

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13649 of 2017

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Azhar Ali, age about 23 years, Son of Shri Md. Manzoor Ali, Resident of Village Harila, P.O.- Dhanauti, P.S.- Sikrahta, District- Bhojpur, Ara, Bihar.

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Home Affairs, Government of India, New Delhi.
2. The Inspector General, Central Industrial Security Force, NISA, Hyderabad.
3. The DIG (Training) Central Industrial Security Force, Head Quarters, New Delhi.
4. The Deputy Inspector General, Central Industrial Security Force RTC, BARHAWA.
5. The AIG/Rectt., CISF Head Quarters, New Delhi.
6. The Commandant, Central Industrial Security Force, Unit CTPS, Chandrapura, District- Bokaro (JH).
7. The Deputy Commandant, Central Industrial Security Force RTC, BARHAWA.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mrs. Shama Sinha
For the Respondent/s : Mr. S.D Sanjay, Sr. Advocate (Addl. Soc. Gen.)
Mr. Kumar Priya Ranjan, C.G.C.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V. JUDGMENT

Date: 31-07-2018

The petitioner by way of the present writ petition has prayed for quashing of the order dated 25.06.2017, whereby and where under the appointment of the petitioner has been cancelled. The petitioner has further prayed for restoring his appointment and for directing the respondents to conduct the remaining basic training of the petitioner and fixation of his seniority just below the person who was immediately above him in the select list.

The brief facts of the case are that the petitioner had applied for the post of Constable (G.D.) in the Central Industrial Security



Force (hereinafter referred to as the 'C.I.S.F.') in the year 2015 pursuant to the examination conducted by the Staff Selection Commission for making appointment on the post of Constable (G.D.) in C.R.P.F.'s, S.S.F. and Riflemen in Assam Rifle. The petitioner was issued the admit card and thereafter he had appeared in the written examination and upon passing the same he had appeared in the physical test, which was also qualified by the petitioner. The petitioner was called for medical test on 06.06.2016 and after clearing the same, the petitioner was sent an offer for appointment vide Memo dated 15.03.2017. The petitioner had also filled up the attestation form, which was sent along with the appointment letter and he had not concealed any material fact as also had enclosed the certificate issued by the local police. The petitioner had, in column no. 12 of the attestation form, filled up the details of one criminal case filed against his family by his agnates. The local Police had also provided details of the said criminal case wherein challan had been submitted against the petitioner but the learned court below had subsequently acquitted the petitioner and others and found them not guilty. Thereafter, the documents of the petitioner were examined and he was allowed to join the training on 02.04.2017 as also he was allotted chest no. 1E-305 by the Headquarter of the respondents at New Delhi. While the petitioner was performing extremely well in his training and was given the responsibility of monitoring his training group, suddenly the



petitioner, vide letter of the respondents dated 18.05.2017, was directed to submit the copies of the FIR, F.R. and all connected documents including the copy of the judgment of the learned trial court for re-examination of his appointment. The petitioner had then submitted all the documents and after completion of about three months of training by the petitioner, he was informed vide letter dated 25.06.2017, that the 18th Standing Screening Committee (second sitting) had considered the case of the petitioner and he has been found not suitable for appointment in C.I.S.F. The petitioner is stated to have made a representation to the Defence Minister for consideration of his matter, however, the respondents had intimated that since a writ petition, filed by the petitioner, is pending before the Hon'ble Patna High Court, it would be appropriate to await the decision of the Court.

The learned counsel for the petitioner has submitted that the petitioner had never concealed the factum of one criminal case having been lodged against him wherein he was acquitted by the learned trial court and while filling the application form as also while submitting the character certificate in the format provided by the respondents, he had enclosed the character certificate issued by the local authorities / S.H.O., who had taken into account the criminal case filed against the petitioner as also the judgment passed by the learned trial court. It is further submitted that when the appointment letter was issued to the



petitioner, which is dated 15.03.2017, the respondents had also enclosed one attestation form and the petitioner in column no. 12 of the attestation form had disclosed about the criminal case and had also enclosed the certificate issued by the Police. At this juncture, it may be relevant to reproduce herein below clause 5(a) of the offer of appointment dated 15.03.2017 sent to the petitioner herein:-

“5(a) Two copies of Attestation Forms (Already supplied or enclosed) duly filled in completely.

