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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 24.04.2024*+ **W.P.(C) 5723/2024, CM APPL. 23591/2024- Stay****COMMISSIONER OF POLICE AND ORS**

..... Petitioners

Through: Mrs. Avinish Ahlawat, SC with Mr.
Nitesh Kumar Singh, Ms. Laavanya
Kaushik, Ms. Aliza Alam and Mr.
Mohnish Sehrawat, Advocates

versus

MANDEEP KUMAR

..... Respondent

Through: Mr. Gautam Narayan, Advocate

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE SAURABH BANERJEE****REKHA PALLI, J (ORAL)****CM APPL. 23592/2024- Exp**

1. Exemption allowed, subject to all just exceptions.
2. The application is disposed of.

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3. The present petition under Articles 226 and 227 of The Constitution of India seeks to assail the order dated 04.01.2024 passed by the learned Central Administrative Tribunal (the Tribunal) in O.A. No. 30/2023. Vide the impugned order, the learned Tribunal has allowed the original application filed by the respondent herein and consequently directed the petitioners to forthwith issue an Offer of Appointment to the respondent

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subject to his fulfilling other eligibility criteria set forth in the Recruitment Rules. Learned Tribunal has further made it clear that the eligibility of the respondent which requires to be considered by the petitioners will be confined to the eligibility set forth in the Recruitment Rules and will not entitle the petitioners to once again examine the aspect of the respondent having been named in the FIR.

4. The brief factual matrix as is necessary for the adjudication of this matter is that, upon an advertisement being issued by the petitioners, the respondent applied for direct recruitment to the post of Sub-Inspector (Executive) and appeared in the Delhi Police Examination 2012 conducted by the Staff Selection Commission (SSC).

5. Upon the result being declared, the respondent was placed at position no.10 in the merit list of the selected candidates. After the result was initially declared, it appears that there was some litigation at the behest of the other candidates and the SSC, which litigation ended by way of an order on 19.07.2017 passed by the Apex Court.

6. Soon thereafter, while the respondent was patiently waiting for his appointment letter, he received a Show Cause Notice dated 15.06.2018 from the Delhi Police informing him about the proposed cancellation of his candidature on account of his name having been included in column no.12 of an FIR No.6/2016 registered on 10.01.2016 at Police Station Sardar Jind under Section 188 IPC and Sections 61/1/14 of the Punjab Excise Act, 1914. After the respondent submitted his reply to the Show Cause Notice stating that his involvement was never established and that no chargesheet was filed against him, his case for appointment was considered by a Screening Committee of the petitioners which



recommended cancellation of his candidature vide order dated 18.12.2018.

7. Being aggrieved, the respondent approached the learned Tribunal by way of a O.A. No. 453/2019 which was allowed vide order dated 21.12.2021 by quashing the Show Cause Notice dated 15.06.2018 and the order dated 18.12.2018 whereby the candidature of the respondent was cancelled.

8. In the detailed judgment passed on 21.12.2021, the learned Tribunal while allowing the O.A. No. 453/2019 came to a categorical conclusion that the decision of the Screening Committee cancelling the candidature of the respondent was arbitrary and therefore remanded the matter to the petitioners for consideration of the respondent's candidature afresh.

9. In purported compliance of this order, the petitioners placed the matter once again before the Screening Committee which considered the matter afresh on 10.05.2022 and again came to the conclusion that the respondent was not suitable for being appointed by the Delhi Police. Based on the said recommendation, the petitioners passed the order dated 07.06.2022 cancelling the candidature of the respondent.

10. This compelled the respondent to once again approach the Tribunal by way of O.A. No. 30/2023 which has been allowed vide the impugned order by issuing directions as already noted above.

11. In support of the petitioners, Mrs. Ahlawat vehemently once again contends that once the learned Tribunal had, vide order dated 21.12.2021, remanded the matter back to the petitioners for considering the eligibility of the respondent for appointment to the post of SI (Executive), it was open to the petitioners to consider all aspects including the aspect of the respondent being named in the FIR No. 6/2016 dated 10.01.2016. She



further submits that the Screening Committee has fairly and objectively examined the respondent's case afresh and found that merely because no charge-sheet was filed against him, it could not be said that he was innocent. Her plea is that the decision of the Screening Committee was proper and no interference thereto was called for by the learned Tribunal.

12. On the other hand, Mr. Gautam Narayan, who appears on behalf of the respondent on advance notice supports the impugned order and contends that once the Tribunal on 21.12.2021 categorically came to the conclusion that the decision of the Screening Committee was arbitrary and the respondent could not be said to be in any manner involved in the FIR No. 06/2016, the petitioners could not have re-examined the matter on merits as has been rightly held by the learned Tribunal. He submits that the limited scope of the matter being remanded back to the petitioners by the Tribunal on 21.12.2021 was to enable the petitioners to consider the other eligibility criteria as prescribed in the Recruitment Rules which aspect has also been clarified by the Tribunal in the impugned order.

