

A COMMISSIONER OF POLICE

v.

RAJ KUMAR

(Civil Appeal No. 4960 of 2021)

B AUGUST 25, 2021

[K. M. JOSEPH AND S. RAVINDRA BHAT, JJ.]

- Service Law – Recruitment – Public employment – Delhi Police – Post of constable – Standing Order No.398/2010 Policy*
- C *for deciding cases of candidates provisionally selected in Delhi Police involved in criminal cases (facing trial or acquitted) – Selection authority / Screening Committee rejected candidature of respondents candidates as they had faced criminal proceedings – CAT allowed the applications of respondents – Writ petitions – Direction of High Court that the respondents be considered for*
- D *appointment – Held: Not justified – Reading of the applicable Standing Order made it clear that in relation to certain offences, acquittal or exoneration of an accused candidate, per se would not entitle her or him to consideration – Public service – Like any other, pre-supposes that the state employer has an element of*
- E *latitude or choice on who should enter its service – Norms, based on principles, govern essential aspects such as qualification, experience, age, number of attempts permitted to a candidate, etc. – Judicial review is permissible to ensure that those norms are fair and reasonable, and applied fairly, in a non-discriminatory manner*
- F *– However, suitability is entirely different; the autonomy or choice of the public employer, is greatest, as long as the process of decision making is neither illegal, unfair, or lacking in bona fides – High Court’s approach appears to hint at the general acceptability of behaviour which involves petty crime or misdemeanor – Such generalizations, leading to condonation of*
- G *the offender’s conduct, should not enter the judicial verdict and should be avoided – Each case is to be scrutinized by the concerned public employer, through its designated officials – More so, in the case of recruitment for the police force, who are under a duty to maintain order, and tackle lawlessness, since their ability*
- H *to inspire public confidence is a bulwark to society’s security.*

Service Law – Public employment – Recruitment / A Appointment – Judicial Review – Scope – Held: Courts exercising judicial review cannot second guess the suitability of a candidate for any public office or post – Absent evidence of malice or mindlessness (to the materials), or illegality by the public employer, an intense scrutiny on why a candidate is excluded as unsuitable renders the courts' decision suspect to the charge of trespass into executive power of determining suitability of an individual for appointment.

Allowing the appeals, the Court

HELD: 1. Standing order No.398/2010 policy for deciding cases of candidates provisionally selected in Delhi Police involved in criminal cases (facing trial or acquitted) is relevant for an appropriate decision in this case. Annexure A to the policy refers to offences involving moral turpitude. Clause 3 of the Standing Order, which refers to the Screening Committee, comprises of senior police officers. This committee assesses candidates' (previously implicated for an offence, but against whom charges are terminated, for any reason), suitability for appointment. Clause 6 prescribes that candidates who faced charges involving serious offences or offences involving moral turpitude and who are later acquitted giving benefit of doubt or because the witnesses turned hostile due to fear of reprisal by the accused person shall not generally be considered suitable for government service. Each of such cases is to be considered by the Screening Committee manned by senior officers. It is evident from a reading of the applicable Standing Order along with Annexure-A that in relation to certain offences, acquittal or exoneration of an accused candidate, per se would not entitle her or him to consideration. [Paras 12, 13][11-H; 14-D-G]

2. Courts exercising judicial review cannot second guess the suitability of a candidate for any public office or post. Absent evidence of malice or mindlessness (to the materials), or illegality by the public employer, an intense scrutiny on why a candidate is excluded as unsuitable renders the courts' decision suspect to the charge of trespass into executive power of determining suitability of an individual for appointment. [Para 26] [20-D-E]

