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

Reserved on: 18 October 2024
Pronounced on: 4 November 2024

\+ W.P.(C) 11856/2022

MANISH SAINI .....Petitioner
Through: Ms Manisha Parmar and Mr Kapil Chaudhary, Advocates

versus

GOVERNMENT OF NCT OF DELHI
AND ANR .....Respondents
Through: Mr. Kshitij Chhabra, Senior Panel Counsel for respondents

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT

% 04.11.2024

C. HARI SHANKAR, J.

1. The petitioner assails judgment dated 10 June 2022 passed by the learned Central Administrative Tribunal[1] in OA 3065/2019[2], whereby the learned Tribunal has dismissed the OA.

[1] "the learned Tribunal" hereinafter
[2] **Manish Saini v Commissioner of Police & another**

Facts

2. FIR[3] 117 was lodged against the petitioner at PS Kharkhoda on 12 July 2011, alleging that the petitioner had committed offences under Sections 398 and 401 of the Indian Penal Code[4], 1860, read with Sections 25, 54 and 59 of the Arms Act 1959. The charge against the petitioner was that he, along with certain other persons, had attempted to rob a passerby, who had alerted the local Police patrolling the area and who, in turn, had intercepted the petitioner and the other accused. It was also alleged that knives were recovered from his possession. The petitioner was arrested and committed to trial in ***SC 100 of 2011/2012***[5].

3. The trial ultimately ended in the acquittal of the petitioner, vide judgment dated 8 November 2012, passed by the learned Additional Sessions Judge Sonepat[6]. Paras 15 to 24 of the judgment of the learned ASJ merit reproduction, thus:

> "15. According to the case of the prosecution, the accused persons attempted to rob passers-by. They also attempted to rob of EASI Joginder. One spring-actuated knife each was recovered from the possession of the accused.
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> 16. The case of the prosecution rests solely on the statements of police officials as no independent witness was joined during the course of investigation. The raid was conducted on the basis of the secret information received by the investigating officer at police post Jharot. PW7 ASI Surender Singh stated that he had tried to join independent witness but none was available at that time. No

[3] First Information Report
[4] IPC
[5] **State v Manish**
[6] "the learned ASJ" hereinafter

independent witness was called from village Jharot. PW4 Rajbir Singh and PW5 EASI Joginder Singh expressed their ignorance whether the investigating officer had tried to join any independent witness in the investigation or not. Thus the statements of the witnesses of the prosecution are not consistent regarding joining of the independent witnesses. No explanation worth the name, what to talk of satisfactory, has been furnished by the investigating officer for non-joining of the independent witnesses. Thus, the fact remains that the raid was conducted after getting secret information and the investigating officer had ample opportunity to join independent witnesses, but no sincere effort was made to join any independent witness. This fact casts a shadow of doubt on the case of the prosecution.

17. No doubt, the case of the prosecution cannot be dislodged merely on the score of non-joining of the Independent witness, but at the same time this fact cannot be lost sight of that the officials of the police generally remain interested in the success of their case and in order to achieve such an end, they sometimes act over jealously. Therefore, as a matter of caution, the statements of the police officials are to be scrutinized more minutely.

18. As per the case of the prosecution, the place of occurrence was on the main road which leads to village Jharot and the site plan Ex. PB shows that the road was straight leading from Sonepat to Kharkhoda. Thus, the accused persons could very well see any vehicle coming from any side from the straight road. The thieves and robbers are expected to remain alert while committing the offence, because they always fear of being apprehended. It cannot be believed that the accused persons stopped the motor cycle of PW5 EASI Joginder Singh which was followed by two other motor cycles of the police officials, without taking any precaution.

19. It is also important to note that the accused were armed with spring-actuated knives, but it is quite surprising that they did not offer any resistance when the police party tried to apprehend them. It is not believable that the accused persons, who had set out with firm determination to commit robbery, would have offered no resistance and surrendered before the police despite possessing deadly weapons. As a man of ordinary prudence, they would have used their weapons in order to succeed in escaping. In this context, reference may be made to ***Punni v State of Uttar Pradesh***[7].

[7] **1999 (4) R.C.R (Criminal) 147**

20. According to the case of the prosecution, the secret informant had informed that the accused persons were robbing the passers-by but neither he disclosed as to who were those persons nor any person came forward to make complaint to the police that he was robbed by the accused. If, the accused persons were determined to commit robbery, then they could succeed in robbing the other passers-by because there were no police at that time and they had no fear at all. This fact further casts a doubt on the case of the prosecution regarding the face that the accused had robbed some other passers-by also.

21. There are material contradictions and discrepancies in the statement of the police officials. PW 7 ASI Surender Singh did that he had tried to join independent witness in the investigation but PW 4 HC Rajbir Singh and PW 5 EASI Joginder Singh expressed their ignorance whether the investigating officer had made any effort to join independent witness. PW7 ASI Surender Singh stated that the place from occurrence is situated at a distance of half a kilometre from Sonipat- kharkhoda road while PW 5 deposed that the same is about one kilometre. These material contradiction and discrepancies in the statement of the police officials render the case of the prosecution highly doubtful.

22. It is also worthwhile to add that PW7 ASI Surender Singh is the complainant in this case. Ruqqa Ex. PH was sent by him to the Police Station on the basis of which the first information report was registered. He is also the investigating officer of the case, therefore, his statement cannot be considered free from doubt. He must be an interested person in the success of the case. This fact further renders the case of the prosecution doubtful regarding the attempt made by the accused to commit robbery and recovery of knives from the possession of the accused. There is no evidence of the prosecution worth the name on record that accused persons belong to a gang of wandering or other gang of persons associated for the purpose of habitually committing theft or robbery. The law cited by the learned defence counsel is fully applicable to the facts of the instant case. Under such circumstances, it would not be safe and prudent to base conviction of the accused on such feeble and unbelievable evidence of the prosecution.

23. In view of the fore going discussion, I arrive at the conclusion that the prosecution has miserably failed to establish its case against the accused beyond reasonable doubt, therefore, they are entitled to acquittal. Accordingly, the accused are acquitted of the charges for which they are facing trial.

> 24. The case property shall stand confiscated to the State and it will be disposed of at appropriate time in accordance with law, after the expiry of period of limitation for appeal or revision or the decision thereon, if any, filed. File be consigned to the record room."

4. On 22 April 2017, the Delhi Government issued a notification inviting applications for direct recruitment to the post of Sub-Inspector (Executive) (Male)[8] in the Delhi Police, by the Delhi Police Examination 2017[9], to be conducted by the Staff Selection Commission[10] . The petitioner applied, and participated in the DPE, and was declared provisionally selected for the post of SI, on 3 November 2018, as per the final result of the DPE issued by the SSC. This was, however, subject to completion of codal formalities, including verification of character and antecedents of the candidates and checking of the documents submitted by them.

