

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

Judgement Reserved on : July 11, 2016
% *Judgment Delivered on : July 15, 2016*

+ **W.P.(C) 11979/2015**

MANOJ Petitioner

Represented by: Mr.M.S.Saini, Advocate

versus

UOI & ORS. Respondents

Represented by: Mr.Akash Vajpai, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. Charge sheeted before a criminal court but finally acquitted, whether by way of benefit of doubt or honourably – would it be a relevant consideration in appraising the suitability of a candidate who successfully clears the selection process to be appointed to an armed force of the Union, is the question which arises for consideration in the instant writ petition.

2. Successfully clearing the selection process to be appointed as a Constable (GD) in a Central Armed Police Force, as per marks obtained by him and keeping in view his preference, the petitioner was offered appointment as a Constable (GD) in CISF and was called upon to fill the enrolment form. In the column applicable where the candidates had to disclose whether they were an accused in any criminal case, the petitioner dutifully informed that he was a co-accused in FIR No.2011 dated July 05, 2008 registered with PS Narnaund (Hissar) for offences punishable under

Section 323/324/307/120-B/34 IPC. He disclosed that he had been acquitted by the learned Additional Sessions Judge vide judgment dated December 19, 2008.

3. It is thus not a case of concealment.

4. On February 23, 2015 the offer of appointment was withdrawn. It was based on the report by the Screening Committee which opined that on account of the petitioner being an accused in the FIR aforementioned, notwithstanding he being acquitted, his character antecedents did not justify petitioner's appointment as a Constable in an armed force of the Union.

5. The petitioner has filed the instant petition and relies upon a recent judgment of the Supreme Court reported as (2015) 2 SCC 377 Jogender Singh Vs. UT of Chandigarh & Ors. wherein Jogender Singh who was acquitted at a criminal trial for an offence of constituting an unlawful assembly and causing simple and grievous hurt to persons as also attempting to murder a person was held entitled to be appointed as a Constable in the Union Territory of Delhi. The decision shows that the acquittal was on account of the fact that the witnesses could not identify the assailants and stated that their signatures were obtained on a blank sheet of paper by the Investigating Officer. Even the injured eye witnesses did not support the case of the prosecution. With reference to the decision reported as 2013 (1) SCC 598 Insp.General of Police Vs. S.Samuthiram the Supreme Court held that an acquittal would be 'honourable' in every sense when the prosecution leads full evidence but miserably fails to prove the charge. The decision of the Punjab and Haryana High Court dismissing writ petition filed by Jogender Singh against the decision to deny him employment as a Constable was reversed. The Supreme Court held that the past alleged conduct of Jogender Singh was irrelevant.

6. Learned counsel for the respondents heavily relied upon the decision of another Division Bench of the Supreme Court reported as (2013) 7 SCC 685 Commissioner of Police New Delhi Vs. Mehar Singh where a decision of this Court in favour of Mehar Singh who was likewise charged for a criminal offence but acquitted at the trial but was denied employment as a constable in Delhi Police was reversed by the Supreme Court in which opinion in paragraph 26 and 35 the Supreme Court observed as under:-

“26. In light of above, we are of the opinion that since the purpose of departmental proceedings is to keep persons, who are guilty of serious misconduct or 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.

x x x

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."

7. Relevant would it be to highlight that in para 25 of the decision in Mehar Singh's case the Supreme Court referred to the concept of honourable acquittal as was culled out by the Supreme Court in S.Samuthiram's case (supra).

8. The decision in S.Samuthiram's case (supra) brings out that where key witnesses were not examined and it was a cases of acquittal, the acquittal would not be honourable because the prosecution did not lead its best evidence. But where the prosecution leads its best evidence and its star witnesses failed resulting in an acquittal, it would be a case of an honourable acquittal.

9. Thus, we find no conflict between the decision of the Supreme Court in Mehar Singh's case and Jogender Singh's case. The ratio is common. Where the acquittal is not an honourable acquittal, in that, the prosecution does not produce its material witnesses resulting in an acquittal, the factum of acquittal would be irrelevant and the department would be justified in appraising the character of a candidate with reference to his involvement in a crime and look into such material which was gathered by the police during

investigation. But where the acquittal is after the prosecution has examined all its witnesses it would be case of an honourable acquittal as was in the case of Jogender Singh.

