2025:DHC:782-DB

$~1

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

\+ W.P.(C) 16867/2024, CAV 593/2024, CM APPLs. 71443/2024 & 71444/2024

UNION OF INDIA & ORS. .....Petitioners

Through: Mr. Vineet Dhanda, CGSC with Ms. Akansha Choudhary, Ms. Shweta Shandilya and Mr. Saksham Sethi, Advs.

versus

CHAND SINGH .....Respondent

Through: Mr. Sachin Chauhan, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

% 06.02.2025

C. HARI SHANKAR, J.

CAV 593/2024

1. As the learned Counsel for the Caveator has entered his appearance, the caveat stands discharged.

W.P.(C) 16867/2024

2. The appointment of the respondent to the post of Multi Tasking

Staff[1] in the office of the petitioners was cancelled by an order dated 2 July 2021, which reads as under:

"SUB: CANCELLATION OF APPOINTMENT

Reference the following-

(i) CSF form IV dated 28.07.2018 and 01.12.2018.
(ii) FIR No. 121 dated 31.03.2014.
(iii) Court Judgement dated 04.05.2015.

2. Vide above documents it is understood that an FIR no. 121 dated 31.03.2014 Under Section 148,149,307,323,324,452 & 506 of IPC was registered against you and you are acquitted by the court of Shri. Rakesh Kadian, Judicial Megistrate 1st Class Court, Panipat vide its order dated 04.05.2015. During recruitment process on 28.02.2018 you have signed a declaration to SSC that you have never been convicted by any court of Law and no criminal case is pending against you. Also in CSF form IV dated 28.07.2018 in Sr. No.13 you have put across and not submitted the details of the criminal case in which you are acquitted by the court of law. Whereas CSF Form IV dated 01.12.2018 you are accepted that you have been arrested and prosecuted. Where as the fact of the case was not revealed by you in the earlier CSF IV form.

3. The order dated 04.05.2015 of Judicial Magistrate, 1st Class Court, Panipat has been examined and it is observed that the Hon'ble court specifically stated that they had no other option but to acquit the accused as brought out in para-12 of the said order dated 04.05.2015 by giving a benefit of doubt. The Hon'ble Court has brought out that the complainant Smt. Reena Devi and the Prosecution witness turned hostile and even during the cross examination nothing came out of the mouth of the witnesses as well as complaint to support the case of the prosecution, as brought out in para-5 & 6 of the order dated 04.05.2015. It has also been observed by the Hon'ble Court in para-10 of the said order dated 04.05.2015 that FIR was registered on the basis of complaint but the complainant did not support the prosecution story and hence was declared hostile.

4. From the above, it is evidently clear that the acquittal of Shri. Chand Singh cannot be treated as a hon'ble acquittal and not on merits and in the hand book for the disciplinary authority it has been stated as under: -

[1] "MTS" hereinafter

> "Where the criminal case ended in acquittal only due to the reason that the prosecution witness turned hostile and there was no decision on merits a division bench of Madras High Court set aside the order of the Tamilnadu Administrative Tribunal and permitted the department to proceed with the charge memo in accordance of the law (***Deputy Supdt of Police Sriperampudur Vs W.D. Sekaran***[2]".
>
> 5. In view of the above, considering the fact that your acquittal by the Hon'ble Judicial Magistrate, 1st Class Court, Panlpat, is not on merit as the acquittal of the accused, by giving benefit of doubt. The Competent Authority felt that the department may not issue the formal appointment letter to you for the reasons mentioned above.
>
> 6. In view of the above, your Appointment as LDC in this department is hereby cancelled and your dossier was returned to SSC (NWR).
>
> 7. This has the approval of Competent Authority.
>
> (Dr. Ch Ravinder)
> AGM (Pers)
> For General Manager"

3. Aggrieved by the aforesaid order, the respondent moved the Central Administrative Tribunal[3] by way of OA 1431/2022[4].

