

## Shri Sandeep vs Commissioner Of Police on 13 March, 2013

Central Administrative Tribunal  
Principal Bench, New Delhi

O.A.No.1147/2012

Order reserved on 8th March 2013

Order pronounced on 13th March 2013

Hon ble Shri Sudhir Kumar, Member (A)  
Hon ble Shri A.K. Bhardwaj, Member (J)

Shri Sandeep  
s/o Shri Ram Phal (Roll No.808299)  
R/o Village & PO Chattera Badhur Pur  
Distt. Sonapat (Haryana)  
..Applicant  
(By Advocate: Shri Lalta Prasad)

Versus

1. Commissioner of Police  
Police Headquarters  
MSO Building, New Delhi

2. Dy. Commissioner of Police  
Establishment/Police  
Headquarter MSO Building  
Delhi  
..Respondents  
(By Advocate: Shri Amit Anand)

O R D E R

Shri A.K. Bhardwaj:

As culled out in the counter reply filed on behalf of the respondents, to fill up 676 vacancies of Constable (Driver) in Delhi Police, applications were invited from suitable candidates through advertisement published in two leading newspapers, i.e., Hindustan Times (English) and Nav Bharat Times (Hindi) dated 19.2.2009. Applicant participated in the selection successfully. However, since he was involved in a criminal case registered vide FIR No.42/2000 under Sections 324/307/34 IPC PS, Kundli, Sonapat, Haryana dated 11.10.2010, his case was examined by the

Screening Committee constituted by the Commissioner of Police, Delhi in detail to assess his suitability, keeping in view the nature of involvement in the criminal case, gravity of the offence, the judgment of the court, the grounds of acquittal and the judgment of the Hon ble Supreme Court in Delhi Administration v. Sushil Kumar, JT 1996 (1) SC 34. In view of the report of the Screening Committee, a show cause notice proposing cancellation of the candidature of the applicant for the aforementioned post was served upon him vide Police Headquarters No.8727/Rectt. Cell/ (AC-II) /PHQ dated 9.12.2011. On receipt of his reply dated 19.12.2011 and after giving him an opportunity of hearing on 27.1.2012, the competent authority confirmed the proposed show cause notice and cancelled the candidature of the applicant vide order No.1633/Rect. Cell (AC-II)/PHQ dated 15.3.2012. Questioning the said order, the applicant has filed the present O.A. saliently on the following grounds:

the respondents misinterpreted the order dated 14.3.2012 passed by the trial court, the act of the respondents in cancelling the applicant s provisional appointment is arbitrary; and the respondents failed to follow the view taken by the Hon ble Supreme Court in the case of Commissioner of Police & others v. Sandeep Kumar, JT 2011 (3) SC 484.

2. The issue raised in the present O.A. has been addressed and dealt with in detail in an order passed by this Tribunal in Shri Pappu Lal Meena v. The Commissioner of Police & another (O.A.No.1750/2011 with connected O.As.) decided on 17.5.2012. The relevant excerpt of the said order reads as under:-

. In view of the facts and circumstances involved in aforementioned cases and rival contentions parties, following common proposition arises to be determined by us.

(i). Whether a person implicated in a criminal case can be considered unsuitable for his appointment in Delhi Police even after his acquittal in the same.

(ii). Whether Screening Committee constituted by Commissioner of Police, Delhi can re assess/ evaluate the judgment of competent Court of jurisdiction passed by it acquitting a person in criminal case, while assessing suitability of such person for appointment in Delhi Police.

(iii). Whether a person who is convicted in criminal case on the plea of guilt can be considered by Screening Committee as suitable for appointment in Delhi police on the ground that the offences alleged to have been committed by him is mild and he is convicted on plea bargain.

4. As far as first proposition is concerned in terms of Section 248-A of Crl. Procedure (Conclusion of trial of warrant cases by Magistrate) if in any case in which charges could be framed, the Magistrate finds the accused not guilty, he should record an order of acquittal. Similarly in trial of summon

cases by Magistrate, in terms of Section 255 of Code of Criminal Procedure if the Magistrate, upon taking the evidence referred to in Section 254 and such further evidence, if any, as he may, of his own motion, cause to be produced, finds the accused not guilty, he shall record an order of acquittal. In terms of Section 232 of Cr. PC in case of trial before a court of session, if after taking the evidence for the prosecution, examining the accused and hearing the prosecution and defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal. From the language of aforementioned provision of Cr.PC it is apparent that once a person implicated in a criminal case is acquitted, presumption is that after taking the evidence for the prosecution, examining the accused and hearing the prosecution as well as defence on the point the concerned Judge could not find any evidence to the effect that the accused committed an offence, or the Magistrate has found that the accused is not guilty. In case of trial of summon cases by Magistrate, acquittal is recorded upon taking the evidence referred to in Section 254 and other evidence caused to be produced and in case of acquittal in case of trial of warrant cases by Magistrate, order of acquittal is recorded if the Magistrate find the accused not guilty. However, presumption is that such order is recorded after assessment of evidence placed on record under Sections 242, 243, 244 and 247 of the Code. These are Sections 232, 248, 250 and 255 of Code of Criminal Procedure, in terms of which order of acquittal is recorded. Section 320 of Code of Criminal Procedure provide for compounding of certain offences mentioned in the table thereunder. In terms of Section 321 of Code of Criminal Procedure, the Public Prosecutor or Assistant Public Prosecutor in charge of any case may, with the consent of the Court, at any time before the judgment is pronounced, withdraw from the prosecution any person either generally or in respect of any one or more of the offences for which he is tried; and, upon such withdrawal if same is after framing the charge, he shall be treated as acquitted. Thus Section 321 (b) talks of acquittal on withdrawal from prosecution but not of recording of an order of acquittal. In other words, even an order of acquittal as a result of steps taken by Public Prosecutor or Assistant Public Prosecutor under Section 321 of Code of Criminal Procedure, 1973 would be recorded under either of aforementioned Sections, i.e. 232, 248 or 255 of Code of Criminal Procedure whereunder acquittal is recorded only on satisfaction of finding of the Magistrate that the person is not guilty of allegation/charges framed against him. In terms of Section 306 of Cr.PC with a view to obtain the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which said section apply, the Chief Judicial Magistrate or a Metropolitan Magistrate at any stage of the investigation or inquiry or trial of the offence, and the Magistrate of the first class inquiring into or trying the offence at any stage or trial may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge related to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof. However, if the person so pardoned does not comply with the condition of pardon in terms of Section 308 of Cr.PC, he may be tried for the offence in respect of which the pardon was tendered or for any offence of which he appears to have been guilty in connection with the same matter and also for the offence of giving false evidence. Section 353 of Code of Criminal Procedure provide that the judgment in every trial in any criminal court of original jurisdiction shall be pronounced in open Court by the Presiding Officer immediately after the termination of trial or at some subsequent stage of which notice shall be given to the parties or their pleaders:-

(a) by delivering the whole of the judgment or

(b) by reading out the whole of the judgment; or

(c) by reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or the pleader. For easy reference said Section 353 is extracted hereinbelow:-

53. Judgment:- (1) The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open Court by the presiding officer immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders,-

(a) by delivering the whole of the judgment; or

(b) by reading out the whole of the judgment; or

(c) by reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader.

(2) Where the judgment is delivered under clause (a) of sub-section (1), the Presiding Officer shall it to be taken down in short-hand, sign the transcript and every page thereof as soon as it is made ready, and write n it the date of the delivery of the judgment in open Court.

(3) Where the judgment or the operative part thereof is read out under clause (b) or clause (c) of sub-section (1), as the case may be, it shall be dated and signed by the presiding officer in open Court, and if it is not written with his own hand, every page of the judgment shall be signed by him.

(4) Where the judgment is pronounced in the manner specified in clause (c) of sub-section (1), the whole judgment or a copy thereof shall be immediately made available for the perusal of the parties or their pleaders free of cost.

(5) If the accused is in custody, he shall be brought up to hear the judgment pronounced.

(6) If the accused is not in custody, he shall be required by the Court to attend to hear the judgment pronounced, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted:

Provided that, where there are more accused than one, and one or more of them do not attend the Court on the date on which the judgment is to be pronounced, the presiding officer my, in order to avoid undue delay in the disposal of the case,

pronounce the judgment notwithstanding their absence.

(7) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place.

(8) Nothing in this section shall be construed to limit in any way the extent of the provisions of section 465. In terms of Section 354 of Code of Criminal Procedure every judgment shall contain the point or points for determination, the decision thereon and the reason for the decision and if it be a judgment of acquittal, shall state the offence of which the accused is acquitted and direct that he be set at liberty. In terms of Section 360 of Code of Criminal Procedure when any person not under twenty one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life and no previous conviction is proved against the offender, if it appears to the Court before which he/she is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court, may sentencing him in advance to any punishment, direct that he be released on individual bond with or without sureties, to appear and receive sentence when called upon during such period ( not exceeding three years) as the Court may direct in the meantime to keep the peace and good behaviour. Having regard to certain circumstances the Court may show leniency and release a convict on his entering into a bond to keep peace and good behaviour. Such provisions are enshrined in the procedure of law with a view that a person who commits an offence once in life time should be given opportunity to reform and should not be pushed to criminal world. The object of showing further leniency in the case of those who are under 21 years of age is probably not to hamper their career, including the job opportunity in public sector. In terms of provisions of Section 386 of Code of Criminal Procedure, the Appellate Court can reverse the finding of Trial Court and acquit or discharge the accused. Provision of Section 386 (b), (c) and (d) read as under:-

#### 86. Powers of the Appellate Court

(a) xxx xxx xxx

(b) in an appeal from a conviction-

(i) reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii) after the finding, maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;

(c) in an appeal for enhancement of sentence-

(i) reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court competent to try the offence, or

(ii) alter the finding maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, so as to enhance or reduce the same;

(d) in an appeal from any other order, alter or reverse such order. From the aforementioned particularly provisions of Section 232, 248A and 255 of Code of Criminal Procedure, it is clear that the Code of Criminal Procedure or Criminal Jurisprudence does not recognize any difference between Hon ble acquittal, acquittal on benefit of doubt, acquittal on compromise or acquittal on witness being turned hostile. If a Court competent to try an offender for committing an offence and acquit him, presumption is that the said Court could not find any evidence /material on record to find such person guilty. In case of Shashi Kumar Vs. Uttri Haryana Bijli Vitran Nigam ( 2005 (1) ATJ 154, Hon ble Punjab and Haryana High Court categorically viewed that the term hon ble acquittal or fully exonerated are unknown in the Code of Criminal Procedure or in Criminal Jurisprudence. Paras 7 to 9 of the said judgment read as under:

. In any event, the terms honourable acquittal or fully exonerated unknown in the Code of Criminal Procedure or in Criminal Jurisprudence. These terms came up for consideration before a Division Bench of the Madras High Court in the case of Union of India Vs Jayaram, AIR 1960 Mad.325. Rajamannar, C.J. delivering the judgment of the Division Bench observed as under:-

There is no conception like honourable acquittal in Criminal P.C. The onus of establishing the guilt of accused is on the prosecution, and if it fails to establish the guilt beyond reasonable doubt, the accused is entitled to be acquitted.