10. In the instant case the decision by the learned Additional Sessions Judge acquitting the petitioner and three co-accused, copy whereof has been filed as Annexure P-6 with the writ petition would show that the FIR was registered on the statement of one Rajpal in which he had named the petitioner and three other co-accused stating that accused No.1 Ramphal and accused No.4 Ved Prakash had animosity towards him because there was an altercation between him and them during a marriage at Village Moth on April 04, 2008 the said two persons along with the petitioner and one Sandeep gave beating to his brother Rakesh using iron rods and lathis.

11. At the trial Rajpal appeared as PW-1 and stated that the police took his signatures on blank papers. He denied having named any accused before the police. The injured Rakesh Kumar appeared as PW-2, admitting being injured he did not name the four accused as the ones who assaulted him. The prosecution examined all its witnesses. All evidence was led. The acquittal is thus honourable.

12. We need to highlight at this stage that when the incident took place the petitioner was 18 years and 4 months of age. Coming from a rural background where cast fraternity compels members of the society to act under the pressures of elders, assuming for the sake of argument that the petitioner did join in the assault to injure Rakesh, from the charge sheet laid we find that the motive attributed was to Ramphal and Ved Prakash. It would obviously be a case of the petitioner joining members of his fraternity under patriarchal pressure, if at all the petitioner was involved.

13. It is no doubt true that police plays an essential role of enforcement of law and order in modern societies. Without an efficient police force, a society would become anarchic. To ensure that the police force of a state is efficient, the state must ensure that each individual recruited to the police force, at whatever level, must possess the following attributes:-

- (a) Physical Strength and fitness/Free from medical diseases.
- (b) Emotional maturity, and ability to remain calm in emotionally charged situations.
- (c) Ability to exercise initiative in their work.
- (d) Good moral character and integrity.
- (e) The ability to carry a great deal of responsibility in handling difficult situations alone/ dependability.
- (f) Good Judgment

14. Keeping in view the above attributes, which are the minimum required of a person who becomes a member of the police force, it becomes the duty of the State to carefully screen the candidates with reference to the aforesaid attributes. But, what we find in India is that the only screening done is with respect to the moral character and integrity, physical strength and free from medical disease. Evidenced by the instant case, the first attribute is sought to be verified by archaic means i.e. checking on the police dossiers or relying upon information provided by the candidate himself and the second, of physical strength, by subjecting the candidates to a physical test, and of being free from medical disease by conducting the medical examination. No evaluation pertaining to the emotional maturity, ability to remain calm in emotionally charged situations, ability to handle difficult situations and be responsive and the ability of initiative in work is conducted.

15. We find that in some jurisdictions abroad, such as United States of America, Canada, Philippines, to name a few, a psychological test is conducted to ascertain the suitability of candidates commensurate to the nature of job they are being inducted to. At times a polygraph test is also conducted to check the deceiving tendencies of candidates. Because so much public trust is placed in peace officers, candidates for these positions are carefully screened to rule out emotional instability, poor judgment, lack of dependability, or other problems which might negatively affect their law enforcement work.

16. A criminal record is a record of a person's criminal history, generally used by potential employers to assess the candidate's trustworthiness. The information included in a criminal record varies between countries and even between jurisdictions within a country. In most cases it lists all non-expunged criminal offenses and may also include traffic offenses such as speeding and drunk-driving. In some countries the record is limited to actual convictions (where the individual has pleaded guilty or been declared guilty by a qualified court) while in others it also includes arrests, charges dismissed, charges pending and even charges of which the individual has been acquitted. The latter policy is often argued to be a human rights violation since it works contrary to the presumption of innocence by exposing people to discrimination on the basis of unproven allegations.

17. It is unfortunate that in India we are not marching ahead in the comity of nations and prefer to be governed by the recruitment processes which are a legacy of the British era; ignoring that the purpose of governance then was to rule and the purpose of governance now is to serve.

