

Central Administrative Tribunal, Lucknow Bench, Lucknow
Original Application No. 331/2011

This the 12th day of September, 2012

Hon'ble Mr. Justice Alok Kumar Singh, Member (J)
Hon'ble Sri S.P.Singh, Member (A)

Vineet Kumar aged about 32 years son of Sri Vijay Pal Singh
resident of 741, Civil Lines, Kalyani Devi, Unnao.

Applicant

By Advocate: Sri P.K. Srivastava

Versus

1. Union of India through Secretary, Ministry of Home Affairs, Govt. of India, New Delhi.
2. Director, Central Bureau of Investigation, Govt. of India, 5B, 7th Floor, CGO Complex, Lodhi Road, New Delhi-110003.
3. Staff Selection Commission, through its Chairman, Block No.12, CGO Complex, Lodhi Road, New Delhi-110003.
4. The Regional Director (NR), Staff Selection Commission, Block No. 12, CGO Complex, Lodhi Road, New Delhi-110003.

Respondents

By Advocate: Sri S.P. Singh

(Reserved on 10.9.2012)

ORDER

By Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

This O.A. has been filed for the following reliefs:-

- i) to quash the orders dated 12.5.2011 and 17.6.2011 contained in Annexure 1 and 2 to this O.A. holding such orders bad in law, not enforceable and simultaneously directing the opposite parties to appoint the petitioner on the post of Assistant Public Prosecutor in CBI in pursuance of his selection by the Staff Selection Commission (SSC) within a specified time limit that may be allowed by this Hon'ble Tribunal.
- ii) to issue any other order or direction as this Hon'ble Tribunal deems fit and proper may also be passed along with the costs of the original application.

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2. In short, the case of the applicant is that the Staff Selection Commission (SSC) (Respondent No.3) advertised 17 vacancies for selection for the post of Assistant Public Prosecutor (APP) for Respondent No.2 i.e. C.B.I. vide advertisement published in the employment news / weekly news 22-28 August, 2009. Reservation for the relevant categories were also made and the applicant belonging to OBC category, being eligible for the post, participated in the selection and after interview, he was finally selected in the month of July, 2010. He stood at position No. 10 in the select list and second amongst the OBC category candidates. On 12.8.2010, CBI, New Delhi asked for certain documents which were to be sent by registered post or in person latest by 31.8.2010 along with two set of attestation form were also enclosed for filling. The applicant appeared in person on 26.8.2010 in the office of the CBI, New Delhi along with the requisite certificate. Thereafter, when the applicant did not receive any communication and other selected candidates were being given appointment letters for joining by 15.1.2011, he preferred an application under Right to Information Act on 29.4.2011 and received communication dated 20.5.2011 enclosing therewith point-wise reply furnished by CBI on 12.5.2011. The SSC also issued a show cause notice of the same date i.e. 12.5.2011 to the applicant calling upon him to show cause as to why not the candidature of the applicant be cancelled because he has misled the SCC regarding his involvement in the criminal case. He submitted a detailed reply on 25.5.2011 (Annexure -9) saying that the candidature of the applicant has been rejected in an arbitrary manner without application of mind. It has also been clarified that at the time of submission of forms in response to the advertisement, no criminal case was pending against the applicant. At that relevant time, he was staying at Banaras Hindu University pursuing his PHD. During that period, a matrimonial discord brewed up with his

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elder brother Pradeep Kumar Singh and his wife who were staying in Vikas Nagar, Lucknow. His elder brother filed a divorce suit. On the other hand, his brother's wife lodged an FIR under case Crime No.43/2010 u/s 498-A, 323, 504 and 506 IPC and 3/4 Dowry Prohibition Act at P.S. Kidwai Nagar, Kanpur falsely roping therein the entire family which included the applicant, his married sister and Bua etc. (Annexure 10). During investigation, the police added Section 324, 292, 294, 452 IPC also. But the applicant was enlarged on bail on 27.5.2010 (Annexure 11).

3. It has been further pleaded that the police finally submitted charge sheet against all the family members except the father and the Learned CMM, Kanpur took cognizance on 27.5.2010. As already said at the time of filling form, neither there was any requirement by the SSC nor there was any occasion for the applicant to inform the SSC as regard the lodging of FIR in the criminal case. Similarly, at the time of interview held on 23.6.2010 also, whatever information was sought by the SSC were duly supplied. Nothing has been concealed by the applicant at both the above stages. During course of time, some of the family members also challenged the charge sheet u/s 482 Cr PC before the Hon'ble High Court vide Misc. Application No. 23046/2010 and the proceedings of the lower court were stayed. Thereafter, the matter was sent to the mediation centre for amicable resolution. The efforts however failed and ultimately the above case was also dismissed on 8.3.2011. After the applicant was declared successful by the SCC and recommended for appointment in response to the letter dated 12.8.2010, it was for the first time the applicant had to submit attestation form to CBI answering certain queries as mentioned at point No.12 as under:-

12 a) Have you ever been arrested?	Yes/No
b) Have you ever been prosecuted?	Yes/No

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c) Have you ever been kept under detention? Yes/No

d) Have you ever been bound down? Yes/No

e) Have you ever been fined by a court of law? Yes/No

f) Have you ever been convicted by a court of law for any offence Yes/No

g) Have you ever been debarred from any Examination or rusticated by any University? Yes/No

h) Have you ever been debarred/disqualified by any Public Service Commission/ Staff Selection Commission for any of their Examination? Yes/No

i) Is any case pending against you in any Court of law at the time of filling up this Attestation Form? Yes/No

j) ...detention /fine/conviction/ sentence Punishment etc and /or the name of the Case pending in the Court/ university Educational authority etc. at the time of Filling up this form? Yes/No

Note 1) Please also see the WARNING at the top of this attestation form.

