A.F.R.

Neutral Citation No. - 2024:AHC:192065-DB

Court No. - 39

Case :- WRIT - A No. - 4810 of 2021

Petitioner :- Pradeep Kumar
Respondent :- State Of U P And Another
Counsel for Petitioner :- Siddharth Khare,Sr. Advocate
Counsel for Respondent :- C.S.C.

Hon'ble Saumitra Dayal Singh,J.
Hon'ble Donadi Ramesh,J.

1. Heard Sri Ashok Khare, learned Senior Counsel assisted by Sri Umang Srivastava, learned counsel for the petitioner; Ms. Kritika Singh, learned Additional Chief Standing Counsel for the State-respondents and Sri Ashish Mishra, learned counsel for the High Court.

2. Present writ petition has been filed for the following relief :-

> *"(a) Issue a writ, order or direction in the nature of certiorari quashing the order of the State Government dated 26.09.2019 (Annexure No.11) and the order of High Court on administrative side dated 09.07.2020 (Annexure No.8);*
>
> *(b) Issue a writ, order or direction of a suitable nature commanding the respondents to forthwith grant appointment to the petitioner as Additional District Judge in U.P. Higher Judicial Service in pursuance of his selection in U.P. Higher Judicial Service (Direct Recruitment) Examination-2016, within a period to be specified by this Hon'ble Court, with all consequential benefits with effect from the date from which other selected candidates have been appointed".*

3. The undisputed facts of the case are, the petitioner applied for selection to the U.P. Higher Judicial Service under the U.P. Higher Judicial Service (Direct Recruitment) Examination, 2016. In that application, the petitioner disclosed the facts pertaining to Session Trial No.69 of 2004, State versus Pradeep Kumar @ Akash Verma, under Sections 3, 6, 9 of Official Secrets Act & Section 120-B IPC and Session Trial No.236 of 2004, State versus Pradeep Kumar @ Akash Verma, under Section 124-A IPC, arising out of Case Crime No.268 of 2002, Police Station Kotwali,

District Kanpur Nagar. It was thus disclosed that the present petitioner was charged and tried at those session trials. It was also disclosed, vide judgement and order dated 06.03.2014, passed by the Additional Sessions Judge, Court No.24, Kanpur Nagar, the petitioner was acquitted, at those trials.

4. The petitioner participated in the selection process. He was declared successful. He secured merit position twenty-seven. On 18.08.2017, the High Court forwarded to the State Government the list of selected candidates and recommended their appointments. Appointment letter was not issued to the petitioner. At that stage, the petitioner approached this Court by means of **Writ-A No.23371 of 2018, Pradeep Kumar versus State of U.P. & others**. It was disposed of with the following directions: -

> *"In view of the aforesaid facts and circumstances, we dispose of this writ petition with the direction to the respondent No.1 to place the matter of appointment of the petitioner in the Higher Judicial Service of the State of U.P. pursuant to the recommendation of the High Court dated 18.8.2017 before the Hon'ble Governor of the State immediately within two weeks and have his opinion within next one month, after necessary consultation with any other authority, as may be deemed proper, and thereafter to proceed, if necessary, with the appointment.*
>
> *In the end, we saddle the respondent No.1 with an exemplary cost of Rs.10 Lakh for the indifferent attitude shown by it in the matter of appointment of the Judicial Officer and for remaining inactive on the recommendation of the High Court for a period of two years. The said cost is directed to be deposited in the Registry of the Court within a period of one month to be utilized for the benefit of the litigants by the High Court".*

5. That order was not challenged. Thereafter, the matter was considered by the State Government. Vide Office Memorandum dated 26.09.2019, the State Government has declined to offer appointment to the petitioner. That Office Memorandum has been communicated to the petitioner, by the High Court, vide its further communication dated 09.07.2020. Hence this writ petition.

6. Submission of learned Senior Counsel for the petitioner is, other than the fact occurrence of two criminal cases lodged against the petitioner, leading to two sessions trials (noted above) faced by the petitioner, there is

no adverse circumstance existing or considered by the State Government in declining to issue the appointment letter to the petitioner. As to the criminal trials faced by the petitioner, it has been strenuously urged that the entire prosecution story was concocted. It has been found to be false by learned trial court, in its judgement and order dated 06.03.2014. Referring to paragraph nos. 27, 28, 29, 30 and 31 of that judgement and order passed by the learned trial court, it has been submitted, the prosecution could not prove : (i) that the documents i.e. copies of alleged maps produced at the trials, were confidential or secret documents; (ii) that those documents had been recovered from the petitioner; (iii) the documents produced at the trials were the same as were allegedly recovered from the petitioner; (iv) that the petitioner called or spoke to any foreign national or passed on any information, telephonically; (v) that the petitioner spoke to or was in contact with any foreign national; (vi) that there existed any element of conspiracy; (vii) that ingredients of offence alleged under Section 124-A IPC, existed. Reliance has been placed on the decision of the Supreme Court in **Avtar Singh Vs. Union of India & Ors. (2016) 8 SCC 471 and Joginder Singh Vs. Union Territory of Chandigarh and Others, (2015) 2 SCC 377.**

7. On the other hand, learned Additional Chief Standing Counsel would contend that the allegations levelled against the petitioner are most serious. The petitioner was a spy and worked for an enemy nation. He was apprehended on a joint operation of the Special Task Force (STF) of the State Government and Military Intelligence. He was charged under the Official Secrets Act. Though, the criminal trials failed, the State Government had enough material to reach a conclusion that the petitioner's character could not be certified. He was wholly undeserving of the appointment.

