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**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.**

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**CWP-5793-2024 (O&M).
Date of Decision: 22.01.2025.**

RAJNEESH

... Petitioner(s)

Versus

UNION OF INDIA AND OTHERS

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Vikas Chatrath, Advocate,
Mr. Abhishek Singla, Advocate, and
Ms. Tanya Sehgal, Advocate
for the petitioner.

Ms. Anita Balyan, Senior Panel Counsel,
for the respondents/Union of India.

VINOD S. BHARDWAJ, J. (ORAL)

CM-14325-CWP-2024

Application is allowed as prayed for subject to all just
exceptions.

Annexures A-1 and A-2 are taken on record.

The Registry is directed to tag the same at an appropriate place.

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**Main case**

Challenge in the instant writ petition is to the order dated 14.12.2023 (Annexure P-11) whereby the respondents have not permitted the petitioner to join as a Constable despite the appointment letter dated 28.08.2023 (Annexure P-5) on the ground of the petitioner having a criminal case pending against him even though he stood acquitted.

2 Learned counsel appearing for the petitioner contends that respondent No.2 issued an Advertisement No.366/RC/SSB/CT (GD) SQ/2022 dated NIL to fill up 399 posts of General Central Service, Group 'C' Non-Gazetted (Non-Ministerial) Combatised post of Constable (General Duty). The petitioner being eligible and being a sportsperson had applied in the respective quota. As per the information sought in the application, a candidate was required to furnish information pertaining to registration, arrest or detention by police in any criminal case. Petitioner had initially answered the same as 'Yes' however, thereafter, the same was changed to 'No' as the petitioner got confused since an FIR had been lodged against him but he had not been arrested in the case. The nature of the question asked had certain element of ambiguity as a result whereof, there was a failure on the part of the petitioner to comprehend the exact nature of the information sought. The petitioner was in merit and was hence issued the appointment/joining letter dated 28.08.2023 and was asked to submit his joining on or before 11.10.2023. Due to some exigencies, the petitioner was however not able to join the services by the said date, hence, a request letter

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dated 19.09.2023 was sent by him asking for extension of six months' time for joining the service. The same was allowed by the competent authority and the date of joining was extended upto 27.11.2023. Accordingly, the petitioner submitted his joining on 14.11.2023 at Commandant, 59, Bn SSB, Nanpara, District Bahraich, Uttar Pradesh. He specifically disclosed about the FIR bearing No.348 dated 23.10.2020 under Section 25 of the Arms Act, 1959, registered at Police Station Murthal, Sonapat, having been registered against him but he stood acquitted by the Chief Judicial Magistrate, Sonapat, vide judgment dated 30.10.2023. He submits that notwithstanding the acquittal of the petitioner, the respondents issued a Memorandum dated 14.12.2023 whereby the petitioner was informed that his services stood cancelled/terminated, without granting any opportunity of hearing.

3 Learned counsel for the petitioner contends that as per the Memo bearing Folio No.I.45020/6/2010-Pers-II dated 01.02.2012 issued by the Government of India, Ministry of Home Affairs, a candidate is required to declare information about his being arrested, prosecuted or convicted by a Court for any criminal offence. The said clause further stipulates that in case the said candidate has already been appointed, while cancelling/terminating the appointment, the principle of natural justice shall be followed and opportunity of being heard has to be accorded to such a candidate. Further, the candidate will not be considered for recruitment where the involvement in a case shows an offence involving moral turpitude, however, the proviso specifies that the candidate shall not be debarred if he/she has been finally

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acquitted/discharged by a Court notwithstanding pendency of appeal against such acquittal. He submits that notwithstanding his failure to give the complete disclosure, the case of the petitioner squarely falls within the proviso and the order of termination has been passed after joining of the petitioner to the post. He submits that the action of the respondents was thus in violation of the instructions issued by the Government of India as also in violation of the law laid down by the Hon'ble Supreme Court in the matter of **Ravindra Kumar Vs. State of U.P. and others, reported as 2024 (5) SCC 264**. The operative part of the judgment reads thus:-

“28. The nature of the office, the timing and nature of the criminal case, the overall consideration of the judgement of acquittal; the nature of the query in the application/verification form; the contents of the character verification reports; the socio economic strata of the individual applying; the other antecedents of the candidate; the nature of consideration and the contents of the cancellation/termination order are some of the crucial aspects which should enter the judicial verdict in adjudging suitability and in determining the nature of relief to be ordered.”

