

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH, ERNAKULAM**

Original Application No.496/2013

THURSDAY, this the *14th* day of *August*, 2014.

CORAM :

HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER

HON'BLE Ms.MINNIE MATHEW, ADMINISTRATIVE MEMBER

Basheer P., s/o Sri Moideenkutty,
aged 38 years, residing at Palliyalil House
South Pallar, Vyrampcode Post,
Thirunavaya, Malappuram District,
Kerala -676 301.

.... Applicant

(By Advocate Mr.O.V.Radhakrishnan, Sr. & Mrs. K.Radhamani Amma)

versus

1 Union of India
represented by its Secretary
Department of Personnel and Training,
Ministry of Personnel, Public Grievances and Pension
New Delhi -110 001.

2 Central Bureau of Investigation,
represented by its Director,
Plot No. 5B, CGO Complex, 7th Floor,
Lodhi Road, New Delhi -110 003.

... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

This application having been heard on 23.07.2014, this Tribunal
on *14-08-14* delivered the following:-

ORDER

HON'BLE Ms.MINNIE MATHEW, ADMINISTRATIVE MEMBER

This O.A. has been filed seeking a direction to the respondents to appoint
the applicant to the post of Public Prosecutor under the 2nd respondent based on
Annexure - A3 list of recommended candidates published by the Union Public
Service Commission (UPSC).

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2. The applicant submits that he applied for the post of Public Prosecutor under the 2nd respondent in response to Special Recruitment advertisement No. 51/2012 published in Employment News 14 -20 April, 2012. He appeared for the written test and based on the written test he was called for the interview. He appeared for the interview on 4.9.2012 and was ranked at Serial No.29 in the list of candidates recommended for appointment to the post of Public Prosecutors in Central Bureau of Investigation. At the time of interview, he was required to submit an attestation form which solicited details as to whether the candidate has ever been arrested / prosecuted/ kept under detention. The Applicant states that in response to these queries in Column 12 of the attestation form he has admitted that he was arrested, prosecuted and also kept under detention. In response to the query as to whether he has been convicted by a court of law for any offence, the applicant answered in the negative. Subsequently he received a letter from the UPSC intimating that he has been recommended to the post of Public Prosecutor in the CBI. It was also stated in the letter that the offer of appointment will be made to him only after the Government satisfies itself, after such enquiry as may be necessary, that he is suitable in all respects for appointment to the service and that he is in good mental and bodily health and free from any physical defects likely to interfere with the discharge of his duties. Accordingly the applicant appeared before the medical board and was certified as fit to hold the post. The applicant further submits that though he was arrayed as 4th accused in Sessions Case No. 238 of 2001 on the file of Court of Sessions, Manjeri, he was honourably acquitted as per judgment dated 10.09.2004 under Section 232 of the Code of Criminal Procedure after analysing the entire evidence adduced on the

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side of the prosecution. The Sessions Court came to the conclusion that there was no evidence against the accused persons in connection with the murder. The judgment by Annexure - A9 is abundantly clear that the applicant was honourably acquitted and that his acquittal was not on technical ground or by giving benefit of doubt. According to the applicant, once a person is acquitted honourably and exonerated fully, no adverse civil consequences shall visit him. He also contends that the mere fact that a person was detained in prison and was tried in a murder case by itself should not render him unsuitable for appointment in the event of his honourable acquittal after trial. The legal effect of honourable acquittal and full exoneration of the charges is that the person shall be deemed to have never committed the offence charged against him. This being the legal position, he ought to have been appointed as Public Prosecutor according to his turn in Annexure -A3. He therefore submitted a representation dated 29.04.2013 pointing out that he was acquitted under Section 232 of the CPC by the Court of Sessions after having satisfied that there was no evidence that he committed the offence and should therefore be appointed as Public Prosecutor from Annexure -A3 list recommended for appointment. In response to his representation, he was informed vide letter dated 17.05.2013 that his case was under consideration with Department of Personnel and Training and that the decision of the competent authority was awaited. The applicant is aggrieved by the inordinate delay in appointing him to the post of Public Prosecutor and also by the appointment of candidates who secured lower ranks than him.