2) Specific answer to each of the question should be given by striking out "Yes/No" as the case may be. The warning at Point No. 1,2 and 3 mentioned in the said attestation form are being berating been reproduced herein:-

1. The furnishing of false information of suppression of any factual information in the application for would be a disqualification and is likely to render the candidate unfit for employment under the Govt.

2. If detained, arrested prosecuted bound down, fined, convicted debarred acquitted etc. subsequent to the completion and submission of this form the detail should be communicated immediately to the Union Public Service Commission or the authority to whom the attestation form has been sent earlier as the case may be, failing which it will be deemed to be suppression of factual information.
3. If the act that information has been furnished or that there has been suppression of any factual information in the attestation form comes to notice at any time during the service of a person, his services would be liable to be terminated."
4. The applicant answered the aforesaid questions correctly including about the criminal case and he also gave complete description of the criminal case at the foot of the point No. 12. Thus at no point of time, he concealed any thing either from the CBI or from the SSC. Reference has also been made to para 2.2.7 of the chapter 2 of the Manual of CBI (Admn.) of Govt. of India, New Delhi which provides for verification of character and antecedents. It is also provided that even if a person has been convicted after obtaining specific approval of the Govt. if appointing authority feels that there are redeeming features and reasons to believe that such a person has cured himself of the weakness, he may be appointed. In the case of the applicant, he has not been convicted and there is no provision in the rules including the CBI manual that selection of a candidate may invite ineligibility in case a criminal case is found to be pending. Still his candidature has been canceled without any application of mind. Hence this O.A.
5. The O.A. has been contested by filing a detailed CA on behalf of the CBI (R.No.1). It has been admitted that the applicant

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was finally selected but the SSC while recommending the names of the candidates for appointment in the CBI had advised to verify their character/antecedents before issuing offer of appointment. The applicant was therefore, directed to furnish the required information in the attestation form for verification of his character/ antecedents vide letter dated 12.8.2010. The applicant filled the attestation form under his signature: In column No.12 of the Attestation form, he has furnished information as under:-

a)	Have you ever been arrested?	Yes
b)	Have you ever been prosecuted?	No
c)	Have you ever been kept under detention?	No
d)	Have you ever been bound down?	No
e)	Have you ever been fined by a court of law?	No
f)	Have you ever been convicted by a court of law for any offence	No
g)	Have you ever been debarred from any Examination or rusticated by any University or any other educational authority/ institution?	No
h)	Have you ever been debarred/disqualified by any Public Service Commission/ Staff Selection Commission for any of their Examination/ selection?	No
i)	Is any case pending against you in any Court of law at the time of filing up this Attestation Form?	Yes

6. It has been also admitted that the applicant has further mentioned that a case Crime No. 43/2010 dated 21.2.2010 u/s 498-A/323/504/506 IPC and 3/4 of DP Act has been registered against him in the Police Station Kidwai Nagar, Kanpur. It was further

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mentioned that Hon'ble High Court has referred the matter to the mediation centre and proceedings has been stayed. Based on the information furnished by the applicant, the District Magistrate, Unnao was requested vide letter dated 6.9.2010 for verification of character /antecedents of the applicant. He sent his report on 31.12.2010. Similarly, S.P. Unnao also sent his report on 5.10.2011 mentioning about the pendency of the above criminal case. The verification about the conduct of the applicant was also made by the CBI itself through its Dy. S.P. who reported on 28.9.2010 that the charge sheet dated 6.6.2010 under the aforesaid sections has been filed, which is under trial. After examining the above reports, it was found that the applicant is involved in the above criminal case which is still pending. Though he has not been convicted, it was decided not to appoint him in the organization. Accordingly, his dossier was returned to SSC vide letter dated 3.2.2011 followed by letter dated 15.2.2011 requesting to sponsor another candidate of OBC category in his place. The applicant was also informed about this vide letter dated 12.5.2011 with reference to his application dated 29.4.2011 under RTI. Thereafter, SSC issued a show cause notice dated 12.5.2011 to the applicant. He submitted his reply to the SSC on 25.5.2011. After due consideration of the reply, the SSC vide its letter dated 17.6.2011 had cancelled the candidature of the applicant.

7. The applicant also filed Rejoinder Reply reiterating his averments contained in the O.A. and also saying that now even the criminal case against him and his family members has been decided on 29.3.2012 and all the accused along with applicant have been acquitted. After this judgment, no appeal has been filed in the higher court of law. Therefore, the applicant deserves to be appointed in pursuance of his selection by the SSC.

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8. No Counter Reply has been filed on behalf of SSC which has passed the impugned order dated 17.6.2011 (Annexure -2).

9. We have heard the learned counsel for parties and perused the material on record.

10. Before entering into the merit of the case, certain facts are required to be mentioned which are either admitted or not denied from the other side. It is worthwhile to mention that out of the four respondents, including Union of India, CBI and SSC, only CBI has filed Counter Reply.

11. Admittedly, the applicant got finally selected by the SSC for the post of Assistant Public Prosecutor for CBI in response to the advertisement published in the employment news/weekly news 22-28 August, 2009. He stood at position No.10 in the select list and second amongst the OBC category candidates. On 12.8.2010, the CBI, New Delhi asked for certain documents which were required to be sent by registered post or to be made available in person latest by 31.8.2010. Those documents also included two set of attestation forms which were to be filled by the applicant. The applicant personally submitted those forms/ documents on 26.8.2010 in the office of the CBI, New Delhi.