5. At the time of application, the petitioner had disclosed the fact that he had been arrayed as an accused in FIR 117 dated 12 July 2011 under Sections 398 and 401 of the IPC read with Sections 25, 54 and 59 of the Arms Act, registered at PS Kharkhoda, though he contended that he was falsely arrayed. It was also declared that he had been acquitted of the said offences *vide* judgment dated 8 November 2012 *supra*, passed by the learned ASJ, Sonepat.

[8] "SI" hereinafter
[9] "DPE" hereinafter
[10] "SSC" hereinafter

6. On 31 May 2019, the Deputy Commissioner of Police[11] (Recruitment) issued a Show Cause Notice to the petitioner, requiring him to show cause as to why his candidature for the post of SI, consequent on the DPE 2017 be not cancelled owing to his alleged involvement in the criminal case registered *vide* FIR 117. The petitioner replied on 7 June 2019, submitting that the case set up against him in the FIR was false and that he had been honourably acquitted of the alleged offences by the learned ASJ. In these circumstances, the petitioner submitted that he was entitled to be appointed as SI.

7. By order dated 24 September 2019, the DCP cancelled the petitioner's appointment as SI. The order reproduces the allegation in the FIR and proceeds to note that the accused in the FIR, including the petitioner, had been "acquitted of the charges as prosecution failed to establish the case as no independent police witness was joined and all PWs were police officials". Nonetheless, it was observed that the Screening Committee, to which the petitioner's case had been put up, was of the view that the petitioner had been involved in a serious offence of attempted robbery and was in possession of spring actuated knives, which itself indicated the petitioner's "criminal tendency with disrespect for law", rendering the petitioner unfit/unsuitable for service in a disciplined force such as the Police. The relevant portion of the order read thus:

> "… The accused including you were acquitted of the charges as prosecution failed to establish the case as no independent police

[11] "DCP" hereinafter

witness was joined and all PWs were police officials. However, the Screening Committee observed that *you were involved in serious nature of offence like attempt to robbery and were in possession of spring actuated knives for which section 25 Arms Act was also registered. Possession of knife to rob people shows your criminal tendency with disrespect for law and **as such** make you unfit/unsuitable for serice in a discipline force and law enforcing agency like police.* Sub-Inspectors (Exe) in Delhi are the cutting edge in the police functioning and upper subordinate rank officers. *The candidate having such dubious character* cannot be appointed as it would not be in public interest."

(Emphasis supplied)

8. Aggrieved thereby, the petitioner approached the learned Tribunal by way of OA 3065/2019, which stands dismissed by the impugned judgment.

9. Cases of candidates who were involved in a criminal case and thereafter seek appointment to the Delhi Police are, undisputedly, governed by Standing Order 398/2018[12] dated 18 October 2018, issued by the Commissioner of Police. Clause 3 of the Guidelines contained in the said SO, which specifically addresses such cases, reads thus:

"3. IN CASE OF DISCLOSURE OF INVOLVEMENT/ARREST/ACQUITTAL/DISCHARGE ETC. IN CRIMINAL CASE

(A) If a candidate had disclosed his/her acquittal/discharge/conviction in criminal case(s), complaint case(s) etc. in the Attestation form, the Appointing Authority after obtaining the information of appeal/revision against the acquittal/discharge etc. shall issue show cause notice for the cancellation his/her candidature before final decision in the matter.

[12] "SO 398/2018" hereinafter

(B) On receipt of candidate's reply, complete case may be sent to PHQ to assess the suitability for appointment in Delhi Police by the Screening Committee. From the observations of the Hon'ble Apex Court in cases of Mehar Singh, Parvez Khan and Pradeep Kumar, it is clear that mere acquittal in a criminal case does not automatically entitle the provisionally selected candidate for appointment to the post. The Screening Committee will still have the opportunity to consider antecedents and examine whether he/she is suitable for appointment to the post in Delhi Police. The Screening Committee must also be alive to 'the importance of trust reposed in it and must examine the candidate with utmost care.

(i) Even after due opportunity, the candidate still fails to enclose/provide the certified/photocopies of the record/ investigation and trial along with reply to the show cause notice, then an adverse inference will be drawn against him/her. However, in such a case the Department shall make all efforts to obtain the relevant documents from the authorities concerned and then the matter should be submitted before the Screening Committee for its recommendation.

(ii) The recommendation of the Screening Committee may not be as reasoned and speaking, as that of a quasi judicial authority, but it should contain the view of the Committee on:

a) The nature and extent of involvement of the candidate in the criminal case.

b) Whether he/she is acquitted on compromise/benefit of doubt/witnesses turning hostile or honorably. In cases where acquittal was out of compromise or benefit of doubt, the Screening Committee shall offer reasoned and speaking comments.

c) Nature and gravity of the charge etc.

d) Such comment of the Screening Committee would not amount to *its* sitting on the judgment like a trial court, but would only amount to assessment of the suitability of a candidate involved in a criminal case for appointment in Delhi Police.

> e) The final decision on the show cause notice shall be passed as per the recommendations of the Screening Committee. If the Committee does not recommend the case, show cause notice may be confirmed and candidature may be cancelled by passing a reasoned and speaking order. The Complete dossiers of such candidate must be kept in record."

10. The learned Tribunal has, in the impugned judgment, placed reliance on the decisions of the Supreme Court in ***State of Madhya Pradesh v Bunty***[13], ***Commissioner of Police v Raj Kumar***[14] and ***UOI v Methu Meda***[15] and has, thereafter, concluded thus:

> "11. From the above quoted judgments of the Hon'ble Apex Court it is evident that the Screening Committee would be within its right to not recommend case of a candidate who was involved in criminal proceedings and acquitted by the competent Court after due consideration.
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> 12. From the above, it is quite obvious that the Screening Committee considered all aspects taking into account the acquittal by the Court of AJM, Sonipat and the law laid down by the Hon'ble Apex Court has referred above in a catena of judgements and did not recommend his case. Accordingly his candidature was cancelled vide the impugned order dated 24.09.2019.
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> 13. In view of the above mentioned, we are of the view that the SCN dated 31.05.2019 and the impugned order dated 24.09.2019 are not in violation of any laid down procedures/rules. We also do not find any infirmity or illegality in the action of the respondents in cancelling the candidature of the applicant.
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> 14. The OA is thus devoid of merit and the same is accordingly dismissed. There shall be no order as to costs."

[13] **(2020) 17 SCC 654**
[14] **(2021) 8 SCC 347**
[15] **(2022) 1 SCC 1**

11. Aggrieved thereby, the petitioner is before this Court, under Article 226 of the Constitution of India.

12. We have heard Ms Manisha Parmar, learned Counsel for the petitioner and Mr Kshitij Chandra, learned Senior Panel Counsel for the respondents, at length.