3. In the reply statement filed by the respondent, it is seen that there is no dispute on the basic facts of the case. The respondents in their reply statement have stated that the verification of the character and antecedents of the



applicant was done through the District Collector, Malappuram and also through Additional S.P., CBI, ACB Cochin. They have both stated that a case of murder and related offences under Section 302, 143, 147, 341, 324 r/w 149 IPC was registered in Crime No. 299/97 in the Tirur Police Station in which the applicant figured as an accused. The case was subsequently acquitted under Section 232 Cr.P.C. on 10.9.2004. Further in the report it has been stated that the District Police Chief did not recommend recruitment of the applicant for the sensitive post of Public Prosecutor in CBI. After perusing the verification reports of the applicant's character and antecedents and the severity of the allegation against him, the competent authority did not approve the appointment of the applicant in CBI which investigates very sensitive and complex cases. Further the post of Public Prosecutor is a very important post in prosecution cadre in which the Public Prosecutor has to discharge his duties outstandingly with high standard of extraordinary performance. In the additional reply statement, respondents have reiterated that the character verification report of the applicant proved that he was not a person who was having a clean record and hence the action of the respondents is legal and sustainable. It has been further pointed out that the letter of UPSC has clearly mentioned that this letter does not constitute an offer of appointment. Offer of appointment was not issued to the applicant by the respondent. They have further submitted that the Apex Court had considered the desirability of appointing a person against whom a criminal case is pending. The Hon'ble Court held that verification of character and antecedents is one of the important criteria to test whether the selected candidate is suitable for a post under the State. The Court further observed that though the candidate was provisionally selected, the appointing authority on account of his antecedent did not find it desirable to appoint him and this view taken by the appointing



authority cannot be said to be unwarranted. The Apex Court further held that whether the respondent was discharged or acquitted of the criminal offence, the same has nothing to do with the question as to whether he should be appointed to the post. In the instant case, respondents have followed the observations of the Apex Court and refused to appoint the applicant which is in no way illegal.

4. We have heard the learned counsel on both sides. The learned counsel for the applicant relied on the reported judgments AIR 196 SCC 2216, AIR 1986 4 SCC 268 to reinforce his argument that the respondents have necessarily to make the appointments strictly in the order of merit which has been prepared by the UPSC. He also cited 1994 Supp 3 SCC 674 in support of his argument that acquittal on merit cannot be a ground for denying legitimate appointment due to the applicant. As the acquittal has not been on technical ground, the applicant is entitled to be considered as if there is no blot on his character and conduct. He further drew attention to the CBI manual which deals with as given in Annexure A13 which states as follows:

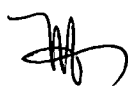
" While normally a person convicted for an offence involving moral turpitude should be regarded as ineligible for government service, in cases where the appointing authority feels that there are redeeming features and reasons to believe that such a person has cured himself of the weakness, he can be considered for appointment after obtaining specific approval of the government".

5. ^{Thus} ~~That~~, the learned counsel for the applicant argued that the respondents own manual provides that a person convicted on moral turpitude can also be considered for appointment in case where the appointing authority have reason

to believe that such a person has amended himself. In the instant case, the applicant has not been convicted of any offence by a Court of law. Therefore, there can be no reason at all for not considering the applicant for appointment when the Criminal Case against him ended in acquittal. He vehemently argued that the honourable acquittal wipes out with retrospective effect the adverse consequences if any of the case against him. He also relied on AIR 1980 AP 132 Full Bench judgment in which it has been held that the applicant cannot be made to suffer even after his acquittal. The learned counsel took exception to the first affidavit of the respondents being filed by a person who was not a respondent in the O.A.

6. The Senior Central Govt Standing Counsel representing the respondents submitted that the action of the respondents in not appointing a person with a bad character is supported by various judgments of the Hon'ble Supreme Court. The report of District Collector of Malappuram clearly points to the the reasons for not recommending the applicant for appointment to the post of Public Prosecutor which is a very important post requiring high standards of integrity. A person involved in a murder case charged under Section 302 cannot be stated to have good antecedents. He denied the contention that a subordinate officer has wrongly filed the reply statement stating that he has been duly authorised to file the reply statement on behalf of the respondents and hence the reply statement is valid on all counts.

