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

+ **W.P.(C) 6549/2017**

LIYAKAT ALI

..... Petitioner

Through: Mr. S.N. Kaul, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Ms. Suman Chauhan, Advocate.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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25.02.2019

Dr. S. Muralidhar, J.:

1. The challenge in this writ petition is to an order dated 3rd June 2017 issued by the Senior Commandant (TRG), CISF in the office of the Director, National Industrial Security Academy (NISA), Hyderabad cancelling the provisional offer of appointment made to the Petitioner as Sub Inspector (Exe) in the CISF.

2. The background facts are that the Petitioner applied for the post of SI (Exe) in the CISF and took the Staff Selection Commission (SSC) Examination, 2015. Upon being successful in the examination, he was issued a letter dated 15th September 2016 by Respondent No.5 provisionally appointing him as SI Executive in the CISF subject to character and antecedent verification. He was asked to report to the Director NISA,

Hakimpet, Hyderabad on 22nd October 2016 for basic training.

3. The Petitioner states that he complied with the directions in the letter dated 15th September 2016 and submitted all relevant documents including character certificate. He also submitted copy of a judgment dated 22nd January 2015 of the Judicial Magistrate First Class, Firozpur, Khirka at Punangwan (Haryana) in Criminal Case No.426 of 2010 whereby he was acquitted for the offences under Sections 148/149/323/324/325 IPC. However, the Petitioner was not permitted to join the basic training along with his batch-mates and was told that he would be communicated further directions in due course. Thereafter, his appointment offer was cancelled by the Standing Screening Committee by impugned letter dated 3rd June 2017 on the ground that he was not suitable for appointment in the CISF.

4. In response to the notice issued in the petition the Respondents have contended that in terms of the notification of the Ministry of Home Affairs dated 1st February 2012, a candidate will not be considered suitable for appointment where a criminal case has been filed and the charges fall in the category of serious offences and later the candidate is acquitted by extending 'benefit of doubt' or because witnesses have turned hostile 'due to fear of reprisal by the accused persons.' In the present case, since the offence under Section 325 IPC was a serious offence as per the guidelines framed in terms of the directions issued in WP(C) 2930 of 2011 (***Het Ram Meena v. Union of India***), the Petitioner was not found suitable for appointment in the CISF.

5. Mr. S.N. Kaul, learned counsel for the Petitioner referred to the decision

of this Court dated 20th September 2012 in WP(C) 1530 of 2012 (*Mintu Mistri v. Union of India*), decision dated 3rd December 2014 in WP(C) 1029 of 2014 (*Sandeep Singh v. Union of India*) decision dated 3rd December 2014 in WP(C) 1028 of 2014 (*Praveen Kumar v. Union of India*), and *Joginder Singh v. UT of Chandigarh (2015) 2 SCC 377* to urge that the acquittal was an honourable one and not on technical grounds and, therefore, the impugned order of the Respondents was unsustainable in law. He pointed out that the SLPs filed by the Union of India against the decisions of this Court in *Praveen Kumar (supra)* and *Sandeep Singh (supra)* were dismissed by the Supreme Court of India. It is, therefore, contended that the Respondents cannot be selective in not implementing those decisions vis-a-vis the Petitioner.

6. This Court has carefully examined the relevant memorandum dated 1st February 2012 issued by the 'Police-II Division' of the MHA on the topic of 'policy guidelines for considering cases of candidates for appointment in CAPFs.' Relevant to the case in hand is para V which reads as under:

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

the concerned CAPF.”

7. The question that arises here is whether the acquittal of the Petitioner in the aforementioned criminal case was ‘by extending benefit of doubt’ or because witnesses turned hostile ‘due to fear of reprisal by the accused.’ The expression ‘honourable acquittal’ was explained by the Supreme Court in *Inspector General of Police v. S. Samuthiram (2013) 1 SCC (Cri) 566* as under:

“24.....The expression "honourable acquittal" "acquitted of blame", "fully exonerated" are unknown to the court of criminal procedure or Penal code, which are coined by judicial pronouncement. It is difficult to define precisely what is meant by expression "honourably acquitted". When there is acquittal after full consideration of prosecution evidence that the prosecution had miserably failed to prove the charge levelled against the accused, it can possibly be said that the accused was honourably acquitted.”