13. Ms Parmar has pressed into service paras 16, 20 and 21 of the judgment dated 8 November 2012 of the learned ASJ. She submits that the respondent was not acquitted on benefit of doubt, but because the Police was unable to prove the case set up against him. She submits, further, that a reading of paras 16, 20 and 21 of the judgment of the learned ASJ disclose that there were material inconsistencies in the statements of the prosecution witnesses, and there was no explanation as to why no independent witness was joined. The learned ASJ has, in the circumstances, clearly stated that there was "a shadow of doubt on the case of the prosecution". In fact, in para 21, the learned ASJ concludes by observing that "the case of the prosecution" was "highly doubtful". Ms Parmar has placed reliance on the judgment of a coordinate Division Bench of this Court in ***Mahesh Kumar v UOI***[16], as also the judgments of the Supreme Court in ***Joginder Singh v UT of Chandigarh***[17] and ***Pramod Singh Kirar v State of MP***[18] **.**

[16] **2023 SCC OnLine Del 2113**
[17] **(2015) 2 SCC 377**
[18] **(2023) 1 SCC 423**

14. Mr Kshitij Chandra, on the other hand, supports the impugned judgment and states that the Courts should, in such cases, refer to the decision of the Screening Committee, especially as appointment is being made to a post in the Delhi Police.

Analysis

The law

15. The case of the petitioner, for appointment, was indisputably required to be considered in the light of SO 398/2018. The validity or legality of the said SO is not in challenge. The petitioner is, therefore, bound by it. From the SO, the following principles emerge:

(i) A Show Cause Notice, proposing cancellation of the candidature of the candidates seeking appointment to the Delhi Police could be issued even in a case of acquittal or discharge of the candidate in the criminal case.

(ii) Acquittal in the criminal case did not automatically entitled the provisionally selected candidates for appointment to the Delhi Police.

(iii) The Screening Committee, in arriving at a decision as to whether the candidate deserved to be appointed, had to bear in mind

(a) the antecedents of the candidate,

(b) the suitability of the candidate for appointment,

(c) whether the candidate was acquitted honourably or on "compromise/benefit of doubt/witnesses turning hostile", and

(d) the nature and gravity of the charge against the candidate.

It is important to note that the issue of whether the acquittal of the candidate was, or was not, honourable, thus assumes importance in the backdrop of the SO 398/2018. It is also important to note that SO 398/2018 contradistinguishes an honourable acquittal from an acquittal on compromise, benefit of doubt, or because the witnesses turned hostile.

16. The learned Tribunal has held that, once the Screening Committee had, in scrupulous adherence to these principles, found the respondent unsuitable for appointment as SI in the Delhi Police, the Tribunal, or the Court, could not direct otherwise.

17. The issue in controversy has been addressed by the Supreme Court on numerous occasions, and the position in law is well-settled. We proceed to advert to some of the authoritative decisions on the point.

18. ***Joginder Singh***

18.1 There are, admittedly, on facts, stark similarities between this case and the case before us. Joginder Singh[19] , the appellant before the Supreme Court, applied for recruitment as Constable in the Punjab police. He participated in the selection, and was declared successful. Thereafter, it was found that he was involved in an FIR registered at Bhiwani under Sections 148, 149, 323, 325 and 307 of the IPC. Consequent on trial, Joginder was acquitted on 4 October 1999. He, therefore, petitioned the learned Tribunal, seeking a direction that he be appointed as Constable. The learned Tribunal allowed the OA. The High Court, however, set aside the decision of the learned Tribunal. Aggrieved thereby, Joginder appealed to the Supreme Court.

18.2 The Supreme Court, in appeal, found, initially, in paras 16 and 17 of the report, that the acquittal of Joginder was honourable:

> "16. However, adverting to the criminal proceeding initiated against the appellant, we would first like to point out that the complainant did not support the case of the prosecution as he failed to identify the assailants and further admitted that the contents of Section 161 CrPC statement were not disclosed to him and his signatures were obtained on a blank sheet of paper by the investigating officer. Further, Sajjan Singh, who was an eyewitness of the case, who was also injured, had failed to identify the assailants. Both the witnesses were declared hostile on the request of the prosecution.
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> 17. The learned Additional Sessions Judge, Bhiwani held that the prosecution has not been able to prove in any way the allegations against the appellant. Thus, the learned Judge held that

[19] "Joginder" hereinafter

the prosecution had miserably failed to prove the charges levelled against the appellant in the criminal proceedings. Therefore, we are in agreement with the findings and judgment of the learned Additional Sessions Judge and are of the opinion that the acquittal of the accused from the criminal case was an honourable acquittal.

18. The learned counsel has rightly placed reliance upon the decision of this Court in ***Inspector General of Police v S. Samuthiram***[20] of which relevant paragraph is extracted as under:

> "24. The meaning of the expression 'honourable acquittal' came up for consideration before this Court in ***RBI v. Bhopal Singh Panchal***[21]. 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*."
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> (Italics in original; underscoring supplied)

18.3 Having thus held Joginder to have been honourably acquitted, the Supreme Court went on to hold that, as he had not concealed the fact of the criminal case having been registered against him and of his acquittal therein, at the time of applying for appointment, he was entitled to the full benefit of his honourable acquittal, which would include the right to be appointed as Constable. Denying him such appointment was held to be "like a vicarious punishment, which is not

[20] **(2013) 1 SCC 598**
[21] **(1994) 1 SCC 541**

permissible in law". Apart from the "small dent in the name of this criminal case in which he has been honourably acquitted", the Supreme Court found that there was no other unsavoury antecedent visiting Joginder.

19. *Pramod Singh Kirar*

19.1 This was also a case of cancellation of appointment to the post of Police Constable on the ground of involvement, by the appellant Pramod Singh Kirar[22] in an offence under Section 498-A of the IPC, of which he was acquitted. There was no suppression, by Pramod, of his involvement in the criminal case, resulting in his acquittal.

19.2 The Supreme Court observed that the matrimonial dispute between Pramod and his wife ended in settlement, his wife did not support the case of the prosecution and was declared hostile and other prosecution witnesses examined in the cases did not co-operate the version of the prosecution. Thus, it was found that the offence for which Pramod was tried ultimately resulted in acquittal, arising out of a matrimonial dispute which ended in settlement out of court. In para 11 of the report, the Supreme Court holds, therefore, that "under the circumstances and the peculiar facts of the case, the appellant could not have been denied the appointment solely on the aforesaid ground that he was tried for the offence under Section 498-A IPC and that too, for the offence alleged to have happened in the year 2001 for

[22] "Pramod" hereinafter

which he was even acquitted in the year 2006 may be on settlement (between husband and wife)."

19.3 This judgment, in our considered opinion, cannot be said to support the case that Mr. Parmar seeks to canvass. The Supreme Court itself observed that the decision was rendered in the peculiar facts of the case before it. The criminal case against Pramod arose out of a matrimonial dispute with his wife. That dispute was settled, and the wife therefore did not press charges. Other witnesses turned hostile. Such a case, quite obviously, turns on its own facts, and the Supreme Court has repeatedly emphasised, in the judgment, that the dispute was ultimately one between husband and wife.