- A 3. Public service – like any other, pre-supposes that the state employer has an element of latitude or choice on who should enter its service. Norms, based on principles, govern essential aspects such as qualification, experience, age, number of attempts permitted to a candidate, etc. These, broadly
- B constitute eligibility conditions required of each candidate or applicant aspiring to enter public service. Judicial review, under the Constitution, is permissible to ensure that those norms are fair and reasonable, and applied fairly, in a non-discriminatory manner. However, suitability is entirely different; the autonomy or choice of the public employer, is greatest, as long as the process of decision making is neither illegal, unfair, or lacking in bona fides. [Para 29] [22-C-E]
- C 4. The High Court's approach, evident from its observations about the youth and age of the candidates, appears to hint at the general acceptability of behaviour which involves petty crime or misdemeanour. The impugned order indicates a broad view, that such misdemeanour should not be taken seriously, given the age of the youth and the rural setting. This court is of opinion that such generalizations, leading to condonation of the offender's conduct, should not enter the
- D judicial verdict and should be avoided. Certain types of offences, like molestation of women, or trespass and beating up, assault, causing hurt or grievous hurt, (with or without use of weapons), of victims, in rural settings, can also be indicative of caste or hierarchy-based behaviour. Each case is to be scrutinized by the
- E concerned public employer, through its designated officials- more so, in the case of recruitment for the police force, who are under a duty to maintain order, and tackle lawlessness, since their ability to inspire public confidence is a bulwark to society's security. [Para 30] [22-F-H]
- F 5. The common impugned judgment and the orders of the CAT, quashing the orders issued by the appellant, declining appointment to the respondent candidates, are hereby set aside. [Para 31] [23-A]
- G *Commissioner of Police, New Delhi & Anr v Mehar Singh, (2013) 7 SCC 685 : [2013] 13 SCR 432 ; Avtar*
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Singh v. UOI & Ors, (2016) 8 SCC 471 : [2016] 7 SCR 445 ; Joginder Singh v. Union Territory of Chandigarh & Ors., (2015) 2 SCC 377 : [2014] 11 SCR 155 ; Union Territory, Chandigarh Administration & Ors v. Pradeep Kumar & Anr., (2018) 1 SCC 797 : [2018] 1 SCR 112 ; Anil Bhardwaj v. High Court of Madhya Pradesh, (2020) SCC Online (SC) 832 ; M.V. Thimmaiah v. Union Public Service Commission, (2008) 2 SCC 119 : [2007] 13 SCR 624 ; Dalpat Abasaheb Solunke v Dr. B.S. Mahajan, (1990) 1 SCC 305 ; Union Public Service Commission v. M. Sathiya Priya, (2018) 15 SCC 796 : [2018] 6 SCR 701 – relied on.

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Case Law Reference

[2013] 13 SCR 432	relied on	Para 4	
[2016] 7 SCR 445	relied on	Para 4	D
[2014] 11 SCR 155	relied on	Para 15	
[2018] 1 SCR 112	relied on	Para 15	
[2007] 13 SCR 624	relied on	Para 26	
(1990) 1 SCC 305	relied on	Para 27	E
[2018] 6 SCR 701	relied on	Para 28	

CIVIL APPELLATE JURISDICTION : Civil Appeal No.4960
of 2021.

From the Judgment and Order dated 05.12.2013 of the High Court of Delhi at New Delhi in Writ Petition (Civi) No.4308 of 2013.

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With

Civil Appeal Nos. 4961, 4963 and 4962 of 2021

Ms. Madhvi Divan, ASG, P V Yogeshwaran, Kamlendra Mishra, Sanjay Kumar Visen, B. V. Balaram Das Advs. for the Appellant.

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Anil Singal, Prashant Bhardwaj, Rishi Bharadwaj, Abhiesumat Gupta, Vikram Singh Jakhar, Arvind Kumar Gupta, Sudhir Naagar, Sidharth Khatana, Manohar Naagar, Yoginder Singh, Advs. for the Respondent.

