

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-2029/2015

Reserved on :26.11.2015.

Pronounced on :08.12.2015.

**Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)**

Sh. Yetender Janghu
Candidate for the Sub-Inspector (Exe.)
S/o Sh. Balwan Singh,
R/o Village-Lal, PO-Rohrai,
PS-Jatusana, District-Rewari,
Haryana-123401
GroupC', Aged 25 years. **Applicant**

(through Sh. Sourabh Ahuja, Advocate)

Versus

1. GNCT of Delhi
Through Commissioner of Police,
Police Headquarters,
I.P. Estate, MSO Building,
New Delhi.

2. Deputy Commissioner of Police,
Recruitment Cell,
New Police Line,
Delhi-110009. **Respondents**

(through Ms. Rashmi Chopra, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The applicant responded to an advertisement issued by Delhi Police for filling up the post of Sub-Inspector (Executive) Male in the year 2013. He appeared in the written exam and secured 23rd rank in the merit list prepared by the respondents. However, he was not issued appointment letter despite the fact that several of his batch-mates were sent for training. On 20.04.2015, the

applicant received a show cause notice calling upon him to show cause as to why his candidature for the post of Sub-Inspector (Executive) Male should not be cancelled on account of his involvement in two criminal cases, namely, FIR No. 155/2012 u/s 323/207 IPC and 25/54 Arms Act, PS Model Town, Rewari, Haryana and FIR No. 30 dated 13.04.2013 u/s 307/34 IPC and 25(54) Arms Act, 1959, PS Jat Usana, District Rewari. It was mentioned in the show cause notice that even though applicant had been acquitted in both these cases, they were of serious nature and the reason for acquittal was that the complainants resiled from their statements and turned hostile. The applicant submitted his reply on 28.04.2015 in which he mentioned that the show cause notice cannot be sustained in the eyes of law as it was in violation of this Tribunal's judgment in the case of **Anoop Kumar Vs. Delhi Police** (OA-178/2008) dated 23.07.2008. However, the respondents cancelled his candidature vide impugned order dated 19.05.2015. Hence, he has filed this O.A. seeking the following relief:-

- "(a) Quash and set aside the impugned SCN dated 20.04.2015 and order dated 19.05.2015 mentioned in Para 1 of the OA, whereby the candidature of the Applicant has been cancelled for the post of Sub-Inspector (Executive) Male in Delhi Police. And
- (b) Direct the respondents to appoint the Applicant to the post of Sub-Inspector (Executive) Male in Delhi Police forthwith and to accord all the consequential benefits to him as has been granted to his batch-mates viz. Promotion, seniority etc. and
- (c) Call for the records of the screening committee qua the Applicant. And
- (d) Award cost in favour of the Applicant and against the respondents. And/or
- (e) Pass any further order, which this Hon'ble Tribunal may deem fit, just equitable in the facts and circumstances of the case."

2. His contention is that the respondents have processed his case with a closed mind. The show cause notice itself was issued in pursuance to the

recommendations of the Screening Committee but the same were never supplied to him. Thus, the applicant was deprived of a reasonable opportunity to defend his cause effectively while replying to the show cause notice. The aforesaid action of the respondents was against the principles of natural justice. The applicant has further submitted that his reply to the show cause notice should have been placed before the Screening Committee, which consisted of high ranking police officer of the level of Special Commissioner. On the contrary, the decision in his case was taken by DCP of the Recruitment Cell, who was an officer subordinate to the Screening Committee and could not have taken a view different from the recommendations of the Screening Committee. Thus, issuance of show cause notice and taking his reply thereon became a mere formality. Moreover, the order passed by the DCP was absolutely non-speaking and cryptic. It does not disclose as to how the reply to the show cause notice given by the applicant has been considered. The Apex Court in a *catena* of judgments has held that consideration should be effective inasmuch as competent authority must apply its mind while dealing with the contentions raised. Further, the applicant has alleged that the rules of public employment do not specify any disqualification for being involved in a criminal case particularly when the applicant has been acquitted in both the cases. The applicant has relied on the judgment of this Tribunal in the case of **Anoop Kumar** (supra), the relevant portion of which reads as under:-

