

*** HONOURABLE SRI JUSTICE P.NAVEEN RAO**

+ WRIT PETITION NO.20977 OF 2019

% 15-10-2019

Karra Krishna Kumar, S/o.K.Vishwanath,
Aged about 27 years, occ: Unemployee,
R/o.Challigadda Thanda, H/o.Ryakal Village,
Narayankhed, Mandal, Sanga Reddy District.

..PETITIONER

VS

\$ The State of Telangana,
Rep., by its Principal Secretary,
Home Department, Secretariat,
Saifabad, Hyderabad-022 and others.

..RESPONDENTS

! Counsel For The Petitioner: K.Muralidhar Reddy.

^ Counsel For Respondents: Government Pleader for Home for
respondents 1, 3 and 4, M.V.Rama Rao,
Standing Counsel for respondent No.2
(Police Recruitment Board)

< Gist :

> Head Note :

? CITATIONS :

1. (2016) 8 Supreme Court Cases 471
2. 2005 (5) SLR 6
3. (2013) 7 SCC 685
4. (2018) 1 SCC 797
5. (2018) 18 SCC 733
6. 2019 SCC Online 430

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.20977 OF 2019

Date: 15-10-2019

Between:

Karra Krishna Kumar, S/o.K.Vishwanath,
Aged about 27 years, occ: Unemployee,
R/o.Challigadda Thanda, H/o.Ryakal Village,
Narayankhed, Mandal, Sanga Reddy District.

.....Petitioner

And

The State of Telangana,
Rep., by its Principal Secretary,
Home Department, Secretariat,
Saifabad, Hyderabad-022 and others.

.....Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO. 20977 OF 2019

ORDER:

On 31-12-2015 recruitment notification was issued to recruit candidates to the post of Stipendiary Cadet Trainee Police Constable in Civil, Armed Reserve, SAR CPL, Special Protection Force and Firemen in Fire Service Department. The scheme of examination comprised of Preliminary examination, Physical Measurement Test, Physical Efficiency Test and final selection based on written examination. Petitioner applied on 17-01-2016. He belongs to ST category. Petitioner was successful in the written examinations as well as physical efficiency test and based on his performance, he was shortlisted for appointment as Stipendiary Cadet Trainee Police Constable in Armed Reserve of Medak District. After including his name in the provisional selection list, show cause notice was issued on 24-09-2017 informing that during antecedent verification it was found that he was involved in Cr.No.140 of 2016 of Narayankhed Police Station and that why his provisional selection should not be cancelled. On 04-05-2017 petitioner submitted his explanation explaining the background facts in institution of crime against petitioner and others and also contend that it was the brother of his father who filed false complaint as a counter blast to Cr.No.139 of 2016 lodged by his father and there was no truth in the allegations. By proceedings dated 14-06-2017 provisional selection of petitioner was cancelled by the recruitment board. On 30-07-2017 the 4th respondent also passed same order by cancelling his selection. On 06-07-2017 and on 12-07-2017 petitioner submitted representations to reconsider

his candidature. Alleging inaction on such representations he filed WP.No.29868 of 2017 praying to direct the respondents to dispose of his representations made on 06-07-2017 and 12-07-2017. By memorandum dated 02-11-2017 the 2nd respondent cancelled orders dated 04-06-2017 cancelling the provisional selection. On 05-011-2018 petitioner submitted representation to the 2nd respondent informing him that in Cr.No.140 of 2016, charge sheet was filed and Court of Judicial Magistrate of First Class, Narayankhed took cognizance of charges levelled and registered the case as CC.No.84 of 2017. After conducting full trial, learned Magistrate pronounced judgment on 12-10-2018 holding that petitioner and three others found not guilty for the offences under Sections 448, 324, 325 and 504 read with Section 34 IPC. He, therefore, requested 2nd respondent to depute him for undergoing training and same request was made on 06-11-2018 to the Superintendent of Police. While so, on 17-12-2018 2nd respondent passed orders cancelling the provisional selection, impugned in this writ petition.