Clause (b) of Article 193 of the Civil Service Regulations which says that when a Government servant who was under suspension is honourably acquitted, he may be given the full salary to which he would have been entitled if he had not been suspended applies only to the case of departmental inquiry.

Where the servant was suspended because there was a criminal prosecution against him, and he was acquitted therein, and reinstated he is entitled under the general law, to the full pay during the period of the suspension. To such a case Article 193 (b) does not apply.

8. The aforesaid judgment of the Madras High Court was considered and followed by this Court in the case of Jagmohan Lal V.State of Punjab through Secy. To Punjab Govt. Irrigation and others, AIR (54) 1967 Punjab and Haryana 422 (Pun.). In that case, on acquittal, the petitioner was reinstated in service, but his period of suspension was not treated as the period spent on duty. He has, therefore, filed writ petition under Articles 226/227 of the Constitution of India claiming that he was entitled to full pay and allowances for the period of his suspension. Considering the impact of Rules 7.3. 7.5 and 7.6 of the Punjab Civil Services Rules Vol.I Part-I, it was observed as follows:-

(2) xxx xxx The interpretation which has been put by the Government on the rule is incorrect. The blame which attached to the petitioner was that there was a criminal charge against him under which he was standing his trial. The moment he is acquitted of the charge, he is acquitted of the blame. In criminal law, the Courts are called upon to decide whether the prosecution has succeeded in bringing home the guilt to the accused. The moment the Court is not satisfied regarding the guilt of the accused, he is acquitted. Whether a person is acquitted after being given a benefit of doubt or for that reasons, the result is that his guilt is not proved. The Code of Criminal Procedure does not contemplate honourable acquittal. The only words known to the Code are discharged or acquitted. The effect of a person being discharged or acquitted is the same in the eyes of law. Since according to the accepted notions of imparting criminal justice, the Court has to be satisfied regarding the guilt of the accused beyond a reasonable doubt, it is generally held that there being a doubt in the mind of the court, the accused is acquitted.

I am, therefore, quite clear in my mind that the intention underlying rule 7.5 can be no other except this: the moment the criminal charge on account of which an officer was suspended fails in a court of law, he should be deemed to be acquitted of the blame. Any other interpretation would defeat the very purpose of the rule. It is futile to expect a finding of either honourable acquittal or complete innocence in a judgment of acquittal. The reason is obvious; the criminal courts are not concerned to find the innocence of the accused. They are only concerned to find whether the prosecution has succeeded in proving beyond a reasonable doubt the guilt of the accused.

9. The judgment rendered in the case of Union of India vs. Jayaram (supra) has also been followed by a Division Bench of the Gujarat High Court in the case of Ramsinhji Viraji Rathod, Parmanand Society Vs. The State of Gujarat and anr., 1971 SLR 743. In the aforesaid case, it has been observed as follows:-

.. Clause (b) of Article 193 of the Civil Service Regulations, which was under consideration before the Madras High Court was substantially similar to our Rule 152, with this difference, that instead of the words "fully exonerated". With respect we are in agreement with the reasoning of Rajamannar, C.J. and in our opinion, it is not open to the authorities concerned to bring in the concept of honourable acquittal or full exoneration so far as the judgment of the Criminal Court is concerned. In a criminal trial the accused is only called upon to meet the charge leveled against him and he may meet the charge- (a) by showing that the prosecution case against him is not true or (b) that it is not proved beyond reasonable doubt; or (c) by establishing positively that his defence version is the correct version and the prosecution version is not correct. In any case of these three cases, if the Court comes to the conclusion that the prosecution has failed to establish its case beyond reasonable doubt or that the prosecution case is against the prosecution version, the Criminal Court is bound to acquit the accused. The accused is not called upon in every case to establish his complete innocence and it is sufficient for the purposes of criminal trial that he satisfies the Court that the prosecution has not established its case beyond reasonable doubt. Since he is not called upon to prove a positive case, the concept of honourable acquittal or full exoneration can have no place in a criminal trial and it is because of this reasoning that we agree with the observations of Rajamannar, C.J. in Jayaram's case AIR 1960 Mad 325. Again in the case of Bhag Singh Vs. Punjab & Sind Bank (2006 (1) SCT 175), Hon'ble Punjab and Haryana High Court again ruled that the concepts of "honourable acquittal", "fully exonerated" or "acquittal of blame" are all unknown to the Criminal Procedure Code, 1973 and the term "benefit of doubt" cannot detract from the impact of acquittal. As is viewed by their lordship in the said case, the moment accused is acquitted of the charge, he is acquitted of the blame. In criminal law, the Courts are called upon to decide whether the prosecution has succeeded in bringing home the guilt of the accused. The moment the Court is not satisfied regarding the guilt of the accused, he is acquitted. Whether a person is acquitted after being given a benefit of doubt or for other reason, result is that guilt is not proved. The Code of Criminal Procedure does not contemplate "honourable acquittal". The only words known to the Code are "discharged" or "acquitted". The effect of a person being discharged or acquitted is the same in the eyes of law. Relevant excerpts of said judgment read as under:-

The interpretation which has been put by the Government on the rule is incorrect. The blame which attached to the petitioner was that there was a criminal charge against him under which he was standing his trial. The moment he is acquitted of the charge, he is acquitted of the blame. In criminal law, the Courts are called upon to decide whether the prosecution has Succeeded in bringing home the guilt to the accused. The moment the court is not satisfied regarding the guilt of the accused, he is acquitted. Whether a person is acquitted after being given a benefit of doubt or for other reasons, the result is that his guilt is not proved. The Code of Criminal Procedure does not contemplate honourable acquittal. The only words known to the Code are "discharged" or "acquitted". The effect of a person being discharged or



acquitted is the same in the eyes of law. Since, according to the accepted notions of imparting criminal justice, the Court has to be satisfied regarding the guilt of the accused beyond a reasonable doubt, it is generally held that there being a doubt in the mind of the court, the accused is acquitted..."

"It is futile to expect a finding of either honourable acquittal or complete innocence in a judgment of acquittal. The reason is obvious; the criminal Courts are not concerned to find the innocence of the accused. They are only concerned to find whether the prosecution has succeeded in proving beyond a reasonable doubt the guilt of the accused."

9. A Division Bench of this Court, of which one of us (S.S. Nijjar, J.) was a member, has earlier considered the term of "benefit of doubt" in the case of Shashi Kumar v. Uttri Haryana Bijli Vitran Nigam through its Managing Director, Panchkula and Anr., 2005(1) S.L.R. 659. It has been held as under:-

"A perusal of the order passed by the respondents removing the petitioner from service shows that the respondents had passed the same basing it purely on the conviction of the petitioner. The order states that in view of the conviction, the petitioner is removed from service on account of conduct which led to his conviction. Excepting for the aforesaid sentence, the order does not elude to any circumstances which could be related to the conduct of the petitioner leading to the conviction. Therefore, in our opinion, the impugned order is liable to be quashed on this short ground as it has been passed, without taking into consideration the relevant material. In any event, the petitioner having been acquitted in appeal, the justification of the order of removal no longer existed. The High Court has ordered the acquittal of the petitioner after threadbare examination of the evidence. It has been noticed that the complainant, Puran Singh PW-8 was the owner of 8-1/2 killas of land situated in village Jundla. He further stated that about two years prior to the recording of the statement in Court on 5.8.1997, he had gone to the office of Vigilance Department and reported against Haryana State Electricity Board Officer Natha Ram for demanding Rs. 7500/-. This amount had been demanded for installation of new transformer as old transformer was overloaded and his tubewell meter was not functioning properly. He also stated that he had earlier paid Rs. 3200/- to Natha Ram.' He further stated that Junior Engineer of his feeder was Sukhbir Singh Malik. He then categorically stated that he did not know Shashi Kumar, the petitioner. It was also stated by him that the petitioner never remained Junior Engineer of his feeder. He never demanded any amount from him nor he paid any amount to him. This witness was declared hostile, but nothing useful emerged from his cross-examination. In fact in the cross-examination, he further admitted that there was a scuffle among HSEB employees and the police employees. He reiterated that he did not pay any amount to the petitioner. Therefore, the High Court concluded that according to the statement of the complainant, the petitioner did not know the complainant nor did the petitioner demand any amount from him. Even the trap

witness PW2 in the cross-examination admitted that he was an employee of the Vigilance Department, Karnal. He had remained posted as a Peon for the last 10 to 15 years at Karnal. He further admitted that he had joined 3-4 raids with the Vigilance Officer.

Therefore, the High Court came to the conclusion that PW was not an independent witness as he was under the control of DSP (Vigilance). The High Court relied on a judgment of the Supreme Court in the case of State of Madhya Pradesh v. J.B. Singh, 2000 CrL.L.J. 4591 wherein it has been held that an offence under the Prevention of Corruption Act would not be established unless there is evidence to prove the act of demand of illegal gratification. Relying on the aforesaid ratio of law, the petitioner has been acquitted. In such circumstances, it can hardly be said that the acquittal of the petitioner is not honourable". (Emphasis supplied)

10. The expression "honourable acquittal" has been considered by a Division Bench of the Madras High Court in the case of Union of India v. Jayaram, . In that case, Rajamannar, C.J delivering the judgment observed as under:-

"There is no conception like "honourable acquittal" in Criminal P.C. The onus of establishing the guilt of accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is entitled to be acquitted.