12. Earlier, in response to the advertisement in question, the applicant had filled the form (Annexure 5) on 21.6.2010 showing him a practicing advocate in Unnao Bar Association from 11.1.2003. This form consisted of 16 columns which we have gone through but did not find any column requiring to give any particulars of involvement in any criminal case. Similarly, the typed copy of the advertisement in question, which has been brought on record also does not show any such requirement. It is also noteworthy that till that relevant time, only an FIR has come into existence in case Crime No. 43/2010 dated 21.2.2010. But any charge sheet/ criminal case was not pending. It has also not been denied that at that

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time, the applicant was staying at BHU pursuing his PHD and during that period, a matrimonial discord brewed up with his elder brother and elder brother's wife who were staying in Vikas Nagar, Lucknow. His elder brother filed a divorce suit. On the other hand his elder brother's wife lodged an FIR under case Crime No. 43/2010 U/Ss 498-A, 323, 504 and 506 IPC and 3/4 Dowry Prohibition Act at P.S. Kidwai Nagar, Kanpur. It is a matter of common knowledge that in such unfortunate matrimonial disputes, cases are lodged from both sides and from the side of the wife, when an FIR is lodged, allegation of harassment on account of non-fulfillment of demand of dowry etc. are usually made not only against the husband but also against all the family members and some times even against married sisters etc. as has been done in the present case also. The applicant was however, released on bail. Thus, at the time of filling form, neither there was any requirement in the form or in the advertisement issued by the SSC nor there was any occasion for the applicant to inform the SSC in respect of lodging of FIR in a criminal case. For the first time, after his final selection, such information was sought vide letter dated 12.8.2010 in the shape of attestation form at point No.12. It is also not disputed that the applicant furnished correct information in column No.12. The relevant sub columns are (a) and (i) :

a) Have you ever been arrested? Yes

i) Is any case pending against you
in any Court of law at the time of filling

up this Attestation form? Yes

13. In fact these replies have been categorically admitted in para 8 of the counter reply filed by the CBI itself. Not only this, it has also been fairly admitted in the same paragraph of Counter reply that the applicant has also gave particulars such as case Crime No. 43/2010 dated 21.2.2010 U/Ss 498-A, 323, 504, 506 of IPC and

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3/4 of D.P. Act Police Station, Kidwai Nagar, Kanpur and that the Hon'ble High Court has referred the matter to the Mediation Centre and proceedings have been stayed and that the applicant was granted bail by the CMM Court, Kanpur. In the show cause notice issued on 12.5.2011 (Annexure -8), it is mentioned as to why the candidature may not be cancelled as the candidate has mislead the Commission regarding his involvement in criminal case. But in fact, there does not appear to be any concealment or act of misleading on the part of the applicant because admittedly, he has revealed the relevant information with full particulars in response to the relevant columns of the attestation form as mentioned above. Probably, that was the reason that while passing the impugned order dated 17.6.2011 (Annexure -2), cancelling the candidature of the applicant, the ground of concealment or misleading has not been mentioned. Instead it has been simply said that on account of his involvement in the said case, it has been decided not to appoint him in the CBI as APP. We would come to that question hereinafter. But we find that the explanation/ reply was sought unnecessarily and wrongly from the applicant by means of show cause notice dated 12.5.2011 that he has mislead the Commission regarding his involvement in the criminal case, whereas he had furnished all the required information correctly in response to para 12 of the attestation form as already mentioned. This becomes further clear from the reply submitted by the applicant in response to the above show cause (Annexure -9). It is a detailed reply comprising 10 paragraphs. The relevant paragraphs of the reply are as under:-

"4. It so happened there after that a criminal case wide CR Case No. 43/2010/ U/S 498-A, 323, 504, 506 IPC and 3/4 D.P.Act has been registered at police station Kidwai Nagar, Kanpur (U.P. on 21.2.2010 on the complaint of Smt.Meera Devi. The said Smt. Meera Devi is wife of elder brother of the

applicant namely Pradeep Kumar Singh. Entire family of the applicant and also certain distant relatives has been roped in the said criminal case which is essentially the matrimonial dispute between my elder brother and his wife. The Axe has also fell upon the applicant only because he is the younger brother of husband of said Smt. Meera Devi as he has also being named in the said case. Teh copy of the FIR enclosed as Annexure -1.

5. The applicant came to know of such FIR only on 14.3.2010 when he was arrested while he was staying in Lucknow. The applicant was released on bail wide order dated 15.3.2010 by CMM, Kanpur. Copy is enclosed as Annexure No.2. Mother was also named in the FIR was released on bail on 15.3.2010 the elder brother was also released on bail on 20.3.2010. I.O. supplemented the charge with sections 324, 292, 294, 452 on 17.3.2010. For which the applicant was released on bail 27.5.2010 by the CMM Court, Kanpur. Rest of the person named in FIR sought stay on their arrest by preferring the writ petition. Wherein the Hon'ble High Court, Allahabad wide order dated 29.3.2010 stayed the arrest of remaining.

6. The applicant received the interview letter from SSC conveying the interview date fix on 23.6.2010. The applicant was required to submit the biographical data at the time of interview. The format was sent along with the interview letter. The applicant appeared in the scheduled interview on 23.6.2010 and also submitted the biographical data. It is pertinent to mention that there was no requirement as per the information sought in the said biographical data to bring in the notice of the SSC as to any criminal case which could have been lodged/ instituted after the submission of the

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application form till the date of interview. The applicant was neither only inquired in this behalf by the SSC in all bonafides and good faith. He submitted the biographical data without any concealment of information, he was expected to fill in prescribed bio data form.