02. Learned counsel for the petitioner contends that 2nd respondent is only recruiting agency and its role confines to process of selection by issuing notification, conducting selections and drawing up selection list based on merit secured by the candidates. Once selections are finalized and selection list is drawn, 2nd respondent has no authority to deal with further aspects. Only the appointing authority is competent to deal with the issue of entitlement of petitioner for appointment and result of antecedent verification. Therefore, the order impugned in the writ petition is liable to be set aside on this ground alone.

03. He would further emphasize that the Supreme Court in **Avatar Singh v. Union of India**¹ issued detailed directions. In terms of direction in 38.5 only Employer is competent to deal with the issue of involvement in criminal case, where as selection of petitioner was cancelled by the Board. Therefore, on this ground also order is liable to be set aside.

04. He further submitted that petitioner was implicated in Cr.No.140 of 2016 registered on 06-05-2016 i.e. after filing of application for employment and ultimately he was acquitted. But the factum of his involvement in criminal case was stated in the antecedents verification form, there was no suppression of his involvement and as he was acquitted by the competent criminal Court, his involvement in the crime has no significance at all and 2nd respondent erred in not appreciating this aspect. He would submit that once acquittal was granted by competent court even if it is on benefit of doubt, there can be no distinction on why a person is acquitted and the 2nd respondent cannot go into the nature of finding recorded by the Court to hold that acquittal was not a clean acquittal but was based on benefit of doubt and thereby deprive the employment to the petitioner.

05. By placing reliance on judgment of this Court in case of **Inspector General of Police v. V.Venkateshwarlu**² he would submit that as held by this Court selected candidate cannot be deprived of being sent for training unless appointing authority has thoroughly satisfied that selection is liable to be cancelled on any

¹ (2016) 8 Supreme Court Cases 471

² 2005 (5) SLR 6

of one or more valid grounds and appointing authority is expected to exercise the discretion.

06. He would further submit that before passing the order impugned in the writ petition petitioner was not granted any opportunity of hearing and order is liable to be set aside on this ground also.

07. Per contra, learned Standing Counsel for 2nd respondent board submits that recruitment to the police constable is governed by Telangana Police (Stipendiary Cadet Trainee) Rules notified by G.O.Ms.No.315, dated 13-10-1999 as amended vide G.O.Ms.No.97, dated 01-05-2006. The candidates recruited in pursuance to the recruitment notification are only treated as Stipendiary Trainee Constables. After they successfully complete the training and on being satisfied with the performance of the candidates during training, they will be recommended for appointment. Consequently they would be appointed and placed on probation. Thus a person's entitlement to appointment to the post of police constable would arise only after he successfully completes training and till then he is only a trainee.

08. By pointing out to amended Rule 3 Clause G he would submit that it is the responsibility of Board to verify antecedents and if a person attracts any of the disqualifications mentioned in Clause G, he is not entitled to be appointed as Trainee Cadet. As per Clause G (VI) a person who is involved in crime of moral turpitude attracts disqualification. In terms thereof, petitioner was declared as disqualified.

09. He would submit that decision of Division bench of this Court is not applicable to the facts of this case, as same was rendered prior to amendments carried out to the Rules in the year 2006.

10. He would further submit that having regard to the allegations in the charge sheet in criminal case charges levelled against petitioner attract moral turpitude. As held by the Hon'ble Supreme Court in **Avatar Singh** it is permissible to the recruiting agency to look into the nature of acquittal granted i.e. whether it was a clean acquittal or on benefit of doubt. On a similar contention urged before this Court in WP.No.28458 of 2017 and Batch, learned Single judge by judgment dated 06-12-2017 allowed the writ petitions and direction was issued to consider the claims of the petitioners therein in terms of directions issued by Supreme Court in **Avatar Singh** and as discussed in the judgment. Aggrieved thereby, Board preferred W.A.Nos 828 and 833 of 2018. Division Bench by judgment dated 25-10-2018 disposed of writ appeals holding that while considering the parameters laid down in **Avatar Singh** the Board is competent to take note of provision in Rule 3 (G) of the Rules. Therefore, liberty was given to the board to duly consider the directions issued in para No.38 of **Avatar Singh** read with provision in Rule 3(G).

