

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 9th OF FEBRUARY, 2023

WRIT PETITION No. 4212 of 2017

BETWEEN:-

**RAJKUMAR YADAV S/O HAMIR YADAV, AGED ABOUT 30 YEARS,
OCCUPATION: SERVICE QTR NO 30 TYPE-I CPWD QUARTER NEAR
WHITE CHURCH INDORE (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI L. C. PATNE, LEARNED COUNSEL FOR THE PETITIONER)

AND

**1. THE STATE OF MADHYA PRADESH PRINCIPAL SECRETARY VALLABH
BHAVAN, BHOPAL (MADHYA PRADESH)**

**2. DIRECTOR GENERAL OF POLICE (DGP) POLICE HEADQUARTERS
(PHQ) JAHANGIRABAD BHOPAL (MADHYA PRADESH)**

**3. INSPECTOR GENERAL OF POLICE (SELECTION AND APPOINTMENT)
POLICE HEADQUARTERS (PHQ) JAHANGIRABAD, BHOPAL (MADHYA
PRADESH)**

**4. INSPECTOR GENERAL OF POLICE UJJAIN ZONE, INDORE (MADHYA
PRADESH)**

**5. SUPERINTENDANT OF POLICE (S.P.) DEWAS DISTT INDORE (MADHYA
PRADESH)**

.....RESPONDENTS

(BY SHRI BHUWAN DESHMUKH, GOVERNMENT ADVOCATE)

*This application coming on for hearing this day, the court passed
the following:*

O R D E R

With the consent of learned counsel for both parties, this writ petition is heard finally.

2. Petitioner has filed this present petition being aggrieved by the order dated 16.06.2017 whereby he has been denied the appointment to the post of Constable/Driver on account of registration of a criminal case.

3. The petitioner participated in the selection process for appointment to the post of Driver in the Police Department. The final result was declared in which the petitioner secured 53.68 marks and placed at Serial No.336 in UR category. After the final selection, he was posted at P.T.S. Indore on the post of Driver. Before joining, the petitioner submitted an affidavit disclosing the fact of registration of a criminal case as well as the judgment of acquittal. The aforesaid affidavit was sent for character verification from the Office of Superintendent of Police, Sagar. The character verification report was received against the petitioner and the same was placed before the Screening Committee. After considering the entire material on record and the law laid down by the Apex Court in the case of ***Mehar Singh Vs. Commissioner of Police*** reported in **(2013) 7 SCC 685** and ***Avtar Singh Vs. Union of India*** reported in **(2016) 8 SCC 471**, the Committee has not found the petitioner fit for the post of Constable (Driver). Accordingly, the petitioner was not permitted to continue in the service. Hence, this present petition before this Court.

4. Shri Patne, learned counsel for the petitioner submits that the petitioner was falsely implicated as an co-accused in F.I.R. registered at **Crime No.33/2012** for the offence punishable under Sections 363 in

alternate Section 363/120-B, 366 in alternate Section 366/120-B, 366-A & 376(2)(cha)/120-B of the IPC but vide judgment dated 26/09/2014 he has been acquitted from all the charges, therefore, he has not incurred any disqualification for appointment to the post of Constable (Driver). Shri Patne further submits that it is not the case in which the petitioner suppressed the fact that he was subjected to the criminal trial. Therefore, in view of the law laid down by the Apex Court in case of Avtar Singh (supra) he is entitled to be appointed and continue in the service.

5. Shri Patne further submits that the Committee has wrongly considered the judgment passed by the Session Court and held that there is no clean/honourable acquittal. In support of his contention, he placed reliance on orders passed by the Coordinate Bench of this Court in the case of ***Devendra Singh Gurjar Vs. State of M.P. And Ors. (W.A.No.1954 of 2019 decided on 01.05.2020) & State of M.P. & Ors. Vs. Bhanu Singh Sikarwar (W.A.No.217 of 2017 decided on 11.10.2017).*** He further placed reliance on the order passed by this Court in the case of ***Nilesh Jat Vs. State of M.P. & Ors. (W.P. No.16780 of 2017 decided on 23.4.2019).***

6. Shri Deshmukh, learned Government Advocate appearing on behalf of the respondent submits that in view of para 53 (C) of M.P. Police Regulation, the petitioner is not fit for the post of Police Constable on the ground that his acquittal is on a technical ground. The action taken by the answering respondents is just, legal and proper in accordance with the judgment reported in ***2005 8 SCC 747 (Baldev Singh Vs. Union of India and Ors*** which establishes that “Moral Turpitude” is an expression issued in legal as also social parlance to

describe conduct which is inherently base, vile depraved on having any connection showing the depravity

7. It is further submitted by the learned Government Advocate that apart, the conduct of the petitioner is against the spirit of Police Regulation No.53 and 64, which relate to moral turpitude. The Hon'ble Apex Court in the case of "**Commissioner of Police and another Vs. Mehar Singh reported in (2013) 1 SCC 598**", had observed that the "Police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in society. People repose great faith and confidence in it. It must be working of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude and must have impeccable character and integrity. A person having criminal antecedents will not fit in this category, even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined by the appointing authority. The decision of the Screening Committee must be accepted as it is which is not malafide. The learned Government Advocate has placed reliance on a judgment passed by the Apex Court in the case of **Commissioner of Police and another Vs. Mehar Singh**. He also placed reliance on the case of **Sanjay Kumar Vs. State of M.P. And Ors. (W.A.No.301 of 2006 decided on 28.10.2022)**, in support of his submission and prayed for dismissal of the writ petition.

