

A THE STATE OF MADHYA PRADESH & ORS.

v.

BUNTY

(Civil Appeal No. 3046 of 2019)

B MARCH 14, 2019

**[ARUN MISHRA AND NAVIN SINHA, JJ.]**

- Service Law: Appointment – On the post of constable – Denied on the ground that he was involved in a criminal case for commission of offence u/s. 392 and 411 of IPC – Writ petition challenging the denial order – Single Judge of High Court dismissed the writ petition – In writ appeal, Division Bench of High Court held that appointment order should have been issued as the candidate was acquitted in the criminal case giving him benefit of doubt – On appeal, held: If acquittal in criminal case is based on benefit of doubt or any other technical reason, the employer can take into consideration all the relevant facts to take an appropriate decision as to the fitness of incumbent for appointment/continuance in service – In the present case, the criminal case against the respondent/candidate was of serious kind involving moral turpitude – Since the candidate was acquitted on the basis of benefit of doubt, clouds cannot be said to be clear as to his antecedents, and hence appointment could not have followed as a matter of course.*

**Allowing the appeal, the Court**

- HELD:** 1. In case acquittal in a criminal case is based on the benefit of doubt or any other technical reason, the employer can take into consideration all relevant facts to take an appropriate decision as to the fitness of an incumbent for appointment/continuance in service. [Para 13] [510-C-D]

2. In the present case, all throughout during selection process, the criminal case was pending consideration and as certain witnesses have turned hostile which is not unusual. The respondent knew very well about the pendency of the case against him and it is not uncommon to see that witnesses turned hostile. In the aforesaid circumstance, it cannot be said to be case of

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clear acquittal, in criminal case, he was given benefit of doubt not acquitted because the case against him was found to be false. Thus, due to such acquittal appointment could not have followed as a matter of course as observed by the Division Bench of the High Court. [Para 8] [508-B-D]

3. Considering the nature of allegation in the case, it was a criminal case of impersonation as a police officer and thereby committing the offence under Sections 392 and 411 of the IPC. It was a case of the serious kind, which involved moral turpitude and having not been granted the clean acquittal in the criminal case merely by the grant of benefit of the doubt, clouds cannot be said to be clear as to the antecedents of the respondent. Thus, the perception formed by the Screening Committee that he was unfit to be inducted in the disciplined police force was appropriate. Therefore, decision of Scrutiny Committee could not be said to be such which warranted judicial interference. [Para 9] [508-D-F]

*Commissioner of Police, New Delhi and Another v. Mehar Singh (2013) 7 SCC 685 : [2013] 13 SCR 432; State of Madhya Pradesh & Ors. v. Parvez Khan (2015) 2 SCC 591; Union Territory, Chandigarh Administration and Others v. Pradeep Kumar and Another (2018) 1 SCC 797 : [2018] 1 SCR 112 ; Avtar Singh v. Union of India and Others (2016) 8 SCC 471 : [2016] 7 SCR 445 – relied on.*

*Joginder Singh v. Union Territory of Chandigarh and Others (2015) 2 SCC 377 : [2014] 11 SCR 155 – distinguished.*

<u>Case Law Reference</u>		
[2013] 13 SCR 432	relied on	Para 5
(2015) 2 SCC 591	relied on	Para 6
[2018] 1 SCR 112	relied on	Para 6
[2016] 7 SCR 445	relied on	Para 7
[2014] 11 SCR 155	distinguished	Para 7

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- A CIVIL APPELLATE JURISDICTION: Civil Appeal No.3046 of 2019

From the final impugned Judgment and Order dated 31.10.2017 of the High Court of Madhya Pradesh, Bench at Indore in Writ Appeal No.535 of 2017

- B Rahul Kaushik, Ms. Bhuvneshwari Pathak, Ms. Shilpi Satyapriya Satyam, Siddharth Chakravorty, Arjun Garg, Advs. for the Appellants.

Pourush Ranka, Anup Jain, Advs. for the Respondent.

The following Judgment of the Court was delivered :

C JUDGMENT

1. Leave granted.

2. The State of Madhya Pradesh and Others are in appeal as against the reversal of the judgment and order passed by the Single Judge dismissing the writ application questioning the decision of the

- D Screening Committee holding the respondent/Bunty to be unfit for appointment as a constable in the police service of the State of Madhya Pradesh.

- E 3. The respondent applied for the post of a Constable in the year 2013. He appeared and cleared the Police Constable Recruitment Test (II). Physical endurance test was held on 06.05.2013. He was medically examined and selected on 09.05.2014. On 05.06.2014 he was called for verification of the marks sheet, caste certificate. He was called for police verification by the Screening Committee on 25.02.2015. On 11.03.2015, the department, on the basis of the Report of the Screening Committee, decided to deny the appointment to the respondent/Bunty for the reasons mentioned therein.

- F 4. It is not in dispute that respondent/Bunty was involved in a case involving moral turpitude for the commission of an offence under Sections 392 and 411 of the IPC. He was given benefit of doubt in the G said case and was acquitted vide judgment and order dated 7.1.2015 and same has attained finality.

