

were provisionally selected for appointment to the post of Driver. In December 2010, the DSSSB forwarded the dossiers of the selected candidates (including that of the applicant) to the respondent-DTC, with the stipulations that appointment of the selected candidates would be subject to fulfillment of all conditions of eligibility as per Recruitment Rules, and that actions would be taken by the respondent-DTC (i) to enquire into the character & antecedents of the candidates, (ii) to get the candidates medically examined, and (iii) to verify the original documents/certificates required for the post as submitted by them along with their application forms. It was also stipulated by the DSSSB that the respondent-DTC would issue appointment letters to the candidates after satisfying themselves about their eligibility as laid down in the Recruitment Rules. In case of any discrepancy/shortcoming in the license or any other matter relating to eligibility, etc., the DSSSB/DTC has the right to cancel the selection/appointment of any candidate at any stage thereafter. Accordingly, the applicant was required to complete the pre-recruitment formalities, namely, medical examination, acceptance of the offer of appointment, training for the post of Driver, and submission of Form No.17 mentioning his bio data and details of criminal cases, if any, against him either pending, or disposed of, by that date. On medical examination, the applicant was found fit for appointment to the post of Driver. Paragraph 21 of Form No.17 duly filled in and submitted by the applicant on 2.1.2011(Annexure P-5) is reproduced below:

õ21. If there is any criminal case, give the details: FIR No.493/2000
 PS-Mehrauli U/s 279/338
 Judge Sh.Deepak Garg,
 Patiala House.
 Decided on 13/9/2005
Fine 2000/-

FIR No.4/2004
 PS-Malviya Nagar,
 U/s 279/338,
 Court No.2, Saket Court
 Sh.Deepak Sehrawat,
 MM.
 Pending.
 Next Date 26/4/2011ö

In the criminal case, FIR No.04/2004, P.S.Malviya Nagar, under Sections 279 and 338 IPC, the learned trial court passed the judgment dated 31.1.2011 holding thus:

õ9. Thus it cannot (*sic*) be concluded that the prosecution has failed to prove its case against the accused beyond reasonable doubt and he is given the benefit of doubt and therefore accused Kiran Pal is acquitted for the offence punishable U/s 279/338 IPC for which he stands charged.ö

As the applicant was involved in two criminal cases for rash and negligent driving, and in the first case, a fine of Rs.2000/- was imposed on him, and in the second case, he was acquitted by the learned trial court after giving him benefit of doubt because of the prosecution having failed to prove its case beyond reasonable doubt, the respondent-DTC, vide its order dated 7.9.2012, cancelled the provisional selection of the applicant.

2.2 Being aggrieved by the cancellation of his provisional selection for appointment to the post of Driver, the applicant had filed OA No.2715 of

2012. The Tribunal had disposed of OA No.2715 of 2012, vide order dated 31.7.2013, the relevant part of which is reproduced below:

“Whether after settlement of one of the criminal cases registered against the Applicant and his acquittal in another case, he should be given appointment as driver in DTC or not may be an issue requiring legal advice but a final decision needs to be taken by the competent authority, considering overall circumstances of the case. In this view of the matter, the OA is disposed of with the directions to the Respondents to ensure that a decision regarding appointment of the Applicant is taken by the authority competent to do so within a period of 8 weeks and communicated to Applicant within one week thereafter.”

2.3 In compliance with the Tribunal’s direction, the respondent-DTC considered the applicant’s case, but rejected the same by passing a speaking order dated 28.11.2013, which is reproduced below:

Speaking Order

In pursuance to the orders dated 31.7.13 passed by Hon. Central Administrative Tribunal (Principal Bench), New Delhi in OA No.2715/2012, Shri Kiran Pal (DSSSB candidate bearing Roll No.6527212 is hereby informed that:

1. The applicant was provisionally considered by the DSSSB for selection to the post of Driver (DTC) and his name was referred to Delhi Transport Corporation, along with other selected candidates, for appointment to the post of Driver No.F.1(184)/CC-II/DSSSB/2010/980-96 dated 6.12.2010.
2. He was required to complete the pre-recruitment formalities like medical examination, acceptance of the offer of appointment & training, etc., for the post including submission of details of pending court case(s), if any, in prescribed Form No.17.
3. He was medically examined by the DTC Medical Board on 27.12.2010 and declared fit for the post vide its report bearing No.HQ/MO/39/15 dated 27.12.2010.
4. He submitted an undertaking in prescribed form No.17 on 3.1.2011 wherein it was mentioned that a criminal case u/s 279/338 IPC is pending against him. Subsequently, it was decided vide judgment dated 31.1.2011. Apart from the pending case, he has been imposed a fine of Rs.2000/- in another case u/s 279/338 IPC by Patiala House Court.

5. The matter was examined by Delhi Transport Corporation and it was observed that the applicant has been acquitted in the case because of the reason that the evidence has not been produced and whatever evidence was produced it has turned hostile. As such Hon. Court had no alternative except to acquit him.

6. The applicant was earlier also involved in a case of rash & negligent driving wherein on conviction he was fined and in the second case of rash & negligent driving, the applicant has not been honourably acquitted but discharged because the witnesses turned hostile. Since the applicant is involved in two cases of accident which were registered against him, even though he is acquitted in second case, his case for appointment as driver is not sustainable. An individual who has to continue as driver must have clean record. He being involved in two cases of rash & negligent driving, even if acquitted cannot be given appointment as driver.

7. Taking into consideration the above particulars, the applicant was informed vide letter No.PLD-III/(Driver/DSSSB)/2012/2787 dated 7.9.12 that the provisional selection made by the DSSSB to the post of driver with Delhi Transport Corporation, is cancelled.

8. It is stated that he has not been acquitted by the Court in accident case(s) on merits as such a person with such a character is not a fit person for the post of driver and also it cannot be a ground to give appointment to the Applicant.

9. In view of the facts as explained above, it is reiterated that provisional selection made by the DSSSB in respect of the applicant to the pot of driver in DTC is already cancelled since he is not fit suitable for appointment to the said post.

This issues with the approval of the competent authority.ö

2.4 Hence, the applicant has filed the present OA seeking the following reliefs:

õa) That the Respondent Corporation be directed to implement the appointment letter dated 3.1.2011 and allow the Applicant to join duties.

b) The impugned order dated 28.11.2013 be quashed and set aside.

c) Pass such any other and further reliefs as this Honøble Tribunal may deem fit and fine in the interest of justice.ö

3. It was submitted by Mr.R.S.Garia, the learned counsel appearing for the applicant that as the first criminal case (vide FIR No.493/2000 under Sections 279 and 338 IPC) was settled by and between the parties and such settlement formed the basis of the judgment/order dated 13.9.2005 passed by the learned Lok Adalat, the applicant stood acquitted of the charges under Sections 279 and 338 IPC. In the second criminal case (vide FIR No.4/2004, under Sections 279 and 338 IPC), the applicant has been acquitted by the learned trial court, vide judgment dated 31.1.2001. In view of his acquittal in both the criminal cases, the respondent-DTC could not have denied appointment to the applicant. In support of his submission, Mr.R.S.Garia relied on the following decisions:

- (i) **K.N.Govindan Kutty Menon Vs. C.D.Shaji**, Civil Appeal No.10209 of 2011, decided by the Honøble Supreme Court on 28.11.2011;
- (ii) **Samraj Singh Vs. Govt. of NCT of Delhi and another**, OA No.153 of 2009, decided by the Principal Bench of the Tribunal on 8.12.2009; and
- (iii) **Govt. of NCT of Delhi & Anr. Vs. Robin Singh**, W.P.(C) No. 2068 of 2010, decided by the Honøble High Court of Delhi on 25.8.2010.

