$~10 [2021]

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 01.12.2021*

\+ **W.P.(C) 11517/2021**

PAWAN SINGH ..... Petitioner
Through Mr Yashpal Rangi, Adv.

versus

COMMISSIONER OF POLICE AND ORS. ..... Respondents
Through Mrs Avnish Ahlawat with Mr N.K. Singh, Advs.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MR JUSTICE TALWANT SINGH
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):-

1. This writ petition is directed against the judgment dated 06.07.2021, passed by the Central Administrative Tribunal [in short the "Tribunal"] in O.A. No.801/2021.

2. In order to adjudicate the issues arising in the writ petition, the following brief facts need to be noticed:-

2.1 The petitioner, who is an ex-serviceman, had applied against the post of Constable (Dog Handler)[Male], advertised by the Delhi Police in 2013. Out of the total 43 vacancies advertised qua the subject post, 10% stood reserved for ex-servicemen.

2.2. The petitioner, who fell in the Other Backward Class (OBC) category, applied in the quota reserved for ex-servicemen.

2.2 Concededly, the petitioner qualified the prescribed written test and was found medically fit. This exercise took place between March 2014 and August 2014.

2.3 However, on 21.04.2015, the petitioner was served a notice, calling upon him to show cause as to why his candidature for the post of Constable (Dog Handler) Male should not be cancelled. The notice, inter alia, alluded to the fact that since the petitioner had been involved in two criminal cases, [though acquitted], he has tendency to reoffend, and, perhaps, was imbued with a violent personality.

2.4. Admittedly, *vide* communication dated 27.04.2015, the petitioner filed a reply to the aforesaid show cause notice. In the reply, the petitioner made a reference, inter alia, to the decision of this Court rendered in the matter of ***Sandeep Singh vs. Union of India and Ors.***, dated 03.12.2014, passed in W.P.(C) No.1029/2014.

2.5 The respondents however, went ahead and cancelled the petitioner's appointment, *vide* order dated 07.05.2015. This impelled the petitioner to approach the Tribunal by way of an original application i.e., O.A. No. 2484/2015

2.6 The Tribunal, *vide* order dated 08.03.2019, dismissed the aforementioned O.A. Being aggrieved, the petitioner challenged the said order in this court, via W.P.(C) No.11942/2019.

2.7. The Division Bench of this Court, *vide* order dated 15.11.2019, set aside the order of the Tribunal, and remitted the matter to the Screening Committee for a *de novo* decision.

2.8. The principal rationale provided by the respondents, in reaching the conclusion that petitioner was not suitable for the job and therefore his candidature had to be cancelled, was, as noticed above, his involvement in two criminal cases i.e., FIR No. 5/1995, registered under Section 307/34 of the Indian Penal Code, 1860 [in short "IPC"], and FIR No. 40/2020, registered under Section 379 of the IPC.

2.9. The Division Bench, as observed above, was of the view that the matter required fresh consideration.

3. The observations made by the Division Bench, in this behalf, in paragraph 11 of the order dated 15.11.2019, being pertinent; are extracted hereafter:

> *"……11. While there is no contest with the law laid down in the case of The State of Madhya Pradesh & Ors. vs. Bunty (supra),* ***it is no doubt also necessary to notice that for the first offence alleged against the petitioner in 1995, being about 16 years of age, he would have been dealt with under the provisions of the Juvenile Justice Act, 1986;*** *and Section 25 of the said statute specifically provided that notwithstanding anything contained in any other law, a juvenile who commits an offence and has been dealt with under the provisions of that statute* ***"shall not suffer disqualification, if any, attaching to a conviction of an offence under that law"; while in the petitioner's case, he was acquitted.*** *It is noteworthy that the same thread of not imputing any subsequent disqualification to a juvenile offender runs even through the Juvenile Justice (Care and Protection of Children)*

> *Act 2000 and the subsequent Juvenile Justice (Care and Protection of Children) Act 2015 (sections 19 and 24 of the two statutes respectively).* ***The second offence alleged against the petitioner under Section 379 IPC was one relating to theft with no other offence alleged; and in the second case also, the petitioner stood acquitted.*** **Furthermore, the fact the petitioner had served in the Indian Army between the period 1996 to 2012 was also not brought to the notice of the respondents, or was not considered**…."
>
> [emphasis is ours]

3.1 It is, thereafter, that the petitioner made a representation dated 16.12.2019 to the respondents, which was disposed of by the respondents, *vide* order dated 23.04.2020. This order, we are informed, was served on the petitioner, on 21.05.2020.

