

Deepa Tomar Vs. Union of India and Ors.

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Court : Delhi

Decided On : Dec-03-2014

Judge : Najmi Waziri

Appellant : Deepa Tomar

Respondent : Union of India and Ors.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

10. 10.2014 Date of Decision:

03. 12.2014 + WP (C) No.1051 of 2014 DEEPA TOMAR Through: Petitioner Mr. Praveen Swarup, Adv. Versus UNION OF INDIA & ORS. Through: Respondents Mr. Ripu Daman Bhardwaj, CGSC with Mr. Malaya Kumar Chand & Mr. S.N. Kaul, Advs. for R-1 to 3. CORAM: HONBLE MR. JUSTICE KAILASH GAMBHIR HONBLE MR. JUSTICE NAJMI WAZIRI NAJMI WAZIRI, J.

1. In this writ petition filed under Article 226 of the Constitution of India, the petitioner seeks quashing and setting aside of the letter/order dated 18.11.2011 issued by respondent No.4, whereby the offer to her of provisional appointment to the post of Assistant Sub Inspector (ASI)/Exe in CISF was withdrawn. The petitioner also seeks a direction to the respondents for conducting her basic training for the said post as well as for fixation of her seniority to just below the person who was immediately above her in the select list as was declared selected

for the post of Assistant Sub Inspector (ASI) in the examination conducted by the Staff Selection Commission (SSC) in the year 2010.

2. The petitioners case is that being eligible and having qualified the examination conducted by the SSC in the year 2010 for the post of ASI/Exe in CISF, she was issued a letter on 25.10.2011, which provisionally appointed her to the post of ASI/Executive in CISF and she was directed to report to the Deputy Inspector General/Principal, CISF, RTC, Arakkonam, Post Suraksha Campus, Distt. Vellore, Tamil Nadu on 12.11.2011 for basic training which was to commence from 14.11.2011. The petitioner was also directed to produce necessary documents. In compliance of the requirements of the aforesaid letter, the petitioner appeared on 12.11.2011 and submitted all the relevant documents along with her Character Certificate and a copy of the court order/judgment dated 04.04.2011 passed by the Additional Sessions Judge, Fifth Baghpat in Sessions Examination 327/2008 whereby she was acquitted of the charges for offences punishable under Sections 364, 120-B of the Indian Penal Code (IPC). However, vide the impugned order/letter dated 18.11.2011, the petitioners provisional offer of appointment was withdrawn since the petitioner had answered Yes in Column No.04 of the Questionnaire Form which pertained to whether any FIR had been lodged against her in the past and also because the petitioner had not forwarded the details in advance.

3. The petitioner has assailed the said letter/order on the ground that having been acquitted of the charges framed against her in the said criminal case, there was no cause/opportunity for withdrawal of her appointment; that there was no independent material before the

Appointing Authority apart from the FIR and the judgment to ascertain the antecedents of the petitioner which otherwise stood sincerely redeemed because of her acquittal in the said criminal case. It is further submitted that no show cause notice was issued to her before cancellation of her provisional offer of appointment. It is also submitted that the criminal case was prosecuted on the allegation that the petitioner had got her own husband kidnapped and killed as she was in love with someone else; that however, after trial, the Court held that no

strong evidence presented on file in the aforesaid circumstances by the prosecution side which proves (sic) the allegation levied (sic) against the accused persons Satpal and Smt. Deepa under section 120-B, 364 IPC as(sic) beyond reasonable doubt. Accused persons are entitled to obtain the benefit of doubt. Accused persons Satpal and Smt. Deepa are liable to be acquitted for the charges levied (sic) against them.

Accordingly, the accused persons including the petitioner were acquitted of the charges levelled against them.

4. The learned counsel for the petitioner submits that the judgment of the Trial Court does not suggest that the complainant had turned hostile due to fear of reprisal by the petitioner; instead, the petitioner was acquitted after a full fledged trial and it was not merely a technical acquittal. Therefore, he submits that to doubt the acquittal and suggest involvement of the petitioner would amount to casting aspersion on the petitioners character without any basis and this would be unsustainable in law, especially since the Departments decision is not based upon any legally admissible

material. He relies upon the dicta of this Court in *Devender Kumar Yadav v. Govt. of NCT of Delhi*, 2012 (190) DLT140 in support of his case which held thus:

12 Such acquittals, where the material witnesses are produced during trial, but, they do not support the case of 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 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 the 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 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 enquiry 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 offence 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 levelled against him. Acquittal of the

accused, after trial, only strengthens and reinforces 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 be sustained in law.....

