

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00764/2016

Jabalpur, this Monday, the 30th day of July, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Pradeep Kumar Sahu
S/o Shri Leela Kishan Sahu
Aged about 34 years
unemployed R/o H.No.148
Street No.3 Near II
Railway Gate Kanchi Chola
Bhopal District Bhopal M.P.462010

-Applicant

(By Advocate –**Shri Rajesh Soni**)

V e r s u s

1. Union of India
Through it's The Chief General Manager
West Central Railway Indira Market
Jabalpur District Jabalpur M.P. 482001

2. Chief Personal Officer
In the office the Chief General Manager
West Central Railway Indira Market
Jabalpur District Jabalpur M.P.) 482001

3. Divisional Railway Manager
West Central Railway Nearby
Habibganj Naka Bhopal
District Bhopal M.P. 462010

- Respondents

(By Advocate –**Shri Y.N.Mishra**)
(Date of reserving the order:-03.04.2018)

ORDER

By Ramesh Singh Thakur, JM:-

The applicant is aggrieved by the order dated 09.06.2016 (Annexure A-13) passed by the respondent No.3 whereby he was not found suitable for appointment against the Scout Quota in Group 'D' post in Railway Department.

2. The applicant in this Original Application has prayed for the following reliefs:-

"8.1 That applicant humbly request to this Hon'ble Court, may kindly be pleased to quash the order dated 09.06.2016 and direct the respondent to issue posting order in respect of appointment order dated 14.03.2014 (Annexure A-2).

8.2 That this Hon'ble Court be pleased to direct the respondents to pay the full back wages "from the date of appointment order dated 14.03.2014" along with all consequential benefit with 18% interest per annum.

8.3 Any other order/orders/directions deem fit and proper in favor of the petitioner may kindly be awarded, in the interest of justice.

8.4 That the cost of the original application of the Rs.25000/- be also awarded to the applicant."

3. Precisely the case of the applicant is that the respondents have issued the advertisement on 04.01.2012 inviting the application for the post of Scout and Guide. The applicant applied and appeared in the written examination and thereafter interview. He was selected and appointment order dated 14.03.2014 (Annexure A-2) duly approved by the competent authority was

issued in his favour. Thereafter there was no further development in the matter.

3.1 The applicant filed many representations dated 06.07.2015, 01.02.2016 and 19.02.2016 (Annexure A-7) which were undecided by the respondent-department. On non receipt of any response, the applicant approached this Tribunal by filing an Original Application No.200/00251/2016 whereby direction was given to the respondent-department to decide his representation.

3.2 Thereafter respondent-department issued a fresh advertisement dated 29.01.2016 (Annexure A-3) inviting vacancies of Scouts and Guides Quota.

3.3 In compliance of the order dated 03.03.2016 passed by this Tribunal, the claim of applicant was examined and observed that a case has been registered against the applicant as a RT No.6509/2012 for the offences under Sections 498A/34 of the Indian Penal Code 1860 and under Sections 3/4 of the Dowry Prohibition Act 1961 on 14.08.2012 before the Ashok Bhardwaj Judicial Magistrate First Class Bhopal MP. In terms of Para No.101 of the Indian Railway Establishment Manual Volume-I (1989 Edition) it is mandatory for every candidate to bear a good morale and character and good conduct whereas criminal charges were leveled against you. Therefore he do not fulfill the

requirement of Para 101 of the IREM and thus not suitable for appointment.

3.4 The applicant further submits that the case registered against him under RT No.6509/2013, the Judicial Magistrate First Class has acquitted/release from the all criminal charges vide order dated 30.06.2015 (Annexure A-6). Thereafter, the complainant (Smt. Kanchan Sahu) and State of M.P. have filed criminal appeals No.784/2015 and 919/2015 against the order dated 30.06.2015 which was also dismissed by the Special Session Judge Bhopal vide order dated 12.04.2016 (Annexure A-14).

3.5 Learned counsel for the applicant submits that the case of the applicant has not been considered by the respondents in proper aspects and rejected the claim of the applicant after two years.