We have carefully perused the decisions cited by the learned counsel

3.1 In **K.N.Govindan Kutty Menon Vs. C.D.Shaji** (supra), it has been held by the Honøble Supreme Court that in view of the unambiguous language of Section 21 of the Legal Services Authorities Act, 1987, every

award of the Lok Adalat shall be deemed to be a decree of a civil court and as such it is executable by that Court. The said Act does not make out any such distinction between the reference made by a civil court and criminal court. There is no restriction on the power of the Lok Adalat to pass an award based on the compromise arrived at between the parties in respect of cases referred to by various Courts (both civil and criminal), Tribunals, Family Court, Rent Control Court, Consumer Redressal Forum, Motor Accidents Claims Tribunal and other Forums of similar nature. Even if a matter is referred by a criminal court under Section 138 of the Negotiable Instruments Act, 1881, by virtue of the deeming provisions, the award passed by the Lok Adalat based on a compromise has to be treated as a decree capable of execution by a civil court.

3.2 **In Samraj Singh Vs. Govt. of NCT of Delhi and another** (supra), the applicant was a candidate for selection and appointment to the post of Constable (Driver) in Delhi Police. He was involved in two criminal cases, viz., (i) FIR No. 684/99, dated 28.10.1999, under Sections 307 and 506 IPC; and (ii) FIR No. 465 dated 6.10.2003, under Sections 323, 341 and 506 read with Section 34 IPC. The applicant disclosed his involvement in the said two criminal cases in the application and attestation forms. In the first case, the applicant was acquitted by the learned trial court. The second case having been compromised, the learned Judge, Lok Adalat, acquitted the applicant.. The respondent-Delhi Police declared the applicant unfit for appointment to the post and issued a show-cause notice calling upon the

applicant to show cause as to his candidature should not be cancelled. Thereafter, the respondent-Delhi Police cancelled the applicant's candidature. After considering the facts and circumstances of the case, the Tribunal concluded that the respondent-Delhi Police did not properly analyze the case of the applicant, and that the applicant's candidature was erroneously cancelled. Accordingly, the Tribunal quashed both the show-cause notice and the order cancelling the applicant's candidature, and remitted the matter to the respondent-Delhi Police to pass appropriate order for appointment of the applicant to the post of Constable (Driver).

3.3 In **Govt. of NCT of Delhi & Anr. Vs. Robin Singh** (supra), the applicant was a candidate for selection and appointment to the post of Sub Inspector (Executive) in Delhi Police, pursuant to an Advertisement issued in 2007. He was involved in a criminal case under Sections 323, 504 and 506 IPC on the basis of a private complaint. He was acquitted in the said criminal case on 9.6.2008. Though his involvement in the said criminal case was not disclosed by the applicant in the attestation form, yet he subsequently intimated the same to the Delhi Police. The Delhi Police issued a show-cause notice proposing to cancel his candidature on the ground of suppression of involvement in criminal case and, thereafter, cancelled his candidature. The Tribunal allowed the O.A. filed by the applicant. The writ petition filed by the Govt. of NCT of Delhi and another challenging the Tribunal's order was dismissed by the Hon'ble High Court of Delhi, with the following observations:

40. All these offences are non-cognizable and needless to state are bailable. No moral turpitude, as generically understood, is involved. The acts do not shock the moral conscience of the society and with reference to the motive do not evidence a person with depraved character. The offences are not of the kind which would justify dismissal or removal from service, if the respondent had committed the same if in service.

41. Thus, being charged with the said offences, of which the respondent has ultimately been acquitted, would not be a bar and cannot be treated as a bar to seek public employment and on being successful at the entrance exam, to be denied the same.