7. The applicant was declared successful when the result was declared in July/ August, 2010.

8. Thereafter, the applicant received letter dated 12.8.2010 from the CBI, HO , New Delhi where under he was required to submit certificate in support of date of birth, education certificate, caste certificate in original before the CBI by 31.8.2010. Two attestation form fully filled by the candidate was also required to be submitted by 31.8.2010, attestation form was also enclosed with this letter.

9. The applicant appeared before the CBI, H.O. on 26.8.2010 for the purpose of verification of his certificates and submissions of attestation form in response to the letter of CBI. The applicant submitted the attestation form the said form contained every detail of which the applicant was required to make disclosure at point No.12, therein the applicant was required to answer various questions by putting in yes/ no option, a few of which questions pertaining to the arrest / prosecution conviction criminal case etc. the applicant made true and correct disclosure to every question wide point no. 12 of the form. The applicant in all bonafide and with a view to give complete information regarding the criminal case in which he was unfortunately found involved by writing details of the same in his own handwriting at the foot of the page no. 4 below the point No.12 (i) .At the point of time, Hon'ble High Court , Allahabad ordered dated 15.7.2010 the dispute seems to be between husband and

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wife, matter was referred to mediation centre and further proceedings of criminal case No. 43/2010 was remain stayed. The copy of the order is enclosed as Annexure No. 3. It is also relevant to mention that it was not required in the attestation form that SSC is also to be informed by the candidate as regard to lodging of criminal case.

10. The applicant never concealed anything at any point of time either from the SSC or from the CBI. The application form submitted to the SSC was duly filled in and complete in all respect. Since no case was lodged against the applicant by that time, there was no occasion of any concealment on the part of the applicant. Again there was no requirement in the application form that SSC has to be kept informed regarding future involvement in criminal case, subsequent to submitting the application form neither was there any column in biographical data sent by the SSC along with the interview letter. Requiring the applicant to disclose the criminal case lodged after submitting the application form till the date of interview. Again there was no occasion for the applicant to conceal anything from the SSC when he was not asked for the same by the SSC, in the first place.

For the first time, after the submission of application form in connection with the present requirement process the applicant was required to disclose the criminal case pending against the applicant when he had to submit the attestation form sent by the CBI and where in the applicant mentioned everything without even iota of any concealment. The applicant did never have any point of time nor will in future any intention to mislead either the SSC or CBI.

In view of the above, it is most humbly requested the candidature of the applicant may not be cancelled. The

applicant sincerely desires to serve the institution of the CBI with complete determination and dedication and if he is given appointment on the said post he would ever feel obliged.

Applicant
Sd/-
25.5.2011"

14. Now, we come to the impugned order of cancellation of candidature of the applicant which has been passed after considering the above reply comprising 10 paragraphs running into four pages. In comparison to the above, the impugned order is very short which consists of only seven lines and there is not even a whisper about the main and sole point i.e. the applicant has concealed or mislead the Commission about his involvement in a criminal case. It appears that when the Commission did not find any act of misleading or concealment, then they left that point and instead passed an order saying that on account of his involvement in the criminal case, it has been decided not to appoint him. The detailed explanation / reply submitted by the applicant has not been discussed at all. Thus, there does not appear to be any sequence or proximity or coherency between the show cause notice, the detailed reply submitted by the applicant vis-a-vis the above order passed by the SSC. There also does not appear any application of mind in passing the impugned order. It is also not a reasoned order because none of the points raised by the applicant in his reply have been dealt with. Not only this, there also does not appear to be any rule or provision in the CBI manual or elsewhere as claimed by the applicant that a person duly selected by the SSC shall be held ineligible or unsuitable for appointment in the CBI merely because of pendency of a criminal case. There was also no direct involvement of the applicant in this case. Being husband's brother (Devar), he along with his married sister and Bua who were

living separately, were also implicated. It was also not a case of moral turpitude or any serious offence. Reference has also been made in the pleadings contained in O.A. to para 2.2.7 of the chapter 2 of the Manual of CBI (Admn.), Govt. of India, New Delhi which provides for verification of character and antecedents. It says that even if a person has been convicted then after obtaining specific approval of the Govt. , if appointing authority feels that there are redeeming features and reasons to believe that such a person has cured himself of the weakness, he may be appointed. In the present case, what to say of conviction, the applicant has been finally acquitted on 29.3.2012 and no appeal has been filed in the higher court of law. In the present case, the SSC has not even filed any Counter reply. It is only the CBI who has filed Counter Reply. Thus, the author of the impugned order i.e. the SSC (R-3) has not even dared or cared to controvert the pleadings of the O.A. Therefore, as against the SSC, the pleadings of the O.A. stand uncontroverted and admitted.