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- A The Judgment of the Court was delivered by
S. RAVINDRA BHAT, J.
- B 1. Leave granted. The Commissioner of Police, Delhi (“the appellant”) is in appeal, aggrieved by a common judgment of the Delhi High Court by which the respondents (hereafter referred to as “candidates/applicants”) were directed to be considered for appointment to the post of Constable of Delhi Police.
- C 2. An advertisement was issued in the year 2009, inviting applications from eligible candidates to fill up vacancies in the cadre of constable in the Delhi Police. It is not in dispute that the respondent candidates, in their applications, disclosed that criminal cases had been instituted against them – as well as the outcome of those cases. Except in SLP(C) 18396/2014 where the applicant Deepa Tomar was facing trial, the criminal cases had ended in compromise. After due consideration of their candidature, and in terms of S.O. No.398/2010,
- D the appellant referred their cases to a Standing Committee, to assess their suitability. In Deepa Tomar’s case, the consideration was deferred since she was facing trial in criminal proceedings where she was charged with committing the offence of kidnapping under Section 364 IPC. By various orders, which were impugned in separate proceedings by the candidates, the Central Administrative Tribunal (CAT) allowed the applications of the candidates, upholding their pleas, and quashing the orders of the Screening Committees. All the orders of the CAT were impugned by the appellant before the High Court. They were dealt with and considered by the common impugned order, which rejected the appellant’s petitions, under Article 226 of the Constitution of India.
- E 3. The main argument by the candidates was that having regard to the terms of the applicable Standing Order as well as the decisions of this Court, the rejection of their candidature was unsustainable because of non-application of mind and further the orders were made in a mechanical manner. By the impugned order, the Division Bench
- F G allowed the writ petitions and quashed the rejection of the candidatures of the respondents.
- H 4. It is urged by the Additional Solicitor General (ASG), Ms. Madhavi Divan, appearing on behalf of the appellant that the impugned judgment is erroneous inasmuch as the Division Bench lost sight of the fact that the Standing Orders could not be so read as

compelling the authorities to select applicants whose conduct was not satisfactory in the opinion of the Screening Committee. The appellant relies upon the rulings of this Court in *Commissioner of Police, New Delhi & Anr v Mehar Singh*¹ as well as the observations of the three-Judge Bench in the Court's judgment in *Avtar Singh v. UOI & Ors*².

5. The appellant urges that in all the four cases, the candidates faced criminal proceedings – in most of them, even charges were framed after which the cases against them ended in a compromise. In the case of Ms. Deepa Tomar, the candidate was not only accused but also charged for committing the offence of kidnapping. She stood trial but was acquitted on the ground of insufficient evidence. It was submitted that having regard to the nature of the offences that the candidates were alleged to have committed and the outcome of the cases, the authorities were justified in concluding that they were unsuitable for employment in the concerned post, i.e. as Constables of Police.

6. It was argued by Mr. Singhal appearing on behalf of two candidates, Shiv Singh [SLP(C) 13282/2014] and Prem Singh Choudhary [SLP(C) 18396/2014] that the Screening Committee dealt with their cases in a perfunctory manner and did not appreciate the entirety of facts. With respect to the respondent Shiv Singh, it was urged that though in the first information report (FIR), allegations could have led to grave offences, including charge under Section 353 IPC, as a matter of fact the charges framed were not in relation to these offences. Ultimately, the alleged victims had no difficulty in entering into compromise with the candidate, which led to compounding of the offences that he was said to have committed. It was submitted that in the case of Prem Singh Choudhary/Respondent too, it could not be said that the criminal charges (i.e., of committing offences under Sections 143/343/341 IPC) were either grave or involved moral turpitude. In this case too, the accused/candidate was not convicted; and a compromise was entered into with the informant.

7. Learned counsel for the respondent/candidates relied upon the observations of the High Court that in cases involving allegations of commission of offences under Section 323 IPC, especially where the

¹(2013) 7 SCC 685

²(2016) 8 SCC 471

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- A offenders were youth from rural backgrounds, it cannot be said that the conduct involved moral turpitude and that the Courts should be alive to the realities that in such areas, brawls and fights are common place. It was also emphasized that there is a tendency of exaggerating on the part of the informants whenever such incidents occur, to falsify the facts and implicate the offenders.
- B 8. Learned counsel appearing on behalf of the respondent Deepa Tomar drew the attention of the court to the findings recorded by the trial court. It was submitted that an overall reading of the facts narrated by the trial court would show that the relationship between the candidate and her husband Joginder was strained and that therefore, she and her family members were accused of having abducted him; he was reported missing. Learned counsel submitted that having regard to the evidence led by the prosecution which was considered by the concerned court of competent jurisdiction, the candidate was exonerated of the offences. These had to be duly considered and appropriate weight given, to the findings of such court by the Screening Committee. Learned counsel submitted that the Screening Committee did not apply its mind and merely went by the label, i.e. the seriousness of the offence to hold the candidate Deepa Tomar unsuitable – an entirely arbitrary outcome.