4 He further contends that the Hon'ble Supreme Court in the matter of **Mohammed Imran Vs. State of Maharashtra and others, reported as 2019 (17) SCC 696**, has specifically held that there can be no mechanical or rhetorical incantation for moral turpitude, to deny appointment in judicial

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service simplicitor and much would depend on the facts of each case. The operative part of the judgment reads thus:-

“6. Employment opportunities is a scarce commodity in our country. Every advertisement invites a large number of aspirants for limited number of vacancies. But that may not suffice to invoke sympathy for grant of relief where the credentials of the candidate may raise serious questions regarding suitability, irrespective of eligibility. Undoubtedly, judicial service is very different from other services and the yardstick of suitability that may apply to other services, may not be the same for a judicial service. But there cannot be any mechanical or rhetorical incantation of moral turpitude, to deny appointment in judicial service simplicitor. Much will depend on the facts of a case. Every individual deserves an opportunity to improve, learn from the past and move ahead in life by self-improvement. To make past conduct, irrespective of all considerations, an albatross around the neck of the candidate, may not always constitute justice. Much will, however depend on the fact situation of a case.

10. In the present proceedings, on 23.03.2018, this Court had called for a confidential report of character verification as also the antecedents of the appellant as on this date. The report received reveals that except for the criminal case under reference in which he has been acquitted, the appellant has a clean record and there is no adverse material against him to deny him the fruits of his academic labour in a competitive selection for the post of a judicial officer. In our opinion, no reasonable person on the basis of the materials placed before us

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*can come to the conclusion that the antecedents and character of the appellant are such that he is unfit to be appointed as a judicial officer. An alleged single misadventure or misdemeanour of the present nature, if it can be considered to be so, cannot be sufficient to deny appointment to the appellant when he has on all other aspects and parameters been found to be fit for appointment. The Law is well settled in this regard in **Avtar Singh v. Union of India and others, 2016(3) S.C.T. 672: (2016) 8 SCC 471**. If empanelment creates no right to appointment, equally there can be no arbitrary denial of appointment after empanelment.”*

5 Learned counsel appearing on behalf of the respondents/Union of India however contends that the petitioner reported for joining pursuant to appointment letter on 14.11.2023 at Commandant, 59 Bn SSB, Nanpara, District Bahraich, Uttar Pradesh where he also disclosed about FIR No.348 dated 23.10.2020 under Section 25 of the Arms Act, 1959, having been registered against him as well as his acquittal by the Chief Judicial Magistrate, Sonapat vide judgment dated 30.10.2023.

6 The petitioner was thus confronted by the officials with the instructions that the factum of any criminal case was required to be disclosed by him but the same was concealed. In the meanwhile, the petitioner submitted joining report and that he had been permitted to perform the duties assigned to him before passing of the impugned order dated 14.12.2023.

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7 Learned counsel for the respondents/Union of India does not dispute the applicability of the aforesaid judgment in the matter of **Ravindra Kumar (supra)** in the present case.

8 Having heard the learned counsel for the parties and taking into consideration the policy guidelines of February 01, 2012, it is evident that the guidelines stipulate that once a person has been appointed, principles of natural justice are required to be followed before such appointment is to be cancelled.

9 Undisputedly, neither opportunity of hearing was granted to the petitioner nor the scope and applicability of the guidelines have been discussed. Still further, the said guidelines also contain a proviso that a candidate does not get debarred if he or she has been finally acquitted. Hence, a registration of a case is not a bar against an appointment or even when he is convicted in minor offences mentioned in Chapter VIII or X of the Code of Criminal Procedure, 1973. All these aspects were thus required to be considered before terminating the service.

10 Taking into consideration the totality of the circumstances and a fair statement of the learned counsel for the respondent regarding the applicability of the judgment of the Hon'ble Supreme Court in the matter of **Ravindra Kumar (supra)**, and the same having not been followed, the present writ petition is allowed. The impugned order dated 14.12.2023 is hereby set aside. Liberty is, however, granted to the respondents to take a fresh decision, as per law and considering the guidelines issued by the Government subject

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to the respondents initiating any proceedings afresh, if they so desire. The respondents are directed to accept the joining of the petitioner subject to verification of the documents, if already received by them, within a period of three months of receipt of a certified copy of the order passed by this Court. However, the petitioner shall not be entitled to the arrears of salary for the above said period but the period shall be computed towards consequential benefits and seniority would be placed at appropriate place having regard to merit of the petitioner.

January 22, 2025.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No