

Writ Petition No. 11174/2014

21.6.2016

Shri M.K. Agrawal, learned counsel for the petitioner.

Shri Ajay Pratap Singh, learned Government Advocate for respondent State.

With consent of learned counsel for the parties the matter is heard finally.

Petitioner is aggrieved of his non-appointment as Police Constable (G.D). It is urged that having passed the written examination (Annexure P/3) and Physical Proficiency Test and the Interview (Annexure P/4), the petitioner was declared selected and posting order was issued on 31.7.2013 (Annexure P/4); whereby, he was allotted the posted of Constable (G.D) under Superintendent of Police, Panna. It is contended that the petitioner was not given joining on the frivolous ground that there were criminal cases registered against him; whereas the facts are that he had already disclosed the fact that prosecution for offence under Sections 294, 324/34, 506 paragraph 2 IPC ended into compromise on 28.3.2011 on the basis whereof he was acquitted of these charges. In respect of charge under Section 452 of IPC, the petitioner, it is urged has been acquitted vide order dated 20.5.2014 in Criminal Case No. 506/2007. It is accordingly submitted that non-appointment of the petitioner on the ground of criminal case is not sustainable.

Respondents have opposed the relief sought. It is urged that the document Annexure P/5 is not an appointment order but

an offer of appointment subject to character/police verification and, therefore, does not create any right in the petitioner for appointment. It is urged that on Character/Police verification it was found that not only offence under Sections 452/323, 294, 336, 506 B/34 IPC and under Section 25/27 Arms Act was registered in the year 2007, cases under Gambling Act has also been registered and petitioner was punished thrice vide offence No. 115/2009 and 165/2009 under Section 3 of Gambling Act. As a result whereof the offer of appointment tendered to the petitioner was not carried forward.

Considered the rival submissions.

Question is as to whether communication dated 31.7.2013 (Annexure P-5) can be said to be an appointment or offer of appointment and if it is an order of appointment whether any right accrue in favour of the petitioner who is found to have been prosecuted for an offence under Sections 452/323, 294, 336, 506 B/34 IPC and under Section 25/27 Arms Act and has been punished on three different occasions for an offence under Section 3 of the Gambling Act.

Rule which governs the recruitment of Constable in the Police Department are G.O.P (Gazetted Orders on Police) No. 137/2012 dated 30.7.2012. Clause 17 whereof provides for:

“17. चयन सूची से नियुक्ति—

(1) सीधी भर्ती के लिये उपरोक्त बिन्दु 13 के अन्तर्गत बनाई गई चयन सूची से ही नियुक्ति की जावेगी। नियुक्ति आदेश चयन सूची में वरिष्ठता के क्रम में जारी किये जावेगे। नियुक्ति आदेश जारी करने के पूर्व उम्मीदवारों का चरित्र सत्यापन स्वास्थ्य परीक्षण कराया जावेगा

चरित्र सत्यापन में कोई विपरीत रिमार्क न होने और निर्धारित मापदण्ड के आधार पर पूर्ण रूप से स्वस्थ होने पर ही उम्मीदवार को नियुक्ति आदेश जारी कर पुलिस लाईन अथवा सम्बन्धित कार्यलय में आमद देने का आदेश दिया जावेगा।

(2) नियुक्ति के उपरान्त प्रत्येक चयनित उम्मीदवार को दो वर्ष की परिवीक्षा पर नियुक्त किया जायेगा एवं निर्धारित प्रशिक्षण पर भेजा जावेगा।

(3) जिस पद के लिये उम्मीदवार का चयन किया जायेगा केवल उसी पद पर उसे नियुक्ति दी जावेगी। उसी संवर्ग में आगे पदोन्नतियां तथा पदस्थापनाएं की जावेंगी।

(4) निर्धारित प्रशिक्षण से स्थायी या अस्थायी छूट का कोई प्रावधान नहीं है। प्रशिक्षण पर निर्धारित समय में उपस्थित न होने वाले चयनित उम्मीदवारों का नाम चयन सूची से हटा दिया जावेगा/नियुक्ति प्रस्ताव वापस ले लिया जावेगा। इस संबंध में मेडिकल प्रमाण-पत्र मान्य नहीं होगा।

(5) प्रशिक्षण के दौरान विभिन्न शारीरिक तथा बौद्धिक प्रशिक्षण, अस्त्र-शस्त्र संचालन आदि का प्रशिक्षण दिया जायेगा। इसमें किसी वजह से कोई क्षति होने पर विभाग जिम्मेदार नहीं होगा। प्रशिक्षण में प्रवेश लेने वाले प्रत्येक अभ्यर्थी को प्रशिक्षण के दौरान निर्धारित परीक्षाएं सफलता पूर्वक उत्तीर्ण करना अनिवार्य होगा। प्रशिक्षण के दौरान निर्धारित परीक्षा में अनुत्तीर्ण हुये उम्मीदवार को सम्बन्धित परीक्षाएं उत्तीर्ण करने के लिये एक अतिरिक्त अवसर प्रदान किया जावेगा।