E *Analysis and Conclusions*

9. For the sake of clarity, a tabular chart, indicating the involvement of each of the respondent, in respect of various offences, the course of the trials, their outcome, etc, is set out below:

F	S. No.	Name of writ petitioner candidate	Case No.	FIR	Offence	Remarks
G	1	Raj Kumar	SLP(C.) No. 13285/2014	FIR No. 283/07, dated 14.10.2007. under Sections 143, 451, 323, 336, 382 IPC	Cognizance taken under sec. 147, 451, 323, 336 IPC	Acquitted by Order dated 22.05.2008 under Sections 147 and 336 as charges were not proved. Compromised charges under Sections 451 and 323.
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[S. RAVINDRA BHAT, J.]

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2.	Shiv Singh	SLP(C.) No. 13282/2014	FIR No. 410/2009 Dated 18.10.2009 under Sections 323, 341, 325, 34 IPC.	Cognizance taken under sec. under Sections 323, 341, 325, 34 IPC	Acquitted by order dated 01.12.2019; acquitted under Sections 323, 341, 325, 34 IPC based on the compromise deed dated 01.12.2019.	A
3.	Deepa Tomar	SLP(C.) No. 18397/2014	FIR dated 26.05.2002 under Sections 364, 506, 120 IPC	Cognizance taken under Sections 364, 120 B IPC	Acquitted by order dated 04.05.2011 (pg.67- 106). Acquitted under Sections 120B,364 IPC as the prosecution was not able to prove the charges beyond the doubt. Therefore, Court held that the accused as entitled to the benefit of doubt.	B
4	Prem Singh Choudhary	SLP(C.) No. 18396/2014	FIR No. 38/2007 dated 14.02.2007 under Sections 143, 341, 323 IPC	Cognizance Under Sections 323, 341, 325, 34 IPC	Acquitted by order dated 04.12.2009 under Sections 323, 341, 325, 34 IPC on the basis of compromise with the informant.	C

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10. Standing order No.398/2010, which is relevant for an appropriate decision in this case, reads as follows:

"STANDING ORDER NO. 398/2010 POLICY FOR DECIDING CASES OF CANDIDATES PROVISIONALLY

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- A *SELECTED IN DELHI POLICE INVOLVED IN CRIMINAL CASES (FACING TRIAL OR ACQUITTED).*
- During the recruitments made in Delhi Police, several cases come to light where candidates conceal the fact of their involvement in criminal cases in the application Form/ Attestation Form in the hope that it may not come to light and disclosure by them at the beginning of the recruitment process itself may debar them from participating in the various recruitment tests. Also the appointment if he/she has been acquitted but not honourably.*
- B *In order to formulate a comprehensive policy, the following rules shall be applicable for all the recruitments conducted by Delhi Police:-*
- 1). xxx xxxxxxxx
- 2). xxx xxxxxxxx
- D *3). If a candidate had disclosed his/her involvement and/or arrest in criminal cases, complaint case, preventive proceedings etc. and the case is pending investigation or pending trial, the candidature will be kept in abeyance till the final decision of the case. After the court' judgment, if the candidate is acquitted or discharged, the case will be referred to the Screening Committee of the PHQ comprising of Special Commissioner of Police/Administration, Joint Commissioner of Police/Headquarters and Joint Commissioner of Police/Vigilance to assess his/her suitability for appointment in Delhi Police.*
- E *4) If a candidate had disclosed his/her involvement in criminal case, complaint case, preventive proceedings etc. both in the application form as well as in the attestation form but was acquitted or discharged by the court, his/her case will be referred to the Screening Committee of PHQ to assess his/her suitability for appointment in Delhi Police.*
- F *5). xxx xxxxxxxx*
- G *6). Such candidates against whom charge-sheet in any criminal case has been filed in the court and the charges fall in the category of serious offences or moral turpitude,*
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though later acquitted or acquitted by extending benefit of A doubt or the witnesses have turned hostile due to fear of reprisal by the accused person, he/she will generally not be considered suitable for government service. However, all such cases will be judged by the Screening Committee of PHQ to assess their suitability for the government job. The details of criminal cases which involve moral turpitude may kindly be perused at Annexure 'A'.