20. *Methu Meda*

20.1 A detailed analysis of the law on the point is to be found in the decision in ***Methu Meda***, on which the learned Tribunal has placed reliance. In that case, the respondent Methu Meda[23] was tried for an alleged offence of kidnapping for ransom. He was acquitted by the Sessions Court as the complainant, who was allegedly abducted by Methu, turned hostile. Thereafter, as his candidature for appointment to the Central Industrial Security Force[24] was cancelled, Methu sought legal redress, and the case travelled to the Supreme Court. Here, too, there was complete disclosure, by Methu, of the criminal case that had been registered against him. The Screening Committee, nonetheless,

[23] "Methu", hereinafter
[24] "CISF", hereinafter

refused to uphold his appointment, in view of the gravity of the charges against him.

20.2 Paras 9 to 21 of the report merit reproduction:

> 9. After having heard the learned counsel for the parties at length, the question which arises in the present appeal is whether the decision of the Screening Committee rejecting the candidature of the respondent, when there was no allegation of malice against the Screening Committee and the respondent-writ petitioner had been acquitted of serious charges, inter alia, of kidnapping for ransom as some prosecution witnesses had turned hostile, ought to have been interfered with.
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> 10. While addressing the question, as argued the meaning of expression "acquittal" is required to be looked into. The expressions "honourable acquittal", "acquitted of blame" and "fully acquitted" are unknown to the Code of Criminal Procedure or the Penal Code, 1860. It has been developed by judicial pronouncements. In ***State of Assam* v. *Raghava Rajgopalachari***[25], the effect of the word "honourably acquitted" has been considered in the context of the Assam Fundament Rules (FR) 54(*a*) for entitlement of full pay and allowance if the employee is not dismissed. The Court has referred to the judgment of ***Robert Stuart Wauchope* v. *Emperor***[26], in the context of expression "honourably acquitted", Lort-Williams, J. observed as thus:
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> > "The expression "honourably acquitted" is one which is unknown to courts of justice. Apparently it is a form of order used in courts martial and other extra-judicial tribunals. We said in our judgment that we accepted the explanation given by the appellant, believed it to be true and considered that it ought to have been accepted by the government authorities and by the Magistrate. Further we decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what the government authorities term "honourably acquitted".

[25] **1972 SLR 44 (SC): 1967 SCC OnLine SC 1**
[26] **ILR (1934) 61 Cal 168**

11. In ***R.P. Kapur v. Union of India***[27] , it is observed and held by Wanchoo, J., as thus: (AIR p. 792, para 9)

> "9. … Even in case of acquittal, proceedings may follow where the acquittal is other than honourable."

12. In view of the above, if the acquittal is directed by the court on consideration of facts and material evidence on record with the finding of false implication or the finding that the guilt had not been proved, accepting the explanation of accused as just, it be treated as honourable acquittal. In other words, if prosecution could not prove the guilt for other reasons and not "honourably" acquitted by the court, it be treated other than "honourable", and proceedings may follow.

13**.** The expression "honourable acquittal" has been considered in ***S. Samuthiram*** after considering the judgments in ***RBI* v. *Bhopal Singh Panchal***[28] and ***R.P. Kapur***, ***Raghava Rajgopalachari***; this Court observed that the standard of proof required for holding a person guilty by a criminal court and enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing guilt of the accused is on the prosecution, until proved beyond reasonable doubt. In case, the prosecution failed to take steps to examine crucial witnesses or the witnesses turned hostile, such acquittal would fall within the purview of giving benefit of doubt and the accused cannot be treated as honourably acquitted by the criminal court. While, in a case of departmental proceedings, the guilt may be proved on the basis of preponderance of probabilities, it is thus observed that acquittal giving benefit of doubt would not automatically lead to reinstatement of candidate unless the rules provide so.

14. Recently, this Court in ***State (UT of Chandigarh)* v. *Pradeep Kumar***[29], relying upon the judgment of ***S. Samuthiram*** said that acquittal in a criminal case is not conclusive of the suitability of the candidates on the post concerned. It is observed, acquittal or discharge of a person cannot always be inferred that he was falsely involved or he had no criminal antecedent. The said issue has further been considered in ***State* v. *Mehar Singh***[30] holding non-examination of key witnesses

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[27] **AIR 1964 SC 787**
[28] **(1994) 1 SCC 541**
[29] **(2018) 1 SCC 797**
[30] **(2013) 7 SCC 685**

leading to acquittal is not honourable acquittal, in fact, it is by giving benefit of doubt. The Court said that nature of acquittal is necessary for core consideration. If acquittal is not honourable, the candidates are not suitable for government service and are to be avoided. The relevant factors and the nature of offence, extent of his involvement, propensity of such person to indulge in similar activities in future, are the relevant aspects for consideration by the Screening Committee, which is competent to decide all these issues.

15. In the present case, the charges were framed against the respondent for the offences punishable under Sections 347/327/323/506 Part II and 364-A IPC. He was acquitted after trial vide judgment dated 19-3-2010 by the Sessions Judge, Jhabua because the person kidnapped Nilesh and also his wife have not supported the case of prosecution. As per prosecution, the complainant was beaten by the respondent and the said fact found support from the evidence of the doctor. Therefore, it appears that the Committee was of the view that acquittal of the respondent, in the facts of the present case, cannot be termed as "honourable acquittal" and the said acquittal may be treated by giving benefit of doubt.

16. The law with regard to the effect and consequence of the acquittal, concealment of criminal case on appointments, etc. has been settled in ***Avtar Singh* v. *Union of India***[31], wherein a three-Judge Bench of this Court decided, as thus: (SCC pp. 507-08, para 38)

> "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.

[31] **(2016) 8 SCC 471**

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.

(emphasis in original)"

17. In view of the above, in the facts of the present case, as per paras 38.3, 38.4.3 and 38.5 of ***Avtar Singh*** *case*, it is clear that the employer is having right to consider the suitability of the candidate as per government orders/instructions/rules at the time of taking the decision for induction of the candidate in employment. Acquittal on technical ground in respect of the offences of heinous/serious nature, which is not a clean acquittal, the employer may have a right to consider all relevant facts available as to the antecedents, and may take appropriate decision as to the continuance of the employee. Even in case, truthful declaration regarding concluded trial has been made by the employee, still the employer has the right to consider antecedents and cannot be compelled to appoint the candidate.

18. If we look into the facts of the present case, the instructions of the Home Department dated 1-2-2012, prevalent at

the time of selection and appointment specify that such candidate would not be considered for recruitment. In Circular No. 2/2010 dated 31-3-2010, issued by the Office of the Training Sector, National Industrial Security Academy, Central Industrial Security Force (Ministry of Home Affairs), it is clarified that if a candidate is found involved in any criminal case, whether it is finalised or pending, the candidate may not be allowed to join without further instructions from the headquarters. After seeking instructions from the headquarters, the Standing Committee has taken the decision on 15-10-2012 that because of acquittal giving benefit of doubt, the respondent-writ petitioner was not considered eligible for appointment in CISF.