11. He would submit that acquittal granted to the petitioner was not a clean acquittal and was by giving benefit of doubt.

12. Since the issue involved in the writ petition only centers on the scope of Rule 3 (G) of Rules, 1999 vis-à-vis acquittal granted by

the criminal Court, learned Standing Counsel stated that matter can be decided based on the submissions made.

13. The facts are not in dispute including nature of acquittal granted to the petitioner. Police laid charge sheet alleging that petitioner and three others went to the house of complainant/PW.1 used filthy language, beat with stones, which resulted in causing severe injuries and also fracture injuries and tried to kill him and his family members. According to police, the offences alleged attract provisions in Section 448, 324, 325, 504 read with Section 34 IPC. From the judgment of criminal Court, it is seen that though prosecution cited 18 witnesses only 13 witnesses were examined. PW.1 was the complainant and person who was injured. In the deposition PW.1 deposed that a petty quarrel took place between his family members, but accused did not abuse him and did not beat him and due to petty quarrel he went to the police station and lodged complaint and also stated that matter was settled out of the Court and they compromised. Learned Magistrate noticed that PW.1 did not depose anything incriminating against the accused. PWs 2 to 13 turned hostile and did not support the version of prosecution. Having regard to the above assessment of evidence learned Magistrate observed that due to witness turning hostile and due to inconsistency and lacunae in the prosecution case, prosecution was unsuccessful in proving the guilt of the accused beyond reasonable doubt and by extending benefit of doubt to the accused, they were discharged.

14. Paragraphs 8 and 10 of the judgment in C.C.No.84 of 2017 reads as under :

“8. The PW.1 complainant & injured, deposed in chief examination that nearly a year ago, a petty quarrel took place between the accused and him and the accused did not abuse him and did not beat him. **He further stated that due to petty quarrel he went to police station and lodged Ex.P1/complaint. The PW.1 did not depose anything incriminating against the accused and further stated that the matter was settled out the court and they were compromised. This gave a death blow to the prosecution case.**

10. Due to turning hostile of the prosecution witness and due to inconsistencies and lacunae in the prosecution case I hold that the prosecution is not successful in proving the guilt of the accused beyond reasonable doubt. Hence, the benefit of doubt goes to the accused/A.1 to A.4 for the offences punishable U/s.448, 324, 325, 504 r/w.34 of IPC.”

(emphasis supplied)

15. From the reading of above paragraphs of the judgment, it is noticed that even according to deposition of PW.1, though nothing incriminating was elicited from him, he stated that some galata took place and subsequently the matter was settled out of Court and that they compromised. Having regard to these observations of the learned Magistrate and final conclusion it can not be said that petitioner was granted clean acquittal.

16. In view thereof whether petitioner can lay claim for appointment in police force by contending that he was acquitted ?

17. On the issue of involvement in criminal case by a candidate seeking recruitment to police force, his acquittal and entitlement was considered in catena of cases. Few relevant decisions of Hon'ble Supreme Court are noted hereunder.

17.1 In **Avatar Singh**, operative directions read as under:

“38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:

38.1. Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3. *The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.*

38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. *If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.*

38.5. *In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.*

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.

38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. In case the employee is confirmed in service, *holding* departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11. Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.”