4. Learned counsel for the respondents has submitted their reply wherein they have stated that criminal cases have been registered under Sections 498A/34 of the Indian Penal Code 1860 and under Sections 3/4 of the Dowry prohibition Act 1961 against the applicant on 14.08.2012 before the Court Ashok Bhardwaj Judicial Magistrate First Class, Bhopal MP.

4.1 It is pertinent to mention that in terms of Para No.101 of the Indian Railway Establishment Manual, Volume-I (1989 Edition) it is mandatory for every candidate to bear a good morale and

character and good conduct but from the above record it has come to knowledge of the respondents about criminal charges were leveled and trial was conducted against him in the court of law but could not be proved beyond doubt for want of proper evidence against the applicant. Therefore keeping the nature of offences instituted against the application and as per his character antecedents the competent authority did not find him suitable for appointment on the post of Scout Quota in Group D post in Railway Department. Therefore applicant has no prima-facie case and this Original Application is liable to be dismissed.

5. The applicant has filed rejoinder to the reply filed by the respondents. The applicant has reiterated the stand as already been taken in the Original Application.

6. Heard the learned counsel for both the parties and perused the pleadings and documents annexed thereof.

7. There is no dispute regarding the advertisement for inviting the application for the post of Scout and Guide on 04.01.2012. It is also admitted fact that the applicant had applied and appeared in the written examination and also in the interview. It is also admitted fact that the applicant was selected and appointment order dated 14.03.2014 was duly approved by the competent authority in favour of the applicant. Grievance of the applicant is that despite

this, the applicant was not issued the appointment letter. Despite many representations dated 06.07.2015, 01.02.2016 and 19.02.2016 (Annexure A-7) there was no response from the respondents. Resultantly the applicant approached this Tribunal by filing an Original Application No.200/00251/2016 and the respondents were directed to decide the representation. In compliance of this Tribunal, the respondent-department examined and rejected the claim of the applicant on the ground that a case has been registered against the applicant for the offences under Sections 498A/34 of the Indian Penal Code 1860 and under Sections 3/4 of the Dowry Prohibition Act 1961 on 14.08.2012 before the Ashok Bhardwaj Judicial Magistrate First Class Bhopal MP and it is mandatory for every candidate to bear a good morale and character and good conduct whereas criminal charges were leveled against the applicant. So, the applicant was not suitable for appointment.

8. It is admitted fact by both the parties that the case was registered against the applicant but Judicial Magistrate First Class has acquitted the applicant from all the criminal charges vide order dated 30.06.2015 (Annexure A-6). It is submitted by the learned counsel for the applicant that though the complainant (Smt. Kanchan Sahu) and State of M.P. had preferred criminal appeals

No.784/2015 and 919/2015 against the order dated 30.06.2015 which was also dismissed by the Special Session Judge Bhopal vide order dated 12.04.2016 (Annexure A-14).

9. The main ground of the applicant is that the respondents has not considered the case of the applicant in proper aspect and has rejected the claim of the applicant after two years.

10. The main point for determination is that whether after acquittal, appointment letter can be withheld.

11. The learned counsel for the applicant has relied upon the judgment passed by Hon'ble High Court of Madhya Pradesh, Principal Seat at Jabalpur in Writ Petition No.8854/2012 titled as ***Rakesh Kumar Patel vs. Union of India and others.*** The relevant portion Para 4 is as under:-

“4. In the case of Commissioner of Police (supra) the candidate had failed to disclose his true antecedents in the application form for appointment regarding his prosecution in a criminal case as a result of which his candidature was cancelled. The criminal case against the candidate was admittedly compromised and he was acquitted of the charges. Aggrieved, the candidate filed a petition before the Tribunal which was dismissed. He then filed a writ petition before the Delhi High Court. The Delhi High Court allowed the writ petition and quashed the order of cancellation of selection of the candidate. In an appeal filed by the Commissioner of Police, the Supreme Court upheld the order of the Delhi High Court and rejected the submission regarding justification of the cancellation of candidature that the candidate should have disclosed the fact of his involvement in the criminal case even if he had been acquitted. The Supreme Court observed that the candidate had been acquitted in the criminal case and he, being a

youth, cannot be expected to behave as older people. It also observed that, at young age, people often commit indiscretions and such indiscretion should be condoned instead of branding young people as criminals for the rest of their lives. The Supreme Court even condoned the act of a candidate of not mentioning in the application form about his involvement in a criminal case under Section 325/34 at the Indian Penal Code by holding that he might have done so out of fear of getting disqualified automatically.”