8. Learned Additional Chief Standing Counsel has also placed on record a copy of the report submitted by the Military authority to the

District Magistrate, Kanpur Nagar, U.P. (dated 25.7.2019). The same has been retained on record. It reads as below:

"District Magistrate
Kanpur Nagar (UP)

COMMENTS ON DISTRICT MAGISTRATE KANPUR NAGAR LETTER NO 1770-B/ST-DM-2019 DATED 25 JUL 2019

1. Reference to your office letter No 1770-B/ST-DM-2019 dt 25 Jul 2019.

2. Comments on your office letter quoted above are given in succeeding paras.

3. Brief of the Case.

(a) Based on the records held with concerned Army authorities, there were inputs received from sister intelligence agencies, Pradeep Kumar @ Akash Verma was on the radar of Military Intelligence (MI) in 2002 for involvement in Pakistar espionage activities. He was a graduate in Law and was unemployed at that time. His father was also found to be suspended from the service of an additional Judge for charges of bribery in 1990. Pradeep Kumar was apprehended in a joint operation by STF and Military Intelligence on 13 Jun 2002. At the time of arrest, he was residing in Kanpur (UP).

(b) Information avail at the time apprehension:-

(i) Name : Pradeep Kumar s/o Mr. Jagdish Prasad.

(ii) Age : 27 Years.

(iii) Profession : Unemployed.

(iv Marital Status : Unmarried.

(v) Residence Address: House No 43/122, Rajendra Mohal Chowk Police Station Kotwali, Kanpur Nagar

(vi) Education : Graduation from DAV College, LLB, Diploma in Computer Plg from AITC and Internet Training.

(vii) Religion : Hindu.

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4. As per inputs on record, Pradeep Kumar in search of easy money options had come in contact of an individual namely Faizan Illahi, s/o Imam of Badi Masjid at Meston Road. Faizan was running a Photostat shop at that time. Faizan asked Pradeep to provide him some information on telephone in exchange of money. Thereafter, Pradeep started receiving PIO calls on his landline No 0512-366701 and became part of the PIO network. Reportedly, Pradeep Kumar passed sensitive information like names of units and officers of Kanpur cantonment for Rs 18,000/-. He proceeded on to open a cyber café and share more information with the handlers. He was identified and neutralized in the initial stages itself and thereafter handed over to the local police Kanpur Nagar. The recovered documents from the individual including data of Kanpur Cantonment and a service map were found to be of classified nature.

5. The case was closed by the Army authorities in 2002.

6 Further details regarding the apprehension and the charge sheet filed may be sought from STF, UP or district police.

7. For information and necessary action please.

(XXX)
Colonel, Administrative Commandant"

9. She has also relied on the contents of the paragraph 14 of the counter affidavit filed by the State Government. It reads as below:

> *"14. That the contents of paragraph nos.29 and 30 of the Writ Petition are not admitted hence denied. In reply, it is submitted that letter dated 27.07.2019 of the Military Intelligence has been received along with the report of the District Magistrate, Kanpur dated 28.07.2019, in which it has been mentioned that the allegations of spying against India had been leveled upon the petitioner, which in itself is serious allegation and the then Army Officer had proved the allegation as P.W. 5 against the petitioner in the criminal case against him. District Magistrate, Kanpur did not find the petitioner as deserving (suitable) for the post in his above report dated 28.07.2019. Apart from it, the petitioner has concealed material facts in the online application form filed by him for Uttar Pradesh Higher Judicial Services Examination – 2016 for police verification. In view of the above mentioned facts and circumstance candidature of the petitioner has been cancelled vide office order dated 26.09.20219 of Niyukti Anubhag-4."*

10. Therefore, reasonable doubt exists as to the character of the petitioner. Reliance has also been placed on the fact that the petitioner's father - a judicial officer, was dismissed from service on charges of corruption.

11. We have heard learned counsel for the parties and perused the record. In **Avtar Singh (supra)**, a slightly different issue was examined by the Supreme Court – whether, upon suppression of information or upon not submitting or submitting false information, in the verification form, pertaining to past criminal conviction or criminal prosecution or arrest or pendency of a criminal case, a right to appointment earned pursuant to selection/examination etc., may be defeated. In that it was concluded as below:

> *"**38.** We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:*
>
> ***38.1.** Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.*
>
> ***38.2.** While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.*
>
> ***38.3.** The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.*

38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.

38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. In case the employee is confirmed in service, holding departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11. Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.

39. We answer the reference accordingly. Let the matters be placed before an appropriate Bench for consideration on merits."

Those being contingencies other than acquittal, we may examine the matter a little further.