7. Admittedly, the applicant had applied for the post of Public Prosecutor under the 2nd respondent and qualified in the written examination and interview and had also been certified as being fit by the duly constituted medical board. It



is also without dispute that his name figures in the list of recommended candidates published by the UPSC as in Annexure A3 at Sri. No.29. Thus the eligibility and the merit of the applicant for being considered for the post of Public Prosecutor in the examination held in 2012 is not in dispute. The only ground on which the appointment has been denied is the report of the District Collector Malappuram as in Annexure R1 which states as follows:

"On enquiry, District Police Chief Malappuram has reported that the candidate was arrested as A4 in Tirur Police State Crime No. 299/97 u/s 143, 147, 148, 341, 323, 324, 302 r/w 149 IPC as per prosecution case and underwent remand custody. The case has been acquitted u/s 232 Cr.PC on 10/09/2004. However, The district Police Chief has not recommended for the recruitment of the said candidate bearing such an antecedent for the post of Public Prosecutor in CBI. In the circumstance, appointment of Sri Basheer P. to the post of Public Prosecutor is not recommended".

8. Therefore, the point for consideration in this OA is whether denial of appointment to the applicant on account of his antecedents not being proper due to his arrest and prosecution in a murder case is justified.

9. From the material on record, the case against the applicant is Crime No. 299/97 charged by the Tirur Police Station. The report of the District Collector, which is crucial in determining the antecedents, is based on the report of the District Police Chief Malappuram. Referring to the applicants arrest, prosecution and having undergone remand custody, the District Police Chief has "not recommended the recruitment of the said candidate bearing such an antecedent for the post of Public Prosecutor in CBI". Based on the Report of the District

Police Chief, the District Collector has also given the same recommendation and the competent authority in turn has not approved the appointment. The ground of not having good antecedents is evidently based only on Crime No.299/97 in which case the applicant has been acquitted. There is no reference at all to any other incidents or cases pending against the applicant which would render him unsuitable for appointment to a post under the respondent authorities. When the applicant has been acquitted on merit, we hold that the denial of appointment is not legally sustainable as pointed out by the Hon'ble Apex Court in the judgment reported in 1994 Supp. 3, SCC MP-4, which considers the legality of denial of promotion in a case where the criminal prosecution has been culminated in acquittal on merit. In this case, we are considering selection and appointment and not promotion. However, the impact and consequences of acquittal on merit has been clearly enunciated in this judgment as extracted below:

" The material on the basis of which his promotion was denied was the sole ground of the prosecution under Sec. 5(2) (Prevention of Corruption Act) and that ground when did not subsists, the same would not furnish the basis for DPC to overlook his promotion. We are informed that the departmental enquiry itself was dropped by the respondents. Under these circumstances, the very foundation on which the DPC had proceeded is clearly illegal. The appellant is entitled to the promotion with effect from the date his immediate junior was promoted with all consequential benefits. The appeals are allowed".

10. In the instant OA also, the basis for coming to a conclusion about the dubious antecedents or bad character is non-existent in view of the acquittal

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on merit in Crime No.299/97 of Tirur Police Station. Since the report does not refer to any other offences or misconduct, we hold that denial of appointment to the applicant on this ground alone is not valid or justifiable.

11. In the result, the OA is allowed. The respondents are directed to appoint the applicant to the post of Public Prosecutor based on his merit and rank in the Annexure A3 list of recommended candidates of the UPSC from the date of his entitlement. He will however be eligible for his pay and allowances only from the date of assumption of charge as Public Prosecutor.

Time granted for compliance is three months from the date of receipt of a copy of this Order.

No order as to costs.


(MINNIE MATHEW)
ADMINISTRATIVE MEMBER


(U.SARATHCHANDRAN)
JUDICIAL MEMBER

(Dated this the 14th day of August, 2014)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 496 of 2013

Thursday, this the 7th day of July, 2016

CORAM:

Hon'ble Mr. U. Sarathchandran, Judicial Member
Hon'ble Ms. P. Gopinath, Administrative Member

Basheer P., S/o. Sri Moideenkutty,
aged 38 years, residing at Palliyalil House,
South Pallar, Vyrampcode Post, Thirunavaya,
Malappuram District, Kerala, Pin – 676 301.

..... **Applicant**

(By Advocate : Mr. Shafik M.A.)

V e r s u s

1. Union of India, represented by its Secretary,
Department of Personnel & Training,
Ministry of Personnel, Public Grievances and Pension,
New Delhi – 110 001.

2. Central Bureau of Investigation, represented by its Director,
Plot No. 5B, CGO Complex, 7th Floor, Lodhi Road,
New Delhi – 110 003.