15. From the side of the applicant, reliance has been placed on the following four case laws:-

(1) ***Commissioner of Police and others Vs. Sandeep Kumar (2011) 4 SCC 644. Before Markandey Katju and Gyan Sudha Misra, JJ.*** The case in hand appears to be substantially covered by the preposition of law laid down in this case law. In the above case, in the application form itself, an information was sought as to whether the applicant has been arrested, prosecuted, kept under detention, convicted by any court of law etc. But the candidate i.e. Sandeep Kumar wrongly answered in negative , though he was involved in a case U/Ss 325/ 34 IPC. The selection was for the post of Head Constable (Ministerial). In the case before us, the selection is for APP in CBI wherein no such information was sought at the time of filing of form and he did neither conceal any information nor give any wrong information. Coming back to the case of Sandeep

Kumar (Supra), after applying in February, 1999, he was qualified in all the test for selection. Then on 3.4.2001, he filled the attestation form, wherein for the first time, he disclosed that he had been involved in a criminal case with his tenant which later on has been compromised in 1998. Therefore, in August, 2001, a show cause notice was issued to him as to why his candidature may not be cancelled on account of concealment of the fact that he was involved in the above criminal case and for making a wrong submission in his application form. He submitted his reply but the authorities were not satisfied and canceled the candidature of the applicant in May 2003. Sandeep Kumar filed a petition before CAT, which was dismissed but the Hon'ble Delhi High Court allowed it. Thereafter, an appeal was filed by the Commissioner of Police. The Hon'ble Apex Court did not find any substance in the appeal and therefore upheld the judgment of Delhi High Court. The relevant paragraphs are as under:-

"8. We respectfully agree with the Delhi High Court that the cancellation of his candidature was illegal, but we wish to give our own opinion in the matter. When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often be condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

*9. In this connection, we may refer to the character "Jean Valjean" in Victor Hugo's novel *Les Miserables*, in which for committing a minor offence of stealing a loaf of bread for his hungry family Jean Valjean was ~~646~~branded as a thief for his whole life. The modern approach should be to reform a person instead of branding him as a criminal all his life.*

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10. We may also here refer to the case of Welsh students mentioned by Lord Denning in his book *Due Process of Law*. It appears that some students of Wales were very enthusiastic about the Welsh language and they were upset because the radio programmes were being broadcast in the English language and not in Welsh. They came up to London and invaded the High Court. They were found guilty of contempt of court and sentenced to prison for three months by the High Court Judge. They filed an appeal before the Court of Appeals. Allowing the appeal, Lord Denning observed:

"I come now to Mr Watkin Powell's third point. He says that the sentences were excessive. I do not think they were excessive, at the time they were given and in the circumstances then existing. Here was a deliberate interference with the course of justice in a case which was no concern of theirs. It was necessary for the Judge to show—and to show to all students everywhere—that this kind of thing cannot be tolerated. Let students demonstrate, if they please, for the causes in which they believe. Let them make their protests as they will. But they must do it by lawful means and not by unlawful. If they strike at the course of justice in this land—and I speak both for England and Wales—they strike at the roots of society itself, and they bring down that which protects them. It is only by the maintenance of law and order that they are privileged to be students and to study and live in peace. So let them support the law and not strike it down.

But now what is to be done? The law has been vindicated by the sentences which the Judge passed on Wednesday of last week. He has shown that law and order must be maintained, and will be maintained. But on this appeal, things are changed. These students here no longer defy the law. They have appealed to this Court and shown respect for it. They have already served a week in prison. I do not think it necessary to keep them inside it any longer. These young people are no ordinary criminals. There is no violence, dishonesty or vice in

them. On the contrary, there was much that we should applaud. They wish to do all they can to preserve the Welsh language. Well may they be proud of it. It is the language of the bards—of the poets and the singers—more melodious by far than our rough English tongue. On high authority, it should be equal in Wales with English. They have done wrong—very wrong—in going to the extreme they did. But, that having been shown, I think we can, and should, show mercy on them. We should permit them to go back to their studies, to their parents and continue the good course which they have so wrongly disturbed." (Vide *Morris v. Crown Office*¹, QB at p. 125C-H.)

In our opinion, we should display the same wisdom as displayed by Lord Denning.

11. *As already observed above, youth often commits indiscretions, which are often condoned.*

12. *It is true that in the application form the respondent did not mention that he was involved in a criminal case under Sections 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified. At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter.*

13. *For the reasons given above, this appeal has no force and it is dismissed. No costs."*

As said above, the case in hand is substantially and squarely covered by the above case law.

2. ***Ram Kumar Vs. State of U.P. and others reported in 2011***

(3) LBESR 544. Before R.V. Raveendran and A.K. Patnaik, JJ.

This case has been decided by the Hon'ble Apex Court in August 2011 i.e. after about 4 months of the decision of the above case of Commissioner of Police (supra) which was decided in March 2011. In this judgment, the aforesaid case of Commissioner of Police (supra) was also cited and considered. From the other side, reliance was placed on the judgment of Kendriya Vidyalaya

Sangathan and others Vs. Ram Ratan Yadav reported in 2003 (3) SCC 437, in which the case under sections 323, 341, 294, 506-B read with Section 34 IPC was pending and this material was suppressed in the attestation form. The criminal case was however, withdrawn. Appointment in question was on the post of Physical Education Teacher in Kendriya Vidyalaya Sangathan. On these facts, the Hon'ble Apex Court held in that case that he was to serve on the said post and he could not be suitable for that post because the character, conduct and antecedents of a teacher will have some impact on the minds of the students of impressionable age. Therefore, his dismissal from service was not interfered with. On the other hand, the facts of the case of Ram Kumar (supra) were that the post in question was of a constable and the applicant had submitted an affidavit dated 12.6.2006 to the recruiting authority in the proforma of verification roll. In para 4, he had stated that no criminal case was registered against him. He was selected and appointed as male constable and deputed for training. Thereafter, Police Station, Jaswant Nagar, Etawah submitted a report about pendency of criminal case under Sections 324/323/ 504 IPC. Subsequently the criminal case was disposed of on 18.7.2002 and the appellant was acquitted. Along with the above report of the police station, the order of acquittal was also enclosed. The said report was however, submitted to the SSP, Ghaziabad who by order dated 8.8.2007 cancelled the order of selection on the ground that he has submitted an affidavit stating wrong facts and concealed correct facts and his selection was irregular and illegal. Aggrieved by this order, a writ petition was filed before a single judge who dismissed it on 30.8.2007, in the light of the judgment of Kendriya Vidyalaya Sangathan (supra). Then a special appeal was filed before the Division Bench which has also dismissed it on 31.8.2009.