3.2. Being dissatisfied, the petitioner once again approached the Tribunal, *via* a fresh O.A. i.e., O.A. No.801/2021. As noticed above, the said O.A. was dismissed on 06.07.2021.

4. We have heard the learned counsel for the parties.

4.1. What has emerged, clearly, is that the petitioner was tried in respect of FIR Nos.5/1995 and 40/2000.

4.2. In FIR No. 5/1995, the petitioner was accused of committing an offence under Section 307/34 of the IPC. The record shows that, at that point in time [something which the Division Bench noted in the judgment dated 15.11.2019], the petitioner was about 16 years of age. Admittedly, the petitioner was acquitted in the said case. The concerned Court gave the benefit of doubt to the petitioner, and one Joginder Singh, who was the co-

accused.

4.3. Insofar as FIR No. 40/2000 is concerned, the same was registered under Section 379 of the IPC. However, at the time when the chargesheet was filed, the petitioner was charged with having committed an offence under Section 411 of the IPC. The accusation against the petitioner was that he was involved in the theft of a vehicle. It is relevant to note that the prosecution in that case, did not examine the Investigating Officer [in short, "IO"] as its witness. Insofar as the complainant, one Mr Ashok Redu was concerned, he deposed that the accused was unknown to him and that he was unaware, as to the person from whom the stolen vehicle had been recovered. Given this position, the case of the prosecution collapsed and the petitioner was acquitted.

4.4. Besides this, it has emerged in the course of arguments that the petitioner served in the Indian Army without blemish, between 1996 and 2012. This aspect was noticed by the Division Bench in its judgment dated 15.11.2019. In this behalf, it would be relevant to extract hereafter, certain relevant entries made by the Indian Army in the petitioner's discharge book:

> *"**SERVICE PARTICULARS***
>
> *4. Enrolled Indian Army/Navy/Airforce as INF SOL on 10-06-96.*
> *5. Date of Attestation 28-08-97*
> *(Date of oath of Allegiance taken)*
> *6. **Total Service 15 Years 10 Months 21 days.***
> *7. Released/Retired/Discharged from Service on 30-04-2012(AN) by the order of OIC, Records The JAT Regiment.*
> *8. Status of the Individual as Ex-Serviceman as per current*

definition:- Ex-Serviceman.

9. *Reasons for Release/* ***Discharge****/ Dismissal* ***from service under Rule 13(3) III (iii)(a)(i) read in Conjunction with Rule 13(2A) of AR 1954 on Medical Grounds***.

13. ***War Service showing Theatre of Operation OP HIFAZAT, OP RHINO, OP RAKSHAK, OP MEGHDOOT.***

16. ***Medal/Decoration/Commendations/Mention-in-Despatches. Soth INDEPANN MEDAL, SIACHEN GLACIER MEDAL, 9 Yrs LSM.***

17. ***Character assessed at the time of retirement. 'EXEMPLARY'.***

QUALIFICATION & COURSES

18. ***Civil Educational Qualification:***
    (a) At the time of Joining Service SECY
    (b) Acquired while in service SR SECY
19. ***Service Test & Examination MR-Ist***
20. ***Specialist/Service Course PT ASST INSTRS BASIC COURSE SER No.1 – BZ"***

[emphasis is ours]

4.5 It is important to note that the discharge book was part of the record placed before the Tribunal in O.A. No. 801/2021. It appears that the Tribunal overlooked this crucial piece of material, and formed a view that the petition could not be entertained as the petitioner, even after being inducted in the Indian Army, committed a crime and was acquitted on the ground of the witnesses turning hostile.

4.6. To our minds, the approach adopted by the Tribunal was not

appropriate, in the given case. The reason we say so is that when the Division Bench remitted the matter to the Screening Committee [*via* order dated 15.11.2019], the said committee was required to re-examine the matter having regard, inter alia, to the fact that the petitioner had served in the Indian Army for more than 15 years i.e., between 1996 and 2012.

4.7 As would be evident from the entries made in the discharge book, the fact that the petitioner had won commendations, medals and certificates and had taken part in four [4] war like operations, was not adverted to, either by the respondents or the Tribunal. In our opinion, the respondents should have examined the antecedents of the petitioner, while he was in service with the Indian Army.