He also relies upon a decision of this Court in Commissioner of Police v. Manjeet WP(C) 5273/2012, decided on 06.09.2012, in which it was observed as under:

13..... it is observed that the petitioners decision of cancelling the candidature of the respondent was based exclusively on the contents of the said FIR registered against him. The petitioner did not even conduct an independent enquiry so as to ascertain the character of the respondent and cancelled the candidature of the later by merely relying on the contents of said FIR and the prosecution story. The petitioner also failed to grant due weightage to the tender age of the respondent at the time of commission of alleged offence as also the fact that 7 years has elapsed between the alleged incidence and the time of the application of the incident for the post of the Constable. The action of the petitioner in this behalf is clearly untenable. The reasoning of the petitioner that just because the name of the respondent figured in an FIR, his candidature is liable to be cancelled cannot be sustained in law.....

He further relies upon a decision of this Court in Commissioner of Police & Anr. v. Ramanuj Upadhyay, WP(C) No.3926/2012, decided on 09.07.2012, in which it was held as under:

8..... It is obvious from the facts as indicated above that the sole reason as to why the respondents candidature has been cancelled was the fact that his

name found mention in the FIR. We have, time and again, reiterated that once a person has been acquitted in a criminal case, the factum of his name being mentioned in FIR cannot stand in the way of his employment with Delhi Police. Here, we find that although the respondent had been clearly acquitted after a full fledged trial by the trial court, the petitioner still took into account that his name has been mentioned in the FIR and concluded that he had been involved in an alleged incident. This course of conduct is clearly untenable. It was open for the screening committee and for that matter the petitioner to have rejected the candidature of the petitioner on some other valid ground based on some other enquiries made by them but they could not have cancelled the candidature of the respondents solely on the ground that the petitioners name found mentioned in the FIR which culminated in an acquittal by the criminal court.

5. On the other hand, the learned counsel for the respondents has controverted the submissions made on behalf of the petitioner on the ground that the case of the petitioner was considered along with 12 other candidates by the Committee as per the directions of the Ministry of Home Affairs, Government of India. It is submitted that this Committee is headed by an officer of the rank of Inspector General. It is further submitted that after screening the matter, the Committee came to the conclusion that the petitioner was not fit for appointment in CISF due to seriousness of the criminal charges framed against him and because his acquittal was not honourable. He relied upon the dicta of the Supreme Court in Commissioner of Police, New Delhi & Anr. v. Mehar Singh, 2013(9) SCALE444 which held inter alia as under:

A candidate willing to join the Police Force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the

Police Force.

He also relies upon a judgment of this Court in WP(C) No.2930/2011 titled as Het Ram Meena v. Union of India & Others.

6. We have heard the learned counsel for the parties. The reasoning of the Committee is that She was charged with Section 364, 506 and 120-B IPC and the case was tried by the Addl. Session Judge, Bagpat and acquitted on the basis of extending benefit of doubt. As per MHA policy/guidelines issued vide UO No.I-45020/6/2010 Pers.II dated 01.02.2012 person who has been charged under section -364 and 120-B IPC but is acquitted by extending benefit of doubt is not eligible for appointment in CAPFs.

7. In Mehar Singh (supra), the Supreme Court discussed the issue of honourable acquittal and held as under:

21. The expression honourable acquittal was considered by this Court in S. Samuthiram [Inspector General of Police v. S. Samuthiram, (2013) 1 SCC598: (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229]. . In that case this Court was concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under Section 509 IPC and under Section 4 of the EveTeasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious

flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal [(1994) 1 SCC541:

1994. SCC (L&S) 594 : (1994) 26 ATC619, where in somewhat similar fact situation, this Court upheld a bank's action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in the departmental proceedings. This Court observed that the expressions honourable acquittal, acquitted of blame and fully exonerated are unknown to the

Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression honourably acquitted. This Court expressed that when the accused is acquitted after full consideration of the prosecution case and the prosecution miserably fails to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted. In light of the above, we are of the opinion that since the purpose of the departmental proceedings is to keep persons, who are guilty of serious misconduct or dereliction of duty or who are guilty of grave cases of moral turpitude, out of the department, if found necessary, because they pollute the department, surely the above principles will apply with more vigour at the point of entry of a person in the police department i.e. at the time of recruitment. If it is found by the Screening Committee that the person against whom a serious case involving moral turpitude is registered is discharged on technical grounds or is acquitted of the same charge but the acquittal is not honourable, the Screening Committee would be entitled to cancel his candidature. Stricter norms need to be applied while appointing persons in a disciplinary force because public interest is involved in

it.