18. Now, a man can be booked for the offence of over-speeding and perhaps may be convicted for parking his motor vehicle in a non-parking

area. Would this man be of a character, compelling in public interest and for public good, not to induct him in public service? The answer would be in the negative. As against that, a man has committed murder or has broken into a departmental store and stolen cash. Would this man be of a character, compelling in public interest and for public good, not to induct him in public service. The answer would be in the affirmative.

19. Not to induct persons with a criminal background in public service, is based on the premise that considerations of public policy, concern for public interest, regard for public good would justify a prohibition. Thus, the primary consideration is, whether public interest and public good would be jeopardized if a person with a criminal background is inducted in public service. And this takes us straight to the core of the issue, whether brush with penal law would justify the eyes to be closed against the offender or only such brush with penal law which is of a higher degree of criminality. If the answer is in the negative, the further question: what should be the higher degree of criminality which would justify the eyes being shut to such person needs to be addressed.

20. With respect to the first two examples given by us in para 18 above, none would argue that for such trivial offences the eyes must be shut against the offender, and with regard to the next two, everybody would agree that the eyes should be shut to such a person who has to be ignored. We concede that the examples are in the extreme, but they certainly help us in understanding as to the process of reasoning required to be adopted to decide as to on which side of the border-line a case would fall.

21. A look at the penal laws in India would show that most of the penal offences can be categorized under two broad categories i.e. felony and misdemeanour. A further look at the sections stipulating penalties would

show that felonies are treated as more grave vis-à-vis misdemeanours. Further, by classifying offences as cognizable and non-cognizable, higher and lower degrees of criminality to the offences can be discerned. Further, by classifying offences as bailable and non-bailable, the degree of criminality can be further discerned.

22. The civil concept of an offence being of a depraving character is to look at whether the act complained of suffers from the tag of a moral turpitude or not.

23. We do not intend to make a catalogue of reported decisions as to what misdemeanours should normally attract the penalty of removal or dismissal from service. We may simply state that with respect to conviction for grave and serious offences alone, on the anvil of public interest and for public good, Courts have held that the offender has rendered himself unfit to continue in office and in extreme cases summary dismissal or removal from service by invoking Article 311 of the Constitution is also held justified.

24. Thus, we have a guideline of serious and grave offences being the touchstone in case of the door being shown to the government servant.

25. Looking through the prism of case law pertaining to when can the door be shown to a government servant and by doing reverse engineering we can safely say that what is good for the door to be shown, is good for prohibiting entry through the door, and thus while denying public employment with respect to the offence committed by a person, it can be said, and we say so, that it may be a serious violation of the constitutional right of a citizen to be fairly treated in the matter of public employment if trivial offences committed by the citizen would justify the State shutting its eyes and denying employment.

26. We have a clue; of offences being grave, serious and involving a moral turpitude justifying public employment not being given. These would certainly not justify the offender being inducted into public service. None would disagree that convicted and fined for parking a car in a no-parking area or convicted for over-speeding would attract the *de minimis* principle, but the problem would be in cases closer to the borderline. For therein would lie the problem as to in which side of the boundary line should they be categorized.

27. It is unfortunate that in India, the Government does not come out with white papers of the deliberations at various seminars, but we find a reference made to the '*All India Seminar on Correctional Service*' held at New Delhi in March 1969, to consider and lay guidelines pertaining to the problem of rehabilitation of ex-convicts, with emphasis on the need for their employment under the government. Vide OM dated 2.2.1973, No.6857-GSI-72-2755, the State of Haryana has listed the penal offences which have been treated as grave, serious and involving moral turpitude. The said OM lists the under-noted penal offences as grave, serious and involving moral turpitude, disentitling the convict to public employment; the offences are:- Sections 120-A, 121-A, 122 to 124, 161, 161-1A, 165, 167, 181, 182, 193 to 201, 205, 209, 293, 302, 304, 307, 354, 359, 362, 363 to 366, 366-A, 366-B, 367 to 373, 376, 377, 379, 380, 391, 392, 398 to 400, 403, 404, 406 to 409, 417 to 421, 449, 450, 453 to 458, 465 to 468, 471 to 476, 477-A, 489-A, 489-B, 489-C, 489-D, 489-E, 493 to 498 of the Penal Code.