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After considering all the facts and circumstances, the Hon'ble Supreme Court observed as under:-

"7. We have carefully read the Government Order dated 28.04.1958 on the subject 'Verification of the character and antecedents of government servants before their first appointment' and it is stated in the Government order that the Governor has been pleased to lay down the following instructions in supercession of all the previous orders:

"The rule regarding character of candidate for appointment under the State Government shall continue to be as follows:

The character of a candidate for direct appointment must be such as to render him suitable in all respects for employment in the service or post to which he is to be appointed. It would be duty of the appointing authority to satisfy itself on this point."

8. It will be clear from the aforesaid instructions issued by the Governor that the object of the verification of the character and antecedents of government servants before their first appointment is to ensure that the character of a government servant for a direct recruitment is such as to render him suitable in all respects for employment in the service or post to which he is to be appointed and it would be a duty of the appointing authority to satisfy itself on this point.

9. In the facts of the present case, we find that though Criminal Case No.275 of 2001 under Sections 324/323/504 IPC had been registered against the appellant at Jaswant Nagar Police Station, District Etawah, admittedly the appellant had been acquitted by order dated 18.07.2002 by the Additional Chief Judicial Magistrate, Etawah. On a reading of the order dated 18.07.2002 of the Additional Chief Judicial Magistrate would show that the sole witness examined before the Court, PW-1 Mr. Akhilesh Kumar, had deposed before the Court that on 02.12.2000 at 4.00 p.m. children were quarrelling and at that time the appellant, Shailendra and Ajay Kumar amongst other neighbours had reached there and someone from the crowd hurled abuses and in the scuffle Akhilesh Kumar got injured when he fell and his head hit a brick platform and that he was not beaten by the accused persons by any sharp weapon. In the absence of any other witness against the appellant, the Additional Chief Judicial Magistrate acquitted the appellant of the charges under Sections 323/34/504 IPC. On these facts, it was not at all possible for the appointing authority to take a view that the appellant was not suitable for appointment to the post of a police constable.

10. The order dated 18.07.2002 of the Additional Chief Judicial Magistrate had been sent along with the report dated 15.01.2007 of the Jaswant Nagar Police Station to the Senior Superintendent of Police, Ghaziabad, but it appears from the order dated 08.08.2007 of the Senior Superintendent of Police, Ghaziabad, that he has not gone into the question as to whether the appellant was suitable for appointment to service or to the post of constable in which he was appointed and he has only held that the selection of the appellant was

illegal and irregular because he did not furnish in his affidavit in the proforma of verification roll that a criminal case has been registered against him. As has been stated in the instructions in the Government Order dated 28.04.1958, it was the duty of the Senior Superintendent of Police, Ghaziabad, as the appointing authority, to satisfy himself on the point as to whether the appellant was suitable for appointment to the post of a constable, with reference to the nature of suppression and nature of the criminal case. Instead of considering whether the appellant was suitable for appointment to the post of male constable, the appointing authority has mechanically held that his selection was irregular and illegal because the appellant had furnished an affidavit stating the facts incorrectly at the time of recruitment".

In respect of Kendriya Vidyalaya Sangathan (supra), the Hon'ble Apex Court observed that the facts of that case were therefore, materially different from the facts of the case of Ram Kumar (Supra). Therefore, the Hon'ble Apex Court allowed the appeal and set aside the appeal of Learned Single Judge and Division Bench of the High Court of Allahabad and quashed the order passed by the SSP, Ghaziabad with a direction that the applicant will be taken back in service within a period of 2 months from the date of receipt of order. But he will not be entitled for any back wages for the period he has remained out of service. Thus, this case is applicable in the present case before us with full strength.

3. Awadhesh Kumar Sharma Vs. Union of India and others reported in (2000) 1 UPLBEC 763. Before M. Katju and Shitia Prasad Srivastava, JJ. According to the facts of this case, the petitioner applied for appointment as Mazdoor in Central Ordinance Department, Kanpur and he was finally selected for the post vide letter dated 7.1.1989. However, he did not mention about his involvement in a criminal case under Sections 147/323/352/504 IPC which was later converted into Section 307 IPC. Hence, his selection was cancelled. However, in the criminal case, he was acquitted vide judgment and order dated 7.7.1989. Thereafter, he made representation that since he has been acquitted in the

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criminal case, he may be permitted to join duty. But he was informed by letter dated 12.10.1990 that he can be considered as a fresh candidate as and when vacancies are released. He then filed a petition before the CAT which was dismissed and the review application was also dismissed. Then he filed writ petition. The Division Bench of our High Court opined that when the petitioner was acquitted, it has to be deemed in law that he was never involved in any criminal case. It is settled law that every statute ordinarily operates prospectively unless expressly made retrospectively whereas every judgment of a Court of law operates retrospectively unless expressly made prospectively. The only material against the petitioner was the criminal case in which he was acquitted. Therefore, the Hon'ble High Court mandated that since he has been selected, he must now be allowed to join duty. The impugned orders dated 26.2.1997 and 24.12.99 were quashed and the mandamus was issued to appoint the petitioner within 6 weeks in accordance with law in pursuance of selection letter issued in his favour earlier. This case law also applies in the present case with full force.