..... **Respondents**

(By Advocate : Mr. N. Anilkumar, Sr. PCGC ®)

This application having been heard on 21.06.2016, the Tribunal on

07/07/2016 delivered the following:

ORDER

Hon'ble Mr. U. Sarathchandran, Judicial Member –

This Original Application has been filed seeking a direction to the respondents to appoint the applicant to the post of Public Prosecutor under respondent No. 2 based on Annexure A3 list of recommended candidates published by the Union Public Service Commission (UPSC). The applicant had applied for the post of Public Prosecutor in response to an



advertisement published in the Employment News in April, 2012. On the basis of the written test he had taken part he was called for interview and was ranked No. 29 in the list of candidates recommended for appointment. At the time of interview, he was called upon to submit an attestation form wherein he had answered in affirmative to a query whether he has been arrested/prosecuted/kept under detention. To the query whether he has been convicted by a court of law he answered in negative. Later he received Annexure A5 letter from the UPSC intimating that he has been recommended to the post of Public Prosecutor in respondent No. 2 CBI. It was also stated in that letter that the offer of appointment would be made to him only after the Government satisfies itself, after inquiry as may be considered necessary that he is suitable in all respects for appointment in service and that he has good mental and bodily health and is free from any physical defects likely to interfere in the discharge of duties. It was also made clear that the offer of appointment will also be subject to such conditions as are applicable to all such appointments under the Government. The applicant appeared before a medical board and was certified as fit to hold the post. As no offer of appointment was received, he submitted Annexure A11 representation to respondent No. 2 pointing out that he was acquitted under Section 232 of the Cr. PC by the court of Session after having satisfied that there was no evidence that he committed offence. In response to the said representation he was informed vide Annexure A12 that the matter is under consideration with DOP&T and the decision of the competent authority is awaited. The applicant, therefore, being aggrieved by non-appointment to the post to which he was selected, prays for:



"i) to declare that non-appointment of the applicant to the post of Public Prosecutor under the 2nd respondent from Annexure A-3 list of recommended candidates for appointment to the post of Public Prosecutor prepared and published by the Union Public Service Commission and appointing candidates who secured lower rank on a comparative assessment and indicated in Annexure A3 list of the Union Public Service Commission is demonstrably illegal, arbitrary, discriminatory offending Articles 14 and 16(1) of the Constitution of India;

ii) to issue appropriate direction or order, directing the respondents to appoint the applicant to the post of Public Prosecutor under the 2nd respondent forthwith with effect from the date of his entitlement based on his turn in Annexure A3 list of recommended candidates of the Union Public Service Commission;

iii) to issue appropriate direction or order, directing the respondents to grant the applicant all consequential benefits based on his notional appointment from the date of his entitlement including arrears of pay and allowances expeditiously or at any rate, within a time frame that may be fixed by this Hon'ble Tribunal;

iv) to grant such other reliefs which this Hon'ble Tribunal may deem, fit and proper in the circumstances of the case;

v) to allow the above OA with cost to the applicant."

2. The respondents resisted the OA stating that verification of character and antecedents of the applicant was done through the District Collector, Malappuram and also by the Additional Superintendent of Police, CBI and ACB, Cochin. As per the reports of those officials a case of murder and related offences under Sections 302, 143, 147, 341, 324 r/w 149 IPC was registered as crime No. 299/1997 in the Tirur Police Station in which the applicant was arrayed as an accused and that he was subsequently acquitted under Section 232 of Cr. PC on 10.9.2004. It is stated in the report that the District Police Chief did not recommend the appointment of the applicant for the sensitive post of Public Prosecutor in the CBI. In view of the verification reports of the applicant's character and antecedents and the



seriousness of the allegation against him the competent authority did not approve his appointment in CBI which investigates very sensitive and complex cases. The post of Public Prosecutor is a very important and the incumbent has to discharge his duties in an outstandingly manner with high standard of extraordinary performance. The respondents further state that the applicant is not a person having clean records. The letter of UPSC was not offer of appointment and no offer of appointment was issued by the respondents to the applicant. The respondents pray for rejecting the OA.