4.8. Although the petitioner's acquittal in the second case [i.e., FIR No.40/2000] was because the witness i.e., the complainant had turned hostile, what was lost sight of was that the accusation against the petitioner was one of having stolen a vehicle, and the prosecution having recovered the vehicle, did not produce the person who had recovered or enabled recovery of the vehicle. The prosecution failed to examine the IO. Therefore, the respondents could not have concluded that because the witness may have been pressured, the prosecution's case went awry. It is possible the prosecution did not have case to begin with. In such a situation, insofar as the petitioner is concerned, his defence, for which he has been given the benefit of doubt, could only have been that he was not involved in the offence *qua* which the allegation was levelled against him. Offender profiling is not unknown to law. It is probable that the petitioner could have been involved in the second case because of his brush with law as a juvenile.

5. Before we conclude, we may observe that with regard to the allegations made against the petitioner, which is the subject matter of the aforementioned FIRs, the approach adopted by the Tribunal and the respondents was not what the law demanded of them.

5.1. As noticed hereinabove, the first FIR was registered against the petitioner when he was a juvenile; being a child below the age of eighteen years. This was an offence, which the petitioner allegedly committed, in or about 1995, when he was about sixteen years of age.

5.2. Undoubtedly, on the date, when the offence was said to have been committed by the petitioner, he was a "juvenile", as defined under the Juvenile Justice (Care and Protection of Children) Act, 2015 [in short "the 2015 JJ Act"]. [1]Section 3(xiv) of the 2015 JJ Act mandates [as one of the guiding principles] that a fresh start should be afforded to a child, who passes through the juvenile justice system by erasing all past records, save and except, where special circumstances demand otherwise.

5.3. This aspect was emphasized by the Supreme Court in a judgment rendered in ***Union of India and others versus Ramesh Bishnoi,*** (2019) 19 SCC 710, where the appointment of the concerned person, i.e., one Ramesh

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[1] **Section 3 General principles to be followed in administration of Act**—The Central Government, the State Governments, the Board, and other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the following fundamental principles, namely:—

> (xiv) Principle of fresh start: All past records of any child under the Juvenile Justice system should be erased except in special circumstances.

Bishnoi was cancelled on the ground that a criminal case had been lodged against him under the provisions of Sections 354, 447 and 509 of the IPC. In this case as well, at the time when the alleged offence was committed, Ramesh Bishnoi was well below eighteen years of age.

5.3(a). In the trial that ensued, Ramesh Bishnoi was acquitted. The Supreme Court, while noting that the offence could not be proved as neither the girl against whom the alleged offence had been committed nor her parents stepped into the witness box, which resulted in acquittal of Ramesh Bishnoi, made the following observations, having regard to the principle of fresh start engrafted in Section 3(xiv) of the 2015 JJ Act:

> "**8.** From the facts, it is clear that at the time when the charges were framed against the respondent, on 30-6-2009, the respondent was well under the age of 18 years as his date of birth is 5-9-1991. Firstly, it was not disputed that the charges were never proved against the respondent as the girl and her parents did not depose against the respondent, resulting in his acquittal on 24-11-2011. Even if the allegations were found to be true, then too, the respondent could not have been deprived of getting a job on the basis of such charges as the same had been committed while the respondent was juvenile. **The thrust of the legislation i.e. the Juvenile Justice (Care and Protection of Children) Act, 2000 as well as the Juvenile Justice (Care and Protection of Children) Act, 2015 is that even if a juvenile is convicted, the same should be obliterated, so that there is no stigma with regard to any crime committed by such person as a juvenile. This is with the clear object to reintegrate such juvenile back in the society as a normal person, without any stigma. Section 3 of the Juvenile Justice (Care and Protection of Children) Act, 2015 lays down guidelines for the Central Government, State Governments, the Board and other agencies while**

implementing the provisions of the said Act. In clause (*xiv*) of Section 3, it is clearly provided as follows:

"**3. (*xiv*) Principle of fresh start**: All past records of any child under the juvenile justice system should be erased except in special circumstances."

9. In the present case, it is an admitted fact that the respondent was a minor when the charges had been framed against him of the offences under Sections 354, 447 and 509 IPC. It is also not disputed that he was acquitted of the charges. However, even if he had been convicted, the same could not have been held against him for getting a job, as admittedly, he was a minor when the alleged offences were committed and the charges had been framed against him. Section 3(*xiv*) provides for the same and the exception of special circumstances does not apply to the facts of the present case.

