

SUPREME COURT OF INDIA

State of M.P.

Vs.

Parvez Khan

C.A.No.10613 of 2014

(T.S. Thakur and Adarsh Kumar Goel JJ.)

01.12.2014

JUDGMENT

ADARSH KUMAR GOEL, J.

1. Leave granted.
2. This appeal has been preferred against the Judgment and Order dated 20th March, 2012 of the High Court of Madhya Pradesh at Jabalpur in Writ Appeal No.262 of 2010.
3. The question raised for our consideration is whether the refusal by the competent authority to give compassionate appointment in police service on the ground of criminal Page 1 Civil Appeal No. of 2014 @ SLP (C) No.36237 of 2012 antecedents of a candidate who is acquitted for want of evidence or who is discharged from the criminal case on account of compounding can be justified.
4. Sultan Khan was serving with the Madhya Pradesh Police.

He died in harness on 21 st June, 2005. His son, the respondent Parvez Khan, applied for compassionate appointment. The competent authority sent his record for police verification. It was found that he was involved in two criminal cases. In one case, he was prosecuted for offences under Sections 323, 324, 325, 294

and 506-B/34 of the Indian Penal Code and in the other under Sections 452, 394 and 395 of the Indian Penal Code. The Superintendent of Police held that he was not eligible for appointment in Government service and closed his case.

5. The respondent challenged the said order by way of Writ Petition No.15052 of 2008 on the ground that in the first case he was acquitted on 31st January, 2007 and in the second he was discharged on account of compounding of offence.

6. Learned Single Judge did not find any merit in his contention in the writ petition and dismissed the petition. On appeal, the Division Bench took a different view. It was held that the object of verification was to verify suitability of a candidate Page 2 Civil Appeal No. of 2014 @ SLP (C) No.36237 of 2012 for employment. Since the respondent was acquitted in both the criminal cases he could not be considered unsuitable. No reason had been given as to why after acquittal in the criminal case, the respondent was considered to be unsuitable.

Accordingly, the Division Bench directed consideration of case of the respondent afresh in the light of observations in the order within three months. Aggrieved thereby, the appellant-State has preferred this appeal.

7. We have heard learned counsel for the parties.

8. Learned counsel for the State submitted that since on police verification, it was found that the respondent was involved in criminal cases involving moral turpitude, he could not be given appointment. Mere acquittal for want of evidence or discharge on account of compromise could not be taken to be conclusive for suitability of a candidate. The result of criminal proceedings was not conclusive of suitability of a candidate for recruitment to police service.

9. It is submitted that in a criminal case, a person cannot be punished in absence of proof beyond reasonable doubt but the standard of proof required for consideration of suitability or otherwise of a candidate was not the same. Discharge on Page 3 Civil Appeal No. of 2014 @ SLP (C) No.36237 of 2012 account of compounding of the offence by the victim depended upon the attitude of the parties. The victim may be prepared to settle the matter for any consideration other than innocence of the accused, but it did not wash off the criminal antecedents of an accused. Entering into police

service required a candidate to be of character, integrity and clean antecedents. If a person is acquitted or discharged, it cannot always be inferred that he was falsely involved and he had no criminal antecedents. All that may be inferred is that he has not been proved to be guilty.

Reliance has been placed on the decision of this Court in Commissioner of Police vs. Mehar Singh¹.

10. Learned counsel for the respondent supported the impugned order and submitted that some other similarly placed candidates had been given compassionate appointment. Two such instances have been pointed out by the respondent in the counter affidavit. He has also submitted that the State of Madhya Pradesh has issued Guidelines dated 5th June, 2003 for character verification of candidates for recruitment to Government service and such guidelines do not justify rejection of candidature of the respondent. One of the instances given is of Dilip Kumar Samadhiya son of Shri Jagdish Prasad 2013 (7) SCC 685 Page 4 Civil Appeal No. of 2014 @ SLP (C) No.36237 of 2012 Samadhiya against whom three criminal cases were registered prior to the recruitment in Government service but he was acquitted either on account of compromise or on account of benefit of doubt. Still, he was given appointment. Similarly, Jitender Sharma was recruited to Police service though he was tried for a criminal case, but acquitted on account of compounding or on the basis of benefit of doubt. As per Guidelines dated 5th June, 2003, an independent view can be taken only where candidate has concealed the information about pendency of trial and not where there is no such concealment, as in the present case.