(emphasis supplied)

17.2 In Commissioner of Police, New Delhi Vs Mehar Singh³, identical issue was considered. Mr. Mehar Singh was provisionally selected as constable in police force. However, his provisional selection was cancelled on the ground that he was involved in criminal case. Though acquitted but acquittal was on benefit of doubt. Mehar Singh claimed that as he was acquitted, irrespective of nature of acquittal, crime against him gets wiped out and therefore entitled to be appointed. Dealing with this contention the Supreme Court held as under :

“33. So far as respondent Mehar Singh is concerned, his case appears to have been compromised. It was urged that acquittal recorded pursuant to a compromise should not be treated as a disqualification because that will frustrate the purpose of the Legal Services Authorities Act, 1987. We see no merit in this submission. Compromises or settlements have to be encouraged to bring about peaceful and amiable

³ (2013) 7 SCC 685

atmosphere in the society by according a quietus to disputes. They have to be encouraged also to reduce arrears of cases and save the litigants from the agony of pending litigation. But these considerations cannot be brought in here. In order to maintain integrity and high standard of police force, the Screening Committee may decline to take cognizance of a compromise, if it appears to it to be dubious. The Screening Committee cannot be faulted for that.

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 on 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 the trust reposed in it and must treat all candidates with an even hand.”

(emphasis supplied)

17.3 In **Union Territory, Chandigarh, Administration Vs Pradeep Kumar**⁴ also identical issue was considered by the Supreme Court. The candidature of successful applicants was cancelled on the ground that their acquittal was not honourable. Following the decision in Mehar Singh, Supreme Court held as under :

“10. The acquittal in a criminal case is not conclusive of the suitability of the candidates in the post concerned. If a person is acquitted or discharged, it cannot always be inferred that he was falsely involved or he had no criminal antecedents. Unless it is an honourable acquittal, the candidate cannot claim the benefit of the case. What is honourable acquittal, was considered by this Court in *Inspector General of Police v. S. Samuthiram* [*Inspector General of Police v. S. Samuthiram*, (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229] , in which this Court held as under: (SCC p. 609, para 24)

13. It is thus well settled that acquittal in a criminal case does not automatically entitle him for appointment to the post. Still it is open to the employer to consider the antecedents and examine whether he is suitable for appointment to the post. From the observations of this Court in *Mehar Singh* [*Commr. of Police v. Mehar Singh*, (2013) 7 SCC 685 : (2013) 3 SCC (Cri) 669 : (2013) 2 SCC (L&S) 910] and *Parvez Khan* [*State of M.P. v. Parvez Khan*, (2015) 2 SCC 591 : (2015) 1 SCC (L&S) 544] cases, it is clear that a candidate to be recruited to the police service must be of impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was honourably acquitted/completely exonerated. The decision of the Screening Committee must be taken as final unless it is shown to be mala fide. The Screening Committee also must be alive to the importance of the trust reposed in it and must examine the candidate with utmost character.

15. From the above details, we find that the Screening Committee examined each and every case of the respondents and reasonings for their acquittal and taken the decision. ***While deciding whether a person involved***

⁴ (2018) 1 SCC 797

in a criminal case has been acquitted or discharged should be appointed to a post in a police force, nature of offence in which he is involved, whether it was an honourable acquittal or only an extension of benefit of doubt because of witnesses turned hostile and flaws in the prosecution are all the aspects to be considered by the Screening Committee for taking the decision whether the candidate is suitable for the post. As pointed out earlier, the Screening Committee examined each and every case and reasonings for their acquittal and took the decision that the respondents are not suitable for the post of Constable in Chandigarh Police. The procedure followed is as per Guideline 2(A)(b) and object of such screening is to ensure that only persons with impeccable character enters police force. While so, the court cannot substitute its views for the decision of the Screening Committee.

17. In a catena of judgments, the importance of integrity and high standard of conduct in police force has been emphasised. As held in *Mehar Singh case* [Commr. of Police v. Mehar Singh, (2013) 7 SCC 685 : (2013) 3 SCC (Cri) 669 : (2013) 2 SCC (L&S) 910] , the decision of the Screening Committee must be taken as final unless it is mala fide. In the case in hand, there is nothing to suggest that the decision of the Screening Committee is mala fide. The decision of the Screening Committee that the respondents are not suitable for being appointed to the post of Constable does not call for interference. The Tribunal and the High Court, in our view, erred in setting aside the decision of the Screening Committee and the impugned judgment is liable to be set aside.”

