

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2443/2004

New Delhi, this the ¹²_{th} day of March, 2005

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.Singh, Member (A)**

Shyoram Yadav
S/o Shri Ram Kishore
Village & Post Office
Bhungara Ahir
District Alwar
Rajasthan

Delhi Address:

RZ-H9, Nanda Block
Mahavir Enclave
Palam Colony
New Delhi – 110 045.

... Applicant

(By Advocate: Shri Shyam Babu)

Versus

1. Government of NCT of Delhi
Through its Chief Secretary
Players Building, I.P.Estate
New Delhi.
2. The Commissioner of Police – Delhi
Police Headquarters
I.P.Estate
New Delhi.
3. The Deputy Commissioner of Police
(Headquarters) Establishment
Police Headquarters
I.P.Estate, New Delhi. ... Respondents

(By Advocate: Sh. Madhav Panikar, proxy counsel for Sh. Harvir Singh)

ORDER

By Mr. Justice V.S. Aggarwal:

* on 15.03.1988.

Applicant joined Delhi Police as Constable ~~in the year 1994~~. Recruitment was held for the post of Sub-Inspector (Executive) in Delhi Police. The applicant appeared in the test and was selected for the post of Sub-Inspector (Executive). The other persons, who qualified along with the applicant, had been appointed and were sent for training. The applicant was not issued any such appointment letter because a criminal case had been registered against him by the Central Bureau of Investigation (for short 'CBI') and trial is pending. The applicant had applied for an order to be issued and on 26.11.1996, he was informed that:

"Memo.

Please refer to your office Memo. No. 12206/Estd.(I) (SWD) dated 27.9.96 on the subject cited above.

1. Application in respect of constable Shyoram Yadav No. 677/SW has been considered in this Hdqrs. but could not be acceded to as a criminal case of corruption is pending against him. His case for issuing appointment for S.I. (Ex) post has been held in abeyance till the filing finalisation of the case. His case will be decided after thorough examination of the Decision of the court on merits. He may be informed immediately.

Sd/-
(PRATAP SINGH)
For Deputy Commissioner of Police HQ(I)
Delhi"

VS Ag

* corrected as per order dt. 16/03/05
in MA 583/05 in OA 2443/04. *Handwritten*
21/03/05

-3-

2. On 14.5.2002, the Court of Special Judge acquitted the applicant recording:

"24. It is pertinent to mention here that PW5, the SHO had conceded that A.3 was an official, who had been posted only a few months prior to the date of the raid. He conceded that as a new incumbent, A3 was expected to acquaint himself with the local area and was supposed to take rounds with the beat constables. This necessarily will involve, in particular, involvement in watch over the known bad characters of the area, in which the complainant of this case would fall. P.W.5 was unable to confirm if A.6 had been assigned some warrants for execution and some applications for verifications, which had taken him to the area in question. P.W.8 conceded that amongst others a bunch of papers had been seized from the hands of A.6 at the time of his arrest. These bunch of papers, 69 in number, would include court processes. No investigation has been done into this material, which seems to justify the presence of A.6 in the locality. The investigating officer, PW9 when asked during his cross examination sought to express lack of memory as to the nature of material that had been seized from the hands of A.6. It was pointedly suggested to him that A.3 had accompanied A.6 in the vicinity of the house of complainant for the aforesaid purpose. Though the witness denied the suggestion, in the face of recovery of such material from the hands of A.6, a doubt is raised that his visit to the locality might after all be connected to his official visit, in which respect proper investigation has not been done.

25. In above facts and circumstances, where the evidence of complainant about the demand before the FIR or during the trap is wholly contradictory to the prosecution case, it does not appear safe to rest a finding of guilty on the sole word of P.W.8, in as much as there is no corroboration available from the statements of independent witnesses P.W.2 and P.W.3. Since all the other witnesses are formal in nature, the prosecution ought not succeed.

LG Aej

26. In the result, all accused are acquitted on benefit of doubts being extended to them. Their bail bonds are discharged."

3. After the acquittal by the Court of Special Judge, Delhi, the applicant submitted a representation for issuing him appointment letter for the post of Sub-Inspector. The applicant was reinstated and on 1.6.2004, it was further decided that no further departmental action was warranted. The suspension period was treated as spent on duty for all intents and purposes.

4. The precise grievance of the applicant is that vide the impugned order of 24.9.2004, his candidature for the post of Sub-Inspector had been cancelled. By virtue of the present application, he seeks quashing of the said order and also a direction that he should be appointed as Sub-Inspector. The impugned order reads:

"Subject: Cancellation of the candidature for the post of SI (Exe.) in Delhi Police-1994.

