CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application Nos.596, 188, 169, 170, 292, 459, 639, 1098, 1177, 1389, 1444, 1778, 1890 of 2004 with OA Nos.2987, 2977, 2774, 2253, 2289, 2301 and 3174 of 2003

New Delhi, this the 24th day of **December, 2004**

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

O.A.No.596/2004:

Ram Pal
S/o Shri Ram Swaroop
R/o Vill. & P.O. Pur Teh. Bawani Khera
Distt. Bhiwani, Haryana. ... Applicant

(By Advocate: Sh. Arun Bhardwaj)

Versus

1. Commissioner of Police
Police Headquarters
IP Estate
New Delhi.

2. Dy. Commissioner of Police
IInd Bn., Kingsway Camp
New Delhi. ... Respondents

(By Advocate: Mrs. P.K.Gupta)

O.A.NO.1890/2004:

Anil Kumar ... Applicant

(By Advocate: Sh. R.K.Shukla)

Vs.

Union of India & Others ... Respondents

(By Advocate: Sh. Rishi Prakash)

O.A.NO.1778/2004:

Mintu Yadav ... Applicant

(By Advocate: Sh. Anil Singal)

Vs.

Govt. of NCT of Delhi & Others ... Respondents

(By Advocate: Sh. Ajesh Luthra)

O.A.NO.1444/2004:

Deepak Kumar ... Applicant

(By Advocate: Sh. Arun Bhardwaj)

Vs.

Govt. of NCT of Delhi & Others ... Respondents

(By Advocate: Mrs. Sumedha Sharma)

O.A.NO.1389/2004:

Pawan Kumar ... Applicant

(By Advocate:Sh. Anil Singal)

Vs.

Govt. of NCT of Delhi & Others ... Respondents

(By Advocate: Sh. Ashwani Bhardwaj for Shri Rajan Sharma)

O.A.NO.1177/2004:

Ishwar Singh Yadav ... Applicant

(By Advocate: Sh. Sachin Chauhan)

Vs.

Commissioner of Police, Delhi & Others ... Respondents

(By Advocate:Sh. Vijay Pandita)

O.A.NO.1098/2004:

Sh. Rajender Kumar ... Applicant

(By Advocate:Sh. Arvind Kumar)

Vs.

Union of India & Others ... Respondents

(By Advocate: Sh. Harvir Singh)

O.A.NO.639/2004:

Sanjeev Kumar ... Applicant
(By Advocate: Sh. Anil Singal)
Vs.
Govt. of NCT of Delhi & Others ... Respondents
(By Advocate: Sh. Harvir Singh)

O.A.NO.459/2004:

Naresh Kumar Sharma ... Applicant

(By Advocate: Sh. Anil Singal)

Vs.

Govt. of NCT of Delhi & Others ... Respondents

(By Advocate: Sh. Harvir Singh)

O.A.NO.292/2004:

Raja Ram Yadav ... Applicant

(By Advocate: Sh. Anil Singal)

Vs.

Govt. of NCT of Delhi & Others ... Respondents

(By Advocate: Sh. Vijay Pandita)

O.A.NO.170/2004:

Sandeep Talyan ... Applicant

(By Advocate: Sh. Anil Singal)

Vs.

Govt. of NCT of Delhi & Others ... Respondents

(By Advocate:Sh. S.Q.Kazim)

O.A.NO.169/2004:

Sachin Tomar ... Applicant

(By Advocate: Sh. Anil Singal)

Vs.

Govt. of NCT of Delhi & Others ... Respondents

(By Advocate: Mrs. Renu George)

O.A.NO.3174/2003:

Vijender Singh ... Applicant
(By Advocate: Sh. Anil Singal)
Vs.
Commissioner of Police, Delhi ... Respondents

(By Advocate: Sh. Ajesh Luthra)

O.A.NO.2301/2003:

Vinod Kumar ... Applicant

(By Advocate: Sh. Anil Singal)

Vs.