12. In **Deputy Inspector General of Police & Anr. vs S. Samuthiram, (2013) 1 SCC 598**, the Supreme Court considered the meaning and effect of the phrases "honourable acquittal", "acquitted of blame" and "fully exonerated". It found those phrases are not different concepts under any statutory law rather, they are phrases coined by judicial pronouncements. Thus, an order of "honourable acquittal" is one where an accused though charged and put to trial, faces that trial on the full strength of the prosecution evidence. Thereafter, the trial court offers full consideration to that evidence and finds (as a fact) that the prosecution had "miserably failed to prove the charges levelled against the accused". In that regard, it first observed as below:

> ***"24.*** *The meaning of the expression "honourable acquittal" came up for consideration before this Court in RBI v. Bhopal Singh Panchal [(1994) 1 SCC 541 : 1994 SCC (L&S) 594 : (1994) 26 ATC 619] . In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted".*
>
> *(emphasis supplied)*

13. Then, applying that test, in **Commissioner of Police, New Delhi & Anr. vs Mehar Singh, (2013) 7 SCC 685**, two contingencies came up for consideration - whether civil consequences arising from an alleged transaction may be avoided, where the charged person may either be acquitted for reason of compromise reached between the parties or upon the prosecution witness turning hostile. It was held, exoneration from civil

consequences may not arise in either of the above noted two contingencies. It was held as below:

> *"**34.** The respondents are trying to draw mileage from the fact that in their application and/or attestation form they have disclosed their involvement in a criminal case. We do not see how this fact improves their case. Disclosure of these facts in the application/attestation form is an essential requirement. An aspirant is expected to state these facts honestly. Honesty and integrity are inbuilt requirements of the police force. The respondents should not, therefore, expect to score any brownie points because of this disclosure. Besides, this has no relevance to the point in issue. It bears repetition to state that while deciding whether a person against whom a criminal case was registered and who was later on acquitted or discharged should be appointed to a post in the police force, what is relevant is the nature of the offence, the extent of his involvement, whether the acquittal was a clean acquittal or an acquittal by giving benefit of doubt because the witnesses turned hostile or because of some serious flaw in the prosecution, and the propensity of such person to indulge in similar activities in future. This decision, in our opinion, can only be taken by the Screening Committee created for that purpose by the Delhi Police. If the Screening Committee's decision is not mala fide or actuated by extraneous considerations, then, it cannot be questioned".*
>
> *(emphasis supplied)*

14. As to the difference between an acquittal and a honourable acquittal and its effect, in **Union Territory, Chandigarh Administration & Ors. Vs Pradeep Kumar & Anr. (2018) 1 SCC 797**, the Supreme Court again considered the law laid down by it in **S. Samuthiram (supra)** and **Management of Reserve Bank of India, New Delhi Vs Bhopal Singh Panchal, (1994) 1 SCC 541**. It observed as below:

> *"10. The acquittal in a criminal case is not conclusive of the suitability of the candidates in the post concerned. If a person is acquitted or discharged, it cannot always be inferred that he was falsely involved or he had no criminal antecedents. Unless it is an honourable acquittal, the candidate cannot claim the benefit of the case……"*
>
> *(emphasis supplied)*

15. In **Joginder Singh (supra)**, the appointment against selection earned at a public examination was denied for reason of criminal trial faced. There also, an order of honourable acquittal had been earned by the selected candidate/petitioner. In that, the Supreme Court reasoned as below:

> *"24……..Thus, as rightly pointed out by the trial court that as the prosecution has failed to prove the charges against the appellant by adducing cogent evidence, therefore, the police authorities cannot be allowed to sit in judgment over the findings recorded by the Sessions Court in its judgment, wherein the appellant has been honourably acquitted. Denying him the appointment to the post of a Constable is like a vicarious punishment, which is not permissible in law, therefore, the impugned judgment and order [UT, Chandigarh v. Central Administrative Tribunal, (2008) 2 PLR 565] passed by the High Court is vitiated in law and liable to be set aside."*

(emphasis supplied)

16. In **Mohammad Imran. Vs. State of Maharashtra & Ors., (2019) 17 SCC 696**, that petitioner was also selected for appointment in judicial service. Meanwhile, he had been charged with commission of offence under Sections 363, 366 and 34 IPC. He was honourably acquitted of that charge, by the criminal court. Yet, his character was not verified for reason of his having faced that criminal trial. Negating the objection raised by the State-respondents, the Supreme Court reasoned as below:

> *"9…..The report received reveals that except for the criminal case under reference in which he has been acquitted, the appellant has a clean record and there is no adverse material against him to deny him the fruits of his academic labour in a competitive selection for the post of a judicial officer. In our opinion, no reasonable person on the basis of the materials placed before us can come to the conclusion that the antecedents and character of the appellant are such that he is unfit to be appointed as a judicial officer."*
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> *(emphasis supplied)*