Sir,

With reference to your candidature for the post of Sub-Inspector (Exe.) in Delhi Police on the basis of recruitment-1994, I am to inform that your appointment was held-up due to your involvement in case FIR RC No.44(A)/94-DLI dated 13.7.1994 u/s 7 P.C.Act-1988 and 120-B IPC, CBI Anti Corruption Branch, Delhi.

The copy of the judgement dated 14.05.2002 in case FIR RC No.44(A)/94-DLI dated 13.7.1994 u/s 7 P.C. Act-1988 and 120-B IPC, CBI Anti Corruption

A handwritten signature in black ink, appearing to read "As Ag" followed by a stylized surname.

Branch, Delhi and connected papers have been examined in this Hdqrs. It has been found that you were an accused in the case charge sheeted by the C.B.I. and acquitted on benefit of doubt. If as a Constable the prospective officer gets involved in a C.B.I. case of this nature, it is felt that he would not make a good officer, on his fresh appointment to a higher post in Delhi Police. Therefore, your appointment to the post of Sub-Inspector (Exe.) in Delhi Police is not desirable and your candidature for the post of Sub-Inspector (Exe.) is hereby cancelled.

Yours faithfully,

Sd/-

(DINESH BHATT)

DEPUTY COMMISSIONER OF POLICE
HDQRS. (ESTT); DELHI"

5. The application has been contested. The basic facts have not been disputed, to which we have already referred to above. Respondents' claim is that the applicant had been acquitted giving him the benefit of doubt. His case for appointment as Sub-Inspector was examined and it was found that he was accused in the case charge-sheeted by the Central Bureau of Investigation. If, as a Constable, the prospective officer gets involved in a CBI case of this nature, it would feel that the applicant would not become a good officer, on his fresh appointment, to a higher post in Delhi Police. Therefore, his appointment to the post of the Sub-Inspector (Executive) was not found desirable and was cancelled. This decision was conveyed to the applicant. According to the respondents, the decision is in order.

6. We have heard the parties' counsel and have seen the relevant record.

A handwritten signature in black ink, appearing to read "Dinesh Bhatt".

11

7. As is apparent from the perusal of the impugned order, which we have reproduced above, there are two reasons given by the respondents in rejecting the candidature of the applicant, namely, (1) that if the applicant, who is a Constable and prospective officer, gets involved in CBI case, he would not make a good officer on his fresh appointment and (2) the applicant has been acquitted giving him the benefit of doubt.

8. Reliance on behalf of the applicants was placed on the decision of the **Punjab and Haryana High Court** in the matter of **MUNICIPAL COMMITTEE, JAITU v. GULAB SINGH**, (2003) 3 SCC 1011. The Punjab and Haryana High Court held:

"13. In my opinion, there is a fallacy in the submissions made by learned counsel for the Municipal Committee, Jaitu. When Gulab Singh was acquitted by the High Court vide its order dated 8.3.1984, he became, at once, entitled to reinstatement into service as if he was never dismissed from service. It is quite settled that acquittal blots out the existence of guilt altogether. Acquittal will have the effect of placing him in the same position in which he was, before registration of the case against him. It is as if no case was ever registered against him and he was never put up on trial and he will be always deemed to be in service of Municipal Committee, Jaitu. He is, therefore, entitled to all arrears of salary together with usual increments and usual allowances with effect from 9.9.1976 till 19.10.1990 as if he was all along in the service of Municipal Committee, Jaitu and never placed under suspension/dismissed from service. While calculating the salary disbursable to the legal heirs of Gulab Singh, whatever payments have been made to him those will be adjusted and the rest of the amount shall

ls Ag

be paid to the legal heirs of the deceased Gulab Singh.

C.M.No.190 of 2000 is accordingly allowed. Judgment of the learned single Judge dated 28.1.1997 and that of the Letters Patent Bench dated 11.11.1997 shall be deemed to have been modified/clarified accordingly. Calculations are to be made by taking into account Annexure A-1."

9. We know the binding nature of the decision of the High Court but when the Supreme Court has held to the contrary, indeed, we have little doubt in ignoring the said judgment.

10. In fact, more recently in the case of **CHAIRMAN AND MANAGING DIRECTOR, UNITED COMMERCIAL BANK AND OTHERS v. P.C.KAKKAR**, (2003) 4 SCC 364, the Supreme Court once again reiterated that acquittal from a criminal case does not put to an end to the proceedings or allow the employee to claim **immunity** from the proceedings. The findings are:

"15. The employee was placed under suspension from 1983 to 1988 and has superannuated in 2002. Acquittal in the criminal case is not determinative of the commission of misconduct or otherwise, and it is open to the authorities to proceed with the disciplinary proceedings, notwithstanding acquittal in the criminal case. It per se would not entitle the employee to claim immunity from the proceedings. At the most the factum of acquittal may be a circumstance to be considered while awarding punishment. It would depend upon the facts of each case and even that cannot have universal application."

