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

+ **W.P.(C) 11951/2019 & CM APPL. 48940/2019 (interim relief)**

ANAND

..... Petitioner

Through: Mr. Ajay Verma and Ms.
Pratiskha Tripathi, Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Sandeep Tyagi, SCGC and
Mr. Mimanshak Bhardwaj,
Advocate.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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27.01.2020

1. Aggrieved by the rejection of his candidature for the post of Constable/Driver-cum-pump Operator ('Constable/DCPO') in the Respondent/Central Industrial Security Force ('CISF'), the Petitioner has filed the present petition seeking a direction to the Respondents to appoint him to the said post.

2. The brief facts are that the Petitioner applied for the post of Constable/DCPO in response to a 2017 advertisement issued by the CISF, inviting applications for the posts of Constable/Driver and Constable/DCPO. The application was to

be submitted online, latest by 19th March, 2018.

3. The Petitioner applied for the post of Constable/DCPO by submitting an online form on 25th February, 2018. Having found his application and his testimonial certificated to be in order, the Petitioner was invited to appear before the Recruitment Board for the Physical Efficiency Test ('PET'), Physical Standard Test ('PST'), Documentation and the Trade Test. The said tests took place on 29th September, 2018 and 1st October, 2018, and the Petitioner qualified in all of them. In the written examination that took place on 17th February, 2019, the Petitioner qualified.

4. Thereafter, the Petitioner was called for a medical examination on 13th May, 2019 at the CISF, NHCC Hospital, Mahipalpur, New Delhi. During the course of the said examination, the Petitioner submitted a detailed questionnaire form, in which, admittedly, against the "all" column requiring the Petitioner to disclose "FIR/Court case", he marked "No". Having been unfit on one count, the Petitioner appeared for a Review Medical Examination ('RME') at the scheduled date i.e. 25th June, 2019 in which he was found fit. During the RME, the Petitioner submitted another questionnaire in which against column 4, similar to the column in the questionnaire filled on 25th June, 2019, he wrote "yes".

5. On account of the discrepancy between the columns in the initial medical examination and the RME, a letter dated 1st July, 2019 seeking an explanation

from the Petitioner came to be issued by the Office of the Deputy Inspector General, CISF. In particular, the Petitioner was asked to submit a reason as to why he had, at the time of the initial medical examination, failed to disclose his previous involvement in FIR/Court case. It is stated in the petition that the Petitioner responded to the said letter, stating that he made a “bonafide mistake” in the questionnaire form dated 13th May, 2019. When he did not hear from the Respondents, the present petition came to be filed on 13th November, 2019.

6. When the petition was first listed for hearing on 15th November, 2019, the Court issued notice and directed the Respondents to treat the writ petition itself as a representation and decide the same within a period of 3 weeks. Pursuant thereto, the Respondents by way of an order dated 27th November, 2019 communicated the rejection of his representation by the 19th Standing Screening Committee (‘SSC’).

7. By another order dated 5th December, 2019, the Office of the Deputy Inspector communicated to the Petitioner that his case had been considered by the 19th SSC in light of the Policy Guidelines of the Ministry of Home Affairs (‘MHA’) dated 1st February, 2012 as well as the judgment of the Supreme Court in *Avtar Singh v. Union of India (2016) 8 SCC 471*. It was stated therein that a case against the Petitioner had been pending under Sections 148, 149, 323, 325 and 506 of the IPC and that the Court had acquitted him in the said case by giving him “benefit of doubt”. It was further stated that the

Petitioner's case had been "considered" in view of his prayer in the writ for a direction to that effect and that the 19th SSC had duly applied its mind and found the Petitioner unfit for appointment.

8. Thereafter, CM APPL. 842/2020 came to be filed seeking leave to amend the petition to challenge the above order dated 5th December, 2019, which the Court, by its order dated 10th January, 2020, allowed. By the said order, the Court also directed the Respondents to file a response to the amended petition before 27th January, 2020. However, there is no such reply on behalf of the Respondents on record till date.

9. Mr. Sandeep Tyagi, learned counsel for the Respondents contended that no fault can be found in the impugned order dated 5th December, 2019 inasmuch as the Petitioner was acquitted by the Judicial Magistrate due to the prosecution witnesses turning hostile. He has drawn the attention of the Court to the Para V of the MHA Policy Guidelines, which reads as under:-

“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.”

10. Mr. Tyagi placed reliance on the decision of this Court dated 23rd October,

2019 in W.P.(C) 1360/2013 (*Narender Singh v. Union of India*), where the decision of the CISF declining appointment to a candidate for the post of Constable/Driver was upheld. The Court held thus on finding that para V of the MHA policy guidelines was applicable as the candidate's acquittal had come about as a result of a compromise in which the complainants had agreed to turn hostile during trial.