Clause (b) of Article 193 of the Civil Service Regulations which says that when a Government servant who was under suspension is honourably acquitted, he may be given the full salary to which he would have been entitled if he had not been suspended applies only to the case of departmental inquiry.

Where the servant was suspended because there was a criminal prosecution against him, and he was acquitted therein, and reinstated he is entitled under the general law, to the full pay during the period of his suspension. To such a case Article 193(b) does not apply."

Also in Union of India Vs. Jayaram Damodhar Timiri ( AIR 1960 Madras 325), Hon ble Supreme Court ruled that the legal significance of an expression like honourably acquitted cannot be understood, as the Code of Criminal Procedure does not support such conception. Relevant excerpt of said para read as under:-

In the first place, we are unable to understand the legal significance of an expression like Honourably acquitted . Certainly, the Code of Criminal Procedure does not support this conception. The onus of establishing the guilt of accused is on the prosecution, and if it failed to establish the guilt beyond reasonable doubt the accused is entitled to be acquitted.

5. From the aforementioned, it is established that once the order of acquittal of a person is recorded by trial Court, it does not make any difference that in what background same is recorded. The functioning of criminal justice system is wide enough to achieve its goal and objectives. Its ultimate goal is undoubtedly to make the society safer for its people. More specific and generally accepted aims of criminal law includes:-

1. The enforcement of criminal law should reflect the society's disapprobation for criminals activity through apprehending, convicting and punishing offenders.
2. Deterring criminals from indulging in criminal activities and at the same time advising citizens as to how to avoid falling a victim to a crime.
3. Criminal law should be beneficially used to rehabilitate the corrigible offenders and incapacitating those who might otherwise prove to be a potential danger to the society.
4. Ensuring safety and security of people through maintenance of law and order.
5. Helping the victims to get adequate compensation from the offender wherever possible or ensuring their rehabilitation in any other way as the circumstance may warrant.
6. Efficient and fair application of law ensuring proper treatment of suspects, defendants, those who are held in custody and witnesses. Also ensuring that the innocents are acquitted without harassment and the guilty are duly punished.
7. Ensuring that criminal justice system is accountable to the society. Dr. P.K.Sen rightly opines that Indian epics which depict the glory of past Indian civilization and culture amply justify that our juris- consults were thoroughly acquainted with the science of criminology. Their main emphasis was on the mental aspect of the individual's personality because they regarded human mind as the centre from where all thoughts whether good or bad, emanate. The ethical approach led them to believe that the offenders indulge in criminal behaviour because of their mental depravity and physiognomy had nothing to do with it. It is for this reason that they treated delinquent in a medico-legal perspective and considered them as patient suffering from some mental disorder. Their stress was on the need for criminologists to understand the spiritual aspect of human existence and recognize the role of meditation and yoga in mitigating criminality. It is the egoistic urge of human being which prompts him to commit anti-social acts with a view to deriving pleasure. The attitude towards crime and criminal at a given time in a society represents the basic value of that society. By and large, three types of reactions are discernible in various societies. The first is a traditional reaction which regards criminal as basically depraved and dangerous person for whom infliction of punishment is the only

alternative to eliminate him from normal society. This punitive approach, however, represents the earlier stages of development of penology and no longer finds support in modern times. The second reaction treats criminal as a victim of his circumstances and a product of multiple factor operating within the society. Thus, criminal is treated as a sick person requiring therapeutic treatment. The third and more recent reaction to criminal is to be found in preventive approach which lays greater emphasis on eliminating conditions which are responsible for criminality in the offender. Keeping in view the aforementioned factor, penology may also be approached from various points of view each giving rise to particular kind of penology, such as Administrative Penology, Scientific Penology, Academic Penology and Analytical Penology, i.e. (1) Administrative Penology can also be called applied penology because it represents different penological systems in force in different countries. Its predominant feature is implementation of governmental penal policies and institutional treatment of offenders. Its prime functions are custody, security and control. It addresses itself to the solution of penological problems.

(2) Scientific penology attempts to solve the problems arising in treatment of offenders under the aegis of specialists, particularly from the medico-psychological point of view. Its principal concern is to probe into the personality of offenders and not the offences. Criminal penology, undoubtedly is a part of scientific penology. It is based on the conception that there is always a determinable relationship between cause and effect.

(3) Academic penology is mainly descriptive in character, its main purpose being dissemination of penological knowledge through intensive teaching and research. It concerns itself with theoretical knowledge of penology.

(4) Analytical penology aims at ascertaining as objectively as possible, the adequacy of existing penal policies and methods and suggest measures for improving the system. Thus, it makes a critical analysis of penal measures and offers solutions for efficient administration of penal justice. The purpose of analyzing aforementioned view point herein is to indicate that even when in case of criminals who are found guilty and convicted reformatory approach is adopted to bring them in main stream of the society, whether those in whose case the trial Court, posted with over all facts and circumstances record order of acquittal can be deprived of opportunity to join police service on the basis of the fact that they were implicated and tried in a criminal case. With new criminological development, particularly in the field of penology, it has been generally accepted that punishment must be in proportion to the gravity of the offence. It has been further suggested that reformation of criminal rather than his expulsion from society is more purposeful for his rehabilitation. With this aim in view, the modern penologists have focused their attention on individualization of offender through treatment method. Today, old barbarous methods of punishment such as mutilation, branding, hanging, burning, stoning, flogging, amputation, starving the criminal to death or subjecting him to pillory or poetic punishment etc. are completely abandoned. With the exception that it should not stretch too far, modern penologist reaffirm their faith in reformatory justice. It is a known fact that punishment always carries with it a stigma inasmuch as it fetters the normal liberty of individual. Investigative research reveal that it is the mental depravity of the offenders which make

them delinquent and therefore, a system of clinical treatment seems inevitable for the correction of the offender. In the circumstances once reformatory approach is being shown towards who were convicted and are under undergoing penalty, compartmentalization of those who are tried and so acquitted in a separate category cannot be a healthy sign. Once a competent court of jurisdiction, acquit somebody, presumption is that he cannot be blamed. Thus, once a person is found not guilty and acquitted of the charges, he is to be treated in the main stream of society like any other person. Once a person is acquitted of the allegation made against him, the reason and the background in which order of acquittal is recorded is immaterial. In the circumstances, we are of the view that on acquittal of a person, he should not be considered as unsuitable for appointment in Delhi Police merely because he was tried for an offence from which he is finally acquitted at the outset. However, his suitability may be adjudged in view of the law laid down by Hon ble Supreme Court in the case of Daya Shankar Yadav Vs. UOI and Ors.

6. Second proposition noted hereinabove can be better considered and examined by dividing the same in three parts viz:.

Whether after acquittal of a person in a criminal case, the Screening Committee constituted to assess his suitability for his appointment in subordinate rank in Delhi Police can re-appreciate the order of acquittal by classifying the same as acquittal by compromise acquittal on the ground of witnesses being turned hostile, acquittal on benefit of doubt and hon ble acquittal .

Whether there should be a Screening Committee at all to assess the suitability of such candidates who are implicated and acquitted in criminal case.

Whether such Screening Committee can re-appreciate, reevaluate and re-examine the material assessed by competent court of jurisdiction at the time of recording order of acquittal, while assessing suitability of a person and form its opinion, keeping in view the gravity of allegation, nature of offence involved in the criminal case and the roll assigned to the candidate in such criminal case.

7. As far as the question of re-appreciation and interpretation of order passed by competent trial court recording acquittal is concerned as has been discussed hereinabove, once an accused is acquitted in a criminal trial, the Screening Committee assessing suitability of a candidate for appointment in subordinate rank in Delhi Police would not be competent to re assess or re-appreciate such order or the basis of foundation or logic behind the same. Once a person is acquitted of the criminal charges, presumption is that he is not blameworthy. Code of Criminal procedure does not recognize or classify the acquittal on the basis of logic, backdrop or the circumstances in which the trial court record the same. It cannot appeal to any prudent and reasonable person far less to code of law that a Screening Committee can be permitted to re-appreciate, interpretate or evaluate an order of acquittal passed by a trial court which is expected to find out the truth of allegation by applying the mechanism elaborated in detail in codified law. Thus, we have no hesitation in arriving at a conclusion that the Screening Committee cannot interpretate an order of acquittal and attach its own meaning to same. The issue whether there should be a Screening Committee to assess the suitability of a person selected for appointment in a lower

subordinate rank in Delhi Police merely on the ground that he was implicated in a criminal case in which he was finally acquitted is a debatable and contentious issue. In the case of Daya Shankar Yadav Vs. UOI & Ors (2010 (14) SCC 103) (supra), Hon'ble Supreme Court viewed that when an employee or a prospective employee declare in verification form, answer to certain queries relating to his character and antecedents, the verification thereof can lead to following among other consequences:

(a) If the declarant has answered the questions in the affirmative and furnished the details of any criminal case (wherein he was convicted or acquitted by giving the benefit of doubt for want of evidence), the employer may refuse to offer him employment (or if already employed on probation, discharge him from service), if he is found to be unfit having regard to the nature and gravity of the offence/crime in which he was involved.