19. In the aforesaid fact, guidance can further be taken from the judgment in ***Mehar Singh***, in paras 23, 34 & 35, this Court observed, as thus: (SCC pp. 698-99 & 703)

> "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 the 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.
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> ***
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> 34. The respondents are trying to draw mileage from the fact that in their application and/or attestation form they have disclosed their involvement in a criminal case. We do not see how this fact improves their case. Disclosure of these facts in the application/attestation form is an essential requirement. An aspirant is expected to state these facts

honestly. Honesty and integrity are inbuilt requirements of the police force. The respondents should not, therefore, expect to score any brownie points because of this disclosure. Besides, this has no relevance to the point in issue. It bears repetition to state that while deciding whether a person against whom a criminal case was registered and who was later on acquitted or discharged should be appointed to a post in the police force, what is relevant is the nature of the offence, the extent of his involvement, whether the acquittal was a clean acquittal or an acquittal by giving benefit of doubt because the witnesses turned hostile or because of some serious flaw in the prosecution, and the propensity of such person to indulge in similar activities in future. This decision, in our opinion, can only be taken by the Screening Committee created for that purpose by the Delhi Police. If the Screening Committee's decision is not mala fide or actuated by extraneous considerations, then, it cannot be questioned.

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 the 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 trust reposed in it and must treat all candidates with even hand."

20. In view of the aforesaid, it is clear the respondent who wishes to join the police force must be a person of utmost rectitude and have impeccable character and integrity. A person having a criminal antecedents would not be fit in this category. The employer is having right to consider the nature of acquittal or decide until he is completely exonerated 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 and the decision of the Committee would be final unless mala fide. In ***Pradeep Kumar***, this Court has taken the same view, as reiterated in ***Mehar Singh***. The same view has again been reiterated by this Court in ***Raj Kumar***.

21. As discussed hereinabove, the law is well-settled. If a person is acquitted giving him the benefit of doubt, from the charge of an offence involving moral turpitude or because the witnesses turned hostile, it would not automatically entitle him for the employment, that too in disciplined force. The employer is having a right to consider his candidature in terms of the circulars issued by the Screening Committee. The mere disclosure of the offences alleged and the result of the trial is not sufficient. In the said situation, the employer cannot be compelled to give appointment to the candidate. Both the Single Bench and the Division Bench of the High Court have not considered the said legal position, as discussed above in the orders impugned. Therefore, the impugned orders passed by the learned Single Judge of the High Court in ***Methu Meda* v. *Union of India*** and the Division Bench in ***Union of India* v. *Methu Meda*** are not sustainable in law, as discussed hereinabove.

21. *State of Rajasthan v Love Kush Meena*[32]

21.1 The Supreme Court identified the "moot point" which arose for consideration before it, in this case, as "whether a benefit of doubt resulting in acquittal of the respondent in a case charged under Sections 302, 323, 341/34 of the Penal Code, 1860 can create an

[32] **(2021) 8 SCC 774**

opportunity for the respondent to join us a Constable in the Rajasthan Police Service."

21.2 The respondent Love Kush Meena[33] was tried for having committed offences under Section 302, 323 and 341 read with Section 34 of the IPC, on the basis of a complaint by one Babulal. It was alleged that one Jagdish and Dayaram attempted to till a disputed field, which was obstructed by the maternal aunt of Babulal and that Jagdish, thereupon, drove a tractor over her and killed her. Babulal and his associates claimed to have rushed to her aid but to have been beaten up, with injuries inflicted by Dayaram, Jagdish, one Bodan and the respondent Meena. They were all, therefore, tried under the aforenoted Sections of the IPC. During the trial, a compromise was entered into, between the complainant Babu Lal and his associates and the accused, including Meena, as a result of which they turned hostile in the trial which continued for the offences under Sections 302/34 IPC. Based thereon, the learned ASJ, vide judgment dated 1 May 2009, held that "the prosecution had failed to prove the case against the accused persons *beyond reasonable doubt*".

21.3 Meena, after his acquittal, applied for appointment as a Constable in the Rajasthan Police Service. The advertisement inviting applications for recruitment specified that candidates who had not been honourably acquitted by the Court would not be eligible to participate in the recruitment process. Meena participated, and was

[33] "Meena", hereinafter

successful. He disclosed the facts relating to the criminal case against him. His candidature was, however, cancelled on the basis of the "serious criminal offence" against him. Meena challenged the cancellation before the High Court of Rajasthan, which are remitted the matter for *de novo* consideration. In the *de novo* exercise, Meena was once again held to be ineligible for recruitment as the charges against him were not of a trivial nature but were serious offences, and he had not been acquitted honourably by the learned ASJ. Meena again challenged the said decision before the Rajasthan High Court. The High Court allowed his writ petition, against which the State appealed to the Supreme Court.

21.4 Paras 24 to 29 of the judgment of the Supreme Court read thus:

> "24**.** Examining the controversy in the present case in the conspectus of the aforesaid legal position, *what is important to note is the fact that the view of this Court has depended on the nature of offence charged and the result of the same. The mere fact of an acquittal would not suffice but rather it would depend on whether it is a clean acquittal based on total absence of evidence or in the criminal jurisprudence requiring the case to be proved beyond reasonable doubt, that parameter having not been met, benefit of doubt has been granted to the accused.* No doubt, in that facts of the present case, the person who ran the tractor over the deceased lady was one of the other co-accused but the role assigned to the others including the respondent herein was not of a mere bystander or being present at site. The attack with knives was alleged against all the other co-accused including the respondent.
>
> 25**.** *We may also notice this is a clear case where the endeavour was to settle the dispute, albeit not with the job in mind. This is obvious from the recital in the judgment of the trial court that the compoundable offences were first compounded during trial but since the offence under Sections 302/34 IPC could not be compounded, the trial court continued and qua those offences the*

witnesses turned hostile. We are of the view that this can hardly fall under the category of a clean acquittal and the Judge was thus right in using the terminology of benefit of doubt in respect of such acquittal.

26**.** The judgment in ***Avtar Singh*** on the relevant parameter extracted aforesaid clearly stipulates that where in respect of a heinous or serious nature of crime the acquittal is based on a benefit of reasonable doubt, that cannot make the candidate eligible.

27**.** We may also note the submission of the learned counsel for the respondent that as per para 38.3 in ***Avtar Singh*** *case*, the employer has to take into consideration the government orders/instructions/rules applicable to the employee at the time of taking a decision. It is her say that the issue whether the Circular dated 28-3-2017 would apply or not was *res integra* in view of the earlier order of the learned Judge dated 14-5-2018. She has further contended that, in any case, the circular had come into force and as per the judgment in ***Avtar Singh*** *case* para 38.4, it is the date of decision which is material and as on the date of decision dated 23-5-2017, the said circular was applicable.