H 5. As against the denial of the appointment respondent/Bunty filed a writ petition before the High Court of Madhya Pradesh, Bench at Indore. Learned Single Judge of the High Court considered the matter

in extensive detail and relied upon the decision of this Court in Commissioner of Police, New Delhi and Another v. Mehar Singh, (2013) 7 SCC 685, and that the petitioner had appeared before the Screening Committee and it was found in objectivity by the Screening Committee that he was involved in a case of moral turpitude and the acquittal was not clean. He was found unfit for being appointed as Police Constable in a disciplined force. Reasons were communicated. Learned Single Judge also relied upon the decision in State of M.P. and Others v. Dinesh Singh Parihar and Others, rendered by the Division Bench of the High Court in Writ Appeal No. 724/2014, dismissed the said writ application. However, the Division Bench, by the impugned judgment and order, has allowed the writ appeal preferred by the respondent/Bunty on the ground that the judgment of acquittal is based on material on record, he was acquitted since the offence was not proved beyond reasonable doubt, appointment order has to be issued as a matter of course. Hence, the appeal by special leave is filed before this Court.

6. Learned counsel appearing on behalf of the State has relied upon the decisions of this Court in Mehar Singh (supra), State of Madhya Pradesh & Ors. v. Parvez Khan, (2015) 2 SCC 591, Union Territory, Chandigarh Administration and Others v. Pradeep Kumar and Another, (2018) 1 SCC 797, to contend that when the Screening Committee has formed an opinion with objectivity considered the allegations and overall material the decision is not open to judicial review until and unless it has acted arbitrarily or its decision is perverse. Learned counsel further submitted that mere acquittal on the ground of benefit of the doubt could not have enured in favour of the appellant so as to be entitled to appointment, as a matter of course as observed by the Division Bench of the High Court.

7. On the other hand, learned counsel appearing on behalf of the respondent has relied on a decision of this Court in Avtar Singh v. Union of India and Others, (2016) 8 SCC 471, and Joginder Singh v. Union Territory of Chandigarh and Others, (2015) 2 SCC 377. Learned counsel appearing for the respondent has contended that it was a case of no evidence and with respect to PW.12 also in the representation filed before the Screening Committee with respect to the said witness the reasons were assigned why he deposed against the respondent. Thus, in the facts and circumstances of the case, no case for interference is made out in the judgment and order passed by the Division Bench. The

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- A respondent could not have been termed to be unfit by the Screening Committee, in view of the judgment of acquittal.

8. After hearing learned counsel for the parties, we are of the opinion that the respondent had participated in the selection process in the year 2013, at that time the said criminal case was pending

- B consideration and he has been acquitted subsequently, vide judgment and order dated 7.1.2015 all throughout during selection process the case was pending consideration and as certain witnesses have turned hostile which is not unusual. The respondent knew very well about the pendency of the case against him and it is not uncommon to see that witnesses turned hostile. In the aforesaid circumstance, it cannot be said to be case of clear acquittal, in criminal case, he was given benefit of doubt not acquitted because the case against him was found to be false. Thus, due to such acquittal appointment could not have followed as a matter of course as observed by the Division Bench of the High Court.

- D 9. Considering the nature of allegation in the case, it was a case of impersonation as a police officer and thereby committing the offence under Sections 392 and 411 of the IPC. It was a case of the serious kind, which involved moral turpitude and having not been granted the clean acquittal in the criminal case merely by the grant of benefit of the

- E doubt, clouds cannot be said to be clear as to the antecedents of the respondent. Thus, the perception formed by the Screening Committee that he was unfit to be inducted in the disciplined police force was appropriate. In the aforesaid factual matrix, decision of Scrutiny Committee could not be said to be such which warranted judicial interference.

- F 10. Learned Single Judge of the High Court in the factual matrix projected, has rightly relied upon the decision in Mehar Singh (*supra*), wherein this Court has observed as under:-

- G “35. The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in 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

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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 the 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.”

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11. That apart, when we consider the decision of the three-Judge Bench of this Court in Avtar Singh (*supra*) the Court observed:-

“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.”

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12. In Pradeep Kumar (*supra*) this Court has observed:-

“15. From the above details, we find that the Screening Committee examined each and every case of the respondents and reasonings for their acquittal and taken the decision. While deciding whether a person involved in a criminal case has 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 turned hostile and flaws in the prosecution are all the aspects to be considered by the Screening Committee for taking

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- A the decision whether the candidate is suitable for the post. As pointed out earlier, the Screening Committee examined each and every case and reasonings for their acquittal and took the decision that the respondents are not suitable for the post of Constable in Chandigarh Police. The procedure followed is as per Guideline 2(A)(b) an object of such screening is to ensure that only persons with impeccable character enter police force. While so, the court cannot substitute its views for the decision of the Screening Committee.”
- C 13. The law laid down in the aforesaid decisions makes it clear that in case acquittal in a criminal case is based on the benefit of doubt or any other technical reason, the employer can take into consideration all relevant facts to take an appropriate decision as to the fitness of an incumbent for appointment/continuance in service. The decision taken by the Screening Committee in the instant case could not have been faulted by the Division Bench.
- E 14. Coming to the decision relied upon by the learned counsel appearing for the respondent in *Joginder Singh* (supra) we are of the opinion that it was not the case of the decision taken by the Screening Committee on due consideration of the material on record of the case.
- F 15. Thus, the decision is distinguishable. In the peculiar facts and circumstances of the case, we are inclined to hold that the decision of the Screening Committee was appropriate.
- F Thus, the judgment and order of the Division Bench cannot be allowed to be sustained, the same is hereby set aside and the judgment and order passed by the Single Judge are restored. The appeal is, accordingly, allowed. No orders as to costs. Pending application(s), if any, shall stand disposed of.

Kalpana K. Tripathy

Appeal allowed.