12. The Hon’ble Apex Court in the case titled as ***Avtar Singh*** vs. ***Union of India and others*** (2016) 8 SCC 471 has settled issues regarding information given by the parties before entering the Government service. The principles have been laid down in Para 38 of the judgment which is as under:-

“38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

38.1 Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2 While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3 The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4 In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to

knowledge of employer, any of the following recourse appropriate to the case may be adopted : -

38.4.1 In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2 Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6 In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.

38.7 In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8 If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9 In case the employee is confirmed in service, holding Departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10 For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11 Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.”

13. The counsel for the applicant has also relied upon the judgment passed by Hon'ble High Court in the case of ***Madhvi vs. State of M.P. and others*** 2017(2) M.P.L.J. 117 wherein the learned counsel for the applicant has relied upon the order of Indore Bench passed on 28.07.2015 in W.A. No.73/2015 wherein the accused who has faced trial under the provision of Section 498-A of the Indian Penal Code before the JMFC, Ujjain and after acquittal from said trial his W.P. No.3560/2014(s) was allowed quashing the order declaring the petitioner to be eligible for appointment in police service and said order was upheld by the Division Bench in the said Writ appeal.

14. The learned counsel for the applicant has also relied upon the judgment in the matters of ***Kailash Chandra Sirvi vs. State of M.P. and others*** 2016(4) M.P.L.J. 370. The Hon'ble Court has held as under:-

“13. This Court in the case of Manish Verma has passed the following order:-

“A similar controversy regarding interpretation of acquittal came up before this Court and this Court in the case of Rakesh Sharma vs. State of M.P. and 5 ors. W.P No.9913/2012 and in the aforesaid case this Court has held as under:-

“The petitioner before this Court has filed this present writ petition for issuance of an appropriate writ, order or direction directing the respondents to appoint the petitioner on the post of Constable General Duty. Petitioner is also aggrieved by order dt. 13-7-2012 by which the Inspector General of Police has rejected the claim of the petitioner.

In the present case, the petitioner has participated in the process of selection for the post of Constable in the year 2012 and has also submitted a police verification form stating categorically therein that he has been acquitted in S.T. No.196/2007 on 14-2-2008. The petitioner by virtue of his merit was selected for the post of Constable, however, the appointing Authority as well as the Inspector General of Police have rejected the petitioner's claim for appointment even though he is more meritorious and persons who are less meritorious have been appointed to the post of Constable General Duty. The only reason assigned in the return is that the petitioner as he has been acquitted by giving benefit of doubt in respect of Crime No.126/2006, cannot be appointed to the post of Constable General Duty.

Learned counsel for the respondents – State has drawn attention of this Court towards

paragraph 53 of the M.P. Police Regulations and his contention is that a person who is seeking appointment on the post of a Constable should bear a good moral character and therefore, as the petitioner was prosecuted for an offence under Sections 302, 147, 148 and 149 of the Indian Penal Code, he does not bear good moral character, hence the order passed by the Inspector General of Police does not warrant any interference.

This Court is of the considered opinion that once the petitioner has been acquitted, the entire crime registered against him stands wiped out. An acquittal is an acquittal whether it is a "clean acquittal", whether it is "honourable acquittal" or "acquittal" based on giving benefit of doubt". The "clean acquittal", the "honourable acquittal" or "acquittal based on giving benefit of doubt" has not been distinguished in the Code of Criminal Procedure. This Court in the case of Smt. Panna Mehta vs. State of M.P. reported in 2003(1) M.P.L.J. 370 =2002 (4) M.P.H.T. 226 in paragraphs 11 and 12 held as under:-