17. The Delhi High Court in **Mahesh Kumar Vs. Union of India and Others, 2023 SCC Online Del 2113**, observed as below:

> *"**19.** In trial for criminal offences, the accused is presumed to be innocent unless proved guilty and it is the duty of the prosecution for establishing the actus reus of the crime as well as the mens rea. When the accused is acquitted after full consideration of prosecution evidence and the prosecution miserably fails to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted as held in Inspector General of Police v. S. Samuthiram [Inspector General of Police v. S. Samuthiram, (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229].*
>
> ***20.** There can be no second opinion that each case is to be scrutinised on its own facts through the designated officers and in case of the police force, the scrutiny needs to be more closer since the police officials are under a duty to tackle lawlessness. However, at the same time, generalisations cannot be made to deny the offer of appointment merely on the basis of registration of FIR without considering the reasoning in the judgment and the relevant facts and circumstances. Apart from the registration of the aforesaid FIR, there is nothing on record to reflect that the antecedents or the conduct of the petitioner disqualified him in any manner for the appointment to the post of SI (EXE), Delhi Police. It may be difficult to presume that the petitioner would be a threat to the discipline of the police force merely on account of aforesaid FIR and also considering the fact that petitioner had already joined on selection as SI (EXE) in CISF in an exam conducted by SSC. It does not appear to be logical that the petitioner who was found fit for appointment to the post of SI in CISF may be held to be unsuitable for appointment in Delhi Police on the basis of exam conducted by the same recruiting agency i.e. SSC."*

18. Again, in **Manish Saini Vs. Government of NCT of Delhi and Another, 2024 SCC Online Del 7599,** the Delhi High Court had the occasion to consider similar lingering suspicion in the context of honourable acquittal earned by the selected person. It observed as below:

> *"38. The decision of the Screening Committee, as contained in the order dated 24 September 2019, is completely at odds with the judgment of the learned ASJ, and is inherently presumptuous. It defeats comprehension as to how the Screening Committee could allege that the petitioner was "involved in serious nature of offence like attempt to robbery" when the learned ASJ has held otherwise. The alleged possession, by the petitioner, of spring actuated knives, which appears to be what has most disturbed the Screening Committee, has also been disbelieved by the learned ASJ. The use of the words "as such" indicates that it was the alleged possession of knives by the accused, including the petitioner, which has most influenced the Screening Committee to hold him unfit for appointment.*
>
> *39. We are constrained to hold that the Screening Committee has effectively sat in appeal over the judgment of the learned ASJ, which it was not competent to do. It is nobody's case that the petitioner's antecedents were otherwise murky. The only blot on his escutcheon, if one may call it that, was the criminal trial in which he found himself involved. The Screening Committee had, therefore, before it only the judgment of the learned ASJ on the basis of which it had to determine the suitability of the petitioner for appointment as SI. It was, therefore, required to scrupulously appreciate the judgment of the learned ASJ, and we are of the considered opinion that it has failed to do so. The observations of the Screening Committee are totally at variance with those of the learned ASJ and, therefore, we cannot accord, to the decision of the Screening Committee, the respect which it otherwise commands.*
>
> *40. According to us, therefore, the decision of the Screening Committee suffers from non-application of mind and is, therefore, perverse, as understood in law, as it fails to appreciate the material before it in the proper perspective."*

19. In the present case, same issue was first raised at the initial stage. The petitioner approached this Court by means of earlier **Writ-A No 23371 of 2018 (Pradeep Kumar Vs. State of U.P. and 3 Others).** The Court took note of Rule 13 of the governing Rules, the order of honourable acquittal passed in favour of the petitioner and thereafter issued the direction, as extracted above.

20. At present, other than the self-same material that was considered at the trial faced by the petitioner, no other or further material has come into existence and no other or further material has been considered by the State authorities, to not certify the character of the petitioner. Mere repetition of words or reiteration of the suspicion or belief, and/or continued reliance on the self-same material that gave rise to the criminal trial, is irrelevant. In absence of any foundational or basic relevant fact being proven or

established before the learned trial Court, on strength of such material, mere reliance on the seriousness of the charge levelled, causes no consequential legal effect.

21. Next, it cannot be denied that the petitioner faced a heavy charge of espionage, and the matter required careful consideration by the State authorities, at the same time, it remained material and relevant that the petitioner was “honourably acquitted” at the criminal trial, with no element of truth found in the prosecution story on most fundamental/vital aspects of the allegation that had a direct bearing on the petitioner’s moral character. Other than the fact of his arrest proven, the prosecution could neither establish that the documents/copies of alleged maps were confidential nor that any secret document had been recovered from the petitioner nor that the documents produced at the trial were the same as had been recovered from the petitioner nor that the petitioner had called or spoken or met any foreign spy/agent or person nor it was proven that the petitioner acted inimical to the interest of the country nor that he was part of any conspiracy and nor that he had committed any offence under Section 124-A IPC.

