



GAHC010019942022

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/826/2022

MILAN YADAV
ROLL NO. 5105000042, S/O- SHRIRAMJIT YADAV, VILL.- GURBASTI, P.O.
GOHPUR, P.S. GOHPUR, DIST. BISWANATH, ASSAM, PIN- 784168.

VERSUS

THE UNION OF INDIA AND 6 ORS
REP. BY THE SECRETARY TO THE MINISTRY OF HOME AFFAIRS, NORTH
BLCOK, NEW DELHI-110001.

2:THE DIRECTOR GENERAL OF CISF

NEW DELHI-110003.

3:THE INSPECTOR GENERAL

CISF SES HQRS KOLKATA.

4:THE ASSTT. INSPECTOR GENERAL/RECTT

CISF FHQ
NEW DELHI.

5:THE ASSTT. INSPECTOR GENERAL/TRG

CISF FHQ
NEW DELHI.

6:THE COMMANDANT CUM DEPUTY INSPECTOR GENERAL
KHARAVELA RECRUIT TRAINING CENTRE
MUNDALI
ORISHA.



7:THE COMMANDANT
CISF UNIT GP HQRS
GUWAHATI
HOCKEY STADIUM ROAD
NEAR A.G. COLONY
BEHARBARI
P.O. BASISTHA
P.S. BASISTHA
KAMRUP(M)
ASSAM
PIN- 781029

B E F O R E

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

Advocate for the Petitioner : Mr. J Payeng, Counsel.
Advocate for Respondents : Ms. B Sarma, CGC
Date of hearing : 06.09.2022.
Date of Judgment : 16.09.2022

JUDGMENT & ORDER (CAV)

Heard Mr. J. Payeng, learned counsel for the petitioner. Also heard Ms. B. Sarma, learned CGC appearing for all the respondents.

[2] The grievance of the petitioner is that despite having been honourably acquitted in the criminal case, the respondents have not appointed the petitioner to the post of Constable (GD) in the Central Industrial Security Force (CISF).

[3] The petitioner's case in brief is that he had participated in the selection process for appointment to the vacant posts of Constable (GD) in the CISF, pursuant to the advertisement dated 21.07.2018. The petitioner being successful in the selection process was offered appointment to the post of



Constable (GD) in the CISF and was asked to report to the Principal, RTC, Mundali on 21.06.2021 vide letter dated 11.05.2021. The petitioner reported to the Principal, RTC, Mundali and started his training. During document verification, which was done by the respondents on 01.07.2021, a questionnaire had to be filled up where there was a specific question as to whether the petitioner was involved in a criminal case prior to joining the CISF. The petitioner admitted that he had a criminal case prior to joining the CISF. The petitioner was thereafter directed to submit documents with regard to the criminal case.

[4] The petitioner thereafter submitted all the documents relating to GR Case No. 356/2017 under Sections 448/354 (c)/506 IPC arising out of Gohpur P.S. Case No. 302/2017. The Judgment & Order dated 30.09.2019 passed by the Sub Divisional Judicial Magistrate, Gohpur in GR Case No. 356/2017 had acquitted the accused by giving him the benefit of doubt. Thereafter, the Commandant cum Deputy Inspector General, KRTC, Mundali issued a letter dated 05.01.2022 to the petitioner, stating that his case had been examined by the Standing Screening Committee and he was found unsuitable for appointment in the CISF.

[5] The allegations against the petitioner in the said criminal case was that he had clandestinely taken the photographs of the informant, who was taking a bath and had threatened to circulate the same, if she refused to maintain an illicit relationship with the petitioner. The petitioner was thereafter acquitted by the Criminal Court vide judgment dated 30.09.2019, on being given the benefit of doubt.

[6] The petitioner's counsel submits that as the petitioner had been honourably acquitted by the learned Criminal Court, the respondents should



have issued an appointment order to the petitioner, as he was found to be successful in the selection process for appointment to the post of Constable (GD) in the CISF. He further submits that when the petitioner had been acquitted in the criminal case, after full consideration of the prosecution evidence and as the prosecution had failed to prove the charge levelled against the petitioner, it could be said that the petitioner was honourably acquitted.

In support of his submission, the learned counsel for the petitioner has relied upon the judgments of the Apex Court in the case of ***Deputy Inspector General of Police & Another vs. S. Samuthiram***, reported in ***(2013) 1 SCC 598*** and the case of ***Joginder Singh vs Union Territory of Chandigarh***, reported in ***(2015) 2 SCC 377***.