"7.....We are surprised, rather distressed that even though it has been ordained authoritatively by judicial pronouncement that the nature of offence and the manner of acquittal has to be examined properly, the respondents appear to have ignored both. Denial of appointment to a citizen for all times to come is indeed a serious matter. The same cannot be dealt with so lightly so as not even to consider the attending circumstances leading to commission of crime, nature of offence that may appear from the contents of the first information report, statements of witnesses and the medical evidence. While considering the manner of

acquittal, it may not be enough to simply observe that the witnesses had turned hostile, and by simply so observing, to deny appointment to a citizen. The judgment of the criminal court has to be taken into consideration with all the aspects leading to acquittal. The manner of acquittal, and in particular, as to whether the same is a clean acquittal or acquittal on benefit of doubt, has also to be taken into consideration. To elaborate, insofar as, the nature of offence is concerned, we may mention that some times the facts disclosed in the FIR supported with other material, even if taken to be gospel truth, may not constitute an offence under which an FIR is registered, challan presented and the accused tried. In a case of acquittal, where witnesses have not deposed in tune with the statements made by them before the police, the finding of acquittal is recorded without going into any other aspect of the case. If thus in a given case, the offence with which an accused is charged and tried, may not at all be gone into, his plea that the offence with which he was charged was not made out at all even from reading of the FIR and attending circumstances, has to be gone into at some stage. Making a mention of the offence with which a person might have been charged and put to trial is no way to determine the nature of offence. We are of the considered view that nature of offence is not exclusively determinable only on the label or sections on which an FIR may be registered. With a view to find gravity of offence for which a person may have faced criminal trial, the narration of facts in the FIR, supporting material and the medical evidence is required to be taken into consideration. Insofar as, the manner of acquittal is concerned, once again, the judgment of the criminal court has to be carefully gone into. In a given case, the witnesses may not have deposed in tune with their statements made before the police, but they may not have been declared hostile and cross-examined by public prosecutor. Such a situation arises when the prosecution witnesses may support the prosecution version to some extent and the public prosecutor may think that to the extent they have supported prosecution version, the finding of conviction can yet be recorded. He may thus not declare the witnesses to be hostile nor thus cross-examine them. In ultimate analysis, as to whether the accused has been acquitted by giving benefit of doubt or it is a case of clean acquittal, has also to be seen. In the present case, the narration of facts given in the FIR would reveal that four persons, including the applicant gave beatings to Bittoo Singh and Jaipal. Only two, out of four, were put to trial. In the FIR itself, Bittoo Singh appears to have made contradictory statements. In the first instance, he stated that two boys who were armed with dandas were Ajay and Vikas, whereas others had only grappled. He, however, later named the applicant as also one of those who had caused injuries to him. With a view to satisfy ourselves with regard to gravity of offence, we required the counsel representing the parties to produce before us the medico legal report of Bittoo Singh and Jaipal. The same has been made available to us. It appears that Bittoo Singh, the first informant, had received five injuries on his person. Two of the five injuries are swelling of lower wrist and right eye. Even though, two other injuries are of vertex of head and occipital front region, but all the five injuries are simple in nature. Jaipal, the other injured received four injuries, but for injury number (iii) which is one incisor teeth on lower maxilla broken, other

injuries are simple in nature. It is only injury number (iii) on the person of Jaipal which can be said to have brought the offence under section 325 IPC. The provisions contained in section 308 IPC may not have been attracted in the facts and circumstances of the present case. We are conscious that we are not here to determine the controversy with regard to nature of offence, but surely, all these aspects were required to be taken into consideration by the concerned authorities in finding out the nature of offence. The situation where the criminal court may record a finding of conviction is entirely different. The concerned authorities in that event would have no choice but for to follow the judgment of the criminal court, but in a case where the relevant aspects of the case have not even been touched upon, it becomes duty of the high ranking police officers to take them into consideration while dealing with a serious matter like denial of appointment to a citizen. We may reiterate that the Honble Delhi High Court in Deepak Kumar & Others (supra) held that the nature of offence and manner of acquittal has to be gone into properly.....”