In the said case, Hon'ble Supreme Court further ruled that an employee on probation can be discharged from service or a prospective employee may be refused employment (i) on the ground of unsatisfactory antecedents and character, disclosed from his conviction in a criminal case, or his involvement in criminal offence (even if he was acquitted on technical grounds or by giving benefit of doubt) or other conduct (like copying in examination) or rustication or suspension or debarment from college, etc. For easy reference para 16 of said judgment read as under:

Thus an employee on probation can be discharged from service or a prospective employee may be refused employment (i) on the ground of unsatisfactory antecedents and character, disclosed from his conviction in a criminal case, or his involvement in a criminal offence even if he was acquitted on technical grounds or by giving benefit of doubt) or other conduct (like copying in examination\_ or rustication or suspension or debarment from college, etc: and (ii) on the ground of suppression of material information or making false statement in reply to queries relating to prosecution or conviction for a criminal offence ( even if he was ultimately acquitted in the criminal case). This ground is distinct from the ground of previous antecedents and character, as it shows a current dubious conduct and absence of character at the time of making the declaration, thereby making him unsuitable for the post. In a recent judgment dated 20.12.2011 delivered by Division Bench of Hon'ble Delhi High Court in WP (C) No. 6518/2011 (Commissioner of Police Vs. Ranvir Singh) wherein the Court of Judicial Magistrate, Narwana vide judgment dated 15.06.2009 acquitted the respondent (Ranvir Singh) giving him the benefit of doubt and the Screening Committee considering the gravity of offences (under Sections 332/353/186/285/506 r/w 34 of the IPC and 25/54/59 Arms Act in FIR No. 116/2008) did not find him suitable for the post of Sub Inspector (Exe) Male it is viewed that as the acquittal of a person of subordinate rank in Delhi Police does not have any effect on departmental enquiry the same cannot have any effect on the decision of Screening Committee and despite acquittal of a candidate from charges of allegation in criminal case, Screening Committee can declare him unsuitable for appointment in Delhi Police. Relevant except of said judgment read as under:

o. We may in this regard also notice that the Policy for deciding cases of candidates provisionally Selected in Delhi Police, involved in criminal cases ( Facing Trial or Acquitted) has been framed vide Standing Order No. 398/2010 dated 23.11.2010. The said Policy also provides reference of such candidates in the Screening Committee to assess suitability for appointment, once the petitioner itself is not rejecting the candidate merely on the ground of involvement in a criminal case and notwithstanding such involvement assessing the suitability it cannot be denied the said right. The petitioner Delhi Police is often criticized for its force. The popular public conception of the men in Police uniform being the biggest Gundas cannot be ignored. In the light thereof, a candidate whom the experts in the Screening Committee have found unfit for serving in the police cannot be thrust on the police and the same if done may not only instill a false feeling of bravado and confidence in respondent, detrimental to his functioning in the police but may also affect the morale of the police department. No undue weightage can be given to the factum of the respondent being acquitted of the criminal charge. But like such acquittal has been held not to impact the departmental inquiry proceedings on the same charge, for the reason of test of proof being different in the two proceedings, similarly in the matter of employment also, an acquittal of a criminal charge cannot be allowed to wash away the said charge or to place a person in the same position as if never had been charged.

11. The petition was thus fully entitled to consider the factum of the charge against the respondent even though ultimately acquitted thereof in assessing suitability of the respondent for induction in the police force. Else no error is found in the said assessment capable of interference.

12. The Tribunal in the impugned order has blindly followed the dicta in Sandeep Kumar and other similar judgments in which no assessment of suitability had been done by the Screening Committee. The facts of the present case do not allow applicability of the ratio of the said judgment. In yet another decision/judgment dated 25.08.2010 a Division Bench of Hon ble Delhi High Court in WP (C) No. 2068/2010 ( Govt. of NCT of Delhi and Anr. Vs. Robin Singh) noted following proposition:-

Would the pendency of a criminal proceeding or a conviction or for that matter a criminal proceeding which has already terminated either in conviction or an acquittal be a justified ground to dismiss a Government servant from service or deny entry into Government service is a facet of the question which we need to answer. Having noted the aforementioned proposition, Hon ble Delhi High Court ruled that being charged with the said offences which are not cognizable and do not involve any moral turpitude and ultimately being acquitted from the same, a person should not be barred from seeking employment on being declared successful in selection. Relevant excerpts of said judgment read as under:

8. Thus, we have a guideline of serious and grave offences being the touchstone in case of the door being shown to the government servant.

29. Looking through the prism of case law pertaining to when can the door be shown to a government servant and by doing reverse engineering we can safely say that what is good for the door to be shown, is good for prohibiting entry through the door, and thus while denying public employment with respect to the offence committed by a person, it can be said, and we say so, that it may be a serious violation of the constitutional right of a citizen to be fairly treated in the W.P.(C) No.2068/2010 Page 16 of 24 matter of public employment if trivial offences committed by the citizen would justify the State shutting its eyes and denying employment.

30. Having answered the question posed in para 1 above, and the answer being in favour of the citizen, we need to answer the further question as to which offences or brush therewith, would justify non entry into public service.

31. We have a clue; of offences being grave, serious and involving a moral turpitude justifying public employment not being given. These would certainly not justify the offender being inducted into public service. None would disagree that convicted and fined for parking a car in a no-parking area or convicted for over-speeding would attract the de minimis principle, but the problem would be in cases closer to the borderline. For therein would lie the problem as to in which side of the boundary line should they be categorized.

32. It is unfortunate that in India, the Government does not come out with white papers of the deliberations at various seminars, but we find a reference made to the

All India Seminar on Correctional Service? held at New Delhi in March 1969, to consider and lay guidelines pertaining to the problem of rehabilitation of ex-convicts, with emphasis on the need for their employment under the government. Vide OM dated 2.2.1973, No.6857-GSI-72-2755, the State of Haryana has listed the penal offences which have been treated as grave, serious and involving moral turpitude. The said OM lists the under-noted penal offences as grave, serious and involving moral turpitude, disentitling the convict to public employment; the offences are:- Sections 120-A, 121-A, 122 to 124, 161, 161-W.P.(C) No.2068/2010 Page 17 of 24 1A, 165, 167, 181, 182, 193 to 201, 205, 209, 293, 302, 304, 307, 354, 359, 362, 363 to 366, 366-A, 366-B, 367 to 373, 376, 377, 379, 380, 391, 392, 398 to 400, 403, 404, 406 to 409, 417 to 421, 449, 450, 453 to 458, 465 to 468, 471 to 476, 477- A, 489-A, 489-B, 489-C, 489-D, 489-E, 493 to 498 of the Penal Code.

33. We are a little surprised at the list as it excludes offences such as promoting enmity or doing acts prejudicial to maintenance of harmony i.e. offences punishable under Section 153-A IPC. It excludes offences pertaining to mutiny and its abetment i.e. offences under Sections 131 to 136 IPC. But we do not comment. However, what we find is, the common thread of including all offences against women and such



offences which are punishable with imprisonment for life as also imprisonment for a term exceeding three years and above. We get a clue. Offences which do not carry a mandatory sentence of imprisonment and it to be imprisoned the term is less than 3 years and the offender can be let off with payment of fine, are not included in the said list. It is an undisputed fact that there are no rules to guide the authorities in Delhi Police as to in what cases despite acquittal, the person can be kept out of service or can be deprived of employment.

34. That apart, as generically understood, offences involving moral turpitude can be classified with reference to the act being one which shocks the moral conscience of the society in general and this can be determined with reference to the motive of the offender i.e. whether the motive which led to the act was a base one or alternatively whether on account of the act having been committed the perpetrator could be W.P.(C) No.2068/2010 Page 18 of 24 considered to be of a depraved character or a person who was to be looked down upon by the society.

35. Today, with plea bargaining being a well-recognized facet of the administration of criminal law and a part of criminal jurisprudence in India, we do perceive a large number of cases involving thousands and thousands throughout the country, appearing before the Summary Courts and paying small amounts of fine, more often than not, as a measure of plea bargaining. Foremost would be amongst them petty crimes committed mostly by the young and/or the inexperienced. Some may even undergo a petty sentence of imprisonment of a week or ten days. We may also notice that Section 302 Cr.P.C. prescribes for taking note of compoundable offences at the instance of the complainant itself and there are cases where compounding can take place with the permission of the Court.

36. Life is too precious to be staked over petty incidents and the cruel result of conviction for petty offences being the end of the career, the future and the present, of young and inexperienced persons cannot blast their life and their dreams.

37. In a growing democracy, where the systems are failing and the weak and the downtrodden are hardly given the opportunity to sharpen their intellect thereby diminishing the ability of their consciousness to act as a mirror to their acts and actions, it is high time that the executive brings into place a policy where summary/ordinary conviction should not be treated as a conviction for entry or retention in government service.

38. Till then, it would be the duty of the Court to interpret the law by harmonizing human sufferings and human wants, delinquencies and criminal tendencies; conscious of the fact that passengers on Spaceship Earth are the rich and the poor, the needy and the well-off, the hungry and the well-fed, the educated and the uneducated. The need of the hour is to understand that criminals are not born and are not irredeemable brutes. Crime may be a disease but not the criminal, who are a

kind of psychic patients and to understand, that anti-social maladies are mostly the result of social imbalances. It must be remembered that on the one hand, social stresses, for various reasons, explosively mount in the real world's hard environs and the harsh remedy of heartless incarceration and ouster from society deepens the criminality. The swing of the pendulum to the humanist side requires respect for the worth of personhood and the right of every man and woman in its residual human essence.

39. What is the gravamen of the allegation constituting the act committed by the respondent which was treated as voluntarily causing hurt is not known to us. What was the nature of insult heaped upon the complainant which attracted the offence punishable under Section 504 IPC and what was the act which attracted the crime of criminal intimidation is also not known. But from a trinity of the three i.e. the alleged offence punishable under Section 323 IPC, Section 504 IPC and Section 506 IPC we can safely presume that the allegation against the respondent was of abusing the complainant and threatening to beat him followed by simple beating.

40. All these offences are non-cognizable and needless to state are bailable. No moral turpitude, as W.P.(C) No.2068/2010 Page 20 of 24 generically understood, is involved. The acts do not shock the moral conscience of the society and with reference to the motive do not evidence a person with depraved character. The offences are not of the kind which would justify dismissal or removal from service, if the respondent had committed the same if in service.