11. After due consideration, we are of the view that the impugned order cannot be sustained. Refusal by the competent authority to recruit the respondent on the ground of criminal antecedents is not liable to be interfered with. The applicable Guidelines dated 5th June, 2003 inter alia provide :

“On the basis of merits and demerits by the Hon’ble Court the acquitted candidate will be eligible for the Government Service.” The above guidelines show that acquittal is not conclusive.

Even after acquittal, basis of order of the Court has to be gone into by the competent authority. Even after order based on Page 5 Civil Appeal No. of

2014 @ SLP (C) No.36237 of 2012 compromise or lack of evidence may render a candidate ineligible. In the present case, the relevant part of the order of the Superintendent of Police is as follows:

“Action was taken in regard to the proceedings of compassionate appointment, character verification was got done, wherein vide Letter No.V.S./21/VHR/2007/17(F)283/07 dated 17.9.2007 of the Police Headquarters it was informed that a case under Section 294, 323, 506, 324, 34 of IPC had been registered against the applicant in Police Station Kotwali as Crime No.185/06 and the applicant was acquitted on the basis of a compromise by the Court on 23.2.2007. In the same manner in Crime No.494/06 under Section 394, 364, 451 of IPC a case was registered and vide judgment dated 31.1.2007 of the Court he was acquitted.

Two separate crimes had been registered against the applicant, wherein in one case Section 394, 451, 365 of IPC are there and which come in the category of moral turpitude. In the judgment of the Court benefit of doubt has been given, therefore, as per the new guidelines of 2003 issued by the Government of Madhya Pradesh in respect of character verification the applicant Parvez Khan alias Sonu alias Raja has been found to be ineligible for Government service.”

12. In Mehar Singh (supra), the question considered by this Court was as follows :

“18. The question before this Court is whether the candidature of the respondents who had made a clean breast of their involvement in a criminal case by mentioning this fact in their application/attestation form while applying for a post of Constable in Delhi Police, who were Page 6 Civil Appeal No. of 2014 @ SLP (C) No.36237 of 2012 provisionally selected subject to verification of their antecedents and who were subsequently acquitted/discharged in the criminal case, could be cancelled by the Screening Committee of the Delhi Police on the ground that they are not found suitable for appointment to the post of Constable.” After considering the rival contentions, the Court held :

“23. 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.

24. We find no substance in the contention that by cancelling the respondents' candidature, the Screening Committee has overreached the judgments of the criminal court. We are aware that the question of correlation between a criminal case and a departmental enquiry does not directly arise here, but, support can be drawn from the principles laid down by this Court in connection with it because the issue involved is somewhat identical, namely, whether to allow a person with doubtful integrity to work in the department. While Page 7 Civil Appeal No. of 2014 @ SLP (C) No.36237 of 2012 the standard of proof in a criminal case is the proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities. Quite often criminal cases end in acquittal because witnesses turn hostile. Such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on a par with a clean acquittal on merit after a full-fledged trial, where there is no indication of the witnesses being won over. In *R.P. Kapur v. Union of India* [AIR 1964 SC 787] this Court has taken a view that departmental proceedings can proceed even though a person is acquitted when the acquittal is other than honourable.

