



2025:DHC:11509-DB



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

+ **W.P.(C) 14885/2024**

SUMER SINGH

.....Petitioner

Through: Mr. Mandeep Baisala, Mr. Kavesh Bidhuri, Mr. Sahil Chowdhury, Mr. Ashesh Singh, Mr. Atal Singh along with petitioner in person

versus

UNION OF INDIA

.....Respondent

Through: Mr. Srivats Kaushal, SPC with Ms. Laavanya Kaushik, GP and Ms. Khyati Bansal, Advocates

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

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16.12.2025

C. HARI SHANKAR, J.

1. Following a Recruitment Notice issued by the Sashastra Seema Bal¹ in 2020, inviting applications for recruitment to the post of Constable (Driver), the petitioner applied. He qualified all stages of the examination and received letter dated 25 November 2023 confirming that he had been selected for the post. The petitioner was required to join the post within 45 days. At the petitioners' request, three extensions were granted to him for joining, with the final date of joining being 7 April 2024.



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2. There is no dispute about the fact that, on 7 April 2024, the petitioner reported at the office of the respondent for joining as Constable. However, the respondent came to learn, from the documents furnished by the petitioner, that criminal proceedings following FIR no.495/2021, under Section 420 IPC read with Section 63 of the Copyright Act, 1957, were pending against the petitioner. It may be noted that no occasion arose for the petitioner to declare this fact at any earlier stage of the selection process.

3. MHA Policy Guidelines dated 1 February 2012

3.1 It is, again, not in dispute that, owing to the proscription contained in para 2(III) of the Circular dated 1 February 2012 issued by the Ministry of Home Affairs², under the subject “Policy Guidelines for considering cases of candidates for appointment in CAPFs – pendency of criminal cases against candidates – the effect of:”, the respondent did not allow the petitioner to join. The said para 2(III) reads thus:

“2. Accordingly, the matter has been consider in this Ministry in consultation with CAPFs, and it has been decided as follows:

(III) The candidate **will not be considered for recruitment if :**

- a) Such involvement/case/arrest is concerned with an offence mentioned in Annexure A.
- b) Such arrest/detention is made under any of the Acts which are concerned with security and integrity of the country, terrorist and disruptive



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activities, acts against the State, insurgency, etc.;

c) The candidate has been detained under the National Security Act/Crime Control Act/any similar legislation, and the same is confirmed by the Reviewing Authority;

d) Such involvement/case/arrest is concerned with an offence involving moral turpitude;

e) He/she has been convicted by a Court in any case whether or not an appeal is pending against such conviction.

Provided that the candidate shall not be barred in the above cases, if only an FIR has been registered/ the case is under investigation and no charges have been framed either on FIR or on the complaint in any Court of law.

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.

Provided further that the candidate shall not be debarred if the proceedings are withdrawn by the Central/State Government.

Provided further that the candidate shall not be debarred if he/she has been involved/convicted/concerned with minor offences mentioned in Annexure B or those mentioned in Chapter VIII & X of Code of Criminal Procedure, 1973.”

3.2 As we have already noted, criminal proceedings were pending against the petitioner before the learned Additional Chief Judicial Magistrate³ in connection with alleged offences under Section 420 IPC read with Section 63 of the Copyright Act. Section 420 of the IPC is one of the offences enlisted in Annexure A to the MHA Policy Guidelines dated 1 February 2012. By operation of para (III)(a) of the Policy Guidelines dated 1 February 2012, therefore, the petitioner could not be considered for recruitment as Constable in the SSB till



the afore-noted case came to an end.

3.3 We may also reproduce in this context para 2(V) of the Policy Guidelines dated 1 February 2012:

“2(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.”

(Emphasis supplied)

4. Unfortunately, till 7 April 2024, no order, acquitting the petitioner in the criminal proceedings which were pending against him before the learned ACJM, had been passed.