28. We are a little surprised at the list as it excludes offences such as promoting enmity or doing acts prejudicial to maintenance of harmony i.e. offences punishable under Section 153-A IPC. It excludes offences pertaining to mutiny and its abetment i.e. offences under Sections 131 to 136

IPC. But we do not comment. However, what we find is, the common thread of including all offences against women and such offences which are punishable with imprisonment for life as also imprisonment for a term exceeding three years and above. We get a clue. Offences which do not carry a mandatory sentence of imprisonment and it to be imprisoned the term is less than 3 years and the offender can be let off with payment of fine, are not included in the said list. It is an undisputed fact that there are no rules to guide the authorities in Delhi Police as to in what cases despite acquittal, the person can be kept out of service or can be deprived of employment.

29. That apart, as generically understood, offences involving moral turpitude can be classified with reference to the act being one which shocks the moral conscience of the society in general and this can be determined with reference to the motive of the offender i.e. whether the motive which led to the act was a base one or alternatively whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society.

30. Today, with plea bargaining being a well-recognized facet of the administration of criminal law and a part of criminal jurisprudence in India, we do perceive a large number of cases involving thousands and thousands throughout the country, appearing before the Summary Courts and paying small amounts of fine, more often than not, as a measure of plea bargaining. Foremost would be amongst them petty crimes committed mostly by the young and/or the inexperienced. Some may even undergo a petty sentence of imprisonment of a week or ten days. We may also notice that Section 302 Cr.P.C. prescribes for taking note of compoundable offences at the

instance of the complainant itself and there are cases where compounding can take place with the permission of the Court.

31. Life is too precious to be staked over petty incidents and the cruel result of conviction for petty offences being the end of the career, the future and the present, of young and inexperienced persons cannot blast their life and their dreams.

32. In a growing democracy, where the systems are failing and the weak and the downtrodden are hardly given the opportunity to sharpen their intellect thereby diminishing the ability of their consciousness to act as a mirror to their acts and actions, it is high time that the executive brings into place a policy where summary/ordinary conviction should not be treated as a conviction for entry or retention in government service.

33. Till then, it would be the duty of the Court to interpret the law by harmonizing human sufferings and human wants, delinquencies and criminal tendencies; conscious of the fact that passengers on Spaceship Earth are the rich and the poor, the needy and the well-off, the hungry and the well-fed, the educated and the uneducated. The need of the hour is to understand that criminals are not born and are not irredeemable brutes. Crime may be a disease but not the criminal, who are a kind of psychic patients and to understand, that anti-social maladies are mostly the result of social imbalances. It must be remembered that on the one hand, social stresses, for various reasons, explosively mount in the real world's hard environs and the harsh remedy of heartless incarceration and ouster from society deepens the criminality. The swing of the pendulum to the humanist side requires respect for the worth of personhood and the right of every man and woman in its residual human essence.

34. We have discussed hereinabove the necessity to harmonize the various social imbalances and in particular in favour of those who have been denied the opportunity of developing their consciousness and thereby being deprived of their conscious acting as a mirror to their acts. We have highlighted as to how in various jurisdictions abroad the issue is dealt with. We have discussed hereinabove the deliberations at the '*All India Seminar on Correctional Service*' where emphasis for re-habilitation of ex-convicts, committing minor offences, by induction in public service was accorded primacy in the deliberations.

35. It would be advisable for the petitioner to devise a selection procedure by subjecting those who are desirous of seeking employment under the Police to the various tests which we have noted in para 13 above and which we have culled out from jurisprudence followed in matured democracies.

36. The writ petition is accordingly allowed.

37. The impugned order dated February 23, 2015 is set aside and a direction is issued that the petitioner be inducted into service as a Constable with CISF. The petitioner would be entitled to all benefits of seniority and continuity into service with effect from the date the person immediately beneath the petitioner in the empanelled list was made to join. Arrears of salary need not be paid.

38. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

JULY 15, 2016/mamta