Govt. of NCT of Delhi & Others ... Respondents

(By Advocate: Ms. Rashmi Chopra)

O.A.NO.2289/2003:

Vivek Kumar ... Applicant

(By Advocate: Sh. Anil Singal)

Vs.

Govt. of NCT of Delhi & Others ... Respondents

(By Advocate: Sh. Rishi Prakash)

O.A.NO.2253/2003:

Harendra Kumar ... Applicant

(By Advocate: Sh. Anil Singal)

Vs.

Govt. of NCT of Delhi & Others ... Respondents

(By Advocate: Sh. Vijay Pandita)

O.A.NO.188/2004:

Gopal Singh ... Applicant

(By Advocate: Sh. Rajeev Kumar)

Vs.

Union of India & Others ... Respondents

(By Advocate: Sh. Ajesh Luthra)

O.A.NO.2774/2003:

Arun Kumar ... Applicant
(By Advocate:Sh. Yogesh Sharma)

Vs.

Govt. of NCT of Delhi & Others ... Respondents
(By Advocate: Sh. Om Prakash)

O.A.NO.2977/2003:

Shri Jitinder Singh ... Applicant

(By Advocate: None)

Vs.

Union of India & Others ... Respondents

(By Advocate:Mrs. P.K.Gupta)

O.A.NO.2987/2003:

Sunil Kumar ... Applicant

(By Advocate:None)

Vs.

Union of India & Others ... Respondents

(By Advocate: Mrs. Sumedha Sharma)

ORDER

By Mr. Justice V.S.Aggarwal:

By this common order, we propose to dispose of the abovesaid twenty applications. The question involved in all these applications is identical. For the sake of convenience, we are taking the case of **Rampal (OA No.596/2004)** as the leading matter.

2. In pursuance of the recruitment to be held for the post of Constable in Delhi Police, all the above said applicants had applied. At the time when they filled up the Application Form, they had disclosed that they are facing criminal matters pending against them or which had been decided. Even in the Attestation Form, the facts were correctly stated. In the case of Ram Pal, he had mentioned that he had faced a trial in FIR No.93/1997 P.S. Bawani Khera, District Bhiwani Haryana for the offences

punishable under Sections 419/420 and had been acquitted. Despite that, a notice to show cause had been issued to him as to why his candidature should not be cancelled. The applicant had replied to the same. Thereupon, vide the impugned order, his candidature and other similarly placed persons in the connected OAs, was cancelled. The impugned order in the case of **Rampal** reads:

> "You, Sh. Ram Pal s/o Sh. Ram Swaroop were provisionally selected as Const. (Exe.) in Delhi Police during the recruitment held in the year 2002 against Roll No.448033, subject to medical fitness, verification of character and antecedents etc. On receipt of your character and antecedents report from the authority concerned, it revealed that you were involved in a Crl. Case FIR No.93, dated 25.3.97 u/s 419/420 IPC, PS Bawani Khera (Haryana). However, the case was decided by the Hon'ble Court vide its order dated 27.4.2001 and you alongwith others were acquitted of charge. On perusal of the Judgment, it revealed that in this case chargesheet was filed. Charge was framed and witnesses were examined. The witnesses have not supported the prosecution case as they have turned hostile and you were acquitted on the based on benefit of doubt.
>
> On scrutiny of your Application Form and Attestation Form filled up by you on 26.4.2002 & 13.12.2002 respectively, it has been found that you have disclosed your involvement in the above said Crl. Case in the relevant columns.
>
> Accordingly, your case was examined and you were issued a Show Cause Notice vide this office memo. No.9730/Rectt. Cell (R-I) 2nd Bn. DAP, dt. 16.12.2003 as to why your candidature for the post of Const. (Exe.) in Delhi Police should not be cancelled for the reasons mentioned above. In response to Show Cause Notice, you have submitted your reply on 5.1.04, which has been considered alongwith relevant record available on file and the same has been found not convincing because of the reasons that in the said Crl. Case charge sheet was filed and charge was framed & witnesses were examined, who have not supported the prosecution case as they have turned hostile. Moreover, the allegations involve moral

turpitude as the act of copying as alleged against you makes you unfit for the Police Services. Besides, the acquittal by the hon'ble court vide its order dated 27.4.2001 seems to be on the based on benefit of doubt, which is not a honourable acquittal. As such, you have been found not suitable for the post of Constable (Exe.) in Delhi Police. Hence, your candidature for the post of constable (Exe.) in Delhi Police is hereby cancelled."