"11. In the Code of Criminal Procedure, Indian Penal Code, Evidence Act or any other enactment, the word "acquittal" has not been defined. As per the Law Lexicon, the Encyclopaedic Law Dictionary (Edn.1992) "Acquittal" defined, Act X of 1882, Section 403, "the word acquittal is verbum equivocum and may in ordinary language be used to express either the verdict of a jury, or the formal judgment of the Court, that the prisoner is not guilty". (Per Tindal C.J. Burgess vs. Boetefeur, 13 LJMC 126=135 ER 193). It is generally said that a party is acquitted by the jury, but in fact, the acquittal is by the judgment of the Court (ibid). According to the Oxford Dictionary, "acquittal" means That a person is not guilty of a crime, which he has been charged. So in a

criminal jurisprudence there is no difference between “clean acquittal”, honorable acquittal” or “acquittal based on giving benefit of doubt”. When the accused is acquitted by giving benefit of doubt means the prosecution was not able to prove its case beyond doubt.

12. As ruled by the Supreme Court in case of Manni Lal vs. Parmai lal AIR 1971 SC 330 and Dilip Kumar Sharma and others vs. State of M.P. AIR 1976 SC 133, order of acquittal means a person concerned, has not committed the offence for which he was charged and tried. Criminal Courts are recording acquittal when the prosecution fails to prove its case beyond all reasonable doubt and benefit of doubt given to the accused does not mean that the accused was involved in the case but the same could not be proved by the prosecution. In Criminal Law, words “beyond reasonable doubt” cannot be termed as stigma or proof of any criminal charge against acquitted accused. Therefore, petition for expunging the same is not maintainable under Section 482, Criminal Procedure Code and the same is misconceived.”

In the light of the aforesaid order as the petitioner was acquitted on 9-12-2013 and the character verification took place on 30-1-2014, the question of denying appointment to the petitioner does not arise.

The writ petition stands allowed. Respondents are directed to consider the case of the petitioner and if his name finds place in the merit list, the respondents shall issue a consequential appointment order. The petitioner shall be entitled for all consequential benefits including the seniority, grant of increments, notional fixation of salary as well as promotion etc. However, will not be entitled for backwages. The respondents will not deny the appointment to the petitioner only because he was

involved in a criminal case as he has been acquitted, vide judgment of acquittal dated 9-12-2013.”

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“19. The Hon’ble Supreme Court in the case of Joginder Singh vs. Union of Territory of Chandigarh and others, reported in (2015) 2 SCC 377 from paragraphs No.15 to 27 has held as under:-

“15. To answer the point No.1, we must first consider whether the acquittal of the appellant from the criminal case was an honourable acquittal. It is the contention of the respondent that even though the appellant was acquitted in the criminal case, the appointment of the appellant by the appointment authority to the post of Constable in Chandigarh Police, which is a disciplined force was not desirable. The High Court has held that what would be relevant is the conduct and character of the candidate to be appointed in the service of State Police and not the actual result thereof in the criminal case as claimed by the appellant. Further, the relevant consideration to the case is the antecedents of the candidate for appointing him to the post of Constable.

16. However, advertent to the criminal proceeding initiated against the appellant, we would first like to point out that the complainant did not support the case of the prosecution as he failed to identify the assailants and further admitted that the contents of the section 161 of Code of Criminal Procedure statement were not disclosed to him and his signatures were obtained on a blank sheet of paper by the Investigation Officer. Further, Sajjan Singh, who was in eyewitness of the case, who was also injured, had failed to identify the assailants. Both the witnesses were declared hostile on the request of the prosecution.

18. The learned counsel has rightly placed reliance upon the decision of this Court in Inspector General of Police v. S. Samuthiram of which relevant paragraph is extracted as under: (SCC p. 609, para 24)

“24. The meaning of the expression ‘honourable acquittal’ came up for consideration before this Court

in RBI v. Bhopal Singh Panchal. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions 'honourable acquittal', 'acquitted of blame', 'fully exonerated' are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression 'honourably acquitted'. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted."