28**.** *We may note here that the Circular dated 28-3-2017 is undoubtedly very wide in its application. It seeks to give the benefit to candidates including those acquitted by the court by giving benefit of doubt. However, such circular has to be read in the context of the judicial pronouncements and when this Court has repeatedly opined that giving benefit of doubt would not entitle candidate for appointment, despite the circular, the impugned decision of the competent authority dated 23-5-2017 cannot be said to suffer from infirmity as being in violation of the circular when it is in conformity with the law laid down by this Court.*

29. We are, thus, of the view that the impugned orders cannot be sustained and the appellants are well within their rights to have issued the order dated 23-5-2017."

22. *Bunty*

22.1 Bunty applied for recruitment as Constable in the Madhya Pradesh Police Service. He cleared the recruitment test and was

selected. Later, however, he was denied appointment on the basis of the report of the Screening Committee, as he had been involved in criminal proceedings under Sections 392 and 411 of the IPC. Prior to his appointment, however, Bunty had already been acquitted by the competent criminal court by extending, to him, benefit of doubt. The issue before the Supreme Court was whether, in such circumstances, denial of appointment to Bunty was justified.

22.2 The Supreme Court held thus, in paras 8 to 14 of the report:

> "8. After hearing the learned counsel for the parties, we are of the opinion that the respondent had participated in the selection process in the year 2013, at that time the said criminal case was pending consideration and he has been acquitted subsequently, vide judgment and order dated 7-1-2015 all throughout during selection process the case was pending consideration and as certain witnesses have turned hostile which is not unusual. The respondent knew very well about the pendency of the case against him and *it is not uncommon to see that witnesses turned hostile. In the aforesaid circumstance, it cannot be said to be case of clear acquittal, in criminal case, he was given benefit of doubt not acquitted because the case against him was found to be false. Thus, due to such acquittal appointment could not have followed as a matter of course* as observed by the Division Bench of the High Court.
>
> 9. Considering the nature of allegation in the case, it was a case of impersonation as a police officer and thereby committing the offence under Sections 392 and 411 IPC. *It was a case of the serious kind, which involved moral turpitude and having not been granted clean acquittal in the criminal case merely by the grant of benefit of doubt, clouds cannot be said to be clear as to the antecedents of the respondent. Thus, the perception formed by the Screening Committee that he was unfit to be inducted in the disciplined police force was appropriate.* In the aforesaid factual matrix, decision of Scrutiny Committee could not be said to be such which warranted judicial interference.

10. The learned Single Judge of the High Court in the factual matrix projected, has rightly relied upon the decision in ***Mehar Singh***, wherein this Court has observed as under:

> "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 crime 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*."

11. That apart, when we consider the decision of the three-Judge Bench of this Court in ***Avtar Singh*** the Court observed:

> "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."

12. In ***Pradeep Kumar*** this Court has observed:

> "15. From the above details, we find that the Screening Committee examined each and every case of the respondents and reasonings for their acquittal and taken the decision. While deciding whether a person involved in a criminal case has been acquitted or discharged should be appointed to a post in a police force, nature of offence in which he is involved, whether it was an honourable acquittal or only an extension of benefit of doubt because of witnesses turned hostile and flaws in the prosecution are all the aspects to be considered by the Screening Committee for taking the decision whether the candidate is suitable for the post. As pointed out earlier, the Screening Committee examined each and every case and reasonings for their acquittal and took the decision that the respondents are not suitable for the post of Constable in Chandigarh Police. The procedure followed is as per Guideline 2(A)(*b*) and object of such screening is to ensure that only persons with impeccable character enter police force. While so, *the court cannot substitute its views for the decision of the Screening Committee.*"
>
> 13**.** The law laid down in the aforesaid decisions makes it clear that *in case acquittal in a criminal case is based on the benefit of doubt or any other technical reason, the employer can take into consideration all relevant facts to take an appropriate decision as to the fitness of an incumbent for appointment/continuance in service. The decision taken by the Screening Committee in the instant case could not have been faulted by the Division Bench.*
>
> 14**.** *Coming to the decision relied upon by the learned counsel appearing for the respondent in* ***Joginder Singh*** *we are of the opinion that it was not the case of the decision taken by the Screening Committee on due consideration of the material on record of the case. Thus, the decision is distinguishable.* In the peculiar facts and circumstances of the case, we are inclined to hold that the decision of the Screening Committee was appropriate."

23. The principle that the decision of the Screening Committee ought ordinarily to be respected, in the absence of any allegation of

mala fides against the Screening Committee itself stands reiterated in ***Imtiyaz Ahmad Malla v State of J & K***[34].

24. ***State of M.P. v Bhupendra Yadav***[35]

24.1 The respondent Bhupendra Yadav[36] was tried for having allegedly committed offences under Sections 341 and 354(D) of the IPC read with Section 11(D)/12 of the Protection of Children from Sexual Offences Act, 2012[37]. During the course of trial, the minor complainant turned hostile, consequent to a settlement having been arrived at, between Yadav and his compatriots. Other prosecution witnesses also turned hostile. In that view of the matter, the learned trial Court acquitted Yadav and other accused of the charges against them.

24.2 The next year, Yadav participated in an entrance examination for filling posts of Constables in the Madhya Pradesh Police Service. He was selected. Later, he was held to be unfit for appointment in view of his involvement in the aforenoted criminal case in which he had been acquitted only because the offence was not proved beyond doubt.

24.3 Yadav petitioned the High Court and, in due course of time, the matter travelled to the Supreme Court. After noting the earlier

[34] **2023 SCC OnLine SC 205**
[35] **2023 SCC OnLine SC 1181**
[36] "Yadav" hereinafter
[37] "the POCSO Act" hereinafter

decisions rendered in, among others, ***Avtar Singh*** and ***Daya Shankar Yadav v UOI***[38], the Supreme Court observed and held thus, in paras 16 and 21 to 25 of the report:

> "16. As can be discerned from the above decision, an employer has the discretion to terminate or condone an omission in the disclosure made by a candidate. While doing so, *the employer must act with prudence, keep in mind the nature of the post and the duties required to be discharged. Higher the post, more stringent ought to be the standards to be applied. Even if a truthful disclosure has been made, the employer is well within its right to examine the fitness of a candidate and in a concluded criminal case, keep in mind the nature of the offence and verify whether the acquittal is honourable or benefit has been extended on technical reasons. If the employer arrives at a conclusion that the incumbent is of a suspect character or unfit for the post, he may not be appointed or continued in service.*
>
> *****
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> 21. On applying the law expounded by this Court in a series of decisions to the facts of the instant case, we find that the Division Bench of the High Court has dismissed the appeal preferred by the appellant - State Government and set aside the order passed by the learned Single Judge who had upheld the order passed by the Competent Authority, terminating the services of the respondent on the ground that he was candid enough to make a disclosure in his verification form stating that he had been chargesheeted in a criminal case wherein he was later on acquitted and there was no other criminal case pending against him at the relevant time.
>
> 22. We are, however, unable to concur with the aforesaid view. Even though the respondent had truthfully declared that he was involved in a criminal case which was decided by the trial Court *vide* judgment 26th October, 2015, *on perusing the facts of the said case as noted hereinabove and the observations made in the judgment, quite clearly, this was not a case of clean acquittal.* It is evident from the facts narrated that after the chargesheet was filed, the respondent had arrived at a compromise with the complainant and filed an application under Section 320 of the CrPC, based on which the offence under Section 341 IPC was

