



2024:DHC:7092



\$~92

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: 28nd August, 2024

+

W.P.(C) 5806/2019 & CM APPL. 25268/2019

VIKSHIT TOMAR

.....Petitioner

Through: Mr. Robin Khokhar and Mr. Ram Bhadauria, Advocates.

versus

DISTRICT & SESSIONS JUDGE & ANR

.....Respondents

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

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner under Articles 226 and 227 of the Constitution of India, seeking quashing and setting aside of the impugned order dated 07.02.2019 passed by the learned District & Sessions Judge (Headquarters), Tis Hazari Courts, Delhi, whereby the appointment of the Petitioner for the post of Junior Judicial Assistant ('JJA') was cancelled taking into account his character and antecedents report. Petitioner also assails the said report by the '*Committee constituted to look into the matters regarding Police Verification Reports*' (hereinafter referred to as the 'Committee'), in respect of four candidates including the Petitioner, rendered on 22.01.2019, recommending that



2024:DHC:7092



Petitioner was not suitable for the appointment. Writ of mandamus is sought for a direction to the Respondents to appoint the Petitioner to the post of JJA along with his batchmates with all consequential benefits.

2. Factual matrix to the extent relevant is that an advertisement was issued by Respondent No.1 inviting online applications from eligible candidates for recruitment to the post of JJA. A written (objective) test was held on 08.04.2018 followed by interviews on 14.07.2018 and 15.07.2018. Petitioner applied vide Registration No.1137814 and after the conclusion of the recruitment process, Selection Committee finalised a list of 302 candidates for appointment.

3. An offer letter dated 14.08.2018 was issued to the Petitioner for appointment to the post of JJA in Pay Band of Rs.5200-20200 with Grade Pay Rs.2800/- (pre-revised), who accepted the same vide letter dated 27.08.2018. Petitioner submitted his attestation forms, undertakings, declarations and affidavits, as required. Respondent No.1 wrote to the District Magistrate, Baghpat, U.P. vide letter dated 26.09.2018 to conduct police verification and submit a report with respect to character and antecedents of the Petitioner. On 29.10.2018, Respondent No.1 received the character/verification report wherein it was brought forth that FIR No.451/2015 had been registered against the Petitioner and his family members under Sections 302/506/34 IPC at P.S.: Rambala, District Baghpat, Uttar Pradesh but vide judgment dated 27.09.2017, Trial Court had acquitted the Petitioner as well as his family members who were arrayed as co-accused.

4. After receipt of the verification report, the matter was examined by Respondent No.1 and according to him, there were material concealments



2024:DHC:7092



by the Petitioner inasmuch as he had not disclosed in the online application form and the attestation form that he was involved in a criminal case in FIR No.451/2015. In this backdrop, Respondent No.1 referred the matter to the Committee constituted to look into matters concerning police verification reports in respect of the candidates who had applied for posts of JJA, Book Binder, Peon etc.

5. The Committee deliberated on the issues and after giving opportunity of personal hearing to the Petitioner rendered its report on 22.01.2019, recommending that Petitioner was unsuitable for appointment. This recommendation was approved by Respondent No.1 and accordingly, candidature of the Petitioner was cancelled vide Office Order dated 07.02.2019 on the ground that Petitioner was involved in a heinous crime and indulged in material concealments. This led to the Petitioner filing the present petition.

6. Assailing the impugned order cancelling the candidature of the Petitioner as well as the Committee's report dated 22.01.2019, learned counsel for the Petitioner contends that there was no concealment in disclosing the criminal case registered against him under Sections 302/506/34 IPC and to support this plea draws the attention of the Court to the online form, which is annexed to the counter affidavit. It is submitted that one of the questions that the candidates were required to answer was, '*Do You have any Criminal Proceeding details?*'. Petitioner was compelled to answer 'No' for the reason that when he attempted to answer 'Yes', another column appeared wherein Petitioner was required to furnish the details of the criminal case, which were irrelevant and would have created confusion since the Petitioner was already acquitted by the Trial Court on



2024:DHC:7092



27.09.2017. However, in the attestation form, Petitioner had selected the option of 'Yes' against question 12(1)(a) 'Have you ever been arrested?' and question 12(1)(b) 'Have you ever been prosecuted?' and thus there was no intent to conceal the criminal case.