4. *Per contra*, Mr. Akshay for Mr. Manish Garg, the learned counsel appearing for the respondent-DTC submitted that in the first criminal case (FIR No.493/2000, under Sections 279 and 338 IPC), the learned court imposed on applicant a fine of Rs.2000/-. The imposition of fine of Rs.2000/- was disclosed by the applicant in Form No.17, vide paragraph 21. Therefore, it cannot be said that the applicant was acquitted of the charges by the learned court. As regards the second criminal case (FIR No.4/2004, under Sections 279 and 338 IPC), the prosecution having failed to prove its case against the applicant beyond reasonable doubt, the learned court gave him the benefit of doubt and acquitted him of the charges. It was also submitted by the learned counsel that after considering the judgments passed by the learned court, nature of offences, and the duties and responsibilities attached to the post of Driver, the respondent-DTC did not find the applicant suitable for appointment to the post of Driver and accordingly, cancelled his provisional selection. Therefore, there is no infirmity or illegality in the decision taken by the respondent-DTC.

5. We have given our thoughtful consideration to the facts and circumstances of the case, and the rival submissions.

6. In **Commissioner of Police, New Delhi and another vs. Mehar Singh**, 2013 (7) SCC 685, there was a criminal case against the appellant. The Screening Committee did not recognize his case for appointment. He filed an OA before the Tribunal. A direction was issued in his favour. The Commissioner of Police, New Delhi, filed a writ petition before the Hon'ble Delhi High Court, which confirmed the order of the Tribunal. While testing the correctness of the same, at paragraph No.28, the Hon'ble Supreme Court has observed as hereunder:

"28. The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee. The decision of the Screening Committee must be taken as final unless it is mala fide. In recent times, the image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in public domain and are a matter of concern. The reputation of the police force has taken a beating. In such a situation, we would not like to dilute the importance and efficacy of a mechanism like the Screening Committee created by the Delhi Police to ensure that persons who are likely to erode its credibility do not enter the police force. At

the same time, the Screening Committee must be alive to the importance of trust reposed in it and must treat all candidates with even hand."

7. **In Avatar Singh vs Union of India & Ors**, 2016 SCC Online SC 726, after considering a catena of decisions, the Hon'ble Apex Court, at paragraph Nos.21, 22, 24 and 26 to 28 of the judgment, has held as follows:

"21. The verification of antecedents is necessary to find out fitness of incumbent, in the process if a declarant is found to be of good moral character on due verification of antecedents, merely by suppression of involvement in trivial offence which was not pending on date of filling attestation form, whether he may be deprived of employment? There may be case of involving moral turpitude/serious offence in which employee has been acquitted but due to technical reasons or giving benefit of doubt. There may be situation when person has been convicted of an offence before filling verification form or case is pending and information regarding it has been suppressed, whether employer should wait till outcome of pending criminal case to take a decision or in case when action has been initiated there is already conclusion of criminal case resulting in conviction/acquittal as the case may be. The situation may arise for consideration of various aspects in a case where disclosure has been made truthfully of required information, then also authority is required to consider and verify fitness for appointment. Similarly in case of suppression also, if in the process of verification of information, certain information comes to notice then also employer is required to take a decision considering various aspects before holding incumbent as unfit. If on verification of antecedents a person is found fit at the same time authority has to consider effect of suppression of a fact that he was tried for trivial offence which does not render him unfit, what importance to be attached to such non-disclosure. Can there be single yardstick to deal with all kind of cases?

22. The employer is given discretion to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of

filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an incumbent for services in question. In case the employer come to the conclusion that suppression is immaterial and even if facts would have been disclosed would not have affected adversely fitness of an incumbent, for reasons to be recorded, it has power to condone the lapse. However, while doing so employer has to act prudently on due consideration of nature of post and duties to be rendered. For higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However same standard cannot be applied to each and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence etc. have to be considered. Even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or dubious character. In case employer comes to conclusion that conviction or ground of acquittal in criminal case would not affect the fitness for employment incumbent may be appointed or continued in service.

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24. No doubt about it that once verification form requires certain information to be furnished, declarant is duty bound to furnish it correctly and any suppression of material facts or submitting false information, may by itself lead to termination of his services or cancellation of candidature in an appropriate case. However, in a criminal case incumbent has not been acquitted and case is pending trial, employer may well be justified in not appointing such an incumbent or in

terminating the services as conviction ultimately may render him unsuitable for job and employer is not supposed to wait till outcome of criminal case. In such a case non disclosure or submitting false information would assume significance and that by itself may be ground for employer to cancel candidature or to terminate services.