17.4 Yet again, in **State of M.P. Vs Abhijit Singh Pawar⁵**, in recruitment to police force, cancellation of selection on antecedent verification, holding that candidate involved in crime even though acquittal was granted by criminal court was considered. Following the above two decisions and decision in **Avatar Singh**, Supreme Court observed as under :

“13. In *Avtar Singh* [Avtar Singh v. Union of India, (2016) 8 SCC 471 : (2016) 2 SCC (L&S) 425] , though this Court was principally concerned with the question as to non-disclosure or wrong disclosure of information, it was observed in para 38.5 that even in cases where a truthful disclosure about a concluded case was made, the employer would still have a right to consider antecedents of the candidate and could not be compelled to appoint such candidate.

⁵ (2018) 18 SCC 733

14. In the present case, as on the date when the respondent had applied, a criminal case was pending against him. Compromise was entered into only after an affidavit disclosing such pendency was filed. On the issue of compounding of offences and the effect of acquittal under Section 320(8) CrPC, the law declared by this Court in *Mehar Singh [Commr. of Police v. Mehar Singh, (2013) 7 SCC 685 : (2013) 3 SCC (Cri) 669 : (2013) 2 SCC (L&S) 910]*, specially in paras 34 and 35 completely concludes the issue. ***Even after the disclosure is made by a candidate, the employer would be well within his rights to consider the antecedents and the suitability of the candidate. While so considering, the employer can certainly take into account the job profile for which the selection is undertaken, the severity of the charges levelled against the candidate and whether the acquittal in question was an honourable acquittal or was merely on the ground of benefit of doubt or as a result of composition.***

17.5. **In State of M.P. Vs Buntty⁶**, yet again issue concerns cancellation of selection to police force on the ground of involvement in criminal case, Supreme Court held as under :

“13. The law laid down in the aforesaid decisions makes it clear that in case of acquittal in a criminal case is based on the benefit of the doubt or any other technical reason. The employer can take into consideration all relevant facts to take an appropriate decision as to the fitness of an incumbent for appointment/continuance in service. The decision taken by the Screening Committee in the instant case could not have been faulted by the Division Bench.”

18. From the precedent decisions referred to above, it is apparent that Hon’ble Supreme Court emphasizes that a person seeking recruitment to police force must have impeccable character, integrity and high standard of conduct. Once a candidate is involved in a criminal case, mere acquittal does not absolve him of his criminal background and strict scrutiny is required. The appointing authority/recruiting agency has to verify the antecedents, nature of crime, nature of acquittal, whether it is

⁶ 2019 SCC Online 430

based on benefit of doubt; witnesses turning hostile; was a compromise resulted in not deposing against accused; offence compounded etc. It is thus apparent that only a narrow window is available to a candidate to seek employment in police force if he was involved in a crime. Greater latitude is given to appointing authority/recruiting agency in clearing a candidate on antecedent verification. Thus, even if a person is acquitted in criminal case but such acquittal was on account of benefit of doubt/technical acquittal it is open to the recruiting agency to cancel provisional selection. It is also crystal clear from the above judgments of Supreme Court that there must be strict scrutiny of antecedents while recruiting to police Force. Supreme Court reversed decisions of High Court wherever, High Court directed to provide employment on account of acquittal granted.

19. In **Avatar Singh** on a review of precedent decisions, the Supreme Court recorded its conclusion in paragraph No.38. According to paragraph No.38.3 employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision. According to Paragraph 38.4.3 if acquittal recorded by criminal court in a case involving moral turpitude or offence of heinous/serious nature on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt was given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision.