8. The petitioner has filed the rejoinder relying on a judgment passed in the case of **Joginder Singh Vs. Union Territory of Chandigarh & Others reported in 2015 (2) SCC 377** in which the Hon'ble Apex Court has held that if the employee has not concealed

about the registration of a criminal case then the appointment should not be denied on the post in question.

Appreciation and conclusion

9. The facts of the case as discussed above are not in dispute. Before undergoing the selection process the petitioner was arrayed as an accused in a crime No.33/2012 in which a girl aged about 12 years was abducted by five accused persons including the petitioner and subjected to sexual assault. The learned Sessions Judge found certain omissions and contradictions in the statement of the prosecutrix in respect of the involvement of the petitioner and co-accused Delan, Vishal, Mahesh hence acquitted by giving them the benefit of doubt but convicted Dhaniram. In para 90 of the judgment, the learned Additional Session Judge has held that these four accused persons are entitled to benefit of the doubt. Para 90 is reproduced below :-”

“अतः अभिलेख पर आयी साक्ष्य का समस्त पहलूओं से मूल्यांकन करने के उपरान्त न्यायालय का निष्कर्ष है कि अभियुक्त धनीराम को छोड़कर अन्य शेष अभियुक्तगण की घटना में संलिप्तता और उनके द्वारा आपराधिक षडयंत्र किये जाने के तथ्यों की विश्वसनीयता सन्देहास्पद है। अतः अन्य चार अभियुक्तगण सन्देह का लाभ पाने के अधिकारी हैं। उनके विरुद्ध युक्तियुक्त सन्देह से परे आरोप प्रमाणित नहीं होता है।”

10. Therefore, there is no clean acquittal of the petitioner for the services in a disciplined force like the Police Department. Para 53 (C) of M.P. Police Regulation, clearly makes the petitioner unfit for holding the post in the police department. The petitioner was named in the FIR and he was duly identified by the prosecutrix while recording the statement in the Court.

11. The observation by the Apex Court about selection in the Police

force in the case of Mehar Singh (*supra*) is reproduced below :-

*"28. The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee. The decision of the Screening Committee must be taken as final unless it is *mala fide*. In recent times, the image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in public domain and are a matter of concern. The reputation of the police force has taken a beating. In such a situation, we would not like to dilute the importance and efficacy of a mechanism like the Screening Committee created by the Delhi Police to ensure that persons who are likely to erode its credibility do not enter the police force. At the same time, the Screening Committee must be alive to the importance of trust reposed in it and must treat all candidates with even hand.*

29. The Screening Committee's proceedings have been assailed as being arbitrary, unguided and unfettered. But, in the present cases, we see no evidence of this. However, certain instances have been pointed out where allegedly persons involved in serious offences have been recommended for appointment by the Screening Committee. It is well settled that to such

*cases the doctrine of equality enshrined in Article 14 of the Constitution of India is not attracted. This doctrine does not envisage negative equality (*Fuljit Kaur*). It is not meant to perpetuate illegality or fraud because it embodies a positive concept. If the Screening Committee which is constituted to carry out the object of the comprehensive policy to ensure that people with doubtful background do not enter the police force, deviates from the policy, makes exception and allows entry of undesirable persons, it is undoubtedly guilty of committing an act of grave disservice to the police force but we cannot allow that illegality to be perpetuated by allowing the respondents to rely on such cases. It is for the Commissioner of Police, Delhi to examine whether the Screening Committee has compromised the interest of the police force in any case and to take remedial action if he finds that it has done so. Public interest demands an in-depth examination of this allegation at the highest level. Perhaps, such deviations from the policy are responsible for the spurt in police excesses. We expect the Commissioner of Police, Delhi to look into the matter and if there is substance in the allegations to take necessary steps forthwith so that policy incorporated in the Standing Order is strictly implemented.”*

12. So far the judgment passed in the case of *Avtar Singh Vs. Union of India* is concerned the Apex Court has held that the yardstick to be applied has to depend upon the nature of the post for all services not only to uniform services. It has also been observed that for lower posts which are not sensitive, nature or duties, the impact of suppression on suitability has to be considered by the authorities concerned considering the post/nature of the duties/services and the power has to be exercised on due consideration of various aspects which has been

summarized in para 38. Therefore, the employment in uniform services, the nature of the post and the criteria are altogether different. The selection of a lower post with lesser responsibility can be examined while selecting candidates having some connection in a criminal matter.

Recently Apex court has again considered this issue from another angle in the case of **Rajasthan Rajya Vidyut Prasaran Nigam Ltd. v. Anil Kanwariya** reported in **(2021) 10 SCC 136**, and has held as under:-

14. The issue/question may be considered from another angle, from the employer's point of view. The question is not about whether an employee was involved in a dispute of trivial nature and whether he has been subsequently acquitted or not. The question is about the credibility and/or trustworthiness of such an employee who at the initial stage of the employment i.e. while submitting the declaration/verification and/or applying for a post made false declaration and/or not disclosing and/or suppressing material fact of having involved in a criminal case. If the correct facts would have been disclosed, the employer might not have appointed him. Then the question is of TRUST. Therefore, in such a situation, where the employer feels that an employee who at the initial stage itself has made a false statement and/or not disclosed the material facts and/or suppressed the material facts and therefore he cannot be continued in service because such an employee cannot be relied upon even in future, the employer cannot be forced to continue such an employee. The choice/option whether to continue or not to continue such an employee always must be given to the employer. At the cost of repetition, it is observed and as observed hereinabove in catena of decision such an employee cannot claim the appointment and/or continue to be in service as a matter of right.

In view of the above, I do not find any ground to interfere in this petition. Accordingly, the petition is dismissed.

No order as to cost.

(VIVEK RUSIA)
J U D G E