3. The Original Application was adjudicated by this Tribunal by order dated 14.8.2014 and finding that there is no basis for coming to the conclusion about the dubious antecedents or bad character in view of the acquittal on merit in the criminal case and since the report does not refer to any other offences or misconduct, this Tribunal held that denial of appointment to the applicant on this ground alone was not valid or justifiable. While allowing the OA, this Tribunal directed the respondents to appoint the applicant to the post of Public Prosecutor based on his merit and rank in Annexure A3 list of recommended candidates by the UPSC from the date of his entitlement. However, the aforesaid order of this Tribunal was set aside by the High Court of Kerala and remanded the OA to the Tribunal with a direction to take decision after affording reasonable opportunity to the rival parties and taking into account the principles laid down by the Apex Court in the subject matter within a period of two months from the date of receipt of a copy of the judgment. The aforesaid order was passed by the High Court in its judgment dated 23.12.2015 in OP (CAT) No. 22 of



2015.

4. The High Court in the aforementioned judgment observed:

"19. We have considered the rival submissions, perused the pleadings and the records made available. The point that emerges for consideration is whether the acquittal of the Respondent under Sec.232 of the Cr.P.C by the Sessions Court in offences involving moral turpitude is entitled to be considered for appointment to a public post on the said sole ground. It is true that the judgments of the Apex Court cited *supra* lay down the principle that the judgment rendered by the criminal Court can be taken into account if it is found that an honourable acquittal was made by the Court. In order to find out as to whether acquittal is an honourable acquittal, the competent authority is always vested with powers, to go through the relative documents which led to the implication of the Respondent in the crime and other materials on record. So far as a criminal case is concerned, proof beyond reasonable doubt is the law settled for securing conviction, whereas in a quasi-criminal and other civil proceedings, the principle that is to be followed to ascertain the guilt by the Court is preponderance of probabilities. No doubt, if the Sessions Court after trial proceedings entered into a finding that after evaluation of the entire evidence and circumstances, there is absolutely no evidence to incriminate the accused, then it can be considered as a case of honourable acquittal, and in that regard the competent authority may be justified in relying absolutely on the said judgment, since the same was rendered by a competent Court of Law. In the case at hand, it is true that the Respondent was acquitted under Sec.232 of the Cr.P.C, holding that there was no evidence to connect the Respondent and other accused with the murder of the deceased therein. But on going through the judgment of the Sessions Court, it can be seen that all the witnesses examined by the prosecution had turned hostile, which made the prosecution give up the other witnesses. It is in that context, that the Sessions Court has entered into a finding that there was no evidence to incriminate the Respondent to the crime.

20. In this regard, the judgment of the Apex Court in '*Mehar Singh*' *supra* is relevant and according to us, paragraph 25 contained therein is more explanatory and therefore we think that it is only appropriate that the said paragraph is narrated for reference:

"25. The expression "honourable acquittal" was considered by this Court in *S. Samuthiram*. In that case this Court was concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under Section 509 IPC and under Section 4 of the Eve-Teasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this

Court in RBI v. Bhopal Singh Panchal, where in somewhat similar fact situation, this Court upheld a bank's action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in the departmental proceedings. This Court observed that the expressions "honourable acquittal", "acquitted of blame" and "fully exonerated" are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression "honourably acquitted". This Court expressed that when the accused is acquitted after full consideration of the prosecution case and the prosecution miserably fails to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted."

21. Therefore, the principle of honourable acquittal depends on facts and circumstances of each and every case. The core consideration of the Court of Law while considering the question of honourable acquittal should be relating to the entire proceedings that have taken place in a criminal Court from the beginning to the end and then arrive at a decision by a competent authority whether the acquittal made by the Court was after evaluating the entire evidence let in by the prosecution as well as the defence.

22. No doubt in our mind that, a competent authority is always vested with powers to arrive at an objective satisfaction in the matter of selection of its employees. The degree of consideration depends upon the post to which such a person was considered. Here, in this case, the post is a very sensitive post as that of a Public Prosecutor in a premier investigation agency, i.e. the CBI. Therefore, the competent authority is always justified in making a threadbare enquiry with regard to the antecedents and background of the candidate in arriving at a conclusion as to whether such a person is entitled to be appointed to a post of this nature. The question now before us is whether the Tribunal while considering the issue was able to consider whether the competent authority was justified in arriving at a decision not to appoint the Respondent. According to us, the evidence that was placed before the Tribunal was Annexures-R1 to R3, which we discussed earlier, which are reports of the District Collector, Malappuram and Superintendent of Police, CBI and a communication of Department of Personnel and Training dated 13.01.2014, which reads as follows:

***"Department of Personnel & Training
AVD-II***

*Subject: Approval for appointment to the post of Public
Prosecutor in CBI – reg.*

*CBI may please refer to their ID
No.DP/PERS.1/2013/738/3/90/20 dated 28.02.2013 on the
above subject.*



2. Approval of the competent authority is conveyed for cancellation of candidature of Shri Basheer P. as Public Prosecutor in CBI.