8. A perusal of the judgment dated 22nd January 2015 of the trial Court in Criminal Case No. 426 of 2010 reveals that the Petitioner was Accused no.3 and there were in all seven accused. The offence for which they were tried involved assaulting the family members of the complainant, one Fajri. The specific allegation against the Petitioner and one co-accused Arshad was that they ‘hit Sappan with lathi’. However, it is noted that both Fajri, at whose house the incident occurred, and Sahid who rushed to the spot after hearing the hue and cry, turned hostile and did not support the prosecution. However, the acquittal of the Petitioner did not hinge only upon this. One reason was that the deposition of prosecution witnesses PWs 5 to 7 was not

corroborated by the medical evidence. The doctor who conducted the medico-legal report (MLR) did not turn up in the Court as a result of which the prosecution could not prove the injuries on the victims.

9. The prosecution also did not examine the Investigating Officer (IO) of the case. It was for these reasons that the prosecution was unable to prove the case against the accused, and the trial Court acquitted all of the accused, except one co-accused Wahid. Although the trial Court observed that it was acquitting the other accused, including the Petitioner, ‘by giving the benefit of doubt in their favour’, a reading of the judgment as a whole reveals that the acquittal was not merely by giving the accused the benefit of doubt but by properly analysing the entire evidence. In other words, the acquittal was honourable one on merits and because of lack of evidence. It was certainly not because of the witnesses turning hostile on account of the Petitioner having put them under fear or threat. It was not merely on the basis of ‘benefit of doubt.’

10. In similar circumstances, this Court has in two decisions ***Sandeep Singh v. Union of India*** (*supra*) and ***Praveen Kumar v. Union of India*** (*supra*) set aside the orders of the Respondents terminating the services of the successful candidates. Both decisions refer to the decision in ***Devender Kumar Yadav v. Govt. of NCT of Delhi 2012 (190) DLT 140*** where it was observed as under:

“12.....Such acquittals, where the material witnesses are produced during trial, but, they do not support the case of prosecution, to our mind cannot be said to be technical acquittals. We cannot accept the contention that only a case,

where the accused is acquitted despite material witnesses supporting the case of prosecution on merits, would be a case of acquitted other than technical acquittal. We cannot presume that a witness, who does not support the case of the prosecution is necessarily doing so in collusion with the accused, in order to save him from the punishment, despite his actually having committed the offence, with the commission of which he is charged.

It may be true in some cases but may not necessarily be so in each case. What has to be seen in such cases is whether the material witnesses were examined or not. If they are examined but do not support the prosecution and consequently it is held that the charge against the accused does not stand proved, that would not be a case of technical acquittal. We would like to note here that no independent enquiry was held by the respondents to verify the truthfulness or otherwise of the allegations which were made against the petitioner in the FIRs that were registered against him.

The Screening Committee which considered the case of the petitioner had no material before it which could give rise to an inference that the petitioner had actually committed the offence for which he had been prosecuted. As noted earlier, there is a presumption of innocence attached to an accused in a criminal case and the onus is on the prosecution to prove the charges levelled against him. Acquittal of the accused, after trial, only strengthens and reinforces the statutory presumption which is otherwise available to him. We, therefore, hold that the view taken by the Screening Committee was not based on some legally admissible, material and therefore cannot be sustained in law....."

11. In the present case also it cannot, therefore, be said that the acquittal of the Petitioner was merely on technical grounds or on the ground of 'benefit of doubt'. It was pursuant to a full-fledged trial in accordance with law.

12. For the aforementioned reasons, this Court sets aside the impugned order dated 3rd June 2017 cancelling the offer of appointment issued to the Petitioner for the post of Sub-Inspector (Exe) in the CISF. A direction is issued to appoint the Petitioner pursuant to the said order forthwith by giving his seniority (without any back wages), from the same year in which his batch-mates who qualified in the SSC exam 2015 were appointed, along with all consequential benefits. The necessary orders in this regard be issued not later than eight weeks from today. The petition is allowed in the above terms.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

FEBRUARY 25, 2019

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