11. The Court has heard Mr. Ajay Verma, learned counsel for the Petitioner, and Mr. Sandeep Tyagi, learned counsel for the Respondents. The Court has perused the impugned order dated 5th December, 2019; the MHA's policy dated 1st February, 2012 as well the judgment dated 20th September, 2013 of the Judicial Magistrate, Rohtak.

12. The Supreme Court in *Avtar Singh v. Union of India (2016) 8 SCC 471*, concluded by laying down a comprehensive set of criteria against which cases of suppression of information, such as the one at hand, or submission of false information, regarding previous criminal cases, should be evaluated. In this regard, it was observed at paragraph 38.2 as under:

“The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.”

13. Turning, therefore, to the policy guidelines dated 2nd February, 2012 applicable to all CAPF personnel, the Court finds that the Petitioner's case is covered squarely by the second proviso to paragraph 2 III thereof, which reads

as under:

“Provided further that the candidate shall not be debarred if he/she has been finally acquitted/discharged by a Court, whether an appeal is pending or not against such acquittal.”

14. At this juncture, it is appropriate to turn to the decision dated 20th September, 2013 of the Judicial Magistrate, 1st Class, Rohtak in Criminal Case No. 73/2013, in which the Petitioner was one of the co-accused. The operative portion of the decision reads as under:

“7. Star witnesses i.e. injured/complainant and his family members as PW1 to PW3 of this case, examined by the prosecution who did not support the version of the prosecution in any manner, however, they had been declared hostile witnesses at the request of the Ld. APP for the State but even then nothing incriminating evidence could be brought out from their mouth during their cross-examinations conducted by the Ld. APP for the State, rather they have resiled from their earlier statements being given to the I.O. of this case. However, these witnesses have admitted the fight to have taken place the injuries sustained by them but they pleaded their ignorance as to who inflicted injuries to them. Rather, these witnesses have specifically stated that the accused present in the court never inflicted any injuries to them. Thus, these star/material witnesses have totally failed to connect the accused with the present offence.

8. Therefore, looking into consideration the evidence of the prosecution, I have come to the view that the case of the prosecution has not been proved by it beyond shadow of reasonable doubt. Resultantly, benefit of doubt is given to the accused and accordingly, the accused named above are hereby acquitted of the charges framed against them in this case. Their bail bonds and surety bonds stand discharged. File be consigned to the record room after due compliance.”

15. A perusal of the paragraphs extracted hereinabove shows that the acquittal of the Petitioner has in fact been on merits. Even though the “star” witnesses had been declared hostile at the request of the Additional Public Prosecutor (‘APP’), the Court nonetheless observed that the statements of the said witness presented no evidence against the accused, including the Petitioner. In fact, the Court found that the said witnesses specifically averred that the accused persons “never inflicted any injuries on them.” Thus, the Court’s observation that the “benefit of doubt is given to the accused” does not, in any manner of speaking, alter the character of the acquittal of the Petitioner to imply that that the said acquittal was not merits.

16. Therefore, the Court finds that the reliance placed by the Respondents on paragraph 2.V of the aforementioned guidelines dated 2nd February, 2012, and the order of this Court *Narender Singh (supra)*, is misplaced. The aforesaid decision was predicated on the fact that the acquittal of the candidate there was not on merits but, in complete contrast, on a compromise reached between him and the complainants. Unlike the present case, therefore, there was no occasion for to Court to examine witnesses only to find that there was no material against the accused.

17. Therefore there can be no manner of doubt that paragraph 2.V could not have been relied on by the Respondents to deny the Petitioner appointment. To reiterate, the said paragraph envisages a situation wherein acquittal is the result of “extending benefit of doubt” to the accused, or the witnesses turning hostile

“due to fear of reprisal by the accused.” The present case does not relate to either of these situations. As discussed at some hereinabove, the Petitioner has been acquitted due to the complete lack of incriminating evidence against him, and the witnesses were declared hostile “at the request of the Ld. APP.”

18. For the reasons stated hereinabove, the Court finds that the letter dated 5th December, 2019, finding the Petitioner “not suitable” for the post of Constable/DCPO is liable to be set aside. The Court directs the Respondents to issue appropriate orders appointing the Petitioner to the aforesaid post within a period of 4 weeks from today. The Petitioner will be sent to undergo the requisite training with the next batch of inductees.

19. The petition and the pending application are disposed of in the above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 27, 2020/abc