5. DPAR OM dated 6 June 1978

5.1 We use the epithet “unfortunately” because, as a result of the fact that the petitioner could not be permitted to join till the expiry of six months from the date when the offer of appointment came to be issued to him, para 4(ii) of Office Memorandum No. 9/23/71-Estt.(D) dated 6 June 1978 issued by the Department of Personnel and Administrative Reforms⁴, kicked in. The said paragraph read thus:

“4. Seniority in cases of delay in reporting for duty after

⁴ “DPAR”, hereinafter



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selection –

(ii) If, however, within the specified period, a request is received from the candidate for extension of time, it may be considered by the Ministries / Departments but extension beyond three months should not be granted liberally and it may be granted only as an exception where facts and circumstances so warrant and in any case only up to a maximum of six months from the date of issue of the original offer of appointment. An offer of appointment would lapse automatically after the expiry of six months from the date of issue of the original offer of appointment. The candidates who join within the above period of six months will have their seniority fixed under the seniority rules applicable to the service / post concerned to which they are appointed, without any depression of seniority.”

Thus, in accordance with para 4(ii) of DPAR OM dated 6 June 1978, the offer of appointment dated 25 November 2023 issued to the petitioner, expired at the end of six months. At the end of six months, the petitioner had still not joined the services of the respondent. No doubt, the petitioner did report for joining on 7 April 2024, as per the extensions granted by the respondent. However, the respondent rightfully could not allow him to join in view of the proscription contained in para 2(III) of the MHA Policy Guidelines dated 1 February 2012 (*supra*).

5.2 As a result, six months elapsed from the date of issuance of offer of appointment to the petitioner, and the offer lapsed.

6. The impugned decision

Consequent to his acquittal in the criminal proceedings, the petitioner approached the respondent requesting him to take him in service on 10

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June 2024. The respondent rejected the request in terms of the following Memorandum, dated 22 July 2024, which read thus :

“No.06/05/Select-Panel/Vety-TRD/2024/14806-09

Dated the 22 July 2024

MEMORANDUM

Offer of appointment was issued to you for the post of CT (Driver) in SSB vide Memorandum No.06/04/SSB/Select Panel / Vety-TRD/2023/16651-16652 dated 25/11/2023 with the direction to report to the Commandant, 42 Bn SSB, but you failed to join on stipulated date.

2. In this regard, it is also intimated that 03 times extension to join the post of CT (Driver) in SSB upto 07/04/2024 has already been granted in your favour vide this office Memo No.909-10 dated 18/01/2024, No.1969-70 dated 23/02/2024 and No.2693-94 dated 03/04/2024 with the direction to report to the Commandant, 42 Bn SSB, but you failed to join on stipulated date.

3. **As per existing Government Instructions, an offer of appointment issued would lapse automatically after expiry of six months from the date of issue of the original offer of appointment. Since, the offer of appointment issued to you completed more than six months from the date of issue of the original offer of appointment.**

4. Therefore, offer of appointment issued to you vide Memorandum No.06 / 04 / SSB / Select Panel / Vety -TRD / 2023 / 16651-16652 dated 25/11/2023 for the post of CT (Driver) in SSB is hereby cancelled.

(Pramod Devrani)
Commandant (Pers – III)”

7. Aggrieved thereby, the petitioner has approached this Court by means of the present writ petition.

8. We have heard Mr. Baisala, learned counsel for the petitioner and Mr. Kaushal, learned SPC for the respondent, at length.

9. The submissions of learned counsel have more or less been



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encapsulated in the recording of facts hereinabove.

10. We may, however, merely reiterate that Mr. Kaushal's contention is that, till the expiry of six months from the date when the offer of appointment had been issued to the petitioner, the criminal proceedings against the petitioner had still not come to an end. As such, he submits that the respondent was proscribed from permitting the petitioner to join till 7 April 2024, which was the last date provided to the petitioner for joining after the third extension had been granted by the respondent.