(emphasis supplied)

19. Further, an acquittal of the appellant is an "honourable" acquittal in every sense and purpose. Therefore, the appellant should not be deprived from being appointed to the post, in the public employment, by declaring him as unsuitable to the post even though he was honourably acquitted in the criminal case registered against him.

20. Further, undisputedly, there has been no allegation of concealment of the fact that a criminal case was registered against him by the appellant. Thus, the appellant has honestly disclosed in his verification application submitted to the selection authority that there was a criminal case registered against him and that it ended in an acquittal on account of compromise between the parties involved in the criminal case, he cannot be denied an opportunity to qualify for any post including the post of a Constable.

21. Reliance has been placed on the decision of this Court in Deptt. of Home, A.P. v. B. Chinnam Naidu which states herein: (SCC p. 750, para 9)

“9. A bare perusal of the extracted portions shows that the candidate is required to indicate as to whether he has ever been convicted by a court of law or detained under any State/Central preventive detention laws for any offences whether such conviction is sustained or set aside by the appellate court, if appealed against. The candidate is not required to indicate as to whether he had been arrested in any case or as to whether any case was pending. Conviction by a court or detention under any State/Central preventive detention laws is different from arrest in any case or pendency of a case. By answering that the respondent had not been convicted or detained under preventive detention laws it cannot be said that he had suppressed any material fact or had furnished any false information or suppressed any information in the attestation form to incur disqualification. The State Government and the Tribunal appeared to have proceeded on the basis that the respondent ought to have indicated the fact of arrest or pendency of the case, though Column 12 of the attestation form did not require such information being furnished. The learned counsel for the appellants submitted that such a requirement has to be read into an attestation form. We find no reason to accept such contention. There was no specific requirement to mention as to whether any case is pending or whether the applicant had been arrested. In view of the specific language so far as Column 12 is concerned the respondent cannot be found guilty of any suppression.”

(emphasis supplied)

26. *Thus, we are of the opinion that the alleged past conduct of the appellant in relation to the criminal case will not debar or disqualify him for the post of the Constable for which he was successfully selected after qualifying the written test, medical test and the interview conducted by the selection authority. Further, as stated by us earlier, there has been no concealment of any*

relevant fact from the respondents by the appellant. The respondents were thus not justified in denying the said post to the appellant. The conclusion arrived at by them is not cogent and lacks proper application of mind.

27. We, therefore, hold that the High Court has committed a grave error both on facts and in law and it has failed to follow the legal principles laid down by this Court in the cases referred to supra and uphold the decision of CAT. For the foregoing reasons both the appeals succeed and are allowed."

15. The relevant portion in the judgment of **Avatar Singh** (supra) reads as under:-

"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.”

16. In the instant case, the applicant was acquitted for the offence under Section 498A/34 of the Indian Penal Code and under Sections 3/4 of the Dowry Prohibition Act 1961 by the Judicial Magistrate First Class and the Additional Session Judge has also upheld the judgment passed by the Judicial Magistrate First Class. So, it is clear as per the judgment of **Kailash Chandra** (Supra), while relying on the judgment of Hon’ble Apex Court that the acquittal of the accused is honorable acquittal in every sense and purpose and he should not be deprived from the post in the public employment by declaring him as unsuitable for the said post even though honorably acquitted in the criminal case registered against him. So, the reason given by the respondents in the impugned order (Annexure A-13) is not sustainable. Moreover, in the case of **Avatar Singh** (Supra) the Hon’ble Apex Court has clearly held that the employer should given the reasons regarding the unsuitability of the applicant to the concerned post because the yardstick/principles laid down by the Hon’ble Apex Court is that for each relevant post there will be separate yardstick regarding the suitability and the impugned order dated 09.06.2016 (Annexure A-

13) is not in consonance with the law settled by the Hon'ble Apex Court as discussed above.

17. Resultantly, the Original Application is allowed. Impugned order dated 09.06.2016 (Annexure A-13) is quashed and set aside and respondents are directed to provide offer of appointment to the post of Scout and guide to the applicant, if otherwise found eligible, within a period of 60 days from the date of receipt of a certified copy of this order. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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