4. Harendra Panwar, Constable Vs. State of U.P. and others reported in 2012 (2) LBESR 94 (All)- Present : Sunil Hali, J. In this case also, pursuant to the advertisement, the petitioner applied for the post of Constable for which he was selected from District Etawah and was appointed as a Constable in the Police Department on 26.11.2005. After completion of the post recruitment training the petitioner was posted as Constable in District Etawah in June 2006. On 18.8.2007, his selection was cancelled by the respondent No.2 for the reasons that he did not disclose that a case Crime No. 32 of 2005 under Sections 147, 148, 149, 307, 504 and 506 IPC at P.S. Kandhala, District- Muzaffar Nagar was against him. The Hon'ble High Court while referring to

G.O. dated 28.4.1958, providing for verification of character and antecedents of the Govt. servants as a pre-requisite for being appointed as a Govt. servant, observed that character and antecedents of the appointee shall have to be verified by having an over view of his personality in respect of his moral character and integrity. This is done in order to enable the appointing authority to draw its satisfaction as to whether a person is fit to be appointed to the said post. The Hon'ble Court found that in the G.O. no such obligation is cast on the appointee to disclose any such information regarding his involvement in a criminal case. But in column 11 of the form, it was required to inform as to whether the petitioner has been convicted in any case or not. The Hon'ble High Court then observed that in the case before it, the petitioner was not convicted in any case. Therefore, withholding of an information which was not required to be given by the petitioner could not have become a ground for cancellation of his appointment. The Hon'ble High Court specifically observed that it is trite in law that mere involvement in a criminal case is not an impediment for appointment to the post of a constable. Moreover, after a person has already been acquitted from the criminal charge, the stigma attached to a person is obliterated. The Hon'ble High Court observed that while recording its satisfaction, the appointing authority may on verification of the conduct, antecedents and character come to a conclusion that the over all profile of the petitioner is not conducive for his appointment. This will depend upon many factors including the reputation of the person, his behaviour in the public, his integrity and morality etc. The notes attached to column 3 of the G.O. dated 28.4.58 itself provide that a conviction need not of itself involve the refusal of a certificate of good character. Stands of conviction should be taken into consideration if it involves moral turpitude or association with crimes of violence or with a movement which has as its object to

overthrow by violent means a Government. The case of Ram Kumar (supra) was also referred, which was followed by the Hon'ble High Court saying that in the order before it also no satisfaction has been recorded by the appointing authority that the petitioner is not suitable to be appointed with reference to the nature of alleged suppression and the nature of criminal case. Therefore, the Hon'ble High Court allowed the writ petition and quashed the impugned order with the direction to the respondents to take back the petitioner in service within a period of one month with all consequential benefits except back wages for the period he remained out of service.

16. From the side of the respondents following case laws have been relied upon:-

(1). **State of West Bangal and Others Vs. SK. Nazrul Islam**

(2011) 10 SCC-184. In this case law there was concealment of fact regarding antecedents. A criminal charge sheet had already been filed against him. The authority i.e. Police Directorate, West Bangal therefore, did not appoint him as a constable. He went to the Tribunal which declined any relief. The Hon'ble High Court however directed to issue appointment letter subject to final decision of pending criminal case. The Hon'ble Apex Court held that no mandamus could have issued by High Court because a criminal case was pending. It was also observed that the person cannot be held to be suitable in the police till he has not been acquitted.

The above case law is not applicable here because of different facts and circumstances. Admittedly, there is no concealment of facts regarding antecedents in the case before us. Moreover, here the applicant has already been acquitted. Therefore, this case law is not applicable in the present case.

(2). **Arun Kumar Yadav Vs. GNCT of Delhi through Chief Secretary, Delhi Secretariat and Others , O.A.No.2339 of 2008**

(Swamynews-52-53)--In this case there was concealment of involvement in a criminal case, though he was acquitted. The Tribunal held that though the applicant was acquitted but the fact remains that he concealed this fact. As said above in the case before us however, there is no such concealment. Therefore this judgment of CAT Principal Bench (decided on 12.8.2010) has also no application in the present matter. Moreover, this was decided on 12.8.2010 by the Principal Bench whereas subsequently in March, 2011 the Hon'ble Apex Court has decided the case of Commissioner of Police (Supra) in which similar question was involved as already discussed on page 15 of this order. We are therefore bound to obey the preposition of law laid down in the above case of Commissioner of Police, being the law of land. Further, from the perusal of the electrostat copy of this judgment as published in Swamynews as filed on behalf of respondents, it appears that following three judgments were also considered by the Principal Bench CAT in that case. We obtained these case laws also from our CAT library and the same were also perused by us. We would like to make a brief mention of these judgments also as under:-

(1). Union of India and Others Vs. Bipad Bhanjan Gayen (2008) 11 SCC-314.

(2). R. Ragdhakrishana Vs. Director General of Police and Others (2008) 1 SCC-660.

Both these cases do not apply in the present case because of different facts. In both these cases wrong information was disclosed by the candidate which is not a case here.