7. It is further contended that the Supreme Court in ***Mohammed Imran v. State of Maharashtra and Others, 2018 SCC OnLine SC 1943***, has observed that employment opportunities are a scarce commodity in our country and while certain services have a different yardstick for suitability such as the judicial service, there cannot be a mechanical or a rhetorical incantation of moral turpitude to deny appointments simpliciter and each case must turn on its own facts. To make the past conduct, irrespective of all considerations an albatross around the neck of the candidate may not always constitute justice. While rejecting the candidature in any selection process, the vision of the Authority should not be blurred by the spectacle of what is described as moral turpitude, reflecting inadequate appreciation and application of facts as justice may demand. Reliance is also placed on the judgment of the Supreme Court in ***Avtar Singh v. Union of India and Others, (2016) 8 SCC 471***, where the Supreme Court observed that while considering cancellation of candidatures, the approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives. In light of these judgments, it is urged that the cancellation of the candidature of the Petitioner is wholly erroneous overlooking both the crucial facts that Petitioner had not concealed his involvement in the criminal case and in any event, he was acquitted by the Trial Court after a full-fledged trial, finding no evidence against the Petitioner and the acquittal was well before the Petitioner had applied for



2024:DHC:7092



appointment to the post of JJA with Respondent No.1.

8. Learned counsel for the Respondents *per contra* submits that it is incorrect for the Petitioner to argue that there was no concealment inasmuch as in a specific question in the online application form requiring the candidate to answer if he had any criminal proceeding details, Petitioner had stated 'No' whereas he ought to have truthfully stated 'Yes'. After the Petitioner cleared the written test and the interview as per procedure, when the matter was sent for police verification and the character and antecedents report, the concerned District Magistrate, Baghpat reported that Petitioner was involved in a criminal case and an FIR had been registered against him under Sections 302/506/34 IPC *albeit* no doubt he had been acquitted on 27.09.2017 by the Trial Court. The verification report disclosed that his father and brother were also arrayed as co-accused in the criminal proceedings. After deliberating on the report, Respondent No.1 referred the matter to the Committee comprising of the then Additional District Judge-02, West District, Tis Hazari Courts; Judge-In-charge, Mediation Centre, Central District; Tis Hazari Courts; and Additional Sessions Judge, North District, Rohini Courts. The Committee looked into the police verification report reflecting the involvement of the Petitioner in offences under Sections 302/506/34 IPC including the involvement of his family members and also perused the judgment of the Trial Court wherein the acquittal was primarily on account of the witnesses turning hostile. Deliberating on the matter in light of the judgment of the Supreme Court in ***Union Territory, Chandigarh Administration and Others v. Pradeep Kumar and Another, (2018) 1 SCC 797***, wherein the Supreme Court observed that even if a candidate is acquitted, unless it is an honourable acquittal, the Screening Committee is



2024:DHC:7092



within its right to cancel the candidature if the acquittal is based on serious flaws in the conduct of prosecution case or is a result of material witnesses turning hostile, the Committee recommended that Petitioner was unsuitable for appointment as the allegations were serious and grave in nature pertaining to a heinous crime of murder. It is argued that as a prospective employer, Respondent No.1 was well within his right to reject the candidature despite the acquittal for a justifiable reason and in this context, learned counsel refers to the observations of the Supreme Court in *Pradeep Kumar (supra)* and *Avtar Singh (supra)*.

9. I have heard the learned counsels for the parties and examined their rival contentions.

10. The only issue that this Court is called upon to decide is whether the candidature of the Petitioner was rightly cancelled on account of his involvement in a criminal case in FIR No.451/2015 registered under Sections 302/506/34 IPC, after he was offered appointment to the post of JJA by Respondent No.1. Facts to the extent that Petitioner cleared the written test and the interview and was offered appointment and that he was involved in a criminal case for an offence of murder but was acquitted by the Trial Court are not in dispute between the parties to the *lis*.