(In case the answer to any question of column No. 12 of attestation form is “YES” then you must submit complete details of the case to the Principal, CISF RTC BARWAHA-1 immediately by post on receipt of this call up notice for joining. Only on hearing from the Training Centre you will report for the basic training. It is once again reiterated that without forwarding the details in advance and without hearing from Training Centre you will not be allowed to join for the basic training).”

Relying on the aforesaid clause, it is the submission of the learned counsel for the petitioner that in case the answer to any question of column no. 12 of the attestation form is yes then the candidate was required to submit complete details and in such cases the candidate would be allowed to join for the basic training only after being intimated by the Training Centre, hence in the present case only after the petitioner had submitted the complete details of the criminal case and the details of the trial including the judgment passed



by the learned trial court whereby and where under the petitioner was acquitted from the said criminal case, the respondents had examined the same and only then the petitioner was allowed to join training on 02.04.2017. It has been further submitted that the nature of allegations made against the petitioner in the criminal case were generic, ambiguous in nature, ostensibly arising on account of dispute within the family and the acquittal of the petitioner in the said criminal case vide a judgment passed by the learned trial court is also an honourable acquittal inasmuch as during the trial total 12 witnesses were examined by the prosecution and after discussing the evidences of all the witnesses, the Court had arrived at a conclusion that the prosecution has failed to prove the guilt beyond reasonable doubt. It is further submitted that the order of the learned trial court is based purely on the materials available on record and is fully supported by reasonable reasoning, hence the acquittal of the petitioner is in true sense an honourable acquittal and not the one based on the benefit of doubt having been given to the petitioner herein. In this connection, the learned counsel for the petitioner has relied upon a judgment rendered by the Hon'ble Apex Court in the case of ***Joginder Singh vs. Union Territory of Chandigarh & Ors.*** reported in ***(2015) 2 SCC 377***. The learned counsel for the petitioner has also relied on judgments passed by the learned Division Bench of the Hon'ble Delhi High Court in the case of ***N.C.T. of Delhi & Anr.***



Vs. Robin Singh (W.P.C. No. 2068 of 2010 decided on 25.08.2010) and the one rendered in the case of ***Manoj vs. Union of India & Ors.*** (W.P.C. No. 11979 of 2015 decided on 15.07.2016). In fact the learned counsel for the petitioner has also placed reliance on the judgment rendered by the learned Division Bench of the Hon'ble Delhi High Court dated 19.05.2011 passed in W.P.C. No. 2930 of 2011(Ram Het Meena vs. Union of India & ors.), on the basis of which the guidelines dated 01st February, 2012 are stated to have been framed by the Ministry of Home Affairs, to contend that the said judgment was passed in light of the decision rendered in the case of Robin Singh (supra), wherein the Hon'ble Court has nowhere debarred a candidate, who has been acquitted of a criminal case, from appointment in the Police Forces but on the contrary the only direction to the Government is to devise a selection procedure by subjecting those who are desirous of seeking employment under the Police to various tests which has been noted in paragraph-16, which has been culled out from the jurisprudence followed in mature democracy and are reproduced herein below:-

“16. 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 same 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.”*

Thus the submission of the learned counsel for the petitioner is that firstly the judgment passed in the criminal case of the petitioner by the learned trial court would show that the case of the petitioner is a case of honourable acquittal and secondly the case of the petitioner is covered by the various judgments as referred to above apart from the one rendered by the Hon’ble Apex Court in the case of Joginder Singh (supra).

Per contra, the learned Additional Solicitor General of India has submitted that after the petitioner had reported at R.T.C., Barwaha (M.P.) and had submitted the details of the criminal case, the connected documents were forwarded to the Inspector General/ Training Centre, Headquarter N.I.S.A., Hyderabad for consideration of the C.I.S.F. Standing screening Committee. On scrutiny of the record submitted by the petitioner it was revealed that a criminal case