10. Further, the case against the respondent is not with regard to the suppression of any conviction or charges having been framed against him. The respondent had very fairly disclosed about the charges which had been framed and his acquittal on the basis of no evidence having been adduced by the complainant against the respondent. In our considered view, the same can also not be said to be a suppression by the respondent, on the basis of which he could be deprived of a job, for which he was duly selected after following the due process and appointment having been offered to him."

[emphasis is ours]

5.4. Therefore, clearly, the respondents could not have, in our view, taken cognisance of the allegations contained in the first FIR being FIR No. 5/1995. which brings us to the second FIR.

5.5. Insofar as the second FIR is concerned, i.e., FIR No. 40/2000 where,

ultimately, the chargesheet was filed under Section 411 of IPC, the respondents and the Tribunal have adopted an approach, which is suggestive of the fact that, although, the petitioner was acquitted in a criminal trial by procedure established by law i.e., by a court that was invested with the necessary jurisdiction, the acquittal was in a sense tinged.

5.6. The fundamental principle of criminal law is that an accused is innocent unless proved guilty beyond reasonable doubt. It is required to be borne in mind and this is where, in our opinion, both the Tribunal and the respondents have gone wrong that where material witnesses are produced in the course of the trial and they do not support the case of the prosecution, the same cannot be categorized as "technical acquittals". This would also apply where prosecution fails to produce witnesses especially police personnel, who are relevant to the case, set up by the prosecution.

5.7. It cannot be presumed that because a witness does not support the case of the prosecution, he is necessarily in collusion with the accused.

5.8. It is, therefore, necessary to emphasise that, although verification of character and antecedents is important, while assessing the suitability of the candidate [in this case, the petitioner], the assessment has to be carried out on the basis of an objective criteria and by taking into consideration all relevant aspects. [See ***Avtar Singh vs. Union of India and Others***, (2016) 8 SCC 471, paragraph 34]

5.9. As noticed above by us, the respondents and the Tribunal failed to take into account the relevant material, while forming a view in the matter.

6. Before we conclude, we may like to emphasise the importance of mainstreaming those, who have had a brush with law.

6.1. In our opinion, it is important that persons who have committed crimes are given a chance of joining the mainstream i.e., the civil society/community. Although the instant case is not a case of conviction, the State needs to evolve a policy whereby even persons, who have served their prison sentence [hereafter referred to as "such persons"], are allowed meaningful re-entry into the society/community, which can only occur if issues which concern employment, health and housing are addressed by the State.

6.2. It is hard to fathom a situation where such persons will be employed by an individual or a private enterprise. It may be, because of the gravity of the offence, with which an individual is charged, that she/he is not suitable for certain jobs, but that cannot be the reason for the State not to create avenues for jobs which suit a person's profile. Denying jobs to such persons will trigger recidivism, and, perhaps, put them in circumstances where they will re-offend and cause greater harm to the society/community.

6.3. It is, therefore, our view that respondent No. 1/GNCTD should work on formulating a rehabilitation policy for such persons.

7. Thus, given the fact that the aforementioned crucial aspects [as applicable to this case] having not been examined either by the respondents or the Tribunal, we are inclined to set aside the order of the Tribunal dated 06.07.2021 as well as the order dated 23.04.2020, passed by the respondents, and remit the matter to the respondents for a fresh consideration.

7.1. It is ordered accordingly.

7.2. The respondents will ascertain the impact of the entries made in the petitioner's discharge book by the Indian Army.

7.3. The respondents will also have liberty to make further inquiries with the concerned personnel in the Indian Army, under whom the petitioner would have served, and, then, proceed to form a view as to the suitability of the petitioner qua the subject post.

7.4. Needless to add, the respondents will conclude the aforesaid exercise with due expedition, though not later than twelve [12] weeks from the receipt of a copy of this judgment.

8. The writ petition is disposed of in the aforesaid terms.

9. Mrs Ahlawat will ensure that a copy of this judgment is placed before the Home Minister, Government of National Capital Territory of Delhi, in the background of the observations made in paragraph 6.1, 6.2 and 6.3.

10. Parties will act based on the digitally signed copy of this judgment.

RAJIV SHAKDHER, J

TALWANT SINGH, J

DECEMBER 1, 2021/pmc

Click here to check corrigendum, if any