22. Against the above background, we shall now examine what is the nature of acquittal of the respondents. As per the complaint lodged by Ramji Lal, respondent Mehar Singh and others armed with iron chains, lathis, danda, stones, etc. stopped a bus, rebuked the conductor of the bus as to how he dared to take the fare from one of their associates. Those who intervened were beaten up. They received injuries. The miscreants broke the side windowpanes of the bus by throwing stones. The complainant was also injured. This incident is undoubtedly an incident affecting public order. The assault on the conductor was preplanned and premeditated. The FIR was registered under Sections 143, 341, 323 and 427 IPC. The order dated 30-1-2009 passed by the Additional Chief Judicial Magistrate, Khetri shows that so far as offences under Sections 323, 341 and 427 IPC are concerned, the accused entered into a compromise with the complainant. Hence, the learned Magistrate acquitted respondent Mehar Singh and others of the said offences. The order further indicates that so far as offence of rioting i.e.

offence under Section 147 IPC is concerned, three main witnesses turned hostile. The learned Magistrate, therefore, acquitted all the accused of the said offence. This acquittal can never be described as an acquittal on merits after a full-fledged trial. Respondent Mehar Singh cannot secure entry in the police force by portraying this acquittal as an honourable acquittal. Pertinently, there is no discussion on merits of the case in this order. Respondent Mehar Singh has not been exonerated after evaluation of the evidence.

8. While examining a case in terms of the provisions of the Policy/Guidelines dated 1st February, 2012 for considering cases of candidates for appointment in CAPFs against whom criminal cases were pending, this Court was of the view that a candidate who had

been finally acquitted or discharged by a Court, he would not be entitled to the benefit of the proviso thereto to Clause 2(V) of the said policy if (i) the acquittal is on account of extension of benefit of doubt; and (ii) the acquittal rests on witnesses who have turned hostile due to fear or reprisal. Therefore ultimately, the judgment of acquittal would have to be examined. In that case (*Mintu Mistri v. UOI & Ors.*, WP(C) 1530/2012, decided on 20.09.2012), this Court held that the noting of the Trial Court that the accused deserves to be acquitted under the canopy of benefit of doubt would be meaningless and is really otiose if the sum and substance of the said order rests on the fact that there was no evidence at all before the Court. The Court found that there was nothing on record which could suggest or manifest any element of fear or reprisal on the part of the witnesses when they appeared before the Trial Court. Accordingly, the withdrawal of the provisional offer of appointment in that case was set aside.

9. In the present case, there was no evidence led showing the complicity of the petitioner in the offences for which she was prosecuted. She was acquitted because there was no evidence at all. In a case where there is a total lack of evidence against the accused and the person is acquitted after a full fledged trial, it cannot be said that the acquittal was on the basis of benefit of doubt. Although, in the present case the Trial Court did record that the accused persons were entitled for benefit of doubt, the expression benefit of doubt would be otiose since

there was no evidence to prove the charges against the accused persons. The

dicta in *Devender Kumar Yadav (supra)* would be clearly applicable to the present case. In these circumstances, no aspersion could be cast on the character of the petitioner apropos her alleged involvement in the aforesaid criminal case.

10. In the case of *Mehar Singh (supra)*, the accused had entered into a compromise with the complainant; hence, he was acquitted of the offences charged against. It is in those circumstances that the Supreme Court held that such acquittal could not be considered to be an acquittal in the true sense. The case of *Mehar Singh (supra)* is clearly distinguishable from the facts of this case because the present petitioners acquittal was not on account of a compromise with the complainant but after a full-fledged trial, where there was no evidence/witness to prove the involvement of the petitioner in the crime. The present case is akin to the case of *Devender Kumar Yadav (supra)*; hence, the petitioners acquittal could be termed as honourable.

11. In these circumstances, this Court is of the view that since (i) the petitioner was acquitted in the aforesaid criminal case due to lack of evidence after a full fledged trial, way back in the year 2011; furthermore, since (ii) the petitioner had not concealed this fact from the respondents; therefore, (iii) in the absence of any material on record, for the respondents to doubt the character or suitability of the petitioner, the impugned order/letter withdrawing the offer of provisional appointment of the petitioner to the post of ASI/Exe in CISF cannot be sustained in law. The impugned order/letter is hereby quashed. The respondents are directed to ensure that the

petitioner is permitted to undertake the next training programme or join the current training programme, within a period of four weeks from the date of this judgment. The petitioner shall also be given a reasonable time for joining the training programme. The petition is allowed in the above terms. No order as to costs.
NAJMI WAZIRI, J.

DECEMBER03 2014/acm KAILASH GAMBHIR, J.

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