3. CBI is requested to take necessary action in this matter accordingly under intimation to this Department.

4. CR dossiers of Shri Basheer P. received along with the proposal is returned herewith, the receipt of which may please be acknowledged.

Sd/-
Rajiv

Under Secretary
DD (Pers.), CBI, CGO Complex, New Delhi.

DoP&T ID No.202/66/2012-AVD-I Dated 13 January, 2014."

23. In our view, the satisfaction of the competent authority is rendered in one sentence to the effect that the approval of the competent authority is conveyed for cancellation. According to us, what guided the Tribunal in arriving at a conclusion was the judgment of the Sessions Court by which the Respondent was acquitted of the offences. We have already held that if the acquittal is to be considered as a sole criteria for arriving at a decision, the same should be an honourable one. The Tribunal did not consider the question in the right perspective. Even if a person is acquitted, the competent authority is always at liberty to evaluate the facts and circumstances to arrive at a different conclusion and decision with regard to the appointment of a person involved in the said crime. Therefore, the prime duty of a Court of Law considering a question like this, is to find out whether there is an honourable acquittal and thereafter, whether the competent authority has considered the whole issue in order to arrive at a conclusion with regard to the competency of the candidate to secure employment....."

5. After remand of this case we have heard the case again *in extenso*, after giving opportunity to the parties to submit legal arguments and to produce records. In order to ascertain the true circumstances under which the applicant was acquitted in the criminal case, we directed the new counsel engaged by the applicant after remand to produce copies of the records of SC No. 527/2001 of Court of Session, Manjeri including the FIR and FI Statement produced by the prosecution.

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6. In compliance of our order the counsel produced the certified copies of the case records which comprises of the FIR, FI Statement, final report under Section 173 of the Cr. PC, Statements of the witnesses recorded by the police under Section 161 of the Cr. PC, postmortem report of the deceased victim, wound certificates of the other victims, seizure mahasar, seen mahasar and certified copies of the depositions of the witnesses.

7. We have carefully perused the judgment of the Sessions Court, Manjeri in SC No. 238 of 2001 (marked as Annexure A9) and we have heard both sides mainly on the issue whether the acquittal of the applicant in Annexure A9 case was an 'honourable acquittal' or not. Throwing more light on the law on the topic of 'honourable acquittal' in the administrative jurisprudence, the High Court in the judgment in OP (CAT) No. 22 of 2015 has referred to the judgments of the Apex Court in *Commissioner of Police, New Delhi and Anr. v. Mehar Singh* 2013 (7) SCC 685, *Delhi Administration through its Chief Secretary & Ors. v. Sushil Kumar* 1996 (11) SCC 605, *Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal* 1994 (1) SCC 541 and also a recent judgment of the Apex Court in *State of M.P. & Ors. v. Parvez Khan* (Civil Appeal No. 10613 of 2014 dated 01.12.2014). The High Court observed that if the acquittal of the applicant is to be considered as the sole criteria for arriving at a decision, the same should be an honourable one.



8. Now we are once again called upon to adjudicate whether acquittal of the applicant by Annexure A9 judgment was indeed an honourable acquittal or not. In *Mehar Singh's* case (*supra*) the Apex Court referring to the *Deputy Inspector General of Police & Anr. v. S. Samuthiram – 2013 (1) SCC 598* held that acquittal based on benefit of doubt would not stand on par with a clean acquittal on merit after a full-fledged trial. The Supreme court in *Mehar Singh* further held that the selection committee is well within its right of cancelling the candidature of the candidate if it finds that the acquittal of a candidate in a criminal case is based on some serious flaw in the conduct of the prosecution case or is the result of material witnesses turning hostile. Bringing more clarity as to what constitutes 'honourable acquittal', in paragraph 25 of *Mehar Singh* the Court explained:

“25.This Court observed that the expressions “honourable acquittal”, “acquitted of blame” and “fully exonerated” are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression “honourably acquitted”. This Court expressed that when the accused is acquitted after full consideration of the prosecution case and the prosecution miserably fails to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.”