[38] **(2010) 14 SCC 103**

compounded. As for the remaining offences for which the respondent was charged i.e. Section 354(D) of the IPC and Section 11 (D)/12 of the POCSO Act, they were non compoundable and therefore, the matter was taken to trial. *The respondent was acquitted by the trial Court primarily on account of the fact that the complainant did not support the case set up by the prosecution and the other prosecution witnesses had turned hostile. In such circumstances, the respondent's plea that he had been given a clean acquittal in the criminal case, is found to be devoid of merits.*

23. This is a classic example of the situation contemplated in para 38.4.3 of ***Avtar Singh*** where the charges framed against the respondent herein involved moral turpitude and though he was acquitted on the prosecution witnesses having turned hostile, but *given the facts and circumstances of the case which led to his acquittal, we are of the view that the appellant - State Government was well within its right to exercise its discretion against the respondent and terminate his services on the ground that he was unfit for appointment in the police department.* Here was a case where the complainant had reneged from the statement made to the police in view of a settlement arrived at with the respondent. It is noteworthy that the incident, subject matter of the criminal case had occurred on 14th February, 2015, and judgment was pronounced by the trial Court on 26th October, 2015. In the very next year, when the appellant - State Government invited applications for appointment to the post of Constable, the respondent had submitted his application. Even though this is a case of candid disclosure of the criminal case on the part of the respondent, which had culminated in an acquittal, *but having regard to the fact that the prosecution could not succeed in proving the case against the respondent for the reasons noted hereinabove and further, being mindful of the fact that the case involved moral turpitude and the respondent was charged with non-compoundable offences of a serious nature, we are of the firm view that the judgment of the trial Court cannot be treated as a clean acquittal.*

24. The aforesaid aspects were rightly factored in by the appellant - State Government while issuing the communication dated 24th August, 2017 and declaring that the respondent was unfit for appointment to the said post. *The yardstick to be applied in cases where the appointment sought relates to a Law Enforcement Agency, ought to be much more stringent than those applied to a routine vacancy. One must be mindful of the fact that once appointed to such a post, a responsibility would be cast on*

the respondent of maintaining law and order in the society, enforcing the law, dealing with arms and ammunitions, apprehending suspected criminals and protecting the life and property of the public at large. Therefore, the standard of rectitude to be applied to any person seeking appointment in a Law Enforcement Agency must always be higher and more rigourous for the simple reason that possession of a higher moral conduct is one of the basic requirements for appointment to a post as sensitive as that in the police service.

25. We are, therefore, of the opinion that mere acquittal of the respondent in the criminal case would not automatically entitle him to being declared fit for appointment to the subject post. The appellant-State Government has judiciously exercised its discretion after taking note of all the relevant factors relating to the antecedents of the respondent. In such a case, even one criminal case faced by the respondent in which he was ultimately acquitted, apparently on the basis of being extended benefit of doubt, can make him unsuitable for appointment to the post of a Constable. *The said decision taken by the appellant-State Government is not tainted by any malafides or arbitrariness for the High Court to have interfered therewith.* As a result, the judgment dated 17th November, 2017, passed by the learned Single Judge is upheld while quashing and setting aside the impugned judgment dated 24th January, 2018, passed by the Division Bench of the High Court. The appeal is allowed. Parties are left to bear their own costs."

(Emphasis supplied)

The fallout

25. The litmus test that seems to emerge, from a reading of the above authorities, is the basis of the acquittal of the candidate in the criminal case. In the case of candidates seeking entry into Police services, or other services dealing with law and order and security, one cannot really distinguish between offence and offence on the basis of "severity". All offences which involve moral turpitude, or criminal acts or intimidation, must fall under the same umbrella. For a

prospective police person, a taint of robbery or thievery is as damning as one of murder.

26. To repeat, the litmus test is the basis of the acquittal of the candidate concerned. The overwhelming view of the Supreme Court, in its recent decisions, cited *supra*, appears to be that it is only where there is honourable acquittal of the candidate, in that the candidate is found innocent of the crime of which he is accused by the trial Court, that a right to appointment may be said to exist. Where the acquittal is because the prosecution has not been able to garner the requisite evidence or, more particularly, where witnesses have turned hostile, the candidate cannot claim a right to appointment based on his acquittal in the criminal case. It matters little whether the criminal court terms the acquittal to be on "benefit of doubt" or because the prosecution has failed to prove the case "beyond reasonable doubt". There is, clearly, a qualitative difference between holding that the accused as innocent of the charges against him, and that the charges against the accused have not been proved beyond reasonable doubt. The Supreme Court has treated, in ***Love Kush Meena***, an acquittal on the ground that the charges have not been proved against the accused beyond reasonable doubt as equivalent to an acquittal on the basis of the benefit of doubt.

27. In the ultimate eventuate, the Court is required to examine, for itself, the basis on which the concerned criminal Court has acquitted

the candidate, rather than proceed merely on the basis of the terminology used by the concerned Court.

28. *In a case of clean acquittal, nothing adverse can be permitted to visit the employee. A person who has suffered a baseless trial, for an allegation which is later found to be inherently unbelievable, has to be recompensed for what he has undergone, not further punished by denying him employment. It is for this reason, obviously, that* ***Avtar Singh****, in the exigencies it envisages in the various sub-paras of para 38.4, does not refer to the case of a clean acquittal, for it is but axiomatic that a clean acquittal is as good as no involvement in the criminal case at all. We have not, in fact, come across a single decision which holds that, even in a case of clean acquittal, and lack of any other adverse antecedents, appointment can be denied to the candidate.* ***Joginder Singh****, for that matter, unequivocally holds otherwise.*

Applying the law to the facts

29. The considerations which have weighed with the learned ASJ, in acquitting the petitioner, are the following:

(i) The case of the prosecution was based solely on the statements of Police officials. No independent witness joined the investigation. There was discrepancy, among the statements of the Police officials, regarding the reason for not being able to

join independent witnesses. In any event, no satisfactory explanation, for not joining independent witnesses, was forthcoming. This cast doubt on the case of the prosecution.

(ii) As police officials generally were interested in the success of their case, they often acted overzealously. Their statements were, therefore, required to be scrutinised more minutely.