41. Thus, being charged with the said offences, of which the respondent has ultimately been acquitted, would not be a bar and cannot be treated as a bar to seek public employment and on being successful at the entrance exam, to be denied the same. In *Delhi Administration Vs. Sushil Kumar* (JT 1996 (1) SC 34), Hon'ble Supreme Court viewed that even if a person is acquitted or discharged in a criminal case, still it is open for the recruiting authority to cancel his selection on the basis of report of verification of character and antecedents of such person and in the background of his involvement in a criminal case. Para 3 of said judgment read as under:-

. This appeal by special leave arises from the order of the central Administrative Tribunal, New Delhi made on 6/9/1995 in OA No. 1756 of 19. The admitted position is that the respondent appeared for recruitment a Constable in Delhi Police Services in the year 1989-90 with roll No. 65790. Through he was found physically fit through endurance test, written test and interview and was selected provisionally, 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. Aggrieved by proceedings dated 18/12/90 culminating in cancellation of his provisional selection, he filed OA in the Central Administrative Tribunal. The

Tribunal in the impugned order allowed the application on the ground that since the respondent had been discharged and/or acquitted of the offence punishable under Section 304 Indian Penal Code, under Section 324 read with Section 34 Indian Penal Code and under Section 324 Indian Penal Code, he cannot be denied the right of appointment to the post under the State. The question is whether the view taken by the Tribunal is correct in law?. It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was found physically fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to unwarranted. The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant to the case is of the antecedents of the candidate. Appointing authority, therefore, has rightly focused this aspect and found it not desirable to appoint him to the service. Recently only on 15.2.2012 a Division Bench of Hon ble Delhi High Court while deciding a batch of petitions, viz WP (C) No 1694/2011 (GNCTD & Anr. Vs. Dharam Veer Singh), WP (C) No. 6253/2011 (Mukesh Kumar Vs. Govt. of NCT of Delhi) and WP (C) No. 7811/2011 (Commissioner of Police Vs. Vinod Kumar) viewed that an employer cannot be deprived of making assessment qua the person seeking employment with it and persons not found suitable for cogent reason cannot be thrust upon the Police Force. Para 10 of said judgment read as under:-

o. In so far as the respondent in WP ( C ) 1694/2011 is concerned, we find Delhi Police to have at the level of Deputy Commissioner evaluated the suitability of the respondent and considering the charge against the respondent and disposal of the cases as compromised with admonition and benefit under Section 3 of the Probation of Offenders Act concluded the respondent to be habitual of picking up quarrels and resorting to violence and his such attitude rendering him unsuitable. It is thus not as if the candidature of the respondent was cancelled merely for non disclosure and/or for concealment of the said facts, as was the case in Sandeep Kumar (supra). The Delhi Police as an employer cannot be deprived of making such assessment qua the persons seeking employment with it and persons not found suitable for cogent reasons cannot be thrust upon the Police Force. In this light of the matter, the argument of the counsel for the respondent that the petition Delhi Police had in response to the contempt petition filed before the Tribunal sought time to comply with the order and concealed the said fact is of no consequence. Merely because the Delhi Police to avoid being hauled up for contempt sought time from the Tribunal to comply with the order cannot deprive it of its right to avail remedies against the said

order. In so far as the effect of Probation of Offenders Act is concerned, another Division Bench of this Court in Gokul Ram Meena Vs. GNCTD 177 (2011) DLT 471 has dealt in detail on the said aspect and concluded the same to be a relevant factor in service matters. We are thus of the opinion that WP (C) No. 1694/2011 of the Delhi Police deserves to be allowed and the order of the Tribunal impugned therein directing Delhi Police to appoint the respondent is set aside/quashed. In another batch of petitions, i.e. WP (C) No. 5510/2010 (GNCT of Delhi and Anr. Vs. Dinesh Kumar) and WP (C) No. 5527/2010 (GNCT of Delhi Vs. Subhash Chand) wherein the respondent was denied appointment in Delhi Police as Constable (Exe.) and Sub Inspector (Exe.) on the ground that they were accused in certain criminal cases though finally acquitted, following aforementioned decision in the case of Govt. of NCT of Delhi and Anr. Vs. Robin Singh (171 (2010) DLT 705), Hon ble Delhi High Court up hold the orders passed by Tribunal giving direction to petitioner in WPs to give appointment to respondent. Para 19 and 20 of the said judgment read as under:-

9. Thus, as regards Subhash Chand, we see no problem in upholding the impugned decision dated 21.4.2010 passed by the Tribunal for the simple reason he was charged of having committed offences punishable under Section 323/341 IPC. It is apparent that a petty brawl took place in the village. We note that the incident took place in Village Aravali Vihar, Alwar, Rajasthan. His young age coupled with the pettiness of the offences would certainly not be a bar to his getting public employment more so far the reason due to the matter being compromised it could not be ascertained whether there was truth in the complaints resulting in two FIRs being registered against him.

20. As regards Dinesh Kumar, we note that the FIR relate to an offence punishable under Section 307 IPC. But in the absence of any evidence as to which out of three accused had assaulted the person who received grievous injuries and noting that Section 34 IPC was taken aid of to make liable all three accused, noting that the acquittal was on merits, no doubt two witnesses turned hostile, further, nothing the young age of Dinesh Kumar, applying the law laid down in Robin Singh's case (supra), we are of the opinion that the impugned decision of the Tribunal which has directed the petitioner to give employment to Dinesh Kumar needs no interference. In Writ Petition (C) No.5768/2010 (GNCT of Delhi Vs. Sunil Kumar) decided on 27.08.2010, wherein the respondent was denied appointment on the ground that he was accused in an FIR regarding commission of an offence under Section 323/506 IPC, again following the view taken in the case of Govt. of NCT Delhi and Anr. Vs. Robin Singh, Hon ble High Court uphold the order of Tribunal and dismissed the petition (WP (C) No. 5768/2010 of GNCT of Delhi). In yet another case i.e WP (C) No. 9314/2009 (Ram Het Meena Vs. UOI & Ors) decided on 15.03.2011 following the judgment, in the case of Govt. of NCT Delhi and Anr. Vs. Robin Singh (supra), Hon ble Delhi High Court issued direction to respondent to consider the candidature of petitioner in view of the law down in Robin's Singh case (supra). The issue also came up for consideration in WP (C) NO. 3566/2010 (GNCT of Delhi and Anr. Vs. Jai

Parkash) decided on 24.05.2010 wherein Hon ble High Court again viewed that the decision of the authority refusing to give employment to respondent despite the fact that he was acquitted in a criminal case much before his date of appointment cannot be upheld. Para 16 of the judgment read as under:-

6. Thus, taking into consideration the legal position as enunciated above, the decision of the authorities in having refused to give the respondent employment despite his selection merely much before his date of appointment and for which he had given all the information to the authorities as is required under the law, cannot be upheld and therefore, the decision of the Tribunal in allowing the OA cannot be faulted with in any manner whatsoever. Accordingly the writ petition is dismissed with no orders as to costs. In yet another petition, i.e. WP (C) No. 12899 decided on 19.04.2010 (Delhi Police & Anr. Vs. Omveer Yadav), Hon ble Delhi High Court refused to interfere with order of Tribunal passed by it giving direction for appointment to respondent who was involved in a criminal case registered vide FIR No. 865/2005 u/s 392/34 IPC dated 20.12.2005. In Commissioner of Police and Ors. Vs. Sandeep Kumar (JT 2011 (3) SC 484), Hon ble Supreme Court ruled that at age of 20 years youngsters often commit indiscretions, and such indiscretions can often been condoned. Taking such view Hon ble Supreme Court uphold the decision of Delhi High Court passed by it reversing the order of this Tribunal of dismissal of original application of Mr.Sandeep Kumar whose candidature for appointment to the post of HC (Min.) in Delhi Police was cancelled. Relevant excerpts of said judgment read as under:-

8. We respectfully agree with the Delhi High Court that the cancellation of his candidature was illegal, but we wish to give our own opinion in the matter. When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often been condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

9. In this connection, we may refer to the character 'Jean Valjean' in Victor Hugo's novel 'Les Miserables', in which for committing a minor offence of stealing a loaf of bread for his hungry family Jean Valjean was branded as a thief for his whole life. The modern approach should be to reform a person instead of branding him as a criminal all his life.

10. We may also here refer to the case of Welsh students mentioned by Lord Denning in his book 'Due Process of Law'. It appears that some students of Wales were very enthusiastic about the Welsh language and they were upset because the radio programmes were being broadcast in the English language and not in Welsh. Then came up to London and invaded the High Court. They were found guilty of contempt of court and sentenced to prison for three months by the High Court Judge. They filed an appeal before the Court of Appeals. Allowing the appeal, Lord Denning observed :-

"I come now to Mr. Watkin Powell's third point. He says that the sentences were excessive. I do not think they were excessive, at the time they were given and in the circumstances then existing. Here was a deliberate interference with the course of justice in a case which was no concern of theirs. It was necessary for the judge to show - and to show to all students everywhere - that this kind of thing cannot be tolerated. Let students demonstrate, if they please, for the causes in which they believe. Let them make their protests as they will. But they must do it by lawful means and not by unlawful. If they strike at the course of justice in this land - and I speak both for England and Wales - they strike at the roots of society itself, and they bring down that which protects them. It is only by the maintenance of law and order that they are privileged to be students and to study and live in peace. So let them support the law and not strike it down.

But now what is to be done? The law has been vindicated by the sentences which the judge passed on Wednesday of last week. He has shown that law and order must be maintained, and will be maintained. But on this appeal, things are changed. These students here no longer defy the law. They have appealed to this court and shown respect for it. They have already served a week in prison. I do not think it necessary to keep them inside it any longer. These young people are no ordinary criminals. There is no violence, dishonesty or vice in them. On the contrary, there was much that we should applaud. They wish to do all they can to preserve the Welsh language. Well may they be proud of it. It is the language of the bards - of the poets and the singers - more melodious by far than our rough English tongue. On high authority, it should be equal in Wales with English. They have done wrong - very wrong - in going to the extreme they did. But, that having been shown, I think we can, and should, show mercy on them. We should permit them to go back to their studies, to their parents and continue the good course which they have so wrongly disturbed." [Vide : Morris Vs. Crown Office, (1970) 2 Q.B. 114] In our opinion, we should display the same wisdom as displayed by Lord Denning.