(Emphasis added)

ls Ag

-8-

11. Therefore, it is obvious from the aforesaid that firstly the verification of character and antecedents can always be effected to see if a person is suitable to be taken in the Delhi Police and secondly, acquittal by itself does not put an end to the whole proceedings.

12. Before proceeding further, we also deem it necessary to notice the findings of the Supreme Court in the case of **STATE OF M.P. v. RAMASHANKER RAGHUVANSHI AND ANR.**, 1983 SCC (L&S) 263. The Supreme Court held:

".... Is Government service such a heaven that only angles should seek entry into it? We do not have the slightest doubt that the whole business of seeking police reports, about the political faith, belief and association and the past political activity of a candidate for public employment is repugnant to the basic right guaranteed by the Constitution and entirely misplaced in a democratic republic dedicated to the ideals set forth in the Preamble of the Constitution. We think it offends the Fundamental Rights guaranteed by Articles 14 and 16 of the Constitution to deny employment to an individual because of his past political affinities, unless such affinities considered likely to affect the integrity and efficiency of the individual's service...."

13. One has to keep the findings in view before venturing further into the question.



14. The first and foremost ground taken up by the respondents in rejecting the candidature of the applicant has been that if a person, who is a Constable, gets involved in a CBI case, he will not make a good officer. We do not dispute that if a person is taking part in such like crimes, he may be declared unfit. But mere involvement by itself is not a ground to reject the candidature of the applicant. The expression 'involvement' necessarily implies that he was accused in the case. In India, under Section 154 of the Code of Criminal Procedure when a cognizable offence is held to have been made and allegations are made to that effect, necessarily First Information Report is recorded. This is obvious from the perusal of the plain language of Section 154 of the Code of Criminal Procedure.

15. The Supreme Court in the well known decision of STATE OF HARYANA AND OTHERS v. CH. BHajan LAL AND OTHERS, AIR 1992 SC 604 in this regard had held as under:

“32. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.”

18 Aug

16. Thereafter, the Supreme Court more recently, in the case of **SUPERINTENDENT OF POLICE, CBI AND OTHERS v. TAPAN KUMAR SINGH**, (2003) 6 SCC 175 while dealing with the same controversy, held:

“20. It is well settled that a first information report is not an encyclopaedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eyewitness so as to be able to disclose in great detail all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation.”

17. Thus, thereafter investigation has to be proceeded in accordance with Code of Criminal Procedure.

18. In other words, when an allegation has been made pertaining to the alleged demand of illegal gratification, necessarily, it is in accordance with law. When a raid has to be conducted and an FIR has to be recorded in the Police Station or in the CBI, further investigation follows thereafter and the Court will take cognizance. After the trial, question of acquittal and conviction arises. Keeping in view this position in law, mere involvement or that he had to face a

ls Ag

trial, does not appear to be a logical ground. Mere allegation, thus, in the absence of any findings pertaining to moral turpitude, is of little consequence.

19. The other ground pressed, which we have referred above, is that the applicant has been given benefit of doubt and that, therefore, it was not an honourable acquittal.

20. Great stress was laid on behalf of the respondents that the applicants had not earned an honourable acquittal. In the Code of Criminal Procedure, expression '**honourable acquittal**' is an alien to the said procedure. We know from the decision of the Division Bench of the **Madras High Court** in the case of **UNION OF INDIA & OTHERS v. JAYARAM DAMODHAR TIMIRI**, AIR 1960 **Madras** 325 wherein the Court held that there is no conception of the expression of '**honourable acquittal**' in Criminal Procedure Code. The Court held:

“(3) In the first place, we are unable to understand the legal significance of an expression like “Honourably acquitted”. Certainly, the Code of Criminal Procedure does not support this conception. The onus of establishing the guilt of accused is on the prosecution, and, if it failed to establish the guilt beyond reasonable doubt, the accused is entitled to be acquitted.”

21. Same findings had been arrived at by the **Punjab and Haryana High Court** in the case of **JAGMOHAN LAL v. STATE OF PUNJAB & OTHERS**, AIR 1967 **Punjab** 422. It was held that:

“..... The moment the Court is not satisfied regarding the guilt of the accused, he is acquitted.