3. By virtue of the present application, the said order passed is being assailed.

4. Needless to state that in the reply, the application is being contested. The facts are not in dispute. The applicant along with others was provisionally selected but it is pointed that on verification of character and antecedents, it was found that a criminal case had been decided by the Court of the learned Judicial Magistrate, Bhiwani on 27.4.2001 wherein, he had been acquitted. It was revealed that the applicant had been involved in the criminal case. A show cause notice was served. The witnesses had not supported the prosecution case because they turned hostile.

5. The acquittal was on the benefit of doubt. It was not an honourable acquittal and consequently, it was decided that the applicant was not suitable to be recruited in the Delhi Police.

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

7. On behalf of the respondents, it was urged that this Tribunal should not interfere in judicial review pertaining to the question as to if a person is suitable to be recruited as a Constable keeping in view his character and antecedents.

8. We indeed do not dispute the said proposition. In judicial review, this Tribunal will not sit as a Court of appeal over the

findings of the administrative authorities. Even if it may come to the different findings, it will not interfere into the same unless the findings are contrary to law, preposterous or no reasonable person would come to such a conclusion. Judicial review, in this process, as is often said does not review the decision but look into the reasonableness and rationality of the decision making process. The principle of law thus is well settled and we do not intend to travel into the entire arena of judicial precedents but we take advantage in referring to the decision of the **Supreme Court** in the case of **UNION OF INDIA AND ANOTHER** v. **G.GANAYUTHAM** (1997) 7 SCC 463. The Supreme Court held that the Tribunal will not interfere with the administrator's decision unless it was illegal or perverse or suffered from procedural impropriety or was irrational in the sense that it was in outrageous defiance of logic or moral standards. The findings are:

> "31. .....(2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational – in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU [1985 AC 374 : (1984) 3 All ER 935] principles."

9. With this backdrop, we revert back to the merits of the matter.

10. On behalf of the applicants, great reliance was being placed on the fact that under Rule 6 of Delhi Police (Appointment & Recruitment) Rules, 1980, having been acquitted in a case by a Court of competent jurisdiction as it does not make a person ineligible to be recruited in Delhi Police, according to the learned counsel, the entire order thus requires to be quashed.

11. We have no hesitation in rejecting the said submissions.

Rule 6 of the Rules referred to above is as under:

> "6. **Ineligibility.**- (a) No person who is not a citizen of India shall except with the consent of the central Government to be obtained in writing in advance, be appointed, enrolled or employed in Delhi Police.
>
> (ii) No person, who has more than one wife living or who having a spouse living marries in any case in which such marriage is void by reason of its taking place during the life time of such spouse, shall be eligible for appointment, enrolment or employment in Delhi Police.
>
> (iii) Every candidate shall make a declaration in form No.B about his martial status before he is enlisted.
>
> (iv) No person shall be appointed to any post in Delhi police unless he has been certified on as physically fit for police service by Form D & F by a medical authority to be appointed for the purpose by the Commissioner of Police."

12. The same has to be read with Rule 25 of the said rules which is being reproduced below for the sake of facility:

> "25. **Verification of character and antecedents.**- (i) Every candidate shall, before appointment, produce an attestation from, duly certified by two gazetted officer, testifying that the candidate bears a good moral character and they are not aware of anything adverse against him. The candidate may be provisionally enrolled pending verification of his character and antecedents which shall be done by making a reference to the concerned police station. Standing instructions in this regard laying down the procedure for getting such verifications shall be issued by the Commissioner of Police.
>
> (2) An entry about the result of verification of character and antecedents shall be made in the service book/character Roll of the police officer concerned. The papers of such verification shall be filed with his Miscellaneous Personal File."