[7] Ms. B. Sarma, learned CGC, on the other hand submits that the petitioner has not been honourably acquitted, as it is clear from the judgment passed by the learned trial court, wherein the petitioner has been acquitted on being given the benefit of doubt. She accordingly submits that there was no infirmity with the Standing Screening Committee's decision, holding that the petitioner was unsuitable to be appointed in the CISF. She submits that the Standing Screening Committee considered the case of the petitioner, after the petitioner had been acquitted by the Criminal Court on 30.09.2019. She submits that as the competent authority has the right to consider the suitability of a candidate, after he is acquitted in a criminal case and as the said exercise had been undertaken by the respondents, the petitioner cannot claim appointment, after the same has been rejected by the Standing Screening Committee.

[8] The learned CGC has relied upon the judgment of the Apex Court in ***Union of India vs. Methu Meda*** (Civil Appeal No.6238/2021), in support of her submission that acquittal on the ground of benefit of doubt does not mean

that the petitioner has been honourably acquitted.

[9] I have heard the learned counsels for the parties.

[10] The issues to be decided is whether the petitioner had been honourably acquitted by the learned Criminal Court and whether the petitioner had a right to be appointed if he was honourably acquitted by the Criminal Court.

[11] To answer the above questions, the relevant extract of the judgment dated 30.09.2019 passed by the learned Court of the SDJM(M), Gohpur in GR Case No. 356/2017, from paragraph 17 to 19 is reproduced below :

“17. In the light of the above testimonies and on perusal of the materials on record, the following facts are observed:

I. The fact that accused captured objectionable images of the victim, while she took bath is not proved in the instant case. For no such images are brought to record. Hence, offence U/S 354 (C) of IPC stands not proved against the accused person.

II. The victim further stated that accused on the basis of the captured images asked to maintain relationship with him and so she used to converse with him over phone for period of 6-7 days and kept recording of the same. However, said fact is not proved by adducing cogent material evidence.

III. The quality of all are witnesses are poor, considering that accused persons are sister and mother are forwarded as prosecution witnesses who has no knowledge about such incident.

IV. Also another fact that victim filed the case after a considerable period from the alleged offence and that only after her husband came to know about the recorded conversation, makes the prosecution story weak and credibility of the victim's testimony is doubtful.

V. Hence, considering all the above the offences alleged U/S 448/354/354(C)/506 of I.P.C. stands not proved against the accused person.

18. Considering the above, I hold that prosecution has failed to prove the guilt of the accused person beyond all reasonable doubt that in the month of November, 2017 on a certain day at Gourbosti criminally trespassed into the house of victim assaulted victim, intending to outrage her modesty captured image of victim while she took bath and criminally intimidated by threatening victim with injury to her reputation and thereby committed offences punishable U/S 448/354/354(C)/506 of I.P.C.



19. *In the result, the accused person Sri Milan Jadav is hereby acquitted on benefit of doubt U/S 448/354/354(C)/506 of I.P.C. and set at liberty forthwith."*

[12] On a perusal of the judgment passed by the learned Trial Court in GR Case No. 356/2017, it can be seen that the learned Trial Court had held that the prosecution had failed to prove the guilt of the petitioner, beyond all reasonable doubt and had accordingly acquitted the petitioner on the ground of benefit of doubt.

In the above case, the learned Trial Court had examined five prosecution witnesses. PW1 was the informant, while PW2 was the father-in-law of the informant (PW1). PW3 was the sister of the petitioner and PW4 was the mother of the petitioner. PW5 was the neighbour of both the petitioner and the informant.

[13] In the case of ***Deputy Inspector General of Police (supra)***, the Apex Court has held that it is difficult to define precisely what is meant by the expression "honourably acquitted". The Apex Court has however stated that it can possibly be said that an accused is honourably acquitted, if he is acquitted after full consideration of the prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against him. Thus, as per the decision of the Apex Court in the above case, the acquittal of an accused after full consideration of the prosecution evidence and after the prosecution miserably fails to prove the charges, it can be possible to hold that an accused was "honourably acquitted". However, the decision of the Apex Court does not imply that it can be said with certainty that just because an accused is acquitted after full consideration of the prosecution evidence, that an accused has to be considered to be "honourably acquitted". The meaning of the expression "honourably acquitted" as given by the Apex Court in paragraph No. 24 of the

Deputy Inspector General of Police (supra), is reproduced below, as follows:-

“24. The meaning of the expression ‘honourable acquittal’ came up for consideration before this Court in *Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchai* (1994) 1 SCC 541. 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.”

[14] In the case of **Joginder Singh (supra)**, the Apex Court held that a person should not be denied an opportunity to qualify for any post including the post of Constable for the Punjab Police, after the person has disclosed that there was a criminal case registered against him and that it has ended in acquittal on account of a compromise between the parties involved in the criminal case.