(3). Delhi Administration Through its Chief Secretary and Others Vs. Sushil Kumar (1996) 11 SCC-605--According to facts of this case appointment was denied on the ground of undesirability

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because on verification it was found that his appointment to the post of constable was not desirable. The involvement of the applicant was under Section-304 IPC, 324 read with 34 IPS, which was very serious offence. He was however acquitted. But, the appointing authority took a view that in the background of the case, it was not desirable to appoint him as a constable to a disciplined force. The Apex Court found that appointing authority has rightly focused this aspect and found him not desirable to appoint him to the service. But, in the present case neither any such consideration has been made nor any such order has been passed by the appointing authority. Instead the impugned order has been passed by the Commission. However, that order has no connectivity with the show cause notice as already discussed. The applicant was asked to show cause in respect of alleged concealment of his involvement in the criminal case. But the order cancelling his candidature was passed on the ground of his involvement and not concealment. The sole point of concealment was thus given up. Further, the Commission has not even defended the order passed by it. The Commission has not filed any Counter Affidavit refuting the averments and pleadings of the applicant contained in O.A. Moreover, in the case before us the offence is of not of a serious nature. It was an outcome of a matrimonial dispute and allegations were of harassment on account of non-fulfillment of demand of dowry wherein, the applicant's brother-in-law (Devar), was also implicated though, he was living separately in a different district/city making preparations for appearing in competitive examinations as per uncontroverted pleadings. Even, married sister and Bua living separately were also implicated as is normally done these days in such cases. Lastly the above is a case law of 1996. During last 15-16 years, the law has further developed and we do not have any justification to ignore the recent and two consecutive case laws on

this point of Hon'ble Apex Court in the above cases of Commissioner of Police (Supra) and Ram Kumar (Supra), both of 2011. Therefore, the respondents cannot derive any benefit from the above case law.

A photostat copy of a letter dated 29.8.2012 of CBI (Administration) showing internal correspondence has also been filed alongwith the above case law. In fact no cognizance can be taken of such a paper at this stage because, it is not a part of pleading. It has been filed after closure of final arguments. Still, we have perused it. It is mentioned in this letter that as per verification report dated 14.8.2012 the applicant has been acquitted in the relevant criminal case and the limitation period of filing an appeal has also expired. Further, it is mentioned that another case no.757/2010 under Section-12 of Domestic Violence Act is pending in the Court of Metropolitan Magistrate, Kanpur in which the applicant is also one of the accused. Therefore, a request has been made vide this letter to bring it to the notice of learned counsel for the respondents to apprise this Tribunal before passing final orders. As said above this subsequent fact has not been pleaded in the counter affidavit. This Tribunal cannot travel beyond the pleadings, which are on record. This alleged case also does not find place either in show cause notice or any documents on record including the impugned order of cancellation of candidature. Otherwise also, it appears to be an offshoot of same matrimonial dispute giving rise to above main criminal case which has already ended in acquittal. It is a petty case of similar nature under different Act. It has no significance after acquittal in the main case.

17. Thus in the case before us, firstly there is no concealment at all in respect of involvement in the criminal case. Admittedly the applicant had furnished all the required information with all the particulars. Therefore, the show cause notice in respect of alleged

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concealment was ab-anitio wrong and against the record and when this fact was specifically pointed out in the reply it was not dealt with at all in the impugned order. Instead the impugned order was passed on a new ground i.e. merely on the ground of involvement in a criminal case, though it has been nowhere provided either in any law or in the Manual of CBI (Admn.) or in the conditions of the relevant advertisement that candidature or selection can be cancelled on this ground. On the converse in para 2.2.7 of the chapt. 2 of the Manual of CBI (Admn.) (as pleaded in O.A. (which is not controverted in C.A.) that even if a person is a convict, he can be appointed after obtaining approval of the Govt., if appointing authority feels that there are redeeming features and reasons to believe that the person has cured himself of the weakness, if any. In the present case, such facts were not considered at all and there was no application of mind by the appointing authority on these points. In fact, appointing authority has not passed any order whatsoever. After receiving of verification report the dossier was admittedly sent from CBI to the Commission which issued show cause notice dated 12.5.2011 and then impugned order dated 17.6.2011 was passed by the Commission cancelling the candidature of the applicant. But even the Commission was not sure as to who took the actual decision. It is a typical order which has been passed by the Commission saying the CBI has decided not to appoint him and at the same time, it is mentioned that Commission has also decided the same. But there is neither any separate decision of the CBI nor any such joint decision of both of them on record. Secondly, as has been observed in the cases of Ram Kumar (Supra) and Harendra Panwar (supra) in the present case also, no such satisfaction has been recorded by the appointing authority that the applicant was not fit or suitable to be appointed to the post in question. Thirdly, the applicant has been ultimately acquitted in the

criminal case and no appeal has been filed which, as laid down in the case of Awadhesh Kumar Sharma (Supra), would mean that he was not involved in any criminal case on the alleged date because the judgment of acquittal in his favour operates retrospectively. Fourthly, it is trite in law that mere involvement in a criminal case is not an impediment for appointment and after acquittal, the stigma attached to a person is obliterated.

18. In the conspectus of the discussion made hereinabove and having regard to the preposition of law laid down by the Hon'ble Apex Court in the aforesaid judgments, this O.A. is partly allowed. The impugned order dated 17.6.2011 cancelling the candidature of the applicant (Roll No. 0901040793-OBC) is hereby quashed. The other order which has been impugned dated 12.5.2011 is in fact an information furnished under Right to Information Act and as such in respect of it neither any order can be passed nor it is required to be passed. In the follow up action, the opposite parties are directed to appoint the applicant on the post in question in pursuance of his selection, expeditiously. No order as to costs.

S.P. Singh
(S.P.Singh)
Member (A)

HLS/-

Alok Kumar Singh
(Justice Alok Kumar Singh)
Member (J) 12.9.12