7) *Such cases in which a candidate had faced trial in any criminal case which does not fall in the category of moral turpitude and is subsequently acquitted by the court and he/ she discloses about the same in both application form as well as attestation form will be judged by the Screening Committee to decide about his/her suitability for the government job.*

8) xxx xxxxxx

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9). *If any candidate is discharged by extending the benefit of Probation of Offenders Act, 1958 this will also not be viewed adversely by the department for his/her suitability for government service."*

11. Annexure A to the above policy which refers to offences E involving moral turpitude is extracted below:

"1. *Criminal Conspiracy (Section 120-B, Indian Penal Code)*

2. *Offences against the State (Sections 121 - 130, F Indian Penal Code)*

3. *Offences relating to Army, Navy and Air Force (Sections 131-134, Indian Penal Code)*

4. *Offence against Public Tranquility (Section 153-A & 153-B, Indian Penal Code).*

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5. *False evidence and offences against Public Justice (Sections 193-216A, Indian Penal Code)*

6. *Offences relating to coin and government stamps (Section 231-263A, Indian Penal Code).*

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- A 7. *Offences relating to Religion (Section 295-297, Indian Penal Code)*
- 8. *Offences affecting Human Body (Sections 302-304, 304B, 305-308, 311-317, 325-333, 335, 347, 348, 354, 363-373, 376-376-A, 376-B, 376-C, 376-D, 377, Indian Penal Code)*
- B 9. *Offences against Property (Section 379-462, Indian Penal Code)*
- C 10. *Offences relating to Documents and Property Marks (Section 465-489, Indian Penal Code)*
- 11. *Offences relating to Marriage and Dowry Prohibition Act (Section 498-A, Indian Penal Code)"*
- D 12. Mehar Singh noted that Clause 3 of the Standing Order, which refers to the Screening Committee, comprises of senior police officers. This committee assesses candidates' (previously implicated for an offence, but against whom charges are terminated, for any reason), suitability for appointment. Clause 6 prescribes that candidates who faced charges involving serious offences or offences involving moral turpitude and who are later acquitted giving benefit of doubt or because the witnesses turned hostile due to fear of reprisal by the accused person shall not generally be considered suitable for government service. Each of such cases is to be considered by the Screening Committee manned by senior officers.
- E 13. It is evident from a reading of the applicable Standing Order along with Annexure-A that in relation to certain offences, acquittal or exoneration of an accused candidate, *per se* would not entitle her or him to consideration. In this regard, in relation to offences listed in Annexure A *inter alia*, those who are accused of having committed offences under Sections 325-333; 363-373 and 379-462; would fall within the mischief of Clause 6. Upon an overall analysis of the Standing Order, this Court is of the opinion that an acquittal or discharge in a criminal proceeding would not *per se* enable the candidate to argue that the authorities can be compelled to select and appoint her or him. This
- F 14. Court, in this regard, held *inter alia* as follows:

"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."