[15] In the case of **Union Territory, Chandigarh Administration and Ors. Vs. Pradeep Kumar & Anr., (2018) 1 SCC 797**, the Apex Court has held that acquittal in a criminal case is not conclusive of the suitability of the candidate in the concerned post. If a person is acquitted or discharged, it cannot always be inferred that he was falsely involved or had no criminal antecedents. Further, while deciding whether a person involved in a criminal case, who had been acquitted or discharged, should be appointed to a post in a Police force, nature of offence in which he is involved, whether it was an honourable acquittal or only an extension of benefit of doubt because of

witnesses turning hostile and flaws in the prosecution are all aspects to be considered by the Screening Committee, for taking the decision whether the candidate is suitable for the post. It also held that the Court cannot substitute its views for the decision taken by the Screening Committee, except in the case of malafides.

[16] In the case of ***Commissioner of Police, New Delhi & Anr. Vs. Mehar Singh, 2013 7 SCC 685***, the Apex Court has held that the relevant factors and nature of offence, extent of his involvement, propensity of such person to indulge in similar activities in future, after acquittal, are relevant aspects for consideration by the Screening Committee, which is competent to decide all these issues. The Apex Court further held that the decision of the Screening Committee must be taken as final, unless it is malafide. The Apex Court, in the case of ***Union of India vs. Methu Meda (supra)***, held that the Screening Committee would have to take a decision by taking all factors into consideration, in terms of the judgment of the Apex Court in the case of ***Avtar Singh Vs. Union of India, (2016) 8 SCC 471***, as to whether the acquitted person can be appointed into service.

[17] In the case of ***Avtar Singh Vs. Union of India (supra)***, the Apex Court has stated in paragraph Nos. 38 to 38.11 as follows:-

“38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the 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 4 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 5

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."

[18] In the case of ***Avtar Singh (supra)***, the Apex Court has given a set of guidelines, which is to be followed while finalizing the selection/recruitment to a Government post, especially the Disciplined Force. In terms of paragraph No. 38.4.3 in ***Avtar Singh (supra)***, the Apex Court has held that 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 the case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and make appropriate decision as to the continuance of the employee. In paragraph Nos. 21 of the judgment in the case of ***Union of India Vs. Methu Meda, Civil Appeal No. 6238/2021***, the Apex Court has held that the person who wishes to join the Police Force must be a person of utmost rectitude and have impeccable character and integrity. In paragraph No. 22, the Apex Court has held that the law is well settled, that if a person is acquitted by giving him the benefit of doubt, from the charge of an offence involving moral turpitude or because the witness turned hostile, it would not automatically entitle him for employment, that too in a disciplined force.

[19] In the case of ***Union of India vs. Methu Meda (supra)***, the Apex Court has held at paragraph Nos. 21 & 22 as follows:-

"21. In view of the aforesaid, it is clear the respondent who wishes to join the police force must be a person of utmost rectitude and have impeccable character and integrity. A person having a criminal antecedents would not be fit in this category. The employer is having right to consider the nature of acquittal or decide until he is completely exonerated 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 and the decision of the Committee would be final unless mala fide. In the case of Pradeep Kumar (supra), this Court has taken the same view, as reiterated in the case of Mehar Singh (supra). The same view has again been reiterated by this Court in the case of Raj Kumar (supra).

22. As discussed hereinabove, the law is well settled. If a person is acquitted giving him the benefit of doubt, from the charge of an offence involving moral turpitude or because the witnesses turned hostile, it would not automatically entitle him for the employment, that too in disciplined force. The employer is having a right to consider his candidature in terms of the circulars issued by the Screening Committee. The mere disclosure of the offences alleged and the result of the trial is not sufficient. In the said situation, the employer cannot be compelled to give appointment to the candidate. Both the Single Bench and the Division Bench of the High Court have not considered the said legal position, as discussed above in the orders impugned. Therefore, the impugned orders passed by the learned Single Judge of the High Court in Writ Petition No. 3897 of 2013 and Division Bench in Writ Appeal No. 1090 of 2013 are not sustainable in law, as discussed hereinabove."

[20] As can be seen from the judgments of the Apex Court in the case of ***Union Territory, Chandigarh Administration and Ors. (supra)*** and ***Avtar Singh (supra)***, power has been vested with the appointing authority to reject a candidate of a person, who has not been honourably acquitted, but is acquitted by giving him the benefit of doubt.