(iii) The place of occurrence was on a straight road. The accused persons could, therefore, easily see any vehicle arriving from either side. *It was not believable, therefore, that the accused stopped the motorcycle of the Police personnel, who were pretending to be civilians, without any precaution.*

(iv) *Though the accused were armed with spring-actuated knives, it was surprising that they did not offer any resistance when the Police party tried to apprehend them. This, again, was not believable.* As persons of ordinary prudence, they would have used their weapons to succeed in escaping.

(v) Though the secret informant of the Police personnel stated that the accused were robbing passers-by, he neither disclosed the persons who were robbed, nor did any person come forward to the Police and claim to have been robbed by the accused. *This again cast doubt on the case of the prosecution.*

(vi) The FIR was registered on the basis of a *ruqqa* prepared by the complainant, who was an interested witness. The statement could not, therefore, be straightaway believed. *This further rendered the case of the prosecution, regarding the alleged attempt by the accused to commit robbery, as well as the recovery of knives from their possession, doubtful.*

(vii) *No evidence, worth the name, had been produced by the prosecution, on the basis of which it would be held that the accused belonged to a gang of wandering persons associated for habitually committing theft or robbery.*

(viii) *Conviction of the accused could not be based on such "feeble and unbelievable evidence of the prosecution".*

In these circumstances, the learned ASJ has held that the prosecution had "*miserably failed to establish its case against the accused beyond reasonable doubt*" and that the accused – including the petitioner – were, therefore, entitled to acquittal.

30. We are not examining, here, the correctness of the judgment of the learned ASJ. The entitlement of the petitioner to appointment has to be assessed on the basis of the said judgment as it stands. It is nobody's case that the decision of the learned ASJ has been overturned by any superior Court.

31. The findings of the learned ASJ are clear and categorical. They may not, in so many words, hold that the accused – including the petitioner – were innocent of the allegations against them, but effectively do so. The learned ASJ has clearly refused to believe the allegations against the petitioner and other accused. There is not even an expression of doubt, in the judgment of the learned ASJ, regarding the fact that a false and unsustainable case had been set up against the accused, including the petitioner. The case set up by the Police and the prosecution has been castigated to be "feeble *and unbelievable*". No evidence worth the name, to link the petitioner and other accused, with the allegations against them, has been found to exist. The overall circumstances of the case, and the location and situation in which the alleged interception of the petitioner and other accused, by the Police, have been found to be incompatible with the allegations against the accused.

32. Significantly, the learned ASJ has even held that the allegation of recovery of knives from the accused – including the petitioner – not to have been proved. As such, this crucial circumstance, which seems to have weighed heavily with the Screening Committee in holding the petitioner to be unfit for appointment, also stands discredited in the judgment of the learned ASJ.

33. No doubt, where the Screening Committee has holistically assessed all the material on record, and come to a conclusion that the candidate concerned is unfit for appointment to a disciplined Force,

the Court is required to defer to the decision of the Screening Committee, in the absence of any allegation of *mala fides*. In the present case, however, it is not possible for us to hold that the Screening Committee has appreciated all the facts of the case, or has taken a holistic view of the judgment of the learned ASJ, whereby the accused were acquitted, before arriving at a conclusion that the petitioner was unfit for appointment.

34. Irrespective of the terminology used by the learned ASJ, therefore, we are of the opinion that the present case is one of clean acquittal of the accused, including the petitioner, and not the case of acquittal on benefit of doubt.

35. Though the learned ASJ may have, in conclusion, observed that the prosecution had failed to bring home the case against the accused beyond reasonable doubt, a proper reading of the judgment of the learned ASJ reveals that, in fact, the opinion of the Court was that there was no evidence to link the accused with the charge against them. The entire story set up by the prosecution has been found to be incredible and unworthy of acceptance.

36. ***Avtar Singh***, which, in all later cases, has been regarded as the gold standard on the issue, specifically holds, in para 38.4.3, thus:

> "38.4.3If 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."

To our mind, the acquittal of the petitioner, by the learned ASJ, was clean. Thus, the case does not even attract para 38.4.3 of ***Avtar Singh***, which cedes discretion to the employer only in cases where the acquittal of the candidate is not clean, or is on benefit of doubt.

37. Were the judgment of the Trial Court, which acquits the candidate, to contain even a shred of doubt regarding his innocence, or display any lack of equivocation regarding the innocence of the candidate, then, perhaps, the employer may be justified in refusing to appoint him. In a case such as the present, where the learned ASJ has, without using so many words, practically regarded the case as planted, and has expressed complete faith in the case against the petitioner being unbelievable on several counts, the only conclusion is that there is *no cloud whatsoever* on the petitioner's antecedents.

38. The decision of the Screening Committee, as contained in the order dated 24 September 2019, is completely at odds with the judgment of the learned ASJ, and is inherently presumptuous. It defeats comprehension as to how the Screening Committee could allege that the petitioner was "involved in serious nature of offence like attempt to robbery" when the learned ASJ has held otherwise. The alleged possession, by the petitioner, of spring actuated knives, which appears to be what has most disturbed the Screening Committee, has also been disbelieved by the learned ASJ. The use of

the words "as such" indicates that it was the alleged possession of knives by the accused, including the petitioner, which has most influenced the Screening Committee to hold him unfit for appointment.

39. We are constrained to hold that the Screening Committee has effectively sat in appeal over the judgment of the learned ASJ, which it was not competent to do. It is nobody's case that the petitioner's antecedents were otherwise murky. The only blot on his escutcheon, if one may call it that, was the criminal trial in which he found himself involved. The Screening Committee had, therefore, before it *only* the judgment of the learned ASJ on the basis of which it had to determine the suitability of the petitioner for appointment as SI. It was, therefore, required to scrupulously appreciate the judgment of the learned ASJ, and we are of the considered opinion that it has failed to do so. The observations of the Screening Committee are totally at variance with those of the learned ASJ and, therefore, we cannot accord, to the decision of the Screening Committee, the respect which it otherwise commands.

40. According to us, therefore, the decision of the Screening Committee suffers from non-application of mind and is, therefore, perverse, as understood in law, as it fails to appreciate the material before it in the proper perspective.

41. In that view of the matter, we find ourselves unable to sustain the impugned judgment of the learned Tribunal. In our view, the tenor

of the judgment dated 8 November 2012 of the learned ASJ resulted in the petitioner being entitled to be appointed as SI, as he had been otherwise found fit for appointment.

Conclusion

42. As a result, the writ petition succeeds and is allowed. The impugned judgment dated 10 June 2022 passed by the learned Tribunal is quashed and set aside. The respondents are directed to grant appointment, to the petitioner, as SI, consequent to the DPE-2017, w.e.f. the date when others who had participated in the examination and succeeded, were granted appointment. The petitioner shall not be entitled to back wages but shall be entitled to all other benefits, including notional fixation of pay from the date when others, who had participated with the petitioner and had been appointed as SI, joined the service.

43. The respondents are directed to implement this judgment within a period of four weeks.

44. There shall be no orders as to costs.

C. HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J.

November 4, 2024

Click here to check corrigendum, if any