11. As already observed above, youth often commit indiscretions, which are often condoned.

12. It is true that in the application form the respondent did not mention that he was involved in a criminal case under Section 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified. At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter .

In Ram Kumar Vs. State of UP and Ors (Civil Appeal No. 7106/2011) decided on 19.08.2011), Hon ble Supreme Court ruled that in view of the instructions of Govt. of India order dated 28.04.1958 it was the duty of the Senior Superintendent of Police, Ghaziabad as the appointing authority to satisfy himself on the point as to whether the appellant was suitable for appointment to the post of Constable with reference to the nature of suppression and nature of criminal case. Taking such view, Hon ble Supreme Court did not appreciate the mechanical view taken by the authority treating the selection of appellant as irregular on the ground that he had furnished false affidavit.

Para 9 of the order read as under:

9. The order dated 18.07.2002 of the Additional Chief Judicial Magistrate had been sent along with the report dated 15.01.2007 of the Jaswant Nagar Police Station to the Senior Superintendent of Police, Ghaziabad, but it appears from the order dated 08.08.2007 of the Senior Superintendent of Police, Ghaziabad that he has not gone into the question as to whether the appellant was suitable for appointment to service or to the post of constable in which was appointed and he has only held that the selection of the appellant was illegal and irregular because he did not furnish in his affidavit in the proforma of verification roll that a criminal case has been registered against him. As has been stated in the instructions in the Government Order dated 28.04.1958, it was the duty of the Senior Superintendent of Police, Ghaziabad, as the appointing authority, to satisfy himself on the point as to whether the appellant was suitable for appointment to the post of a constable, with reference to the nature of suppression and nature of the criminal case. Instead of considering whether the appellant was suitable for appointment to the post of male constable, the appointing authority has mechanically held that his selection was irregular and illegal because the appellant had furnished an affidavit stating the facts incorrectly at the time of recruitment. In Govt. of NCT of Delhi and Ors. Vs. Daulat Ram (WP (C) No. 734/2012) decided on 10.02.2012, wherein Shri Daulat Ram had disclosed his involvement in criminal case in the application as well as in the attestation form, in view of acquittal of Shri Daulat Ram from criminal case, Hon ble Delhi High Court uphold the order passed by this Tribunal allowing the OA No. 1514/2011. Relevant excerpt of said judgment read as under:-

. The learned Counsel for the petitioner has relied upon the decisions of Supreme Court in Delhi Administration Through Its Chief Secretary And Others v. Sushil Kumar: (1996) 11 SCC 605, decision of this Court in WP(C) No. 5782/2011 Sanjeev Kumar v. Govt of NCT of Delhi And Others decided on 11.8.2011 as well as the decision of Supreme Court in Civil Appeal No. 7106/2011 Ram Kumar v. State of UP And Others decided on 19.8.2011. In the case of Sushil Kumar (supra), the admitted position was that the involvement of the respondent in a criminal case came to be known only on verification by the local police, which led to his provisional selection being cancelled. A perusal of the W.P(C) 734/2012 Page 4 of 8 judgment would also show that the respondent in that case was involved in the offences punishable under Sections 304 and 324 of Indian Penal Code read with Section 34 thereof. However, in the case before this Court, there has been no concealment on the part of the respondent and he was not involved in a serious offence such as murder, rape, dacoity, culpable homicide not amounting to murder, hence, the case before this Court is clearly distinguishable and in fact squarely covered by the decision of Supreme Court in Sandeep Kumar (supra). In the case of Sanjeev Kumar (supra), the petitioner before this Court was prosecuted for the offence punishable under Sections 302/307/148 of the Indian Penal Code and he was acquitted on account of certain witnesses having turned hostile. Considering the nature of the offences in which the

petitioner in WP (C) No. 5782/2011 was involved, the case of the respondent before this Court cannot be treated at par with him. Moreover, since there is no reference to the decision of the Supreme Court in the case of Sandeep Kumar (supra) and it appears to us that the aforesaid binding decision of the Supreme Court was not brought to the notice of this Court. In the case of Ram Kumar (supra), the appellant before the Supreme Court, while applying for the post of a Constable had submitted an affidavit stating therein that no criminal case had been registered against him. It was on a report submitted by Jaswant Nagar Police Station in District Etawah that his involvement in a criminal case registered under Section 324/323/504 IPC came to be known. On W.P(C) 734/2012 Page 5 of 8 receipt of the aforesaid report the selection of the appellant was cancelled on the ground that he had submitted an affidavit stating wrong facts and concealing correct facts and therefore his selection was irregular and illegal. The appellant filed a Writ Petition before Allahabad High Court challenging the cancellation of his selection. The Writ Petition was dismissed holding that since the appellant before the Supreme Court had furnished false information in his affidavit, the case was squarely covered by the decision of Supreme Court in *Kendriya Vidyalaya Sangathan And Others v. Ram Ratan Yadav*: (2003) 3 SCC 437. The Supreme Court noted that the appellant had been acquitted since the sole eye witness had stated during his examination in the Court that someone from the crowd had hurled abuses and in the scuffle he had got injured when he fell and his head hit a brick platform. Allowing the appeal, Supreme Court set aside the order passed by the learned Single Judge and the Division Bench of Allahabad High Court and directed that the appellant would be taken back in service though he would not be entitled for any back wages for the period he had remained out of service. We fail to appreciate how this judgment can, in any manner, advances the case of the petitioner before this Court. In fact, the Court was of the view that it was the duty of the Senior Superintendent of Police, Ghaziabad as the Appointing Authority to satisfy himself on the point as to whether the appellant was suitable for appointment to the post of Constable, with reference to the nature of suppression W.P(C) 734/2012 Page 6 of 8 and nature of the criminal case. Instead of doing that he had mechanically held the selection to be irregular and illegal merely because the appellant had furnished an affidavit stating the incorrect facts.

In *Kendriya Vidyalaya* (supra), which the respondent had relied upon in the case of Ram Kumar (supra), the respondent before the Supreme Court had suppressed in the attestation form the fact that a criminal case had been registered against him under Section 323/341/294 and 506-B read with Section 34 of the Indian Penal Code and that case was pending at that time. It was only subsequently that the criminal case was withdrawn. It was on these facts that the Supreme Court, in the case of *Kendriya Vidyalaya* (supra) held that since he (the respondent Ram Ratan Yadav) was to serve as a Physical Education Teacher he was not suitable for that appointment as his conduct and antecedents will have some impact on the minds of the students of impressionable age and since the authorities had dismissed him from service for suppressing material information in the attestation form, the decisions of the authorities could not be interfered by the High Court. The facts of the case before this court are also materially different from the facts in the case of *Kendriya Vidyalaya*



(supra). In the case before this Court, there has been no concealment on the part of the respondent either in the application form or in the attestation form. Moreover, he had already been acquitted of the charges even before he applied for the post of Constable (Executive) in Delhi Police. Therefore, W.P(C) 734/2012 Page 7 of 8 the decision of Supreme Court in the case of Kendriya Vidyalaya (supra) also does not help the petitioner in any manner.

For the reasons given in the preceding paragraphs, we find no merits in the Writ Petition and the same is hereby dismissed without any order as to costs. In a recent decision delivered on 30.03.2012 in WP (C ) No. 8731/2011 (Devender Kumar Yadav Vs. Govt. of NCT of Delhi and Anr.) taking note of various judgments of Hon ble Supreme Court and Hon ble Delhi High Court including most of the judgments noted hereinabove, Hon ble High Court ruled that the acquittal where the material witnesses are produced but they do not support the case of the prosecution cannot be called as a technical acquittal. In the said case Hon ble Delhi High Court did not countenance the contention of the respondents that only a case where the accused is acquitted despite material witnesses supporting the case of the prosecution on merits, would be a case of acquittal other than technical acquittal. In the said case, Hon ble High Court also ruled that it cannot be presumed that a witness does not come forward to support the case of the prosecution only because of collusion with the accused or in order to save him from punishment. As has been ruled by Hon ble Delhi High Court in the said case Screening Committee which assessed the suitability of the petitioner may not arrive at a conclusion regarding unsuitability of a person for appointment, unless it has material before it which could give rise to inference that the petitioner had actually committed the offence for which he had been prosecuted. In the said case, Hon ble High Court also emphasized that there is presumption of innocence attached to an accused in a criminal case and the onus is on the prosecution to prove the charges leveled against him. According to the view taken by Hon ble Delhi High Court acquittal of the accused, after trial only strengthens and reinforce the statutory presumption, which is otherwise available to him. Relevant excerpt of said judgment read as under:-

Such acquittals, where the material witnesses are produced during trial, but, they do not support the case of the prosecution, to our mind cannot be said to be technical acquittals. We cannot accept the contention that only a case, where the accused is acquitted despite material witnesses supporting the case of the prosecution on merits, would be a case of acquittal other than technical acquittal. We cannot presume that a witness, who does not support the case of the prosecution is necessarily doing so in collusion with the accused, in order to save him from punishment, despite his actually having committed the offence, with the commission of which he is charged. It may be true in some cases, but may not necessarily be so in each case. What has to be seen in such cases is as to whether the material witnesses were examined or not. If they are examined, but do not support the prosecution and consequently it is held that the charge against the accused does not stand proved, that would not be a case of technical acquittal. We would like to note here that no independent inquiry was held by the respondents to verify the truthfulness or otherwise of the allegations which were made against the petitioner in the FIRs that were registered against him.

The Screening Committee which considered the case of the petitioner had no material before it which could give rise to an inference that the petitioner had actually committed the offences for which he had been prosecuted. As noted earlier, there is a presumption of innocence attached to an accused in a criminal case and the onus is on the prosecution to prove the charges leveled against him. Acquittal of the accused, after trial, only strengthens and reinforce the statutory presumption, which is otherwise available to him. We, therefore, hold that the view taken by the Screening Committee was not based on some legally admissible material and therefore cannot sustained in law. The case of the petitioner before us is squarely covered by the decisions of Supreme Court in Sandeep Kumar (supra) and Ram Kumar (supra) as well as by the decisions of this Court in Robin Singh (supra), Naveen Kumar Mandiwaandi (supra), Dinesh Kumar (supra). Omveer Yadav (supra), Jai Prakash (supra) and Daulat Ram (supra). In fact the case of the petitioner before us stands on a much stronger footing than the cases of Sandeep Kumar (supra), Ram Kumar (supra), Robin Singh (supra) where the persons concerned had concealed their prosecution. His case stands on a better footing than the case of Subhash Chand, who was prosecuted under Section 307 of IPC and Omveer Yadav, who was alleged to have committed offence under Section 392 of IPC.