11. In these circumstances, Mr. Kaushal submits that the subsequent acquittal of the petitioner in the criminal case could not enure to his benefit. His contention is that, had the petitioner been acquitted prior to 7 April 2024, things might have been different, but as the acquittal of the petitioner took place only on 6 June 2024, by which date six months from the date of issuance of offer of appointment had elapsed, the respondent could not be faulted in issuing the impugned order.

Analysis

12. We find the facts in this case to be somewhat nuanced.

13. The offer of appointment was issued to the petitioner on 25 November 2023. Six months from that date would expire on 24 May 2024. The last date granted to the petitioner to join was 7 April 2024.

Thus, the petitioner was not granted time to join the respondent, till



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the expiry of six months from the offer of appointment.

14. On 7 April 2024, the petitioner actually reported at the respondent's office for being permitted to join. This is not in dispute. The respondent's contention is that they could not permit the petitioner to join owing to the proscription contained in para 2(III) of MHA OM dated 1 February 2012 *supra*.

15. We have already noted that para 2 (V) of the very same OM envisages a situation in which, unless the petitioner is subsequently acquitted on benefit of doubt or because witnesses turn hostile owing to fear of reprisal, the provisions of para 2 (III) would not apply. This is clear from the *non obstante* clause with which para 2 (V) commences.

16. The judgment dated 6 June 2024, passed by the learned ACJM, acquitting the petitioner, is on record.

17. The case against the petitioner was essentially under the Copyright Act, on the ground that he was present in a shop in which fake cream was found.

18. The learned ACJM, though he has finally characterised the acquittal as one on benefit of doubt has found thus:

“14...For the offence under Section 420 IPC, it is necessary to induce a person to deliver property by fraudulently and dishonestly making false promises. In the present case, the prosecution has not stated how the accused has cheated the company. The prosecution has also not clarified to which persons the fake cream cans were



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sold by the accused by claiming them to be genuine and the prosecution has also not stated whether this cream was produced by them. There is no evidence on file in relation to Section 420 IPC. In such a situation, the prosecution has failed to prove beyond doubt the offence against the accused.

15. Thus, the prosecution has not been able to prove beyond reasonable doubt that the accused, being the operators of their shop, manufactured 6 and 12 cans of 500 grams each of fake Raga Professional Detain Removal Cream in the name of complainant company M/s Cavin Care Pvt. Ltd. and cheated the complainant company with dishonest intent and caused wrongful gain to themselves and wrongful loss to the complainant company, also infringed the copyright mark of the product of the complainant company and by printing the name of Raga Professional Detain Removal Cream on the cans of Raga Professional Product Cream, violated the rights of the company by using the name of original Raga Professional Cream. In such a situation, considering all the facts and circumstances of the case, it seems justified to give the benefit of doubt to the accused Gularam and Sumer Singh and declare them innocent.”

19. It is well settled, *inter alia* by the judgment of Supreme Court in ***Ram Lal v. State of Rajasthan***⁵, that the issue of whether an order acquitting an accused of criminal charges against him is “honourable”, or on benefit or doubt or because the charges could not be proved beyond reasonable doubt cannot be determined merely on the basis of the words used by the Court while acquitting the accused. The entire order of acquittal has to be examined before arriving at a conclusion regarding the nature of acquittal.

20. When one holistically sees the order of acquittal passed by the learned ACJM, it is clear that, insofar as Section 420 of the IPC is concerned, the learned ACJM has found that there was no evidence to connect the petitioner with the offence.



21. Thus, the petitioner's acquittal cannot be said to be one on benefit of doubt, or because material witnesses had turned hostile owing to fear of reprisal, within the meaning of para 2(V) of the MHA Policy Guidelines dated 1 February 2012.

22. That being so, the petitioner would ordinarily be entitled to the benefit of para 2(V) of the said OM.

23. There is, however, as Mr. Kaushal points out, still the hurdle of para (ii) of the DPAR OM dated 6 June 1978 *supra*.