25. The expression "honourable acquittal" was considered by this Court in *S. Samuthiram* [2013 (1) SCC 598]. In that case this Court was concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under Section 509 IPC and under

Section 4 of the Eve-Teasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in *RBI v. Bhopal Singh Panchal* [1994 (1) SCC 541] where in somewhat similar fact situation, this Court upheld a bank's action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in the departmental proceedings. This Court observed that the expressions "honourable acquittal", "acquitted of blame" and "fully exonerated" are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression "honourably acquitted". This Court expressed that when the accused is acquitted after full consideration of the prosecution case and the prosecution miserably fails to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

26. In light of the above, we are of the opinion that since the purpose of the departmental proceedings is to keep persons, who are guilty of serious misconduct or dereliction of duty or who are guilty of grave cases of moral turpitude, out of the department, if found necessary, because they pollute the department, surely the above principles will apply with more vigour at the point of entry of a person in the police department i.e. at the time of recruitment. If it is found by the Screening Committee that the person against whom a serious case involving moral turpitude is registered is discharged on technical grounds or is acquitted of the same charge but the acquittal is not honourable, the Screening Committee would be entitled to cancel his candidature. Stricter norms need to be applied while appointing persons in a disciplinary force because public interest is involved in it.

27. Against the above background, we shall now examine what is the nature of acquittal of the respondents. As per the complaint lodged by Ramji Lal, respondent Mehar Singh and others armed with iron chains, lathis, danda, stones, etc. stopped a bus, rebuked the conductor of the bus as to how he dared to take the fare from one of their associates. Those who intervened were beaten

up. They received injuries. The miscreants broke the side windowpanes of the bus by throwing stones. The complainant was also injured. This incident is undoubtedly an incident affecting public order. The assault on the conductor was preplanned and premeditated. The FIR was registered under Sections 143, 341, 323 and 427 IPC. The order dated 30-1-2009 passed by the Additional Chief Judicial Magistrate, Khetri shows that so far as offences under Sections 323, 341 and 427 IPC are concerned, the accused entered into a compromise with the complainant. Hence, the learned Magistrate acquitted respondent Mehar Singh and others of the said offences. The order further indicates that so far as offence of rioting i.e. offence under Section 147 IPC is concerned, three main witnesses turned hostile. The learned Magistrate, therefore, acquitted all the accused of the said offence. This acquittal can never be described as an acquittal on merits after a full-fledged trial. Respondent Mehar Singh cannot secure entry in Page 9 Civil Appeal No. of 2014 @ SLP (C) No.36237 of 2012 the police force by portraying this acquittal as an honourable acquittal. Pertinently, there is no discussion on merits of the case in this order. Respondent Mehar Singh has not been exonerated after evaluation of the evidence.

28. So far as respondent Shani Kumar is concerned, the FIR lodged against him stated that he along with other accused abused and threatened the complainant's brother. They opened fire at him due to which he sustained bullet injuries. The offences under Sections 307, 504 and 506 IPC were registered against respondent Shani Kumar and others. The order dated 14-5-2010 passed by the Sessions Judge, Muzaffarnagar shows that the complainant and the injured person did not support the prosecution case. They were declared hostile. Hence, the learned Sessions Judge gave the accused the benefit of doubt and acquitted them. This again is not a clean acquittal. The use of firearms in this manner is a serious matter. For entry in the police force, acquittal order based on benefit of doubt in a serious case of this nature is bound to act as an impediment.

29. In this connection, we may usefully refer to Sushil Kumar [1996(11) CC 605]. In that case, the respondent therein had appeared for recruitment as a Constable in Delhi Police Services. He was selected provisionally, but, his selection was subject to verification of character and antecedents by the local police. On verification, it was found that his antecedents were such that his

appointment to the post of Constable was not found desirable. Accordingly, his name was rejected. He approached the Tribunal. The Tribunal allowed the application on the ground that since the respondent had been discharged and/or acquitted of the offence punishable under Section 304, Section 324 read with Section 34 and Section 324 IPC, he cannot be denied the right of appointment to the post under the State. This Court disapproved of the Tribunal's view. It was observed that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable for the post under the State. This Court observed that though the candidate Page 10 Civil Appeal No. of 2014 @ SLP (C) No.36237 of 2012 was provisionally selected, the appointing authority found it not desirable to appoint him on account of his antecedent record and this view taken by the appointing authority in the background of the case cannot be said to be unwarranted. Whether the respondent was discharged or acquitted of the criminal offences, the same has nothing to do with the question as to whether he should be appointed to the post. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof.