13. He further submits that even otherwise, the reliance placed by the petitioners on Standing Order No. 398/2018 was misplaced as the said Standing Order could not be made applicable to the present case where the respondent was not even charge-sheeted and thus there was no question of examining whether the respondent was acquitted or not.

14. He also draws our attention to the charge-sheet dated 23.04.2016 filed in FIR No. 06/2016 to support his plea that the police after investigation, had come to the categoric conclusion that the respondent was innocent. He therefore prays that the writ petition be dismissed.

15. We have heard the learned counsel for the parties and have perused



the record.

16. Before proceeding further, it may be pertinent to note that the Tribunal while disposing of O.A. No. 453/2019 vide judgment dated 21.12.2021 observed as under:-

*"12.The learned counsel for the respondents has mainly relied upon the judgment of the Hon'ble Apex Court in **Commissioner of Police vs. Raj Kumar** in Civil Appeal No. 4960/2021 dated 25.08.2021, which has reference to certain other pronouncements made by the Hon'ble Apex Court. However, the facts and circumstances of the present case do not fit into the situations contemplated in the cases referred in the judgment of Hon'ble Apex Court in **Commissioner of Police vs. Raj Kumar** (supra). All these cases are relating to acquittal. In the instant case the most important difference is that even the investigating agency, namely, the local police did not find enough material to make the applicant an accused. In fact, when the applicant went before the Hon'ble Court seeking discharge, his application was disposed of with the following order (Annexure A/14):*

"File taken up today as an application for discharging applicant Mandeep has been filed. Heard. The applicant has not been charge-sheeted as an accused in this case and hence, the question of discharging him does not arise. The application is not maintainable and same is hereby dismissed. Adjourned to 15.09.2018 for the date already fixed purpose already fixed."

Thus, we see no reason how a proposition of law laid down in the context of acquittal can be relied upon in the present case.

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17. From the limited portion of the Minutes of the Screening Committee brought on record, it is seen that a similarly placed person has been recommended for appointment. Another person who was charge sheeted and acquitted has also been recommended. The respondents have been unable to justify this arbitrariness.

18. Under the circumstances and for the reasons explained above, we set aside the orders dated 18.12.2018(Annexure A-1) and 15.06.2018 (Annexure A- 2). The respondents are directed to consider the case of the applicant afresh as per law and in view of the observations made above. If the applicant is otherwise found fulfilling the required conditions, he shall be offered appointment to the post selected for, from the date he, otherwise, would have been



eligible for, with such notional seniority as would have so accrued. However, there shall be no back wages."

17. Since, admittedly, no appeal has been preferred thereagainst, the said order dated 21.12.2021 passed by the Tribunal is final and binds both parties. Consequently, a necessary corollary arising from a bare perusal thereof is that the decision of the Screening Committee alongwith the order dated 18.12.2018 and Show Cause Notice dated 15.06.2018 were set aside. The petitioners herein were consequently directed to consider the case of the applicant "... *afresh as per law and in view of the observations made above*" i.e., to offer the respondent, an appointment letter if he was otherwise found fulfilling the eligibility criteria. It is, thus, clear that the issue of the respondent being named in the FIR was no more open to consideration by the petitioners.

18. As such, the formation of a fresh Screening Committee and re-considering the issue by the respondent being named in the FIR in complete contravention of the aforesaid judgement dated 21.12.2021 was impermissible, more so, whence the findings of the Tribunal therein were, as noted above, clear and categorical. Therefore, the petitioners, under such circumstances, could not have exceeded the scope from what was available to it vide the judgment dated 21.12.2021 passed by the Tribunal.

19. In view thereof, once the case of the respondent was remanded back to the petitioners with specific and unambiguous directions to only examine his case qua the other eligibility criteria, there was no iota of chance for the petitioners to re-examine the issue already dealt with and decided by the Tribunal and to again reject the candidature of the



respondent on the said ground.

20. Additionally, it is an undisputed fact that the Haryana Police Services in its I.I.F.-V/ Integrated Investigation Form-V has itself categorically found the respondent herein to be innocent as there was no evidence against him. The case of the respondent would therefore not fall within the ambit of the Standing Order No.398/2018 which could not be applicable in a case like the present one where the respondent was found to be innocent by the Investigating Authority itself.

21. We also find that it has been specifically recorded in the impugned order “... ..that the matter and the entire gamut of issues involved have been considered and analysed threadbare by the co-ordinate bench in its earlier order. There is no cause before us to hold any divergent view nor has such an occasion arisen.”. In view thereof and for the reasons stated hereinabove, there is no ground made out for us to disagree with the findings rendered by the Tribunal.

22. Accordingly, the present petition, alongwith the pending application, is dismissed *in limine*. Needless to state, the petitioners shall comply with the directions as contained in the impugned order forthwith.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

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