20. Learned counsel for petitioner by referring to above paragraphs, sought to contend that only the Superintendent of

Police, who is appointing authority to the post of police constable, is alone competent to decide the suitability and not the recruiting agency. The said contention is stated to be rejected. Rules, 1999 as amended in 2006 make it explicit that it is the responsibility of recruiting agency to verify the antecedents and according to Rule 3 (G) if a candidate attracts any of the disqualifications mentioned therein, his provisional selection can be cancelled. Further, petitioner was only provisionally selected and he was not given appointment order even as a trainee. Further, a selected candidate can only be a trainee and only after successful completion of training a person would be appointed as constable. Having regard to the scheme of Rules it is clear that recruiting agency is vested with power to determine the eligibility of candidate before his final empanelment and appointing him as trainee police constable.

20 The directions of Hon'ble Supreme Court in **Avatar Singh** have to be read in consonance with the rules governing recruitment. Though Hon'ble Supreme Court used term 'employer', but it has to be understood in the context of that case. As per rules governing this recruitment power to assess the suitability, including antecedent verification is vested in the Board. Further the very same issue came up for consideration in WA.Nos 828 and 833 of 2018 where petitioner was a party. Division Bench modified the earlier directions of learned Single Judge and directed the Board to consider the case of petitioners as per Rule 3(G) of Rules, 1999 and **Avatar Singh** Judgment. In several other decisions referred to above, the Supreme Court conceded the decision to assess the suitability of a candidate, having regard to involvement

in criminal case, to Selection Committee. Thus, it depends on the scheme of the Rules governing recruitment.

21. Petitioner filed W.P.No.29868 of 2017 alleging inaction on his representations dated 06.07.2017 and 12.07.2017. The said writ petition is pending. Prior to order impugned herein, show cause notice was issued, his explanation was considered and order of cancellation of provisional selection was made. However, on 02.11.2017 orders were passed canceling earlier orders dated 04.06.2017 cancelling provisional selection.

22. Learned counsel for petitioner sought to contend that no prior notice was issued to petitioner before cancellation of provisional selection. It is seen from the record that after the acquittal, petitioner submitted representation dated 05.11.2018 to the Board enclosing copy of judgment of criminal court requesting to reconsider the eligibility of petitioner in view of acquittal granted by the criminal Court. On due consideration of his representation and the criminal court judgment the order impugned is passed. The only issue for consideration by the respondent Board was whether acquittal granted by criminal court was clean acquittal and whether offence in which he was implicated is one of moral turpitude. Scheme of the rules and recruitment notification does not envisage show cause notice and opportunity of hearing before cancelling provisional selection. In the facts of this case and in view of the judgments of Hon'ble Supreme Court, in the decisions noted above, it cannot be said that the decision to cancel provisional selection was illegal. It cannot be said that petitioner was granted clean acquittal in order to direct the respondent board

to ignore the involvement of petitioner in crime and to issue orders appointing as Trainee police constable.

23. Be that as it may, as per the law on the subject, the only result is as decided by the Board and there is no ambiguity in the issue. Even assuming that opportunity of hearing has to be read into Rule 3 (G), having regard to statutory framework and law on the subject, Court is not inclined to relegate the issue to the Board on this aspect. The writ remedy is discretionary and equitable remedy and Court need not grant relief even if a case is made out when granting such a relief is futile and no equities to the petitioner as admittedly his acquittal cannot be said as honourable. It is also appropriate to note that no motive or malafides are attributed to the Board.

24. I therefore, see no illegality in the decision of the Police Recruitment Board, cancelling the provisional selection warranting interference by this Court. Writ petition fails and it is accordingly dismissed. Pending miscellaneous petitions, if any, shall stand closed.

P.NAVEEN RAO,J

Date:15 -10-2019
Nvl/Rds/ tvk

Note: To mark L R copy--Yes

HONOURABLE SRI JUSTICE P.NAVEEN RAO



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