(6) जो उम्मीदवार जिस इकाई में नियुक्त किया जावेगा वहां उसे कम से कम 5 वर्ष की सेवा पूर्ण करनी होगी, उसके बाद ही वह अन्य इकाई में स्थानान्तरण का पात्र हो सकेगा।

(7) चयनित उम्मीदवार को नियुक्ति के बाद पुलिस विभाग की अन्य शाखाओं व मध्यप्रदेश शासन के सभी विभागों के अन्तर्गत राज्य के अन्दर व राज्य के बाहर पदस्थ किया जा सकेगा। राज्य सरकार के

अन्तर्गत विभिन्न विभागों जैसे राज्य आर्थिक अपराध अन्वेषण ब्यूरो (एस. बी. आई. ई. ओ.), विशेष पुलिस स्थापना (लोकायुक्त) अथवा अन्य किसी संस्थाओं में की जाने वाली पदस्थापना में उसकी सहमति की आवश्यकता नहीं है।”

Apparent it is from sub-clause (1) of clause 17 that Character/Police verification precedes the order of appointment. In the case at hand close reading of order dated 31.7.2013 (Annexure P-5) though mentions the Unit which has been allotted to the petitioner but the appointment was subjected to stipulations contained therein, viz.,

1. चयनित उम्मीदवारों को पदस्थापना हेतु उन्हें आवंटित की गई इकाई में पुलिस अधीक्षक/सेनानी के समक्ष एक सप्ताह के अन्दर रिपोर्ट करना है। समस्त चयनित उम्मीदवार अपना फोटो युक्त पहचान पत्र भी साथ लाएं।
2. पुलिस अधीक्षक/सेनानी कार्यालय द्वारा उपलब्ध कराया गया चरित्र सत्यापन फार्म भरकर, फोटो लगाकर कार्यालय में जमा करें, ताकि चरित्र सत्यापन प्राथमिकता के आधार पर कराया जा सके।
3. पुलिस अधीक्षक/सेनानी कार्यालय द्वारा उम्मीदवार को जिला मेडीकल बोर्ड के समक्ष मेडीकल परीक्षण हेतु उपस्थित होने की तिथि प्राप्त कर मेडीकल परीक्षण कराया जावे।
4. आपके द्वारा अपना गृह जिला स्वयं बताया गया है। अतः गृह जिला के प्रमाण स्वरूप सेनानी/पुलिस अधीक्षक के कार्यालय में मूल निवासी प्रमाण पत्र प्रस्तुत करें।
5. किसी भी उम्मीदवार को सीना अथवा ऊँचाई में किसी भी प्रकार की छूट नहीं दी जायेगी।”

Thus, the said communication dated 31.7.2013 can at most be an offer of appointment rather an order of appointment

because the same has been subjected to character/police verification. The contention of behalf of the petitioner that communication dated 31.7.2013 (Annexure P-5) is a letter of appointment is negated.

The next issue now remains as to whether the petitioner who is to be enrolled in a disciplined force have a vested right for such appointment when besides having been tried for offences under Sections 452/323, 294, 336, 506 B/34 IPC and under Section 25/27 Arms Act the petitioner on three different occasions has been punished for an offence under Section 3 of the Gambling Act. In this context reference can be had of the decision of Supreme Court in the State of Madhya Pradesh and others v. Parvez Khan [2015 (1) MPHT 1] wherein their Lordships reiterating the law laid down in Commissioner of Police v. Mehar Singh [(2013) 7 SCC 685] were pleased to hold:

“13. From the above observations of this Court, it is clear that a candidate to be recruited to the police service must be worthy of confidence and 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, it cannot be presumed that he was completely exonerated. Persons who are likely to erode the credibility of the police ought not to enter the police force. No doubt the Screening Committee has not been constituted in the case considered by this Court, as rightly pointed out by learned counsel for the Respondent,

in the present case, the Superintendent of Police has gone into the matter. The Superintendent of Police is the appointing authority. There is no allegation of mala fides against the person taking the said decision nor the decision is shown to be perverse or irrational. There is no material to show that the appellant was falsely implicated. Basis of impugned judgment is acquittal for want of evidence or discharge based on compounding”

When the present case is tested on the anvil of the law laid down by Supreme Court in State of M.P. and others v. Parvez Khan (supra) and Commissioner of Police v. Mehar Singh (supra), the relief as sought for by the petitioner cannot be acceded to.

In view whereof petition fails and is dismissed.

**(SANJAY YADAV)**  
**JUDGE**

**VIVEK**