22. In the present case, none of the witnesses produced by the prosecution turned hostile. On the contrary, they sought to prove the prosecution case, as presented to the Court. The trial court made full appraisal of the said evidence and thereafter reached its conclusions as below:

> *“27. पत्रावली पर इस सम्बन्ध में कोई साक्ष्य उपलब्ध नहीं है, जिससे यह साबित हो सके कि कथित प्रदर्शित दस्तावेज प्रदर्श क-6 एवं क-7 किस मूल अभिलेख / नक्शे की छाया प्रतियां हैं। साक्षी पी०डब्लू०-5 मेजर ए०एम० सिंह ने अपनी प्रतिपरीक्षा के पृष्ठ-5 पर यह कहा है कि 'सेना के मूल नक्शे सेना के कार्यालय में रहते हैं और प्रस्तुत नक्शे पर सेना से सम्बन्धित शब्द अंकित नहीं है और नक्शे पर कानपुर छावनी का तथ्य भी अंकित नहीं है।" आगे इस साक्षी ने यह भी कहा है "कि सेना के नक्शे बगैर अधिकारी की अनुमति के बाहर नहीं जा सकते हैं और न ही छाया प्रतियां बनायी जा सकती हैं।" उक्त दस्तावेजों के परिशीलन से यह प्रतीत होता है कि उक्त दस्तावेजों में कानपुर कैन्टोनमेन्ट की बाजार एरिया, बंगला एरिया, सिविल और मिलेट्री की जनसंख्या, सडकों की संख्या, अस्पताल, मंदिर, मस्जिद, गुरुद्वारा, चर्च, सिनेमा हाउस, मार्केट इत्यादि तथ्यों का उल्लेख है और नक्शे की जो फोटो प्रति दाखिल है, उसमें कोई विशिष्ट चिन्ह दूरी के सम्बन्ध में अंकित नहीं है और यह नक्शा सामान्य तौर से प्रत्येक जगह पर नक्शे के रूप में पाया जा सकता है।*
>
> *उक्त नक्शा एवं दस्तावेज किस प्रकार गोपनीय थे, के बिन्दु पर विद्वान सहायक जिला शासकीय अधिवक्ता द्वारा यह कहा गया है कि उक्त नक्शा एवं दस्तावेज को पी०डब्लू०-5 मेजर ए०एम० सिंह ने अपनी रिपोर्ट प्रदर्श क-5 में बताया है। इसके प्रतिवाद में विद्वान अधिवक्ता बचावपक्ष द्वारा यह कहा गया है कि प्रश्नगत मामले में नक्शा एवं दस्तावेज किसी भी प्रकार से गोपनीय नहीं है, क्योंकि कानपुर कैन्टोनमेन्ट के विषय में कोई भी जानकारी इण्टरनेट पर उपलब्ध है तथा उक्त प्रकार का कोई भी नक्शा सामान्य रूप से बाजारों एवं*

गूगल मैप से प्राप्त किया जा सकता है और उसको प्रत्येक व्यक्ति कहीं से भी प्राप्त कर सकता है। चूंकि अभियोजन का सम्पूर्ण कथानक कि उक्त दस्तावेज अर्थात् प्रदर्श क-6 एवं क-7 गोपनीय दस्तावेज हैं, मूल रूप से पी०डब्लू०-5 मेजर ए०एम० सिंह के साक्ष्य पर निर्भर है। अतः इस सम्बन्ध में मेरे द्वारा पी०डब्लू०-5 मेजर ए० एम० सिंह के साक्ष्य का परिशीलन किया गया। इस साक्षी ने प्रदर्श क-5 में दस्तावेजों को सैन्य दस्तावेज नहीं बताया है। अपने साध्य में उनके द्वारा यह भी कहा गया है कि उक्त दस्तावेज सैन्य विभाग के दस्तावेज हैं, जबकि वे कानपुर के सबसे वरिष्ठ इन्टेलीजेन्स आफिसर के रूप में तैनात थे, जो पांच जिलों से सम्बंधित मामले के इन्टेलीजेन्स आफिसर थे और उन्हें ही निर्णय देना पड़ता था। वे यह भी स्वीकार करते हैं कि सेना के मूल नक्शे सेना के कार्यालय में रहते हैं तथा नक्शे में कानपुर छावनी भी अंकित नहीं है। ऐसे नक्शे सेना के सभी कार्यालयों में रहते हैं। सेना के नक्शे बिना अधिकारी की अनुमति के बाहर नहीं निकाले जा सकते हैं और न ही उनकी छाया प्रतियां करायी जा सकती हैं। वे यह भी कहते हैं कि कानपुर स्थित सेना के किसी कार्यालय के सैन्य अधिकारी अथवा कर्मचारी के विरूद्ध इस सम्बन्ध में कोई कार्यवाही नहीं की गयी है, जिनके द्वारा कोई नक्शा चोरी से निकालकर फोटो प्रति करा दी गयी हों उपरोक्त के अतिरिक्त उनके द्वारा यह भी स्वीकार किया गया कि केवल संस्थान के नाम लिखने से कागज गोपनीय दस्तावेज के श्रेणी में नहीं आता है, लेकिन जो सूचनायें प्रदर्श क-6 में अंकित हैं, उसके आधार पर यह गोपनीय दस्तावेज की श्रेणी में आता है। प्रदर्श क-6 के परिशीलन से स्पष्ट होता है कि उक्त कागज में कानपुर कैन्टोनमेन्ट के बाजार एरिया, बंगला एरिया, मंदिर, मस्जिद इत्यादि का उल्लेख है। यह एक सामान्य दस्तावेज है, जो किसी भी तैयारी करने वाले प्रतियोगी के पास भी प्राप्त हो सकता है और विभिन्न साक्षात्कारों में भी यह प्रश्न पूछा जाता है और उक्त जानकारियां इण्टरनेट पर आसानी से उपलब्ध है। प्रदर्श क-6 में कानपुर में तैनात सैनिकों की संख्या, तोपों का विवरण एवं युद्धक विमानों आदि की संख्या का कोई उल्लेख नहीं है। अतः ऐसी स्थिति में मेरा यह मत है कि कथित दस्तावेज गोपनीय दस्तावेज की श्रेणी में आता है, के सम्बन्ध में अभियोजन की तरफ से कोई पुष्टिकारक साक्ष्य प्रस्तुत नहीं किया गया है और इन दस्तावेजों को गोपनीय दस्तावेजों की श्रेणी में नहीं माना जा सकता है। इससे अभियोजन कथानक का मूल प्रतिकूल रूप से प्रभावित होता है और जहां मामले में परिवाद दाखिल न किया गया हो, यह समस्त कार्यवाही को धूल-धूसरित कर देता है और अभियोजन कथानक में गंभीर दोष उत्पन्न होता है।