Whether a person is acquitted after being given a benefit of doubt or for other reasons, the result is that his guilt is not proved. The Code of Criminal Procedure does not contemplate honourable acquittal. The only words known to the Code are 'discharged' or 'acquitted'. The effect of a person being discharged or acquitted is the same in the eyes of law. Since, according to the accepted notions of imparting criminal justice, the Court has to be satisfied regarding the guilt of the accused beyond a reasonable doubt, it is generally held that there being a doubt in the mind of the court the accused is acquitted."

22. The decision of the **Bombay High Court** in the case of

DATTATRAYA VASUDEO KUKKARNI v. DIRECTOR OF

AGRICULTURE, MAHARASHTRA AND OTHERS, 1984 (2) SLR 222 is

also to the same effect.

23. From the aforesaid, it is clear that the concept of **honourable acquittal** is of no avail nor the administrative authorities can question the same once a person has been acquitted.

24. Once a person is acquitted, he is exonerated of the charge that has been framed against him. Acquittal for all practical purposes put to an end to the charge framed.

25. Stress in that event was laid on the fact that the **acquittal was on benefit of doubt**. They relied on the Supreme Court's decision in the case of **VIDYA CHARAN SHUKLA v. PURSHOTTAM LAL KAUSHIK**, 1981 (2) SCR 637. While concerned with the acquittal and the disqualification under the Representation of People Act, 1951, the

As Ag

Supreme Court had occasion to deal with the matter. It was held that an order of acquittal particularly one passed on merits wipes off the conviction and sentence for all purposes and as effectively as if it had never been passed. An order of acquittal annulling or voiding a conviction operates from nativity.

26. It clearly shows that the expression 'benefit of doubt' has rooted deep into our jurisprudence because charge has to be proved beyond all reasonable doubts. It is the prosecution, which is required to prove its case beyond all reasonable doubts. When it is not established, the Court, while acquitting a person, using the expression benefit of doubt, cannot be taken to have recorded a finding of not honourable acquittal or honourable acquittal.

27. We are conscious of the fact that the Supreme Court, in the case of **DELHI ADMINISTRATION THROUGH ITS CHIEF SECRETARY AND OTHERS**

v. SUSHIL KUMAR, (1996) 11 SCC 605, had held:

"3. This appeal by special leave arises from the order of the Central Administrative Tribunal, New Delhi made on 6.9.1995 in OA No.1756 of 1991. The admitted position is that the respondent appeared for recruitment as a Constable in Delhi Police Services in the year 1989-90 with Roll No.65790. Though he was found physically fit through endurance test, written test and interview and was selected provisionally, his selection was subject to verification of character and antecedents by the local police. On verification it was found that his antecedents were such that his appointment to the post of Constable was not found

lg Aug

desirable. Accordingly, his name was rejected. Aggrieved by proceedings dated 18.12.1990 culminating in cancellation of his provisional selection, he filed OA in the Central Administrative Tribunal. The Tribunal in the impugned order allowed the application on the ground that since the respondent had been discharged and/or acquitted of the offence punishable under Section 304 IPC, under Section 324 read with Section 34 IPC and under Section 324 IPC, he cannot be denied the right of appointment to the post under the State. The question is whether the view taken by the Tribunal is correct in law. It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was found physically fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant to the case is of the antecedents of the candidate. Appointing authority, therefore, has rightly focused this aspect and found it not desirable to appoint him to the service."

28. We do not dispute the said proposition, which in any case binds this Tribunal but following the ratio deci dendi of the said decision, the authorities can look into the fact about the conduct and person to be appointed. The authority

ls Ag

can focus on this aspect and thereafter it can come to the conclusion as to if the desirability to appoint him in service or not.

29. But the said discretion has to be exercised in a reasonable manner. Merely stating that he was involved in a criminal case, therefore, after acquittal, in no circumstances, will not make him a good officer, cannot be taken as a cogent ground.

30. In the case of **Sushil Kumar (supra)**, it had been directed that the relevant fact to be considered is the conduct and character of the candidate and not the result of acquittal. It is the antecedents of the candidates, which can be considered and in the peculiar facts, therefore, the Supreme Court had upheld the order of the department. In the present case, the concerned authority has not focused its attention on that. In the impugned order, no other reason has been pointed that there was material available to show the character and antecedents. There is no other material that the applicant, therefore, was not fit to be considered for service. The reasons cannot be sustained.

31. For these reasons, we allow the present application and quash the impugned order. The respondents are directed to reconsider the matter in the light of the findings given above and a decision to be taken preferably within three months of the receipt of the certified copy of the order.


(S.A.Singh)

Member (A)


(V.S. Aggarwal)

Chairman

2/3/2005

/NSN/