2.1 The applicant has also relied on the judgment of Hon'ble High Court in the case of **Commissioner of Police Vs. Mukesh Kumar** (WP(C) No. 4052 of 2012) in which the following has been held:-

“23. While considering the nature of the acquittal, it would not be enough to simply observe that the witness had turned hostile and therefore it would be presumed that the accused had created a terror twice over; firstly when the offending act constituting the crime was committed and secondly when the witnesses were suborned. The judgment of the criminal court has to be taken into consideration with all the aspects leading to acquittal. The manner of acquittal and in particular whether it is on a benefit of doubt. Insofar as the nature of offence is concerned, the facts disclosed in the FIR supported with other material has to be considered. The gravity of the acts alleged the narration of the facts in the FIR and medical evidence has to be considered. Witnesses may not depose in tune with their statements made before the police and thus it would have to be looked into as to whether it was a case where the Investigation Officer did not seek full and complete version from the witness. It being settled law that while appreciating the deposition of witnesses, vis-à-vis their statements made before the police, on the issue of variation and improvements it has to be kept in mind that many a times a person informs facts which he thinks are relevant and ignores to tell facts which he thinks are irrelevant, but in law the relevance or irrelevance may be in converse and hence the duty of he who seeks information to elicit all relevant information.”

2.2 Relying on the judgment of this Tribunal in OA-2413/2008 (**Vivek Mathur Vs. Commissioner of Police & Anr.**) the applicant has stated that mere lodging of an

FIR in criminal case cannot be a ground for denial of public employment. Citing the judgment in the case of **Gura Singh Vs. State of Rajasthan**, AIR 2001 SC 330 the applicant has stated that even evidence of hostile witness can be relied upon to the extent it supports the prosecution version. Further, the applicant has stated that in the case of **R.K. Gupta Vs. UOI & Ors.**, 2005(3)AISLJ 390 the Court has held that where an accused is acquitted for want of evidence in a criminal trial, it should be regarded as a honourable acquittal. In the case of **Bhag Singh Vs. Punjab & Sindh Bank**, 2006(1)SCT 175, Hon'ble Punjab & Haryana High Court has held that where acquittal is based on lack of evidence , mere mention of the words benefit of doubt by the criminal Court is superfluous and baseless. This view has been reiterated in the case of **Shashi Kumar Vs. Uttri Haryana Bijli Vitran Nigam**, 2005(1) ATJ 154. Learned counsel for the applicant also submitted that the applicant had secured a very high rank in the merit and denial of public employment to him would ruin the career of bright young man.

3. In their reply, the respondents have submitted that the applicant had appeared in the 2013 examination held for the post of Sub-Inspector (Executive) Male in Delhi Police. He was selected provisionally. When his character and antecedents were verified, it was revealed that two criminal cases FIR No. 30/2013 dated 03.04.2013 and FIR No. 155/2012 dated 27.04.2012 were registered against him. He was acquitted in the above said criminal cases by the Hon'ble Court on 08.08.2013 and 30.11.2012 respectively. In his attestation form filled by him on 26.08.2014, the applicant had disclosed the factum of his involvement in the above said criminal cases in the relevant column. Accordingly, as per Rules/Instructions framed on the subject, his case was examined by a Screening Committee duly constituted by the C.P. Delhi to

assess his suitability for appointment to the post in question. The Screening Committee while examining the case found that the applicant was involved in two serious/heinous offences like attempt to murder and Arms Act, in both of which he was acquitted due to the reasons that the complainants resiled their statements and turned hostile. His involvement in these cases shows his violent nature and tendency to indulge in crime without fear of law. The Screening Committee observed that such type of candidates who have no respect for the law of land have no place in disciplined force like Delhi Police. In view of the aforesaid recommendations of the Screening Committee a show cause notice was issued to the applicant on 20.04.2015 proposing therein as to why his candidature should not be cancelled. He replied to the show cause notice on 28.04.2015. After considering his reply his candidature was cancelled.