30. It was argued that Sushil Kumar must be distinguished from the facts of the instant case because the respondent therein had concealed the fact that a criminal case was registered against him, whereas, in the instant case there is no concealment. It is not possible for us to accept this submission. The aspect of concealment was not considered in Sushil Kumar at all. This Court only concentrated on the desirability to appoint a person, against whom a criminal case is pending, to a disciplined force. Sushil Kumar cannot be restricted to cases where there is concealment of the fact by a candidate that a criminal case was registered against him. When the point of concealment or otherwise and its effect was not argued before this Court, it cannot be said that in Sushil Kumar this Court wanted to restrict its observations to the cases where there is concealment of facts.

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33. So far as respondent Mehar Singh is concerned, his case appears to have been compromised. It was urged that acquittal recorded pursuant to a compromise should not be treated as a disqualification because that will

frustrate the purpose of the Legal Services Authorities Act, 1987. We see no merit in this submission. Compromises or settlements have to be encouraged to bring about peaceful and amiable atmosphere in the society by according a quietus to disputes. They have to be encouraged also to reduce arrears of cases and save the litigants from the agony of pending litigation. But these Page 11 Civil Appeal No. of 2014 @ SLP (C) No.36237 of 2012 considerations cannot be brought in here. In order to maintain integrity and high standard of police force, the Screening Committee may decline to take cognizance of a compromise, if it appears to it to be dubious. The Screening Committee cannot be faulted for that.

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35. 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 the trust reposed in it and must treat all candidates with an even hand.”

13. From the above observations of this Court, it is clear that a candidate to be recruited to the police service must be worthy of Page 12 Civil Appeal No. of 2014 @

SLP (C) No.36237 of 2012 confidence and must be a person of utmost rectitude and must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was completely exonerated. Persons who are likely to erode the credibility of the police ought not to enter the police force. No doubt the Screening Committee has not been constituted in the case considered by this Court, as rightly pointed out by learned counsel for the Respondent, in the present case, the Superintendent of Police has gone into the matter. The Superintendent of Police is the appointing authority. There is no allegation of mala fides against the person taking the said decision nor the decision is shown to be perverse or irrational.

There is no material to show that the appellant was falsely implicated. Basis of impugned judgment is acquittal for want of evidence or discharge based on compounding.

14. The plea of parity with two other persons who were recruited can also not help the respondent. This aspect of the matter was also gone into by this Court in Mehar Singh (supra) and it was held :

“36. The Screening Committee’s proceedings have been assailed as being arbitrary, unguided and unfettered. But, in the present cases, we see no evidence of this. However, certain instances have been pointed out where allegedly persons involved in serious offences have been recommended for appointment by the Screening Committee. It is well settled that to such cases the doctrine of equality enshrined in Article 14 of the Constitution of India is not attracted. This doctrine does not envisage negative equality (Fuljit Kaur (2010 (11) SCC 455). It is not meant to perpetuate illegality or fraud because it embodies a positive concept. If the Screening Committee which is constituted to carry out the object of the comprehensive policy to ensure that people with doubtful background do not enter the police force, deviates from the policy, makes exception and allows entry of undesirable persons, it is undoubtedly guilty of committing an act of grave disservice to the police force but we cannot allow that illegality to be perpetuated by allowing the respondents to rely on such cases. It is for the Commissioner of Police, Delhi to examine whether the Screening Committee has compromised the interest of the police force in any case and to take remedial action if he finds that it has done so. Public interest

demands an in-depth examination of this allegation at the highest level. Perhaps, such deviations from the policy are responsible for the spurt in police excesses. We expect the Commissioner of Police, Delhi to look into the matter and if there is substance in the allegations to take necessary steps forthwith so that policy incorporated in the Standing Order is strictly implemented.”

15. Having given our thoughtful consideration, we are of the view that the Division Bench of the High Court was not justified in interfering with the order rejecting the claim of the respondent Page 14 Civil Appeal No. of 2014 @ SLP (C) No.36237 of 2012 for recruitment to the police service by way of giving him compassionate appointment.

16. Accordingly, we allow this appeal and set aside the impugned order. There will be no order as to costs.