28. अब मेरे द्वारा अभियुक्त के विद्वान अधिवक्ता के इस तर्क पर विचार किया गया कि कथित पुलिन्दे वस्तु प्रदर्श-4 पर अभियुक्त के हस्ताक्षर नहीं है। इस सम्बन्ध में मेरे द्वारा साक्षी पी०डब्लू०-1 उपनिरीक्षक लल्लूराम त्यागी के साक्ष्य का परिशीलन किया गया।

वस्तु प्रदर्श-4 पुलिन्दे पर अभियुक्त के कोई हस्ताक्षर पुलिस दल द्वारा नहीं कराये गये और न ही इस बात का कोई उल्लेख प्रदर्श क-1 फर्द बरामदगी एवं गिरफ्तारी में है। साक्षी पी०डब्लू०-1 वादी ने अपनी मुख्य परीक्षा में भी पुलिन्दे पर अभियुक्त के हस्ताक्षर होने के विषय में कोई कथन नहीं कहे हैं। इस साक्षी ने अपनी प्रतिपरीक्षा के पृष्ठ-18 पर यह स्वीकार किया है कि "जिस कपड़े में सील किया था, उस पर मुल्जिम के हस्ताक्षर नहीं कराये थे। अन्य साक्षियों के भी हस्ताक्षर सीलबन्द पुलिन्दे पर नहीं बनवाये थे।" ऐसी स्थिति में माननीय इलाहाबाद उच्च न्यायालय द्वारा अवधारित विधि व्यवस्था बेनी प्रसाद बनाम उ०प्र० राज्य 2003 (46) ए०सी०सी० पृष्ठ संख्या-701 में उल्लिखित विधि व्यवस्था के अनुसार यदि अभियुक्त के हस्ताक्षर वस्तु प्रदर्श के सीलयुक्त पैकेट पर नहीं है तो उक्त बरामदगी संदेहास्पद मानी जायेगी। अतः ऐसी स्थिति में कथित बरामदगी के सम्बन्ध में निश्ययात्मक विनश्चय नहीं किया जा सकता है कि अभियुक्त के पास से कथित रूप से उक्त बरामदगी हुयी थी।

29. अभियुक्त के पास से कथित रूप से टेलीफोन का एक बिल भी बरामद होने का कथन अभियोजन की ओर से किया गया है। उक्त पी०सी०ओ० की पर्ची किस पी०सी०ओ० की है और जिस नम्बर पर कथित रूप से बात करना बतायी जा रही है, के सम्बन्ध में विवेचक द्वारा कोई जानकारी नहीं दी गयी है। उक्त पर्ची में उल्लिखित तथ्य सत्य है अथवा नहीं अथवा बी०एस०एन०एल० के टेलीफोन से उन नम्बरों पर कथित रूप से कोई बात हुयी अथवा नहीं के सम्बंध में कोई सम्पोषणात्मक साक्ष्य पत्रावली पर संकलित नहीं किया गया है। कथित रूप से उक्त टेलीफोन एक अन्तराष्ट्रीय काल है, जिससे पाकिसतान में बात होना अभियोजन की तरफ से कहा गया है। बी०एस०एन०एस० के नम्बर से जिन-जिन नम्बरों पर बात हुयी थी, उसका काल डिटेल बड़ी आसानी से प्राप्त किया जा सकता था, जिसे विवेचक द्वारा प्राप्त नहीं किया गया है। इससे विवेचक द्वारा की गयी विवेचना की निष्पक्षता प्रभावित होती है और अभियोजन कथानक की विश्वसनीयता पुनः प्रभावित होती है।