4. We have heard both sides and have perused the material on record. We have also perused the original record of Delhi Police in which the case of the applicant was considered by the Screening Committee. The facts of the case are not in dispute. Counsel for the applicant invited our attention to the judgment of Trial Court in Sessions Case No. 34/2012 dealing with FIR No. 155 dated 27.04.2012 (pages 93 to 116 of the paper-book). Learned counsel pointed out that in Para-12 of the aforesaid judgment, it is mentioned that learned Public Prosecutor for the State himself had conceded that so far as the offence under Sections 307 and 323 read with Section 34 of the Indian Penal Code were concerned, there was no incriminating evidence against the accused person. The learned Public Prosecutor had then proceeded to argue only on the commission of the offence u/s 25 of the Arms Act against accused Vikas. Thus, it is clear that as far as the applicant Yatender was concerned

there was no evidence against him either u/s 307/323 IPC or u/s 25 of the Arms Act. Learned counsel for the respondents, on the other hand, drew our attention to judgment of the Trial Court in Sessions Case No. 36/2013 dealing with FIR No. 30 dated 13.04.2013 (pages-119 to 127), in para-23 of which it is clearly mentioned that the Court had held that the prosecution had failed to prove their case beyond reasonable shadow of doubt and consequently the accused were being given benefit of doubt and were being acquitted all the charges levelled against him.

4.1 Learned counsel for the applicant relied on the judgment of Hon'ble High Court in the case of **Ex. Const. R.S. Shekhawat Vs. UOI & Ors.** dated 21.05.2008 in which it has been held that the Appellate Authority needs to apply its mind to decide the appeal influenced by any extraneous factor or extraneous diktat. He also relied on the judgment of Hon'ble Supreme Court in the case of **Commr. Of Police & Ors. Vs. Sandeep Kumar**, (Civil Appeal No. 1430/2007) dated 17.03.2011 in which the following has been observed

“Vide : Morris Vs. Crown Office, (1970) 2 Q.B.

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

As already observed above, youth often commit indiscretions, which are often condoned.

It is true that in the application form the respondent did not mention that he was involved in a criminal case under **Section 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.

For the reasons above given, this Appeal has no force and it is dismissed. No costs.”

4.2 Learned counsel for the respondents, on the other hand, relied on the judgment of Hon'ble Supreme Court in the case of **DIG of Police and Anr. Vs. S. Samuthiram** AIR 2013 SC 14 in which the following has been observed:-

“23. As we have already indicated, in the absence of any provision in the service rule for reinstatement, if an employee is honourably acquitted by a Criminal Court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.”

4.3 Respondents also relied on the judgment of Hon'ble Supreme Court in the case of **Commissioner of Police, New Delhi and Anr. Vs. Mehar Singh**, AIR 2013 SC 2861 in which the right of the Screening Committee to cancel the candidature of a candidate even after acquittal in a criminal case has been upheld. The Hon'ble Court has observed as follows:-

“8. Clause 3 of the Comprehensive Policy delineated in the Standing Order is material for the present case. It refers to the Screening Committee comprising high police officers. After a candidate, who has disclosed his involvement, is acquitted or discharged, the Committee has to assess his/her suitability for appointment. Clause 6 states that those against whom serious offences or offences involving moral turpitude are registered and who are later on acquitted by extending benefit of doubt or because the witnesses have turned hostile due to fear of reprisal by the accused person shall not generally be considered suitable for government service. However, all such cases will be considered by the

Screening Committee manned by senior officers. In our opinion, the word 'generally' indicates the nature of discretion. As a matter of rule, such candidates have to be avoided. Exceptions will be few and far between and obviously must be substantiated with acceptable reasons.

19. A careful perusal of the policy leads us to conclude that the Screening Committee would be entitled to keep persons involved in grave cases of moral turpitude out of the police force even if they are acquitted or discharged if it feels that the acquittal or discharge is on technical grounds or not honourable. The Screening Committee will be within its rights to cancel the candidature of a candidate if it finds that the acquittal is based on some serious flaw in the conduct of the prosecution case or is the result of material witnesses turning hostile. It is only experienced officers of the Screening Committee who will be able to judge whether the acquitted or discharged candidate is likely to revert to similar activities in future with more strength and vigour, if appointed, to the post in a police force. The Screening Committee will have to consider the nature and extent of such person's involvement in the crime and his propensity of becoming a cause for worsening the law and order situation rather than maintaining it. In our opinion, this policy framed by the Delhi Police does not merit any interference from this Court as its object appears to be to ensure that only persons with impeccable character enter the police force."