9. Keeping in mind of the aforesaid principles of law laid down by the Apex Court in *Mehar Singh's* case (*supra*) and *Samuthiram's* case (*supra*) and in order to decide whether the acquittal of the applicant in the criminal case was a honourable acquittal or not, we have carefully examined the certified copies of the record of Annexure A9 criminal case produced by the applicant. We bestowed special attention to examine whether the applicant's name was involved in the crime right from the stage of the first information




statement recorded by the police. We did a special scrutiny on this aspect in order to ascertain whether the applicant was alleged as a perpetrator of the crime from its initial reporting to the police or not. We have noted that even in FI statement the name of the applicant has been very clearly named as one among the perpetrators of the offences alleged. However, during trial all the witnesses including those who sustained injuries in the incident turned hostile to the prosecution. It appeared to us that the incident in the criminal case was the culmination of some personal animosity between two groups of relatives. It is quite possible that after the lapse of some time the persons concerned decided not to adduce incriminating evidence against the accused persons of whom the applicant was one. On a careful examination of the nature of oral evidence adduced through witnesses, we could perceive that all the material witnesses except the official witnesses were declared hostile. Therefore, acquittal of the applicant cannot be said to be based on a real evaluation of the true evidence of the witnesses or "*after full consideration of the prosecution case and the prosecution miserably fails to prove the charges levelled against the accused*". Since the witnesses including injured witnesses turned hostile, it is discernible that the trial court acquitted the accused based on lack of evidence which can by no means be stated as adjudication after evaluating the merits of the real evidence of the witnesses, had they not turned hostile to the prosecution case. The fact that even the injured witnesses turned hostile is a pointer to the absence of a 'full consideration of the prosecution case'. Therefore, in the light of the guidelines indicated by the Apex Court in *Mehar Singh's case (supra)*, we are convinced that what the applicant earned was not a honourable acquittal

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on the merits of this case after a full-fledged real trial of the criminal case. We note that in *Samuthiram's* case (*supra*) where the accused himself was a police constable, as the police officials who are colleagues of the accused and cited as material witnesses turned hostile, the criminal case got weakened and the trial court took the view that there was no evidence to implicate the accused.

10. In the light of the above discussion we hold that the applicant's acquittal in the criminal case by Annexure A9 judgment was by no means an 'honourable acquittal' after a full-fledged trial and was based on the evidence of the witnesses who turned hostile to prosecution.

11. The next aspect highlighted in the judgment in OP (CAT) No. 22 of 2015 was that this Tribunal did not attempt at all to examine whether the cancellation of the applicant's candidature by the competent authority was supported by adequate materials and whether the same was not vitiated by mala fides. Of course, there is no allegation of mala fides against the competent authority of the respondents in not sending the letter of appointment to the applicant even after he was selected for appointment. In this case there was indeed no offer of appointment. In Annexure A5 letter sent by the UPSC informing the applicant of his name having been recommended to the post, it was clearly stated that the offer of appointment will be made only after the Government has satisfied itself after the inquiry as may be considered necessary for ascertaining the suitability of the applicant in all respects for appointment. In this case the respondents have produced



Annexures R1 to R3 to show that the District Collector, Malappuram in consultation with the District Police Chief and the head of the CBI and ACB, Cochin have reported that the accused was involved and was charge sheeted in a session's case for serious offences under Section 302, though he was finally acquitted by the Court. The District Collector has specifically mentioned in his Annexure R1 report that the applicant's candidature is not recommended.

12. No doubt CBI is one of the premier investigating agencies where integrity of the officials including the prosecutors should be beyond doubt as they deal with very important cases involving serious criminal cases and economic offences. The very linking of a candidate for the post of Prosecutor in CBI in a dreadful offence like murder punishable under Section 302 itself will give rise to a stigma in the minds of the common citizens, although acquittal by the criminal court sets such candidate at liberty free from all criminal and civil consequences. When such a candidate is appointed as Public Prosecutor who is likely to deal with cases involving similar other offences and offences graver in nature, even an iota of the feeling that may crop up in the mind of people that the prosecutor himself was involved in a criminal case, will cast a shadow not only on the system of prosecution but also may pave way to losing of the people's faith in the system.

13. Therefore, we hold that the respondents' authorities were justified in taking decision for cancellation of the candidature of the applicant as Public

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Prosecutor in CBI. In the result the OA is dismissed. Parties shall suffer their own costs.



(MS. P. GOPINATH)
ADMINISTRATIVE MEMBER



(U. SARATHCHANDRAN)
JUDICIAL MEMBER

“SA”