13. A conjoint reading of the two rules would show that under Rule 6 if a person is not a citizen of India shall except with

the consent of the Central Government, cannot be appointed and if he has more than one wife living, generally he shall not be eligible for appointment. But character and antecedents' verification is a sine qua non before a person is appointed. It has to be clearly stated that eligibility is one thing and suitability is another. Every person who is eligible to be recruited is not suitable to be appointed. Therefore, if character and antecedents are verified, it should be done in accordance with rules.

14. 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 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."

15. 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.

16. This is so because in the case of **DELHI ADMINISTRATION THROUGH ITS CHIEF SECRETARY AND OTHERS** v. **SUSHIL KUMAR,** (1996) 11 SCC 605, the Supreme Court 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 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."

17. 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)**

18. 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.

19. Strong reliance is being placed on the decision of the Supreme Court in the case of **COMMISSIONER OF POLICE** v. **DHAWAL SINGH,** (1999) 1 SCC 246. In the case of **Shri Dhawal Singh**, the question involved was as to whether the candidature of a person could be cancelled after he had corrected the mistake in giving incorrect particulars, which was stated to be inadvertently made. This would show that the decision in the case of **Sh. Dhawal Singh** has little import in the facts of the present case and the controversy with which we are presently concerned.

20. The applicants further relied upon the decision of the Supreme Court in the case of **PAWAN KUMAR** v. **STATE OF HARYANA**, (1996) 4 SCC 17. The Supreme Court had observed:

> "14. Before concluding this judgment we hereby draw attention of the Parliament to step in and perceive the large many cases which per law and public policy are tried summarily, involving thousands and thousands of people through out the country appearing before summary courts and paying small amounts of fine, more often than not, as a measure of plea-bargaining. Foremost among them being traffic, municipal and other petty offences under the Indian Penal Code, mostly committed by the young and/or the inexperienced. The cruel result of a conviction of that kind and a fine of payment of a paltry sum on plea-bargaining is the end of the career, future or present, as the case may be, of that young and/or inexperienced person, putting a blast to his life and his dreams. Life is too precious to be staked over a petty incident like this. Immediate remedial measures are therefore necessary in raising the toleration limits with regard to petty offences especially when tried summarily. Provision need be made that punishment of fine upto a certain limit, say upto Rs.2000/- or so, on a summary/ordinary conviction shall not be treated as conviction at all for any purpose and all the more for entry into and retention in government service. This can brook no delay, whatsoever."

21. It is once again to be reiterated that this was a pious wish of the Supreme Court. The Supreme Court was drawing attention of the Parliament to take necessary steps in this regard pertaining to the matters, which are paltry in nature. We have least hesitation in concluding that even the said decision would not come to the rescue of the either party.

22. 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.... ..."

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

24. In the preceding paragraphs, we have already reproduced the representative order that had been passed in the case of **Rampal**, the applicant. It clearly shows that the respondents rejected the candidature of the applicant on the ground that:

(a) The chargesheet was filed against him where charge was framed.

(b) Witnesses did not support the prosecution case as they have turned hostile.

(c) The allegations involved moral turpitude as act of copying makes him unfit for the Police Service.

(d) The acquittal is on benefit of doubt which is not an honourable acquittal.

25. When the controversy is examined on the touch-stone of the legal pleas, necessarily in our opinion, the reasons given cannot be sustained.

26. To state that allegations involved moral turpitude as the act of copying makes the concerned person unfit for Police Service, in the peculiar facts, is of a little consequence. We do not dispute that if a person is involved in such an act, he may be declared unfit but allegations by itself will not make a person unfit for Police Service. In India, in terms of Section 154 of the Code of Criminal Procedure when a congnizable offence is alleged to have been made and allegations are made to that effect, necessarily First Information Report has to be recorded. The Duty Officer has no option in this regard. 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."

27. 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. ....."

28. Thus, thereafter investigation has to be proceeded in accordance with Code of Criminal Procedure. The concerned Officer-In-charge Police Station is duty bound to submit report to the Magistrate under Section 173 of the Code of Criminal Procedure and after that it is the concerned Court which takes cognizance and if trial takes place, the question of acquittal and conviction arises. Thus, mere allegations in the absence of any findings pertaining to moral turpitude will be of little consequence.