For the reasons stated hereinabove, the impugned order dated 31.5.2011 passed by the Tribunal cannot be sustained and the same is accordingly set aside. The respondent is directed to issue an appointment letter to the petitioner within 08 weeks subject to his otherwise being fit and completing all necessary formalities and requirements. The petitioner would be entitled to seniority as well as pay and allowances from the date he joins the service. In the said case Hon ble Delhi High Court also emphasized need of independent enquiry by Screening Committee to verify the truthfulness or otherwise of the allegation made against the petitioner in the FIR registered against him. Besides, aforementioned judgments of Hon ble Supreme Court and Delhi High Court, certain decisions of this Tribunal relied upon by learned counsel for parties are noted hereinbelow:-

OA No/name of party	Offence alleged	Outcome of trial	Outcome of OA
OA153/09 Samraj Singh	FIR no.684/89 u/s 307/506 IPC dt.28.10.99	FIR no.465 dt.06.10.2003 u/s 323/341/506/34 IPC	In one case he was implicated for committing the offence of attacking the complainant with knife and katta (country made revolver) and in other case he had manhandled the complainant.

Acquitted	Allowed	OA No	Details
		OA1821/11	Shani Kumar FIR registered According to one Yoginder when he along with his brother Upender was sitting on Chabutra outside the house of Sukhdev on 19.05.2007 the applicant along with Ankit, Cheenu and Ram Bhajan coming on two motorcycles towards village side, abused, threatened and opened fire at his brother Upendra, who sustained bullet injuries on his thigh. He raised alarm, and on seeing some villagers, the applicant along with others fled away from the spot on the motorcycles. Upendra was taken to Hospital. Acquitted Allowed

OA2562/11 Nawab Khan FIR no. 134/2008 u/s 323/241/324/354/326/307/34 IPC & 3 (i) (xi) 3(2)(v)SC/ST Act PS Rajgarh Alwar.

His involvement in the above criminal case shows his depraved and propensity to indulge in crime without fear of law.

Acquitted Dismissed OA2540/11 Mandeep FIR No.137 dt.24.6.05 u/s 147/148/149/336/341/323/451 IPC and FIR No. 235 dt 29.9.05 He was blamed for assaulting the complainants with deadly weapons causing injuries to them.

Acquitted Allowed OA1819/11 Mehar Singh FIR No.126/2004 u/s 147/341/323/427 IPC Case registered against the applicant on the complaint of one Ramji Lal, who stated that on 15.05.2004 the bus in which he was conductor after picking up passengers started from Narnol to Bhuhana at about 2.30 p.m. and when the bus reached Raipur Village bus stand at about 3.15 pm the accused persons standing on road armed with chain, danda, belt and stores, stopped the bus and surrounded it from all sides.

Acquitted Allowed OA1904/11 Joginder Singh FIR No. 761/2010 u/s 148/149/323/325/506 IPC Complainant Sonu son of Rajbir stated that some time ago a quarrel had taken place, and on 11.09.2009 accused person inflicted injuries on various parts of his body as also inflicted injuries upon Amit, Manjeet and other persons.

Allowed OA2483/11 Jai Narain Meena FIR 114/2007 u/s 279/337/338 IPC and under Section 134/187 MV Act dt.27.2.2007 Allegation of causing injuries to riders in auto rickshaw while driving jeep. Dismissed

8. In view of the aforementioned decisions of Hon ble Supreme Court, Hon ble Delhi High Court and this Tribunal, learned counsel appearing for applicants contended that since there are contradictory views on the issue in different judgments the latest judgment i.e. dated 30.03.2012 would prevail and hold the field. However, we do not find any contradiction in the view taken in aforementioned judgment by Hon ble Delhi High Court or by Hon ble Supreme Court. Rather there is unanimity that irrespective of the acquittal of a person in criminal case, Screening Committee could assess his suitability for appointment as subordinate rank in Delhi Police. However, in view of the facts and circumstances involved in different cases, emphasis could be laid on material/aspect/attitude/functioning /modus operandi to be kept in view by Screening Committee while arriving at decision on suitability. Thus, we have no hesitation to arrive at conclusion that there is no infirmity in the procedure adopted by appointing authority in subjecting a candidate for appointment in Delhi police involved in a criminal case to screening by a Committee to assess his suitability for appointment. In order to take a view regarding material to be assessed by Screening Committee and modus operandi to be adopted while taking a view

regarding suitability of a person, we may usefully refer to the judgment of Hon ble High Court in the case of Robin and Devender Kumar Yadav (supra). In view of the law laid down by Hon ble Delhi High Court in the case of GNCT of Delhi and Anr. Vs Robin Singh while assessing the suitability of person, Screening Committee need to take into account the nature of offence, gravity of offence, degree of criminality of offence alleged against a person involved in a criminal case while assessing his suitability for appointment in Delhi Police after his acquittal in such cases. In Devender Kumar Yadav Vs. Govt. of NCT of Delhi and Anr. Hon ble High Court has laid emphasis on the nature of acquittal, presumption to be drawn when the witness does not come forward to support the charge, importance to be attached by Screening Committee to non examination of a witness in support of the charges and requirement of availability of material before Screening Committee to ascertain truthfulness of the allegation etc. In the light of aforementioned view taken by Hon ble High Court, the Screening Committee may fairly draw support from the material available before trial court to arrive at a conclusion regarding suitability of a person for his appointment in Delhi Police. However, such material after assessing which a trial court record order of acquittal of a person may not be considered as a sole basis for the decision regarding suitability of a person for appointment in Delhi Police. In other word, once in the backdrop of certain material available on record the competent trial court arrive at a decision and record an order of acquittal by re-appreciating the same material, the Screening Committee cannot draw an inference that irrespective of order of acquittal the allegation made in FIR are correct. The Screening Committee need to give due credence to report of verification of character and antecedent of a person who disclosed his involvement in a criminal case culminated into acquittal and other relevant material. Having regard to independent material gathered during verification sufficient to arrive at independent conclusion Screening Committee may refer to the material available on record of trial Court for its corroborative effect. Having done so, the Screening Committee may attach due importance to the nature of the allegation, gravity of charges alleged against the person concerned. When the Screening Committee look at suitability of a person implicated in a criminal case culminated in his acquittal, it may consider the impact of social environmental condition wherein the candidate is brought up. In a dynamic society social change is an inevitable phenomenon. The impact of modernization, urbanization and industrialization in modern dynamic society may sometimes result in social disorganization which may lead to cultural conflicts between different sections of society. The difference may be between old and new values, local and imported values and traditional values as well as government imposed values. The inability of local communities to appreciate the common value of their residents or solve commonly experienced problems cause tension leading to deviant behaviours. Southerland has termed this phenomenon as differential social disorganization which is more common with lower class neighbourhood. He attributes three main causes for the culture conflict, namely (i) residential instability (b) social or ethnic heterogeneity; and (3) poverty. The family background has thus the greatest issue in criminal behaviour of the offender for the reason that children

spend most of their time with their parents and relative of the family. Thus while confirming an opinion of suitability of a person for appointment in Delhi Police, screening committee which generally take a view regarding character and antecedents of a person may assess the family background of a person. After a careful study of a number of delinquents, Donald Taft deduced the following generalizations which are significant from the point of view of crime causation:

- (1). Mobility among criminals is far greater than those of non-criminals. In other words, delinquents change their place more frequently than the law-abiding persons.
- (2) The delinquents usually prefer to stay away from their family, parents and homes.
- (3) The homes of delinquents are often ill-maintained, insanitary and display poor standard of living (4) The family life of most delinquents is usually disrupted and their parents are either dead, separated or divorced.
- (5) Experience has shown that most of the delinquents are subjected to physical punishment by the parents in their childhood. Consequently they hardly show any respect for the members of their family.
- (6) A large percentage of criminals is usually hostile and indifferent towards their brothers and sisters.
- (7) Delinquents are encouraged to follow criminality in their homes in either of the follows ways:

The parents may not themselves be associated with the criminal act but they might deliberately avoid to prevent their children from indulging into criminal acts.

Children may learn criminal patterns through the process of imitation. They begin to learn similar behaviour from their parents or other members of the family.

The parents who have embraced criminality as a way of life like those of professional thieves, pickpockets, prostitutes, etc., often train their children for the vocation. It is, however, true that a reverse process may also operate where criminal parents take all steps to ensure that their children do not follow their foot-steps and keep away from criminality. To take an illustration, it is often seen that prostitutes usually take care to keep their children away from the dubious profession so much so that they take all precautions to ensure that their children do not even come to know that their mother is a prostitute. So also, most of the notorious dacoits prefer to dissuade their children from following similar criminal traits and provide them best education for an upright and honest living. This change in their attitude is perhaps due to the impact of education and social transformation in recent decades. When we take of nature of crime, we may classify as white collar crime, cyber crime, sexual offences, heinous

crime, social crime, alcoholism, drug addiction and crime etc. Gravity of the offence judged by decree of penalty prescribed for the same. Appointment to non-gazetted post in Delhi Police is regulated by Delhi Police (Appointment and Recruitment) Rules, 1980. Rule 25 of said Rule provide for verification of character and antecedents of a candidate before his appointment in Delhi. For easy reference aforementioned Rule 25 is extracted hereinbelow:

5. Verification of character and antecedents.-

(i) Every candidate shall, before appointment, produce an attestation form, duly certified by two gazetted officer, testifying that the candidate bears a good moral character and they are not aware of anything adverse against him. The candidate may be provisionally enrolled pending verification of his character and antecedents which shall be done by making a reference to the concerned police station. Standing instructions in this regard laying down the procedure for getting such verifications shall be issued by the Commissioner of Police.