11. Petitioner contends that he had truthfully disclosed his involvement in the criminal case in the attestation form and was unable to do so in the online application form as the question that appeared after he attempted to answer 'Yes' to the question whether he had any criminal proceedings details required him to fill in further details, which according to him were irrelevant in view of his acquittal. Respondents contend that by answering the question in the negative, Petitioner attempted to conceal his involvement



2024:DHC:7092



in a heinous crime as he knew that this disclosure would lead to rejection of his candidature. Court agrees with the Respondents that Petitioner ought to have disclosed in the online form that he had a criminal past as there is no material on record to evidence the defence put forth by him. Be that as it may, this issue need not detain this Court for the reasons that: (a) Petitioner did disclose in the attestation form about the criminal case and his arrest; and (b) concealment was not the reason that weighed with the Committee while making recommendation of Petitioner's unsuitability to the post.

12. Coming to the second aspect of the matter, counsel for the Petitioner vehemently argued that once the Petitioner was acquitted in the criminal case by the Trial Court after a full-fledged trial, his candidature could not be rejected on the ground of his past antecedents and/or involvement in a heinous crime of murder. It was not for the Committee to sit over the judgment of the Trial Court as an Appellate Court and assess and examine the reasons for acquittal and/or the correctness of the verdict of the Trial Court and for this reliance is placed on the judgments of the Supreme Court in *Avtar Singh (supra)* and *Mohammed Imran (supra)*.

13. Having given my thoughtful consideration, Petitioner's contention deserves to be rejected. It is true that Petitioner was acquitted by the Trial Court for the alleged offences under Sections 302/506/34 IPC vide judgment dated 27.09.2017 by giving benefit of doubt. The Committee looked into the judgment and concluded that the acquittal was on account of the material witnesses turning hostile and therefore recommended that Petitioner was unsuitable for the job of JJA. The recommendation of the Committee cannot be faulted with in light of the observations of the Supreme Court in *Pradeep Kumar (supra)*, wherein the Supreme Court made certain observations



which are extremely relevant to the present case and can be encapsulated as:
(a) acquittal in a criminal case is not conclusive of the suitability of the candidates in the post concerned; (b) acquittal unless honourable or even discharge cannot always lead to an inference that the person was falsely involved; (c) entering into Police service requires a candidate to be of good character, integrity and clean antecedents; (d) acquittal in a criminal case does not automatically entitle a candidate for appointment; and (e) it is always open to the employer to consider the antecedents and examine the suitability, despite acquittal. Relevant passages from the judgment are as follows:-

“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, in which this Court held 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 [RBI v. Bhopal Singh Panchal, (1994) 1 SCC 541 : 1994 SCC (L&S) 594]. 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.”

11. Entering into the police service required a candidate to be of good character, integrity and clean antecedents. In Commr. of Police v. Mehar Singh [Commr. of Police v. Mehar Singh, (2013) 7 SCC 685 : (2013) 3



SCC (Cri) 669 : (2013) 2 SCC (L&S) 910], the respondent was acquitted based on the compromise. This Court held that even though acquittal was based on compromise, it is still open to the Screening Committee to examine the suitability of the candidate and take a decision. Emphasising upon the importance of character and integrity required for joining police force/discipline force, in Mehar Singh case, this Court held as under:

“23. A careful perusal of the policy leads us to conclude that the Screening Committee would be entitled to keep persons involved in grave cases of moral turpitude out of the police force even if they are acquitted or discharged if it feels that the acquittal or discharge is on technical grounds or not honourable. The Screening Committee will be within its rights to cancel the candidature of a candidate if it finds that the acquittal is based on some serious flaw in the conduct of the prosecution case or is the result of material witnesses turning hostile. It is only experienced officers of the Screening Committee who will be able to judge whether the acquitted or discharged candidate is likely to revert to similar activities in future with more strength and vigour, if appointed, to the post in a police force. The Screening Committee will have to consider the nature and extent of such person's involvement in the crime and his propensity of becoming a cause for worsening the law and order situation rather than maintaining it. In our opinion, this policy framed by Delhi Police does not merit any interference from this Court as its object appears to be to ensure that only persons with impeccable character enter the police force.