had been filed against the petitioner for the offences punishable under Sections 341, 448, 504, 323, 325, 307 and 34 of the Indian Penal Code and he was acquitted from the charges by the learned trial court on 12.04.2016. Thereafter, the case of the petitioner was placed before the 18th Standing Screening Committee constituted by the competent authority and the said Committee had examined the case of the petitioner on 17.04.2017, in light of the guidelines issued by the Ministry of Home Affairs dated 01.02.2012, and had opined that more documents were required for re-examination of the case of the petitioner in the next meeting. The petitioner was then asked to submit the other relevant documents and when the same were submitted by the petitioner, the case of the petitioner was again placed before the 18th C.I.S.F. Standing Screening Committee (second sitting) and the said Committee had re-examined the case of the petitioner on 15.05.2017 and it had decided that the petitioner was not suitable for appointment in C.I.S.F. and thereafter the petitioner was informed vide the impugned letter dated 25.06.2017 that he has been found not suitable for appointment in C.I.S.F. It is further submitted by the learned A.S.G. that since the petitioner was involved in a serious criminal case and his subsequent acquittal by the learned trial court was also not an honourable one as also the petitioner had been acquitted since the prosecution could not prove the charges conclusively, hence the petitioner has been found not fit for



appointment in Armed Forces of India. The learned A.S.G. has further relied upon paragraph-2 (iii) (a) and the guidelines issued by the Government of India dated 01st February, 2012 which postulates that if any candidate is involved in criminal case, the candidate will not be considered for recruitment, if such involvement/case/arrest is concerned with an offence mentioned in Annexure-A. It is further submitted that as per paragraph no. 2 (v) of the said guidelines any candidate against whom charge sheet in a criminal case has been filed in a 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 the reasons that the witnesses have turned hostile due to fear of reprisal by the accused persons, he/she shall generally be not considered suitable for appointment in the C.A.P.F. The learned A.S.G. has further submitted that the aforesaid guidelines dated 01.02.2012 was framed by the Ministry of Home Affairs in pursuance of the directions issued by the Hon'ble Delhi High Court in W.P. No. 2930 of 2011 (Het Ram Meena vs. Union of India and ors.) wherein the Union of India was directed to formulate guidelines for considering the cases of the candidates against whom the criminal cases were registered before applying for the various posts in C.A.P.F.'s and only thereafter the matter was considered in the Ministry in consultation with the C.A.P.F.'s and it was decided to frame elaborate guidelines and therein it has been mentioned that a



candidate whose involvement/case/arrest is concerned with an offence mentioned in Annexure-A (serious offences under the Indian Penal Code/involving moral turpitude), such candidate will not be considered for recruitment. The said guidelines also provide for other disabilities on account of pendency of criminal cases or acquittal in a criminal case on account of benefit of doubt being given to the accused or the witnesses having turned hostile, for the purposes of being considered suitable for appointment in C.A.P.F.

I have heard the learned counsel for the parties and gone through the records of the case and I find that the petitioner had made full disclosure of the criminal case pending against him as well as regarding the judgment of acquittal passed by the learned trial court in the said case. From a bare perusal of the judgment dated 12.04.2016 passed by the learned court of 04th Additional District & Sessions Judge, Ara at Bhojpur passed in Sessions Trial No. 80 of 2015 / 285 of 2015 arising out of Sikarhatta P.S. Case No. 30 of 2014 dated 01.08.2014 which was registered under Sections 341, 342, 448, 504, 323, 307, 379 and 34 of the Indian Penal Code against 10 persons including the petitioner herein and charges appear to have been framed under Sections 448, 341, 323, 325, 307 and 504 of the Indian Penal Code, it is apparent that though prosecution witnesses no. 1, 2, 3, 4, 6, 7, 8, 9 and 10 were examined/cross examined and had not been declared hostile but had virtually not supported the case of



the prosecution on account of want of knowledge. The informant i.e. P.W. 5, though had turned hostile but he has not stated about any incident of assault by the petitioner herein or others. In such view of the matter, the learned trial court had acquitted the petitioner and others holding that prosecution had failed to prove the charges levelled against the accused persons. The present case is almost identical to the case of Joginder Singh (supra) wherein under similar circumstances, the Hon'ble Apex Court had directed the appellant of the said case to be appointed as a Constable in the Police Force. It would be relevant to quote paragraphs no. 15, 16, 17, 18, 20, 24, 25, 26, 27 and 28 of the judgment rendered by the Hon'ble Apex Court in the case of Joginder Singh (supra) herein below:-

15. To answer Point (i), we must first consider whether the acquittal of the appellant from the criminal case was an honourable acquittal. It is the contention of the respondent that even though the appellant was acquitted in the criminal case, the appointment of the appellant by the appointing authority to the post of Constable in Chandigarh Police, which is a disciplined force was not desirable. The High Court has held that what would be relevant is the conduct and character of the candidate to be appointed in the service of the State police and not the actual result thereof in the criminal case as claimed by the appellant. Further, the relevant consideration to the case is the antecedents of the candidate for appointing him to the post of Constable.