30. जहां तक अभियुक्त के विरूद्ध विरचित आरोप अन्तर्गत धारा-120 बी का प्रश्न है, तो आपराधिक षडयन्त्र के अपराध के लिये अभियोजन को यह साबित करना पड़ेगा कि उक्त षडयन्त्र में पक्षकारों की सहमति किसी अवैध कार्य या वैध कार्य अवैध साधनों से करने की थी। प्रश्नगत मामले में कथित रूप से षडयन्त्र में दूसरे व्यक्ति के रूप में शामिल होने का कथन पाकिस्तान के आई०एस०आई० एजेन्ट को बताया गया है, परन्तु पत्रावली पर ऐसा कोई क उपलब्ध नहीं है, जिससे यह साबित हो सके कि अभियुक्त का कोई सम्बन्ध पाकिस्तान से किसी भी प्रकार से था। इस सम्बन्ध में विवेचक द्वारा न तो टेलीफोन के सम्बन्ध में जानकारी प्राप्त की गयी और न ही अन्य किसी व्यक्ति को कथित रूप से वह नक्शे दिये जा रहे थे, के सम्बन्ध में कोई साक्ष्य संकलित किया गया। अतः ऐसी स्थिति में अभियोजन अभियुक्त के विरूद्ध धारा-120 बी भा०द०सं० के आरोप को युक्तियुक्त संदेह से परे साबित करने में विफल रहा है।

31. जंहा तक अभियुक्त के विरूद्ध विरचित आरोप अर्न्तगत धारा-124 भा०द०स० का प्रश्न है, तो इस धारा के अधीन अभियोजन द्वारा अभियुक्त को दोषसिद्ध करने के लिये यह साबित करना पड़ेगा कि अभियुक्त द्वारा सरकार के प्रति घृणा या अवमान पैदा की गयी अथवा उसका प्रयत्न किया गया तथा उसका यह कार्य शब्दों द्वारा, जो शब्दों द्वारा अथवा लिखा हो सकता है, संकेतों द्वारा अथवा दृश्यरूपण किया गया। प्रश्नगत मामले में अभियोजन की ओर से प्रस्तुत साक्षियों के साक्ष्य से सरकार के प्रति घृणा यह अवमान पैदा करने अथवा अप्रीति प्रदीप्त करने या प्रदीप्त करने का प्रयत्न करने के सम्बन्ध में कोई साक्ष्य पत्रावली पर उपलब्ध नहीं है। अतः ऐसी स्थिति में अभियुक्त के विरूद्ध विरचित आरोप अन्र्तगत धारा-124 ए भा०द०सं० का अपराध भी साबित नहीं है।"

23. The judgment and order of the learned Court below has been confirmed in **Government Appeal No. 2416 of 2014 (State of U.P. Vs. Pradeep Kumar alias Akash Verma)**, decided on 7.2.2018. In that this Court dismissed that appeal, on the following reasoning:

> *"Considering the above legal proposition, I do not find illegality, infirmity or perversity in the impugned judgement and order. The view taken by the trial Court is just and does not suffer from any misreading of any material evidence on record."*

The above order has attained finality. No further appeal is disclosed to have been filed there against.

24. What survives with the respondent state authorities is a lingering belief or suspicion that the petitioner had spied for a foreign country. That lingering suspicion has not arisen or survived on any fresh or other cogent material or objective fact, not considered at the criminal trial. Even the document produced during course of the hearing, contains an inference on the self-same information and material that were considered by the trial court, and it is not based on any other information or material. It uses high sounding words and expressions to describe a purely subjective belief entertained, not based on any objective material.

25. If the inference drawn were to arise and prevail as true, on its simple recital, as if by way of a magician's spell, without applying the test of

objectivity, that suspicion may be actionable. Yet, that cannot be, and it is not the law. The fact allegation that the petitioner had worked for a foreign intelligence agency was not proven (to any extent), at the criminal trial.

26. We recognize that the standard of proof in a criminal case is proof beyond all reasonable doubt whereas the proof in a civil proceeding or in a proceeding involving civil rights is one of preponderance of probabilities. At the same time, it also cannot be said, though the petitioner has been "honourably acquitted" at the criminal trial, the 'stigma' arising from that allegation of criminal offence (made against the petitioner), would itself cause or result in adverse civil consequences.

27. Then, even if it may have remained open to the said respondents to examine the impact of the transaction alleged against the petitioner, in the context of the civil right of the petitioner to seek appointment as a judicial officer, such examination would necessarily involve consideration of objective material, in a prudent manner. Neither suspicion, nor simple belief - not founded on objective material, nor whims and fancies may propel or govern that objective exercise, to be performed by the state respondents. Here, no objective material survived or existed to allow for a possibility to reach a conclusion other than that reached by the criminal court. It therefore remained impermissible for the State respondents to infer guilt or culpability of the petitioner, in the alleged transaction.

28. No material exists with the State respondents to reach a conclusion that the petitioner may have worked for any foreign intelligence agency. The fact that he may have been on the "radar" of the Indian intelligence agencies, itself means nothing. To be suspected of an offence is not an offence or a scar on a citizen's character. Unless objective material was shown to exist with the authorities for that suspicion to continue to exist, no adverse civil consequence may ever arise against a citizen, based on such a lingering suspicion, that too in the face of result of an order of "honourable acquittal" at the criminal trial.