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14. This Court has, in the past, on several occasions, dealt with questions which are similar, if not entirely identical to what is involved in the present case, to wit, whether in the event of exoneration or acquittal of an applicant/candidate arrayed as accused of various offences is a decisive factor for consideration of his or her suitability. Several judgments in the past had appeared to draw a distinction between "clean" acquittal of accused individuals on the one hand and those acquitted or exonerated on account of benefit of doubt. Similarly, where candidates were charged with grave offences involving moral turpitude as well as larger outcomes were examined. Another area which engaged this Court's attention was the effect of non-disclosure of pending criminal cases. Matters came to a head when all these issues were referred to authoritative decision by a larger three judge Bench. In *Avtar Singh (supra)*, the three-judge bench, after detailed discussion of the various circumstances that arose when public authorities are called upon to deal with such cases, recorded its conclusions in the following manner:

"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."

- A 15. There are subsequent judgments too in this regard which have followed the ruling in *Joginder Singh v. Union Territory of Chandigarh & Ors*³; *Union Territory, Chandigarh Administration & Ors v. Pradeep Kumar & Anr*⁴ and *Anil Bhardwaj v. High Court of Madhya Pradesh*⁵. Before proceeding to analyze the facts in each appeal, it would also be useful to reproduce the relevant extract of this Court's ruling in *Mehr Singh (supra)* where it was held as follows:

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 trust reposed in it and must treat all candidates with even hand."

- B 16. Turning now, to the individual facts of each case, the candidate in the Civil Appeal arising from SLP(C) 13285/2014 (Raj

³ (2015) 2 SCC 377

⁴ (2018) 1 SCC 797

H ⁵ (2020) SCC Online (SC) 832

Kumar), is alleged to have committed offences under Sections 143/323/336/451 IPC along with other individuals. The candidate is alleged to have committed trespass along with others into the house of the complainant, armed with lathis and *jailis*, snatched the jewellery of the complainant's brother's daughter-in-law. According to the allegations, there was a scuffle resulting in injuries. Apparently, the existence of criminal charges had been disclosed by the candidate which led to rejection of the case. The order of rejection of candidature⁶ issued by the Screening Committee noted that the candidate's explanation was in regard to an antecedent family dispute between his family and that of the informant. The order noted that a chargesheet was filed in the court and cognizance was taken. Later, during the pendency of trial, both parties compromised the case so that it could be compounded under Section 451/323 IPC with the approval of the Court and that the candidate was later acquitted by order dated 22.05.2008 in the absence of adequate evidence for charges under Section 147/336.

17. The impugned order proceeds on the footing that the complainant was found to be suffering from a simple hurt. It also held that Raj Kumar was aged 20 years when the incident occurred. The Division Bench was of the opinion that having regard to these facts, the Screening Committee approached this task in a mechanical manner and rejected Raj Kumar's candidature.

18. In the opinion of this Court, the conclusions recorded in regard to Raj Kumar are unsustainable. The Screening Committee went through the case records and noted that a compromise was recorded with the approval of the Court with respect to two offences whereas in the graver offences, the candidate stood trial but was acquitted on account as there was no sufficient evidence and that "material witnesses" did not support the prosecution story. In the opinion of this Court, that the compromise recorded in respect of the offences, that were compounded (and the acquittal for lack of evidence) is apparently so on account of material witnesses not appearing or turning hostile, was a relevant factor that the Screening Committee could and did consider. In these circumstances, the conclusions of the High Court cannot be supported.

19. Shiv Singh, respondent, in another case was accused of committing offences punishable under Sections 323, 341, 325, 34 IPC.

⁶ dated 22.03.2011

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- A A charge sheet was filed before the trial court on 12.11.2009. The court also recorded that the offences were *prima facie* made out against the accused persons- including the respondent Shiv Singh. Later, however, a compromise was arrived at between the accused and the complainant, and an order of composition was issued on 01.12.2009, by the trial court. The Screening committee considered the charge sheet and the order of the trial court, and having regard to the nature of offences involved, was of the view that the candidate was not suitable, because of his propensity to indulge in such behavior without fear of law. The High Court faulted the Screening Committee's order, as a mechanical exercise of power, and reasoned that no charge of
- B assaulting the modesty of a woman was made against the candidate and that the charge of theft was unsubstantiated. The court was also of the opinion that the candidate was young.

