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

+ **W.P.(C) 5056/2015 & CM No.9145/2015**

Date of Decision : 18th April, 2016

PRASHANT KUMAR Petitioner

Through: Mr. R.K. Saini, Advocate

versus

GOVT. OF NCT OF DELHI AND ORS. Respondents

Through: Mr. Ankur Chibber, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL)

Prashant Kumar by this writ petition impugns the order dated 22.7.2014 whereby his OA No.446/2013 was dismissed by the Principal Bench of the Central Administrative Tribunal, New Delhi.

2. The petitioner, who was provisionally selected as Constable (Executive) in the Delhi Police, was denied appointment on account of involvement in a criminal case, i.e., FIR No.1042/2011 dated 14.12.2011 under Sections 294/354 of the Indian Penal Code ('IPC') registered with Police Station ('PS'):Baraut, District Baghpat, Uttar Pradesh.

3. The Screening Committee who had examined the allegations against the petitioner in the criminal case, gave an adverse finding and thereafter the Office of the Deputy Commissioner of Police (Recruitment Cell) ['DCP Recruitment Cell] had issued a Show Cause Notice ('SCN') dated 6.11.2012, proposing cancellation of the petitioner's candidature for the reasons mentioned therein. The petitioner thereupon submitted his reply which was considered by the Office of the DCP (Recruitment Cell). By letter order dated 26.11.2012, the petitioner was informed as under:

"Accordingly, your case was examined by the Screening Committee constituted by the Commissioner of Police, Delhi to judge the nature of your involvement in above criminal case, gravity of the offence, judgment of the court, grounds of acquittal. You were not found suitable for police service by the Screening Committee on the ground that case FIR No.1042/2011 was registered against you on the complaint of Shri Javed S/o Shri Kallu Ram R/o Gurana Road, Baraut District Baghpat (UP) who reported that his cousin Sabnam was a student of MSC-1st year studying at Jat Degree College, Baraut. At about 2:00 PM, she sat in the bus from Bawli Chungi, Baraut along with other students. You used abusive language against her and caught hold of her hand and pulled towards your side. When she raised alarm, the complainant apprehended you with the help of his friends, namely, Shahid, Sakil and Arif. During trial of the case main eye witness (victim) turned hostile. As such, the prosecution failed to prove the case beyond reasonable doubt and you were acquitted by the Hon'ble Court vide judgment dated 31.07.2012. Upon this, a Show Cause Notice was issued to you vide Memo No.21737/Rect. Cell (R-IV)/NPL dated 6.11.2012 proposing for cancellation of your candidature for the reasons mentioned therein.

In response to Show Cause Notice dated 06.11.2012, you had submitted your reply stating therein that none of the witnesses except complainant supported the case of prosecution. The complainant was admittedly not the eye-witness and had reached the spot only after the incident and the victim (Ms. Shabnam) admitted that you had neither used obscene words nor pulled her by catch hold of her hand. You had also pleaded that you had been falsely implicated in the said case and the Screening Committee has erred in making the observation that you were involved in a case of eve-teasing particularly when you were acquitted by the Hon'ble Court and you have also not received any notice/appeal against the said judgment dated 31.07.2012. You have further requested that the finding of the Screening Committee is liable to be set aside and

you may be appointed for the post of Constable after necessary training etc.

The plea[s] put forth by you in the reply has been considered and not found justifiable because of the reason that you were found involved in a case of eve-teasing in a bus with a student of M.Sc. in broad day light at full public view. You were acquitted by the Honble Court as the prosecution failed to prove the guilt beyond reasonable doubt as the victim turned hostile and could not identify the accused during trial but the complainant had fully supported the prosecution. You were found involved in a act of moral turpitude which makes you unfit for a disciplined force like Delhi Police. As such, your candidature for the post of Constable (Exe.) is hereby cancelled with immediate effect.”

4. This order was challenged by the petitioner in OA No.446/2013, which, as noted above, has been dismissed.

5. Learned counsel for the petitioner has drawn our attention to the judgment dated 31.7.2012 passed by the Chief Judicial Magistrate, Barot, District Baghpat, Uttar Pradesh in a chargesheet arising out of FIR No.1042/2011 registered at PS:Barot, District Baghpat, Uttar Pradesh. He submits that two purported eye-witnesses, namely, Mohd. Shahid (PW-2) and Aarift (PW-3) had turned hostile and did not support the prosecution case, indicting the petitioner. He has referred to the statement of the Shabnam (PW-4), who had stated that, on 14.12.2011, she had gone to the Jat College, where she was a student of M.Sc. first year, and had left for home along with other students in a bus at about 2:00 pm. Vulgar language was used by some boys and one of them had tried to pull her hand. Crowd gathered and the boy who had held her hand was taken to the Police Station. PW-4, after looking at the petitioner who was present in the Court, had stated that he was not the one who had used vulgar language and pulled her hand. It is accordingly submitted that the finding

of the Screening Committee and in the letter dated 26.11.2012 is erroneous and factually incorrect. Counsel for the petitioner has relied on the following judgments of the Supreme Court and of this Court:

- (i) *Commissioner of Police & Ors. v. Sandeep Kumar* (2011) 4 SCC 644;
- (ii) *Ram Kumar v. State of Uttar Pradesh & Ors.* (2011) 14 SCC 709;
- (iii) *Commissioner of Police, New Delhi & Anr. v. Mehar Singh* (2013) 7 SCC 685;
- (iv) *Commissioner of Police & Anr. v. Ajay Kumar Dhama* 192(2012) DLT 383 (DB);
- (v) *Commissioner of Police, Delhi v. Manjeet* 194 (2012) DLT 641(DB);
- (vi) *Commissioner of Police, Delhi v. H.C. Laxmi Chand* 185 (2011) DLT 135(DB); and
- (vii) WP(C) No.3015/2012 titled *Commissioner of Police & Anr. v. Shani Kumar* decided on 21.5.2012.

6. The aforesaid arguments overlook the testimony of Javed (PW-1), who had affirmed that the victim, daughter of his *Tau*, who was studying in Jat Degree College, Baruat, was subjected to vulgar insults or abuse by the petitioner, when she sat in the bus. The petitioner had tried to exert force upon the victim by pulling her hand. He was present at the spot from before and had taken the petitioner, Prashant, to the Police Station. Apparently, the petitioner was beaten by Javed and two others. It is an un-disputed position that the petitioner was taken to the police station and arrested.

7. The petitioner has been acquitted by the trial Court vide judgment dated 31.7.2012, but this acquittal by itself in terms and the ratio in *Commissioner of Police, New Delhi & Anr. v. Mehar Singh* (supra) would not justify the petitioner's claim to appointment and quashing of the letter of rejection dated 26.11.2012. In *Mehar Singh* (supra) it has been observed:

“18. The question before this Court is whether the candidature of the Respondents who had made a clean breast of their involvement in a criminal case by mentioning this fact in their application/attestation form while applying for a post of constable in Delhi Police; who were provisionally selected subject to verification of their antecedents and who were subsequently acquitted/discharged in the criminal case, could be cancelled by the Screening Committee of the Delhi Police on the ground that they are not found suitable for appointment to the post of constable.

19. We must first deal with the submission that under the Delhi Police Rules, past involvement of a person in a criminal case is not a disqualification for appointment. It is true that Rule 6 thereof which provides for grounds for ineligibility, criminal antecedents of a person is not mentioned as a ground for ineligibility. But, to conclude from this that instances of moral turpitude, however grave, could be overlooked because they do not find mention in Rule 6, would be absurd. In any case, Standing Order No. 398/2010 issued by the Delhi Police to which our attention is drawn empowers the police to take appropriate decision in such cases. Pertinently the Respondents have not challenged the Standing Order. This Standing Order incorporates policy for deciding cases of candidates provisionally selected in Delhi Police involved in criminal cases (facing trial or acquitted).”

Reference was made to Standing Order No.398/2010 and clauses 3 and 6 thereof. The decision elucidates that the Screening Committee, comprising of higher police officers must examine suitability of a candidate who had disclosed his involvement in a criminal case. As per Clause 6 of the Standing Order, a candidate against whom a serious offences or involvement in moral turpitude was registered and acquitted by extending benefit of doubt or as the witnesses had turned hostile due to fear of reprisal by the accused person, were un-suitable for government

service. The Supreme Court held that the word ‘generally’ in Clause 6 was indicative of the nature of discretion. As a matter of rule, such candidates should be avoided. Exceptions would be few and far between and obviously selection in such cases must be substantiated with acceptable reasons. It was accordingly held as under:

“23. A careful perusal of the policy leads us to conclude that the Screening Committee would be entitled to keep persons involved in grave cases of moral turpitude out of the police force even if they are acquitted or discharged if it feels that the acquittal or discharge is on technical grounds or not honourable. The Screening Committee will be within its rights to cancel the candidature of a candidate if it finds that the acquittal is based on some serious flaw in the conduct of the prosecution case or is the result of material witnesses turning hostile. It is only experienced officers of the Screening Committee who will be able to judge whether the acquitted or discharged candidate is likely to revert to similar activities in future with more strength and vigour, if appointed, to the post in a police force. The Screening Committee will have to consider the nature and extent of such person's involvement in the crime and his propensity of becoming a cause for worsening the law and order situation rather than maintaining it. In our opinion, this policy framed by the Delhi Police does not merit any interference from this Court as its object appears to be to ensure that only persons with impeccable character enter the police force.

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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.”

The said ratio has been reiterated by the Supreme Court in ***State of Madhya Pradesh v. Parvez Khan, (2015) 2 SCC 591***.

8. Looking at the factual matrix of the present case, we do not find any merit in the present writ petition and the same is dismissed. No order as to costs.

SANJIV KHANNA, J

NAJMI WAZIRI, J

APRIL 18, 2016/tp