Magistrate, 1st Class, Kurukshetra, Haryana. By the impugned order - issued on 09.03.2015- the CISF withdrew the Offer of Appointment in the light of its existing policy and guidelines issued by the Ministry of Home Affairs on 01.02.2012.

3. Learned counsel submits that the impugned order is arbitrary. He relies upon the judgment of this Court in **Sandeep Singh vs. Union of India & Ors** in W.P.(C) No. 1029/2014 and submits that the Court had in somewhat identical circumstances where the candidate's criminal case had ended in acquittal, directed that the offer of appointment withdrawn by the public employer should be quashed. The Court had, in the said judgment, taken note of the guidelines applicable to the CISF. The Court observed as follows:-

“8. While examining a case in terms of the provisions of the Policy/Guidelines dated 1st February, 2012 for considering cases of candidates for appointment in CAPFs against whom criminal cases were pending, this Court was of the view that a candidate who had been finally acquitted or discharged by a Court, he would not be entitled to the benefit of the proviso thereto to Clause 2(V) of the said policy if (i) the acquittal is on account of extension of benefit of doubt; and (ii) the acquittal rests

on witnesses who have turned hostile due to fear or reprisal. Therefore ultimately, the judgment of acquittal would have to be examined. In that case (Mintu Mistri v. UOI & Ors., WP(C) 1530/2012, decided on 20.09.2012), this Court held that the noting of the Trial Court that the accused deserves to be acquitted under the “canopy of benefit of doubt” would be meaningless and is really otiose if the sum and substance of the said order rests on the fact that there was no evidence at all before the Court. The Court found that there was nothing on record which could suggest or manifest any element of fear or reprisal on the part of the witnesses when they appeared before the Trial Court. Accordingly, the withdrawal of the provisional offer of appointment in that case was set aside.”

4. It was emphasized that in the present case too, the most important witness i.e. the informant/complainant had failed to identify the accused i.e. the petitioner. In these circumstances it is contended that the ratio of the decision in *Sandeep Singh (supra)* squarely applies and the withdrawal of the offer of appointment was arbitrary. It was also highlighted that besides the same, the circumstance that the complainant had turned hostile, did not automatically imply that he was afraid of reprisal. Counsel submitted that in case the witness resiled from his own testimony, the Courts would be within its right to indict such individuals for perjury or other such like proceedings.

5. Counsel for the respondents urge that there are policy/guidelines with regard to whether to continue an offer of appointment issued after the culmination of the selection process for

someone who has faced criminal proceedings in the past. He urges that a decision under the policy/guidelines is clearly for the executive to make. In the absence of the challenge to the policy/guidelines themselves, it is not open for the Court to enter the primary decision making arena and itself examine the judgment and order of a competent criminal Court or the decision of the executive recruiting authority. It was highlighted that the public employer in this case is a police force and that the facts antecedent to the selection and appointment of a candidate, which directly touch upon his suitability for the post are relevant. Given that the member of the Central Police Force is required to maintain order, integrity and discipline are paramount. If a candidate has faced a criminal action or prosecution in the past convenes the guidelines indicate a graded response and categorize one or the other offence as severe or condonable. In the present case, Annexure A of the guidelines applicable clearly stated that the offences alleged against the petitioner i.e. Sections 325, 326 and 506 (part II) IPC were serious. That the charges resulted in an acquittal was a matter of detail to be examined by the authority. It is submitted that in the present case, the criminal Court had clearly, and despite the hostility of the principal witness, recorded a finding that the recovery of the weapon i.e. the knife was proved to have been made at the instance of the accused i.e. the petitioner.