16. However, advertent to the criminal proceeding initiated against the appellant, we would first like to point out that the complainant did not support the case of the prosecution as he failed to identify the assailants and further admitted that the contents of Section 161 CrPC statement were not disclosed to him and his signatures were obtained on a blank sheet of paper by the investigating officer. Further, Sajjan Singh, who was an eyewitness of the case, who was also injured, had failed to identify the assailants. Both the witnesses were declared hostile on the request of



the prosecution.

17. The learned Additional Sessions Judge, Bhiwani held that the prosecution has not been able to prove in any way the allegations against the appellant. Thus, the learned Judge held that the prosecution had miserably failed to prove the charges levelled against the appellant in the criminal proceedings. Therefore, we are in agreement with the findings and judgment of the learned Additional Sessions Judge and are of the opinion that the acquittal of the accused from the criminal case was an honourable acquittal.

18. The learned counsel has rightly placed reliance upon the decision of this Court in [Inspector General of Police v. S. Samuthiram](#) 2013 1 SCC 598 of which relevant paragraph is extracted as under: (**SCC p. 609**, para 24)

"24. The meaning of the expression 'honourable acquittal' came up for consideration before this Court in **RBI v. Bhopal Singh Panchal** 1994 1 SCC 541. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions 'honourable acquittal', 'acquitted of blame', 'fully exonerated' are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression 'honourably acquitted'. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted."

(emphasis supplied)

20. Further, undisputedly, there has been no allegation of concealment of the fact that a criminal case was registered against him by the appellant. Thus, the appellant has honestly disclosed in his verification application submitted to the selection authority that there was a criminal case registered against him and that it ended in an acquittal on account of compromise between the parties involved in the criminal case, he cannot be denied an opportunity to qualify for any post including the post of a Constable.

24. However, in the present case, we have observed that the appellant was involved in a family feud and the FIR came to be lodged against him on 14-4-1998, after he had applied for the post of Constable. Further, he had been acquitted on 4-10-1999 i.e much before he was called for



*the interview/medical examination/written test. Further, as per **Rule 12.18**, emphasis has been laid on the freedom or otherwise from conviction. An interpretation of the Rules referred to supra clearly indicate that an acquittal in a criminal case will qualify him for appointment to the post of Police Constable, as the appellant had successfully qualified the other requisites required for his selection. Thus, as rightly pointed out by the trial court that as the prosecution has failed to prove the charges against the appellant by adducing cogent evidence, therefore, the police authorities cannot be allowed to sit in judgment over the findings recorded by the Sessions Court in its judgment, wherein the appellant has been honourably acquitted. Denying him the appointment to the post of a Constable is like a vicarious punishment, which is not permissible in law, therefore, the impugned judgment and order passed by the High Court is vitiated in law and liable to be set aside.*

*25. Further, apart from a small dent in the name of this criminal case in which he has been honourably acquitted, there is no other material on record to indicate that the antecedents or the conduct of the appellant was not up to the mark to appoint him to the post. The appellant was also among the list of the 40 selected successful candidates, who had fulfilled all the other requirements of the post. Reliance has been placed on the decision of this Court in **Jagtar Singh v. CBI 1993 Supp 3 SCC 49** which states as under: (SCC pp. 50-51, para 4)*

"4. ... It is not necessary for us to go into the question as to whether the claim of privilege by the respondents is justified or not. We also do not wish to go into the details of the investigations made regarding the antecedents and character of the appellant. We have carefully examined the material on the basis of which the respondents have come to the conclusion that the appellant is not suitable for appointment to the post of Senior Public Prosecutor in the Central Bureau of Investigation and we are of the view that the respondents are not justified in reaching a conclusion adverse to the appellant. No reasonable person, on the basis of the material placed before us, can come to the conclusion that the appellant's antecedents and character are such that he is unfit to be appointed to the post of Senior Public Prosecutor. There has been total lack of application of mind on the part of the respondents. Only on the basis of surmises and conjectures arising out of a single incident which happened in the year 1983 it has been concluded that the appellant is not a desirable person to be appointed to government service. We are of the view that the appellant has



been unjustifiably denied his right to be appointed to the post to which he was selected and recommended by the Union Public Service Commission."