24. Mr. Kaushal's contention is that, as the order of acquittal had been passed after six months from the date of offer of appointment, as envisaged in Clause (ii) of the DPAR OM, had elapsed, the petitioner could not obtain the benefit of his acquittal, or even the benefit of Para 2 (V) of MHA OM dated 1 February 2012, insofar as his entitlement to join the service of the respondent was concerned.

25. While, it is true that Clause (ii) of the DPAR OM dated 6 June 1978 envisages a maximum period of six months, upto which an offer of appointment can be kept alive, this stipulation is not absolute. It is subject to clauses (iii), (iv) and (v), which read thus:

(iii) ... If, even after the extension(s), if any, granted by the Ministry / Departments, a candidate does not join within the stipulated time (which shall not exceed a period of six months), the order of appointment should lapse).

(iv) An offer of appointment which has lapsed should not ordinarily be revived later, *except in exceptional circumstances and on ground of public interest. The Commissions should in all cases be consulted before such offers are revived.*



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(v) *In a case where after the lapsing of the offer, the offer is revived in consultation with the Commission as mentioned in sub-para (iv) above, the seniority of the candidates concerned would be fixed below those who has already joined the posts concerned within the prescribed period of six months; and if the candidate join, he should be placed below all other of his batch. If, however, the candidate joins after some or all the candidates of the next selection examination have joined he should be:*

(a) *in cases of selection through interview, placed at the bottom of all the candidates of the next batch;*

(b) *in the case of examination, allotted to the next year's batch and placed at the bottom."*

(Emphasis supplied)

26. Thus, even in a situation where the officer could not join within a period of six months, there is no absolute proscription against allowing him to join later. No doubt, such permission to an officer to allow him to join after six months has to be given only in exceptional cases and in public interest after consulting the UPSC.

27. In the present case, however, the respondent appears to have proceeded on the premise that Clause (ii) of the DPAR OM dated 6 June 1978 engrafted an absolute proscription on allowing a candidate to join, once six months from the date of issuance of offer of appointment had elapsed.

28. There has clearly been no application of mind to the relaxations envisaged in that regard, as contained in clauses (iv) and (v) of the said OM.

29. In the present case, we are of the opinion that the respondent



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ought to have considered whether the petitioner could be given the benefit of clauses (iv) and (v) of the DPAR OM dated 6 June 1978, essentially because

- (i) the petitioner had actually reported for joining at the office of the respondent on 7 April 2004, within the time which was granted by the respondent in that regard,
- (ii) if the respondent could not permit the petitioner to join, that was only because, on that day, the criminal case against the petitioner was still pending,
- (iii) the criminal case ultimately ended in acquittal of petitioner as a result of which, to our mind, it deserves to be considered whether the petitioner would be extended the benefit of Clause 2 (V) of the MHA Policy Guidelines dated 1 February 2012, and
- (iv) the acquittal of the petitioner was an honourable acquittal and not one which was on benefit of doubt or because witnesses had turned hostile owing to the fear of reprisal as envisaged in Clause 2 (V) of the MHA Policy Guidelines.

30. We, therefore, dispose of this writ petition by quashing and setting aside the impugned communication dated 22 July 2024, and directing the respondent to proceed in accordance with clauses (iv) and (v) of DPAR OM dated 6 June 1978 and reconsider the case of the petitioner for joining in terms of the said clauses.

31. Needless to say, while undertaking this exercise, the UPSC would be consulted, as required by clauses (iv) and (v) of the DPAR OM.

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32. In undertaking this exercise, we expect the respondent as well as the UPSC to bear in mind the observations contained in the present judgment.

33. Let the aforesaid exercise be undertaken, and a *de novo* decision taken, within a period of three months from today, and communicated to the petitioner forthwith.

34. Needless to say, should the petitioner continue to remain aggrieved, his rights in law would remain reserved.

35. The writ petition is partly allowed accordingly, with no orders as to cost.

C.HARI SHANKAR, J

OM PRAKASH SHUKLA, J

DECEMBER 16, 2025/yg