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26. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.

27. Suppression of "material" information presupposes that what is suppressed that "matters" not every technical or trivial matter. The employer has to act on due consideration of rules/instructions if any in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.

28. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by concerned authorities considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.

(Emphasis supplied)

8. Judicial pronouncements make it clear that desirability and suitability of a person to be appointed to service, on the basis of verification of character and antecedents, is the subjective satisfaction of the Government. Desirability and suitability of a candidate in public

employment, depends upon the nature of the post, duties and responsibilities, secret or sensitive matters, which he may have to deal with, if appointed to service and in the context of the above, the Government or the employer requires verification of character and antecedents and to take a decision, as to whether, a candidate can be appointed to a service/post or not.

9. The applicant has not produced before this Tribunal the judgment/order passed in the first criminal case (FIR No. 493/2000, under Sections 279 and 338 IPC) which is stated by him to have been settled by the Lok Adalat. In paragraph 21 of Form No.17 duly filled in and submitted by the applicant on 2.1.2011, it has been clearly mentioned by him that the said criminal case was decided by the court on 13.9.2005 and a fine of Rs.2000/- was imposed on him. Therefore, we have found no substance in the contention of Shri R.S.Garia, the learned counsel appearing for the applicant that the first criminal case was settled and the applicant was acquitted of the charges under Sections 379 and 338 IPC. In the second criminal case (FIR No.4/2004, under Sections 279 and 338 IPC), the learned trial court acquitted the applicant by giving him benefit of doubt as the prosecution failed to prove its case against him beyond reasonable doubt.

10. It is a well-established principle of law that whether, a person is fit to be appointed or not, to a post, should be left to the exclusive domain of the Government/employer. Decision taken by the Government or the employer, as the case may be, on desirability and suitability of a person to be appointed to a post, in relationship to character and antecedents, should be

based on materials, on the touchstone of preponderance of probability. Conclusion arrived at, should not be perverse.

11. In both the criminal cases, the applicant was admittedly accused of offences punishable under Sections 279 and 338 IPC. Section 279 IPC prescribes that whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Section 338 IPC whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both. As already noted by us, in the first criminal case, a fine of Rs.2000/- was imposed on the applicant, and in the second criminal case, the learned trial court acquitted the applicant of the charges by giving benefit of doubt as the prosecution failed to prove its case beyond reasonable doubt. The respondent-DTC took into account the aforesaid aspects and the nature of duties and responsibilities attached to the post of Driver in its organization, while considering the desirability and suitability of the applicant for appointment to the post of Driver, and found that the applicant was unfit for the post of Driver. After having considered the facts and circumstances of the case, in the light of the decisions of the Honøble

Supreme Court in **Commissioner of Police, New Delhi and another Vs. Mehar Singh** (supra) and in **Avatar Singh vs Union of India & Ors** (supra), we have no hesitation in holding that the respondent-DTC was fully justified in considering the suitability of the applicant for appointment to the post of Driver in relation to his character and antecedents owing to the aforesaid two criminal cases and the nature of disposal of both the criminal cases by the learned criminal court.

12. While exercising the power of judicial review, the Court/Tribunal does not act as an appellate authority. The power of judicial review can be exercised by the Court/Tribunal only on the grounds of perversity, extraneous and irrelevant considerations, mala fides and other infirmities. After considering the facts and circumstances of the case, and the materials available on record, we do not find the impugned decision taken by the respondent-DTC cancelling the applicant's provisional selection and/or denying appointment to the applicant to have suffered from any perversity, or extraneous and irrelevant consideration, or mala fide. Therefore, the impugned decision remains unassailable.

13. In the light of our above discussions, we have found no merit in the O.A. The O.A, being devoid of merit, is dismissed. No costs.

(NITA CHOWDHURY)
ADMINISTRATIVE MEMBER

(RAJ VIR SHARMA)
JUDICIAL MEMBER

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