26. Thus, we are of the opinion that the alleged past conduct of the appellant in relation to the criminal case will not debar or disqualify him for the post of the Constable for which he was successfully selected after qualifying the written test, medical test and the interview conducted by the selection authority. Further, as stated by us earlier, there has been no concealment of any relevant fact from the respondents by the appellant. The respondents were thus not justified in denying the said post to the appellant. The conclusion arrived at by them is not cogent and lacks proper application of mind.

27. We, therefore, hold that the High Court has committed a grave error both on facts and in law and it has failed to follow the legal principles laid down by this Court in the cases referred to supra and uphold the decision of CAT. For the foregoing reasons both the appeals succeed and are allowed.

28. Since we have upheld the judgment and order of CAT, the respondents are directed to comply with the same by issuing appointment letter to the appellant within four weeks from the date of receipt of the copy of this order. There shall be no order as to costs.

Another aspect of the matter is that since Article 141 of the Constitution of India postulates that the law declared by the Supreme Court will be binding on all courts within the territory of India and Article 144 of the Constitution of India provides that all authorities, civil and judicial, in the territory of India, shall act in the aid of the Supreme Court, it is a natural corollary that the judgment pronounced by the Hon'ble Apex Court becomes the law of the land, hence there is no need to discuss the various judgments rendered by the learned Division Bench of the Hon'ble Delhi High Court



including the one rendered in the case of Ram Het Meena (supra), on the basis of which purportedly the Ministry of Home Affairs has issued the guidelines dated 01st February, 2012.

It is a trite law that a policy decision/guideline cannot be adopted by means of a circular or letter and any such departmental or executive instruction cannot prevail over the statutory rules, constitutional provisions or the law laid down by the Hon'ble Apex Court. It is equally a well settled law that an acquittal would be "Honourable" in every sense when the prosecution leads full evidence but it fails to prove the charges levelled against the accused and the accused is acquitted after full consideration of the prosecution evidence. Reference in this connection be had to the judgments of the Hon'ble Apex Court reported in *(2013) 1 SCC 598 (Inspector General of Police vs. S. Samuthiram)* and the one reported in *(1994) 1 SCC 541 (Management of Reserve Bank of India vs. Bhopal Singh Panchal)*.

Now, coming to the present case, it is apparent that in the criminal trial, concerning the criminal case in which the petitioner was implicated as an accused, the prosecution had led full evidence by examining as many as 12 witnesses but had failed to prove the charges leading to acquittal of the petitioner and other accused persons. In view of the judgments rendered by the Hon'ble Apex Court in the case of S. Samuthiram (supra) as well as in the case of



Joginder Singh (supra), the present case can definitely be termed as a case of “honourable acquittal”, hence the past conduct of the petitioner in relation to the aforesaid criminal case will definitely not debar or disqualify the petitioner for the post of Constable for which he was successfully selected after qualifying the written test, physical test/interview and the medical test conducted by the respondent authorities. Moreover, there has been no concealment of any relevant fact from the respondents by the petitioner. Thus I find that the conclusion arrived by the 18th Standing Screening Committee in its second sitting as communicated to the petitioner vide letter dated 25.06.2017 by the Deputy Commandant, C.I.S.F. on behalf of the Deputy Inspector General, C.I.S.F., R.T.C. Barwaha, is *de hors* the law laid down by the Hon’ble Apex Court, is perverse and lacks proper application of mind. Moreover, the decision of the respondents, as contained in the impugned letter dated 25.06.2017 also suffers from the vice of non-compliance of the principles of natural justice.

For the reasons mentioned herein above, the impugned letter dated 25.06.2017, issued by the Deputy Commandant, C.I.S.F. on behalf of the Deputy Inspector General, C.I.S.F., R.T.C. Barwaha is unsustainable in the eyes of law, hence is quashed and the respondents are directed to restore the appointment of the petitioner on the post of Constable (G.D.) in C.I.S.F. in accordance with the



offer of appointment made to the petitioner vide letter dated 15.03.2017. The respondents are further directed to fix the seniority of the petitioner accordingly.

The writ petition is allowed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	30.04.2018
Uploading Date	01.08.2018
Transmission Date	N/A