20. This court is unable to agree with the impugned order. Here, there is no dispute that a charge sheet was filed in court, in respect of
- D various offences, including Section 325. The respondent candidate apparently thereafter approached the informants, and compromised the dispute. The approach of the High Court, in considering if evidence existed (in support of criminal charges), its credibility, especially after a charge sheet was filed, and on the basis of its appreciation of those materials, without the benefit of all the relevant records and evidence in judicial review, cannot be sustained.

21. In the case of Prem Singh Choudhary, (the respondent in SLP (C) No 4304/2013) an FIR was registered in a police station at District Alwar, alleging that he committed offences punishable under Sections 143/323/341 IPC. He and four others were named by the complainant, Mukesh for forming an unlawful assembly; he also alleged that the accused were carrying lathis and jeli (a farm implement) and the accused, along with others assaulted him. The matter was compromised; consequently, the court recorded acquittal. The Screening Committee took note of these facts; the appointment order previously issued, was consequently withdrawn. The order was quashed by the CAT. The High Court, commented that the accused was not charged under Section 325 IPC; that he was young, and aged 22 years; that the informant had not suffered serious injuries. After noting that one of the offences the candidate was charged with was Section 325, the High Court stated
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 - H "that no material or evidence whatsoever was presented wherefrom

it could be gathered that the complainant suffered grievous injuries." It was held that in the light of the materials before the police, the informant had given an exaggerated account, of the incident, which the Screening Committee rejected, mechanically. A

22. Again, in Prem Singh Chaudhary's case, this court is of the opinion that the scrutiny of the materials, by the High Court, was as if it was sitting in appeal over the decision of the Screening Committee. That body had the benefit of the overall record of the candidate, in the context of considering his or her suitability. Its conclusions should not have been brushed aside, on the ground that it showed mechanical application of mind, or that the materials did not show involvement in a grave or serious offence. B C

23. Deepa Tomar is the last candidate in the present batch of appeals. She was accused along with her father in CM No. 198/2003 for an offence punishable under Sections 120-B/364 IPC. Both were accused of having abducted her husband, Jitender Singh. After facing trial, both accused were acquitted, by judgment dated May 04, 2011. The screening committee was of the view that the acquittal was by granting benefit of doubt, and that the candidate was unfit for appointment as a Constable (Female) in the Delhi Police because she was accused of having committed a heinous crime i.e. of abduction and that the victim, her husband (Jitender) was still untraceable. D E

24. While quashing the decision of the Screening Committee, the High Court reasoned that the incident was of 2001; Jitender's father complained in 2002 and voiced his suspicion against the candidate and her father. The High Court also observed:

"meaningfully read, the testimony of Jitender's family members was suggestive of the fact that Deepa and Jitender were not having a strained relationship but because of problems in the house of her in-laws Deepa had to leave for her parental house and stealthily Jitender used to visit Deepa or so his parents suspected. If this be so it would not stand to any logic or reason for Deepa and her parents to have contrived to abduct Jitender and make his disappear. Regretfully, the Screening Committee has gone by the label of the offence and not the facts on which Deepa and her father were acquitted. The Screening Committee has also overlooked the fact that in her complaint lodged under F G H

- A *Section 498-A/406 IPC Deepa has made no accusation against her husband.”*

- B 25. In the case of Deepa Tomar, the intensive factual scrutiny which led the impugned order to conclude that the decision of the screening committee is not sustainable, is impermissible under Article 226 of the Constitution. It is evident from the screening committee's order, that it was aware of the judgment, as well as the materials before the trial court. Significantly, before the candidature was cancelled, the Deepa was issued with a show cause notice and she duly responded to it. The committee had the benefit of considering that, as well as her overall record, when it drew its conclusions. The fact appreciation by the High Court, and the intensive scrutiny of the evidence, in the opinion of this court to conclude that Deepa could not have been implicated in the offence, based on inferences drawn under Article 226 of the Constitution, is an exercise of overreach of judicial review process.
- C 26. Courts exercising judicial review cannot second guess the suitability of a candidate for any public office or post. Absent evidence of malice or mindlessness (to the materials), or illegality by the public employer, an intense scrutiny on why a candidate is excluded as unsuitable renders the courts' decision suspect to the charge of trespass into executive power of determining suitability of an individual for appointment. This was emphasized by this court, in *M.V. Thimmaiah v. Union Public Service Commission*⁷ held as follows:

- F “21. Now, comes the question with regard to the selection of the candidates. Normally, the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory rules. The courts cannot sit as an Appellate Authority to examine the recommendations of the Selection Committee like the court of appeal. This discretion has been given to the Selection Committee only and courts rarely sit as a court of appeal to examine the selection of the candidates nor is the business of the court to examine each candidate and record its opinion...”

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H ⁷(2008) 2 SCC 119

30. *We fail to understand how the Tribunal can sit as an Appellate Authority to call for the personal records and constitute Selection Committee to undertake this exercise. This power is not given to the Tribunal and it should be clearly understood that the assessment of the Selection Committee is not subject to appeal either before the Tribunal or by the courts. One has to give credit to the Selection Committee for making their assessment and it is not subject to appeal. Taking the overall view of ACRs of the candidates, one may be held to be very good and another may be held to be good. If this type of interference is permitted then it would virtually amount that the Tribunals and the High Courts have started sitting as Selection Committee or act as an Appellate Authority over the selection.”*

27. In *Dalpat Abasaheb Solunke v Dr. B.S. Mahajan*⁸ this court held that

“12. ... it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinise the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. ... in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so-called comparative merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction.”

28. Again, in *Union Public Service Commission v. M. Sathiya Priya*⁹ it was iterated that

“The question as to how the categories are assessed in light of the relevant records and as to what norms apply in making the assessment, is exclusively to be determined by the

⁸(1990) 1 SCC 305

⁹(2018) 15 SCC 796

- A *Selection Committee. Since the jurisdiction to make selection as per law is vested in the Selection Committee and as the Selection Committee members have got expertise in the matter, it is not open for the courts generally to interfere in such matters except in cases where the process of assessment is vitiated either on the ground of bias, mala fides or arbitrariness. It is not the function of the court to hear the matters before it treating them as appeals over the decisions of the Selection Committee and to scrutinise the relative merit of the candidates. The question as to whether a candidate is fit for a particular post or not has to be decided by the duly constituted expert body i.e. the Selection Committee."*
- B 29. Public service - like any other, pre-supposes that the state employer has an element of latitude or choice on who should enter its service. Norms, based on principles, govern essential aspects such as qualification, experience, age, number of attempts permitted to a candidate, etc. These, broadly constitute eligibility conditions required of each candidate or applicant aspiring to enter public service. Judicial review, under the Constitution, is permissible to ensure that those norms are fair and reasonable, and applied fairly, in a non-discriminatory manner. However, suitability is entirely different; the autonomy or choice of the public employer, is greatest, as long as the process of decision making is neither illegal, unfair, or lacking in *bona fides*.
- C 30. The High Court's approach, evident from its observations about the youth and age of the candidates, appears to hint at the general acceptability of behaviour which involves petty crime or misdemeanour. The impugned order indicates a broad view, that such misdemeanour should not be taken seriously, given the age of the youth and the rural setting. This court is of opinion that such generalizations, leading to condonation of the offender's conduct, should not enter the judicial verdict and should be avoided. Certain types of offences, like molestation of women, or trespass and beating up, assault, causing hurt or grievous hurt, (with or without use of weapons), of victims, in rural settings, can also be indicative of caste or hierarchy-based behaviour. Each case is to be scrutinized by the concerned public employer, through its designated officials- more so, in the case of recruitment for the police force, who are under a duty to maintain order, and tackle lawlessness, since their ability to inspire public confidence is a bulwark to society's security.

31. For the foregoing reasons, this court hereby sets aside the common impugned judgment and the orders of the CAT, quashing the orders issued by the appellant, declining appointment to the respondent candidates. The appeals are accordingly allowed, without any order on costs.

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Bibhuti Bhushan Bose

Appeals allowed.