(2) An entry about the result of verification of character and antecedents shall be made in the service book/character Roll of the police officer concerned. The papers of such verification shall be filed with his miscellaneous Personal file.

As can be seen from aforementioned provision, standing instructions laid down the procedure for getting the verification of character and antecedent of candidate before his appointment on a non gazetted post in Delhi Police could be issued by the Commissioner of Police, Delhi. In order to formulate comprehensive policy to deal with the cases of concealment of the fact involved in criminal case in application form and attestation form, the Commissioner of Police, Delhi issued standing order No. 398/2010 providing that if candidate disclosed his involvement in criminal case, his case should be referred to Screening Committee, PHQ to assess his /her suitability for appointment in Delhi Police irrespective of the fact that he was acquitted/discharged by the Court in such criminal case. For easy reference aforementioned Standing Order No. 398/2010 is reproduced hereinbelow:

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 department is hard put to decide whether candidate should be offered appointment if he/she has been acquitted but not honourably.

In order to formulate a comprehensive policy, the following rules shall be applicable for all the recruitments conducted by Delhi Police:-

1) If a candidate does not disclose his/her involvement and/or arrest in criminal case(s), complaint case (s), preventive proceedings etc. in the application form but

discloses the same in the attestation form, the candidature will not be cancelled only on this ground.

2) However the candidature will be cancelled in case the candidate does not disclose the fact of his/her involvement and/or arrest in criminal case (s), complaint case (s), preventive proceedings etc. both in the application form and in the attestation form and the fact is subsequently found out from the verification report received from the District authorities or otherwise.

Before taking any action against the candidate, a show cause notice will be issued and the candidate will be given reasonable opportunity to submit his/her reply. If sought, a personal hearing must be given to the candidate. Thereafter a speaking order should be passed regarding cancellation of the candidature.

3) If a candidate had disclosed his/her involvement and/or arrest in criminal cases (s), complaint case (s), 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's 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.

4. IF a candidate had disclosed his/her involvement and/or arrest in criminal case (s), complaint case (s), 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.

5. As per Section 19 (1) of the Juvenile Justice (Care and Protection of Children) Act, 2000 a juvenile who has come in conflict with law and has been dealt with under the provisions of the Juvenile Justice Act, he /she shall not suffer any disqualification on account of conviction in an offence under the said law. However, if a candidate who was juvenile in conflict with law and who does not disclose such information in the Attestation Form or in both the Application as well as Attestation Form, his/her candidature will be cancelled on account of concealment.

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, though later acquitted or acquitted by extending benefit of doubt or the witnesses have turned hostile due to fear of reprisal by the accused person (s), 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 criminals 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) Minor offences, traffic violations, juvenile in conflict with law (tried in open courts (Juvenile Justice Boards) and accident cases { not applicable for candidates provisionally selected as Constable (Driver) should not be a bar for recruitments in Delhi Police in view of the various CAT/court judgments.

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.

10) if a candidate was involved in a criminal case which was withdrawn by the State Government he/she will generally be considered fit for government service unless there are other extenuating circumstances. We note that in terms of Rule 12 of Delhi Police (Punishment and Appeal) Rules, 1980 when a police officer has been tried and acquitted by a criminal court, he is not punishable departmentally on the same charge or on a different charge upon the evidence cited in a criminal case, whether actually, led or not, unless criminal charge failed in the opinion of the Court, or the Deputy Commissioner of Police, the prosecution witnesses have been won over, or the court has held in its judgment that an offence was actually committed and that suspicion rests upon the police officer concerned or evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings on a different charge or additional evidence for departmental proceedings is available. Aforementioned situation only guide the concerned authority to take a view whether departmental proceedings against a Police Officer who is acquitted in a criminal trial should be initiated or not. Rule 12 of said Rule read as under:-

2. Action following judicial acquittal:- When a police officer has been tried and acquitted by a criminal court, he shall not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case, whether actually led or not unless:

(a) the criminal charge has failed on technical grounds, or

(b) in the opinion of the court, or on the Deputy Commissioner of Police the prosecution witnesses have been won over; or ( c) the court has held in its judgment that an offence was actually committed and that suspicion rests upon the police officer concerned; or

(d) the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings on a different charge; or

(e) additional evidence for departmental proceedings is available. From the aforementioned it can also be seen that even when a police official is acquitted in a criminal trial, the rule envisages/initiation of disciplinary action against him and consequential penalty in certain circumstances. In other words, even a serving police



official who is acquitted from a criminal charge can be shown the door and made to go out of service if in the departmental proceedings initiated in terms of the aforementioned rule, he is found guilty. Since the penalty imposed on a police official in the proceeding initiated in terms of the aforementioned Rule 12 entails civil consequences and casts a stigma on a serving police official, before imposition of any penalty upon him, principles of natural justice must be adhered to and a detailed enquiry is held. The situation of a candidate who is selected for appointment in Delhi Police but whose candidature on account of his implication in a criminal case wherein he stands finally acquitted is cancelled may be compared with a police official who is dealt with in terms of Rule 12 of Delhi Police (P&A) Rules, 1980. Non appointment of a selected person on account of alleged involvement in a criminal case not only entails civil consequences, but also reflects adversely on his character. In the circumstances though he may not be entitled to an opportunity to defend himself in the manner in which a serving police officer is afforded such opportunity, but the principles of natural justice should also be followed in his case to the extent possible, by affording him an opportunity to have his say before cancellation of his appointment. Although the Standing Order No. 398/2010 provides for a Screening Committee and assessment of the suitability of a candidate involved in a criminal case though acquitted, by such a Committee, it does not indicate the modalities to be adopted by such a committee in arriving at its decision. Thus, in different judgments the Hon ble Delhi High Court had to indicate the modus operandi for guidance of the employer for taking a view regarding suitability of a candidate in a situation where he is implicated but later on acquitted in a criminal case.

9. Having noted the aforementioned judgments of Hon ble Supreme Court and Hon ble High Court on the subject, we deem it appropriate to lay down the following broad guidelines (as contained in these judgments) for guidance of the Screening Committee to take a view on the suitability of candidate implicated but acquitted in a criminal case:-

- (i) The Screening Committee should give due credence/weightage to the report of verification of character and antecedents of the candidate, required to be obtained u/r 25 of Delhi Police (Appointment and Recruitment) Rules, 1980 before his appointment.
- (ii) The committee may refer to the material available on record before it such as age of candidate at the time of commission of the alleged offence, the specific allegation against him in the FIR, his family background and job profile etc. before arriving at a conclusion regarding his suitability or otherwise for appointment.
- (iii) While taking a final view on suitability, the Committee may also take note of circumstances during development/progress of the investigation and trial to arrive at a conclusion i.e whether witnesses were won over or prevented to come forward to support the charge by or at behest of accused in any manner.

(iv) Having done the aforementioned exercise, the Screening Committee must take into account the nature and gravity of offence in which the candidate was involved and the order passed in criminal proceedings.

3. We have gone through the minutes of the Screening Committee dated 25.10.2011, the relevant excerpt of which reads as under:-

Case FIR No.42/2000 U/s 324/307/34 IPC PS. Kundli, Sonapat, Haryana dated 11.10.2000 was registered on the complaint of Sh. Anand. He reported that he was a milk vendor and runs a general merchant shop in the house of his brother Umed Singh. His brother Umed Singh had lent a sum of Rs.10,000/- and some articles to Pardeep (candidate's brother) who was a local cable operator but he did not return the same. On 09.10.2000, Pardeep demanded Rs.100/- as cable charges, on this his brother asked to adjust the amount with the money lent by him. On this matter, Pardeep disconnected the cable but on 10.10.2000, his brother reconnected it. In the evening, Sandeep Kumar (candidate) came at his shop and in the meanwhile Pardeep also came there. Then Sandeep (candidate) caught him while Pardeep inflicted knife blow twice upon stomach and right hand of Sh. Umed Singh. He alongwith his nephew Sandeep S/o Umed Singh rescued his brother.

Pardeep Kumar as well as any cable connection dispute. Sh. Sandeep S/o Umed Singh denied that the incident had taken in his presence and the accused had caused injury to his father. PW 5, a police official, HC, Akbar Khan stated that he had recovered the knife as per the disclosure statement of Pardeep Kumar. However, the court observed that the knife was recovered from the Northern side of the Drain No.8 and that place was assessable to all. Moreover, the statement of PW 5, HC, Akbar Khan did not collaborate with other eye witnesses and the knife was also not produced in the court. The prosecution failed to prove the guilt of the accused and Pardeep was acquitted of the charges by giving benefit of doubt and Sandeep (candidate) was acquitted after dispensing with his statement under section 313 Cr. P.C. vide judgment dated 14.03.2001.

4. In Sushil Kumar's case (supra), the Hon'ble Supreme Court viewed that even if a person is acquitted or discharged in a criminal case, still it is open for the recruiting authority to cancel his selection on the basis of report of verification of character and antecedents of such person and in the background of his involvement in a criminal case.

5. As has been explained in the reply filed on behalf of the respondents, the applicant and his brother were named in the FIR. In the incident, knife was inflicted twice upon stomach and right hand of the victim. Although the key witnesses and complainant turned hostile, none of them denied that the incident had not taken place. The applicant was also acquitted of the charges by giving benefit of doubt, which is not the honourable acquittal and there was enough material on record to

show that the applicant played active role and causing injuries to a person endangering human life. His involvement in the crime shows his violent nature, indulging in crime without fear of the law. The examination by the Screening Committee is not in consonance with the guidelines laid down by this Tribunal in the aforementioned order passed by the Division Bench authored by one of us (Judicial Member).

6. In the circumstances, the impugned order and show cause notice are quashed and set aside. Matter is remitted back to the Screening Committee to take a view in accordance with the guidelines laid down in an order dated 17.5.2012 (supra).

7. O.A. stands disposed of. No costs.

( A.K. Bhardwaj )  
Member (J)

( Sudhir Kumar )  
Member (A)

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