6. This Court has carefully considered the submissions. The choice of a public employer to either continue with an offer of appointment or withdraw it undoubtedly cannot be arbitrary. It has to

be based on some reason or a rationale discernible to all and made applicable in a non-discriminatory manner. The respondents have premised their argument upon the Central Government (Ministry of Home Affairs) Guidelines of 01.02.2012 entitled “Policy Guidelines for Considering cases of candidates for appointment in CAPFs- pendency of criminal cases against candidates-the effect of”. Clause III of the said guidelines sets out clearly that a candidate shall not be considered for recruitment if his or her involvement in a case is any action concerned with an offence mentioned in Annexure A. The second proviso sets out that the candidate would not be debarred if a candidate is finally acquitted or discharged by the Court whether an appeal is pending or not against such acquittal. Clause V states as follows:-

“V. Notwithstanding the provisions of 3(III) above, such candidates against whom chargesheet in a criminal case has been filed in the court and the charges fall in the category of serious offences or moral turpitude, though later on acquitted by extending benefit of doubt or acquitted for thefor the reasons that the witness have turned hostile due to fear of reprisal by the accused person(s), he/she will generally not be considered suitable for appointment in the CAPF. The details of crimes which are serious offences or involve moral turpitude are at Annexure ‘A’. However, cases in which the criminal court, while acquitting, has categorically mentioned that the criminal case would not be a bar on appointment in Government Services, the candidate shall be considered for appointment in the concerned CAPF.”

7. Serial No. 8 of Annexure A outlines the offences which are alluded to in Clause II (a). They include Sections 325 and 326 IPC. The guidelines also outline what are minor offences by virtue of Annexure B which are *per se* not construed as debarring a candidate.

8. The petitioner in this case highlights Clause V especially the part which states that if a candidate is acquitted by extending the benefit of doubt or is acquitted for reasons that the witnesses have turned hostile by fear of reprisal of the accused person, he/she generally not be considered suitable for appointment in the CAPF. It is stated that in the present case there is no finding or indication from the judgment of the competent Court that indeed the complainant had turned hostile in the witness box on account of fear of reprisal. This Court is of the opinion that this argument is unsubstantial and unmerited. There is hardly any judgment which would record the reasons why a witness turns hostile. If such were the position, common sense and logic would dictate that the Court would be in a position to cure the hostility of the witness in criminal proceedings. In our opinion, the problem of witnesses turning hostile (though endemic) may stem out from different reasons- such as fear of reprisal; or that the accused approaches the witness and persuades him or her not to depose adversely; or even the sheer force of overall circumstances such as domination of the accused within a society. Each one of them is indicative of malice and would broadly be covered by the expression “fear of reprisal”. Of course, there could be a fraction of cases where the police statement of the witnesses

recorded earlier is itself not genuine. But to decode the intention or motive of a witness who has turned hostile is a task of immense proportions which ordinarily a Court would not undertake. It is only where the witness resiles from previously sworn testimony that the Court is empowered to initiate perjury or other action of that nature.

9. In the present case, the competent Court clearly observed that the recovery of the offence weapon i.e. the knife at the instance of the present petitioner was proved. That is a matter of record. Given that the task of the Court is merely to judicially review the decision to not continue the petitioner's offer of appointment, a detailed scrutiny of the circumstance that led to the petitioner's acquittal is not only inapt but utterly unwarranted. In that sense, the approach adopted in *Sandeep Singh (supra)*, does not appeal to us. Maybe the facts of that case warranted such a course of action. Clearly the facts of this case do not warrant such an approach.

10. This Court is of the opinion that acceding to the petitioner's claim in the present case on an analogy of *Sandeep Singh (supra)* would not be appropriate because a non-discriminatory implementation of the guidelines which is not in question would be severely impaired. It has been emphasised time and again that the executive must be given certain play in the joints with regard to formulation and implementation of its policies. A public employer's choice of the kind of individual it wishes to employ, given the compulsions of its service and its mandate is something that the Court cannot substitute its own judgment for. The public employer in this

case i.e. the CISF is an organized statutory Central Police Force. Discipline and orderly behavior are at the forefront of the requirements of its personnel. The impugned decision that goes by the letter of its policy and determines on the basis of the judgment that the petitioner's acquittal in this case did not merit a review of the withdrawal of its offer of appointment cannot in the circumstances be characterised as arbitrary, justifying interference under Article 226 of the Constitution.

The writ petition is consequently dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

JANUARY 06, 2016
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