[21] In the present case, a perusal of the Judgment & Order dated 30.09.2019 passed by the learned Trial Court in GR Case No. 356/2017 shows that there was a full consideration of the prosecution evidence by the learned Trial Court and as such, in terms of the judgment of the Apex Court in ***Deputy Inspector General of Police (supra)***, it can possibly be said that the petitioner was honourably acquitted of the charges framed against him. Further, by reading the judgment as a whole, the prosecution had failed to prove the case against the petitioner. However, the learned Trial Court has in the said

judgment held that the petitioner was acquitted on the ground that the prosecution had failed to prove the guilt of the petitioner beyond reasonable doubt and was acquitted on the ground of benefit of doubt. As such, the question of whether the acquittal of the petitioner would entitle him to be appointed in the Paramilitary Force was subsequently left to be decided by the Standing Screening Committee.

[22] The Standing Screening Committee thereafter considered the case of the petitioner and came to a decision in its 21st Sitting as follows:-

“Recommendations of the Committee with reasons

As per MHA policy guidelines notification dated 01.02.2012, Para 2(iii)(a) states that "The candidate will not be considered for recruitment if such involvement/case/arrest is concerned with an offence mentioned in Annexure-A"

Para 2 (v) of the MHA Policy guidelines states that "Notwithstanding the provisions of 3(iii) above, such candidates against whom charge sheet in a criminal case has been filed in the court and the charges fall in the category of serious offences or moral turpitude, though later on acquitted by extending benefit of doubt or acquitted for the reasons that the witness have turned hostile due to fear of reprisal by the accused person(s), he/she will generally not be considered suitable for appointment in the CAPF - attracted as charges falling in the category of moral turpitude, though later on acquitted by extending benefit of doubt.

Para 30(3) of the Apex Court's Order in Avtar Singh's case states that "The employer shall take into consideration the Government orders/ instructions/rules, applicable to the employee, at the time of taking the decision" and Para 30(4)(c) of the order states that "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." Hence, the Committee opines the candidate is "UN-SUITABLE" for employment in CISF."

[23] As per the judgment of the Apex Court in ***Reserve Bank of India V. Bhopal Singh Panchal, 1994 1 SCC 541***, a person who has been acquitted on being given the benefit of doubt, cannot be said to be a person who has been honourably acquitted. Even assuming that the petitioner was not honourably acquitted, the employer may consider all relevant facts and make an



appropriate decision as to the continuance of the employee. In the case of ***Union of India vs. Methu Meda (supra)***, the Apex Court has held that the acquittal of a person by giving him the benefit of doubt, from the charge of an offence involving moral turpitude would not automatically entitle him for employment in a disciplined force. As such, this Court cannot find fault with the authorities' decision to have the petitioner's case considered by the Standing Screening Committee, with regard to the suitability of appointing the petitioner. Accordingly, the Standing Screening Committee considered the case of the petitioner and after considering the Policy Guidelines issued by the Ministry of Home Affairs and the decision of the Apex Court in ***Avtar Singh (supra)***, it came to a decision that the petitioner was unsuitable for employment in the CISF.

[24] This Court would like to add that the present case being a writ petition and not an appeal, this Court is not sitting over the judgment of the learned Trial Court as an Appellate Authority. It is only deciding the issue raised, with respect to whether the petitioner had been honourably acquitted and whether the petitioner was to have been appointed in the event he was found to have been honourably acquitted. As this Court is not sitting as an Appellate Authority, the decision of the learned Trial Court that the petitioner is given the benefit of doubt would remain. In view of the judgment of the Apex Court in ***Reserve Bank of India V. Bhopal Singh Panchal (supra)***, a person who is acquitted on being given the benefit of doubt cannot be said to be honourably acquitted. In terms of the decision of the Apex Court in the case of ***Union of India vs. Methu Meda (supra)***, the acquittal of a person on the ground of benefit of doubt, would not automatically entitle him for employment in a disciplined force.



[25] The Apex Court in the case of ***Union of India vs. Methu Meda (supra)***, has held that the employer cannot be compelled to give appointment to a candidate, who has been acquitted on the ground of benefit of doubt, as the employer is having a right to consider the candidature of the said acquitted person. The decision of the Standing Screening Committee, which has been made in it's 21st sitting, is to the effect that the petitioner was found unsuitable for appointment in the CISF. As the Standing Screening Committee has taken into consideration various parameters and the judgment of the Apex Court in ***Avtar Singh (supra)***, prior to taking a decision on the issue, this Court is of the view that no case has been made out for substituting and/or interfering with the decision taken by the Standing Screening Committee. Further, as there is no averment made by the petitioner in his pleadings that the decision of the Standing Screening Committee was due to malafides, the same cannot be substituted in terms of the judgment of the Apex Court in the case of ***Union Territory, Chandigarh Administration and Others (supra)***.

[26] In view of the reasons stated above, the writ petition stands dismissed.

JUDGE

Comparing Assistant