29. Unless a citizen is reasonably suspected to be involved in an illegal or other activity that may invite adverse civil consequences, the fact that an

intelligence agency or police authority may opine -purely subjectively and thus suspect that such a citizen had indulged in any illegal nature of activity or to have performed such act, without any supportive objective material, may remain a wholly inactionable belief, therefore extraneous to the issue of character certification of the concerned citizen.

30. Second, the fact that the petitioner was unemployed and was in search of gainful employment, is also wholly extraneous to the issue, to the point of being absurd. If unemployment, poverty and like unfortunate circumstances could by themself be a valid ground to suspect a citizen of infringement of the law, a substantial population would be suspected for one or the other offence. In fact, the circumstance of being poor or unemployed or marginalised, itself would become a tool for suspicion and oppression, specifically to deny public employment. Mere registration of a criminal case and perhaps submission of a charge-sheet would be enough to tear to tatters, the precious and fundamental rights guaranteed under Part-III of the Constitution. In the present status of our society, where many criminal prosecutions arise in doubtful circumstances, frequently for collateral reasons, that would be a dangerous proposition.

31. Third, the fact that the petitioner's father may have been suspended/dismissed from service on charges of bribery etc., is equally extraneous to the issue. A person may not be penalised, and his character may not be judged, for the act of another, be it his father or son. It is indeed regrettable that the respondent authorities have also chosen to rely on the allegations of corruption levelled against the father of the present petitioner. That consideration if allowed to stand will admit untenable bias in the process in the objective exercise of character certification that was to be conducted by the State authorities.

32. The fact that the petitioner was apprehended by the STF and the Military Intelligence, is the only fact proven. It is not rebutted. The fact of arrest in the context of criminal investigation is a relevant writing on the slate of character certification of the accused citizen. Yet, an order of "clean acquittal" or "honourable acquittal" earned by a citizen (earlier charged or

arrested), wipes clean that slate as may not allow any person, agency or the State to read the impression of any previous writing on that slate (recording any fact pertaining to such criminal charge suffered by that citizen or of arrest suffered etc.), relevant to his character. Upon the order of "honourable acquittal" earned by the citizen, his innocence is etched hard and deep on that slate, in *personam,* i.e. in the particular facts of that case and *in rem,* i.e. to the whole world for the purpose of certification of his character, *qua* the allegation faced by him, in that case.

33. To say, a citizen would continue to be suspected of an offence alleged and therefore be deprived of fruits of hard labour and "honourable acquittal" earned by him, would be, to not only vicariously penalise an innocent citizen after his innocence has been established in a Court of law, but it would successfully militate against the rule of law itself, guaranteed by the Constitution. A criminal trial begins with a presumption of innocence of the person charged. Once, the charged person is "honourably acquitted", after full appraisal of all prosecution evidence, that presumption is confirmed and sealed, by judicial pronouncement made. None may look beyond it.

34. While individuals, who may have levelled the charge against such a person, may continue to harbour a belief or suspicion (to themselves), that that person though "honourably acquitted", was guilty, yet even they may act on such personal belief only against risk of preventive and other action (against them), by that person. On the other hand, the State and its' institutions, may not continue to entertain such a suspicion or belief any further, as may deprive and deny to the innocent citizen his fundamental right to equality including his right to continuance and progression in life as a citizen, equal in all sense with any other innocent citizens, who may not have been charged with any criminal offence.

35. For the reasons noted above, we find, the respondents have wrongly continued to entertain a suspicion about the character of the petitioner. They also do not have in their possession any credible or actionable material. Only the fact that the petitioner was charged with a serious

offence has prevented the State authorities to act with objectivity. We find no reason exists with the respondents to continue to entertain a belief or suspicion that the petitioner is a person who lacks good moral character to hold judicial office. The unfortunate circumstance of the petitioner having faced two criminal trials, cannot be cited as that reason.

36. The petitioner was “honourably acquitted” at two criminal trials faced by him and no element of truth was found in the prosecution story, in either case. Those orders have attained finality. On all vital aspects of allegation of violation of Official Secrets Act, we find that the lingering sense of suspicion with the State authorities, is to be equated with figment of imagination and nothing more.

37. In view of the above, the writ petition must succeed. It is allowed. The communication dated 26.09.2019 (Annexure No.11) is quashed. Mandamus is issued to respondent no. 1 to ensure Character Verification of the petitioner within a period of two weeks. Consequentially, upon completion of all formalities, appointment letter may be issued to the petitioner not later than 15th January 2025. The petitioner may be appointed against existing vacancies, as on date. This modified relief we have granted because though selected against vacancy of 2017, neither those vacancies survive in the light of the provision of U.P. HJS Rules and also, the petitioner does not have any work experience in the HJS cadre for the last seven years. Grant of larger relief may be detrimental both to the progression of the petitioner in service and also to the working of the cadre and its morale.

38. The writ petition is **allowed as above**. No order as to costs.

Order Date :- 6.12.2024
I.A.Siddiqui/Noman

(Donadi Ramesh, J.) **(S.D. Singh, J.)**