4.4 Lastly, respondents have relied on the judgment of this Tribunal in OA-546/2014 (**Rakesh Kumar Meena Vs. GNCTD & Ors.**) dated 21.05.2015 in which it has been held that the Screening Committee will be well within its right to cancel the candidature of a candidate even after acquittal in a criminal case on the following grounds:-

- "(i) The nature and extent of Involvement of the candidate in the criminal case.
- (ii) His propensity.
- (iii) Whether he is acquitted on compromise/benefit of doubt/witnesses turning hostile or honourably.
- (iv) Nature and gravity of the charge etc."

5. After perusal of the above citations of both sides, we are of the opinion that if a candidate seeking appointment in Delhi Police is found to be involved in a criminal case, mere acquittal in that case may not be sufficient for declaring him fit for appointment in a disciplined force like Delhi Police. The

Delhi Police has constituted a Screening Committee to look into in all such cases and the Screening Committee's right to cancel the candidature of such candidates under certain circumstances has been upheld by the Court. In **Rakesh Kumar Meena's** case (supra), this Tribunal after taking note of several pronouncements of different Courts on this subject has enumerated certain factors that the Screening Committee has to keep in mind while deciding such cases. Thus, we are in agreement with the respondents that mere acquittal of the applicant in criminal cases was not sufficient and the facts and circumstances of the cases in which he was involved, the nature of the offence and the gravity of the charges as well as the reasons for his acquittal have to be seen in great details to decide whether he is suitable for appointment or not.

5.1 Further, we find that in the same case it has been observed that when a show cause notice is issued to a candidate to show cause as to why his candidature should not be cancelled, his reply should be placed before the Screening Committee for consideration and only thereafter the Screening Committee give its recommendation regarding suitability of such a candidate for appointment. The reason for the aforesaid observation is obvious. If the Screening Committee first makes its recommendation and the show cause notice is issued thereafter, the candidate is deprived of his reply being considered by the Screening Committee. Moreover, the officer taking final decision regarding his candidature being junior to the Members of the Screening Committee would find it difficult to deviate from the recommendations of the Screening Committee and is likely to agree with the same. This would reduce the process of issuing the show cause notice to the candidate and taking his reply thereon to an exercise in futility.

5.2 In the instant case, we find from the records produced by the respondents that the Screening Committee meeting was held on 30.03.2015. The Screening Committee was chaired by Special Commissioner of Police and had two other officers of the level of Joint Commissioner of Police as its Members. Thereafter, the show cause notice was issued on 20.04.2015 by Deputy Commissioner of Police, who cancelled the candidature of the applicant also after giving opportunity to the applicant to submit his reply. Thus, the Screening Committee was chaired by an officer of the Special Commissioner of Police whereas the candidature of the applicant was cancelled by the officer at the level of Deputy Commissioner of Police. Moreover, the show cause notice was issued after the recommendations of the Screening Committee had become available and the reply of the applicant was not placed before the Screening Committee. Thus, in the instant case, the whole exercise of issuing show cause notice and giving an opportunity to the applicant to defend his case had been reduced to a mere formality. This is obviously unacceptable and the impugned order dated 19.05.2015 of the respondents becomes unsustainable on this ground.

6. Accordingly, we allow this O.A. and quash and set aside the order dated 19.05.2015 of the respondents. We further direct that the reply submitted by the applicant to the show cause notice dated 20.04.2015 of the respondents be placed before the Screening Committee and their recommendations on the candidature of the applicant be obtained afresh. We have no doubt in our mind that the Screening Committee shall take into account the observations made by different Courts for dealing with such cases, which have been cited above. This consideration shall be completed within a period of eight weeks

from the date of receipt of a certified copy of this order. In case the applicant is found fit for appointment, he shall be so appointed and will be granted the benefit of seniority and pay fixation commensurate with his rank in the merit list. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(Shekhar Agarwal)
Member (A)

/Vinita/