24. We find no substance in the contention that by cancelling the respondents' candidature, the Screening Committee has overreached the judgments of the criminal court. We are aware that the question of co-relation between a criminal case and a departmental enquiry does not directly arise here, but, support can be drawn from the principles laid down by this Court in connection with it because the issue involved is somewhat identical, namely, whether to allow a person with doubtful integrity to work in the department. While the standard of proof in a criminal case is the proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities. Quite often criminal cases end in acquittal because witnesses turn hostile. Such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on a par with a clean acquittal on merit after a full-fledged trial, where there is no indication of the witnesses being won over. In *R.P. Kapur v. Union of India* [*R.P. Kapur v. Union of India*, AIR 1964 SC 787] this Court has taken a view that departmental proceedings can proceed even though a person is acquitted when the acquittal is other than honourable.

25. The expression “honourable acquittal” was considered by this



Court in 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 that case this Court was concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under Section 509 IPC and under Section 4 of the Eve-Teasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in RBI v. Bhopal Singh Panchal [RBI v. Bhopal Singh Panchal, (1994) 1 SCC 541 : 1994 SCC (L&S) 594] , where in somewhat similar fact situation, this Court upheld a bank's action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in the departmental proceedings. This Court observed that the expressions "honourable acquittal", "acquitted of blame" and "fully exonerated" are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression "honourably acquitted". This Court expressed that when the accused is acquitted after full consideration of the prosecution case and the prosecution miserably fails to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

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 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.

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 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 in original)

The same principle was reiterated in *State of M.P. v. Parvez Khan* [State of M.P. v. Parvez Khan, (2015) 2 SCC 591 : (2015) 1 SCC (L&S) 544] .

xxx

xxx

xxx

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.”



14. It would be useful to refer to the observations of the Supreme Court in *Avtar Singh (supra)*, wherein the Supreme Court observed that an employer would be justified in considering fitness of a candidate even in a case where he was involved in a criminal case but acquitted and while doing so may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or of dubious character. Relevant paragraphs of the judgment are as follows:-

“30. The employer is given “discretion” to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an incumbent for services in question. In case the employer comes to the conclusion that suppression is immaterial and even if facts would have been disclosed it would not have adversely affected fitness of an incumbent, for reasons to be recorded, it has power to condone the lapse. However, while doing so employer has to act prudently on due consideration of nature of post and duties to be rendered. For higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However, same standard cannot be applied to each and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed, to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully, the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence, etc. have to be considered. Even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or of dubious character. In case employer comes to conclusion that conviction or ground of acquittal in criminal case would not affect the fitness for employment, incumbent may be appointed or continued in service.

xxx

xxx

xxx

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."

15. In ***Commissioner of Police, New Delhi and Another v. Mehar Singh, (2013) 7 SCC 685***, where the acquittal of the candidate was based on compromise, the Supreme Court observed that it was open to the Screening Committee to examine the suitability and emphasising on the importance of character and integrity required for joining a disciplined force highlighted that the Screening Committee would be entitled to keep persons involved in grave cases of moral turpitude out of the force even if they were acquitted, if it feels that the acquittal was on technical ground or not honourable. In the present case, the Screening Committee has come to a conclusion that the acquittal of the Petitioner was on the ground that the material witness had turned hostile and looking at the nature of the alleged offences, he was unsuitable for the post. In light of the observations of the Supreme Court in



2024:DHC:7092



the aforementioned judgments, no infirmity can be found with the recommendation of the Committee and this Court cannot overlook the nature of the post and nature of the work that is required to be performed by a Junior Judicial Assistant, within the Court premises. Consequently, the impugned order dated 07.02.2019 cancelling the candidature of the Petitioner warrants no interference.

16. For all the aforesaid reasons, the writ petition is dismissed being devoid of merits. Pending application also stands disposed of.

JYOTI SINGH, J

AUGUST 28, 2024

DU/shivam