29. The other ground taken up is that charge-sheet was filed and witnesses had been examined who did not support the prosecution case as they had turned hostile. One fails to

understand as to what is the logic thereto. The expression **hostile witness** is generally used when a witness resiles from his earlier recorded statement by the Police Officer under **Section 161** of the Code of Criminal Procedure and with the permission of the Court, he is cross-examined by the concerned party but that does not imply that what he has stated in Court was incorrect. Necessarily, it is the Court, which scrutinizes the evidence. It is the duty of the Court to separate **grain from the chaff** and come to the conclusion. The administrative authorities cannot sit over the decision of the Court and come to a contrary finding.

30. During the course of submissions, we had put it to the learned counsel representing the respondents as to whether besides these observations, they have any other material to show that the applicants have used some unfair means other than what was before the Court. In terms of any such act, this Tribunal may come to a conclusion that their character and antecedents are bad and do not make them fit person to be taken into service. No such record has ever been produced.

31. In fact when the witnesses are examined in Court and after the trial the Court deem it necessary to pronounce the order of acquittal, it is the decision on the merits of the matter so far as the criminal case is concerned. But the other reason given that charge was framed and charge sheet has been filed as referred to above is of little consequence because it is ultimate decision which is important. Here, it ends in acquittal.

32. 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."

33. 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."

34. 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.

35. 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.

36. 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.

37. 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 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.

38. Be that as it may, benefit of doubt is an expression that has rooted deep into the jurisprudence in India in matters where the charge is not proved beyond all reasonable doubts. It is in the jurisprudence applicable in India as operate from the Anglo-Saxones System. It is the prosecution which is required to prove the charge beyond all reasonable doubts. When it is not established, the Courts while acquitting using the expression **benefit of doubt**, it cannot be taken that the Court has recorded a finding of guilt and when a person is acquitted giving him benefit

of doubt, it cannot be used adversely against the said person pertaining to the said acquittal.

39. As referred to above, strong reliance is being placed on the decision of the Supreme Court in the case of **SUSHIL KUMAR** (supra) and also the decision of the **Kerala High Court** in the case of **K. SADANANDAN** v. **THE STATE OF KERALA,** AIR 1963 **Kerala** 59. Indeed, the decisions are binding which permit the authorities even after acquittal to make sure that the character and antecedents of the said person are such that he is not a fit person to be taken into service. The ratio deci dendi of the decision, therefore, would be that the authorities can look into the facts about the conduct and character of a person to be appointed in service. The authority can focus on this aspect and will come to a conclusion that it is not desirable to appoint him in service.

40. But such a discretion necessarily has to be exercised in reasonable manner. Arbitrariness and reasonableness must be stated to be sworn enemies. Merely stating that because a person was involved in a criminal case and, therefore, even after acquittal he should not be taken in service, would be indeed incorrect. We have one after the other files to see the reason that has prevailed with the respondents in rejecting the claim of the applicant. As referred to above and re-mentioned at the risk of the repetition, the respondents are not forthcoming with any other material to prompt this Tribunal to conclude that the applicants were not fit to be taken into service because of their character and antecedents. There has to be some such antecedents to come to such a conclusion. The same are not shown. The reasons given are not sustainable.

41. In OA No.1177/2004 when the applicant applied, he had given the particulars and by the time he was acquitted, in the Attestation Form he gave the said report. Thus there is no suppression of facts on his part.

42. In some cases, by virtue of the compromise, the concerned persons alone have been acquitted in terms of Section 320 of the Code of Criminal Procedure but again, no further material is forthcoming about their character and antecedents.

43. No other argument was advanced.

44. For the reasons given above, we allow the present applications and quash the impugned orders. The respondents should, unless there are some other material available, act in accordance with law preferably within three months of the receipt of the certified copy of the present order.

(S.A.Singh)
Member (A)

(V.S.Aggarwal)
Chairman

/NSN/