4. Before the Tribunal, the specific stand of the respondent was that his acquittal was honourable, though the learned Judicial Magistrate First Class[5], in para 12, styled the acquittal as on "benefit of doubt". We deem it appropriate to reproduce para 12 of the judgment of the learned JMFC, thus:

> "12. In view of the above said evidence on record, when the complainant and material witnesses have not supported the

[2] **2006 lab IC 1087**
[3] "the Tribunal" hereinafter
[4] **Chand Singh v UOI**
[5] "JMFC" hereinafter

> prosecution story and have turned hostile and there is nothing against the accused, I have no other option but to acquit the accused. Accordingly, the accused are acquitted on the charges leveled against them by giving benefit of doubt. Their bail bonds and surety bonds stand discharged. Case property, if any, be disposed off under rules after awaiting the result of appeal/revision if any. File after compliance be consigned to record room."

5. Thus, it is clear that the basis for cancellation of the respondent appointment as MTS was only that his acquittal by the learned JMFC was on benefit of doubt and could not, therefore, be treated as an honourable acquittal.

6. A reading of the impugned order reveals that the petitioners had relied on a judgment passed by the High Court of Madras in ***Deputy Supdt. of Police v W.D. Sekaran***. Rather surprisingly, the Tribunal has observed that the said judgment has to be treated as having been rendered *in personam*, and that it was *per incuriam* as it was contrary to several decisions of the Supreme Court.

7. In our view, it is not open to the Tribunal to characterise a judgment of a High Court as *per incuriam*. No doubt, if the Tribunal has, before it, judgments of the Supreme Court which enunciate the law differently from the manner in which the High Court has, it would be open to the Tribunal to follow the judgments of the Supreme Court in preference to that of the High Court. However, we reiterate that the Tribunal cannot hold a judgment of the High Court to be *per incuriam*.

8. Paras 9 to 12 of the impugned judgment read thus:

> "9. We find that the aforesaid decision of Hon'ble High Court

of Madras was *in personam*, more particularly in light of the facts narrated wherein the department issued a charge memo. The present case cannot be equated to the decision rendered by Hon'ble High Court of Madras in peculiar facts and circumstance of the said case. Cancellation of appointment is based on the ground that the decision of the Hon'ble High Court of Madras was not honourable and that the decision is rendered *per incuriam* of the aforesaid decisions of the Hon'ble Supreme Court. We have also gone through the relevant columns of CSF-4 Forms submitted by the applicant on 28.07.2018 and 01.12.2018, which are reproduced below**: -**

CSF Form – 4 dated 28.07.2018	**CSF Form – 4 dated 01.12.2018**
13. क्या आपके विरुद्ध किसी भी न्यायालय में अभियोग चल रहा है, हिरासत मे रहे या प्रतिबंधित/ जुर्माना / सजा हुई या किसी लोक सेवा आयोग की परीक्षा मे भाग लेने से वर्जित या आयोग की परीक्षा में भाग लेने से वर्जित या अयोग्य किया गया है। Have you ever been prosecuted, kept under detention or bond down/fined/convicted by a court of law for any offence or debarred or disqualified by any Public Service Commission from appearing at its examination/selection? अगर उत्तर हाँ हो तो कानूनी कारवाई, हिरासत, जुर्माना, गिरफ़्तारी, सज़ा का पुरा विवरण दें Is any case pending against	13 (1) (a) Have you ever been arrested? **Yes** (b) Have you even been prosecuted? **Yes** (c) Have you ever kept in detention? **No** (d) Have you ever been bound down? **No** (e) Have you ever been fined by a Court of law? **No** (f) Have you ever been convicted by a Court of Law for any Offence? **No** (g) Have you ever been debarred from any examination or restricted by any university or Any educational authority/Institution? **No** (h) Have you ever been debarred/disqualified by any

you in any court of law at the time of filling up this application from?	Public Service Commission from appearing at the examination/selection? **No** (i) Is any case pending against you in any court of law at the time of filling up this Attestation Form? **No** (j) Is any case pending against you in any University/or any other educational authority/Institution at the time of filling up this Attestation Form? **No** (ii) If the answer to any of the above mentioned question is 'Yes' give full particulars of the case/arrest/detention/ fine/ conviction/ sentence/punishment, etc. and/or the nature of the case pending in the Court/University Educational authority, etc. at the time of filling up this form.

10. In comparative analysis of the aforesaid two CSF-4 Forms submitted by the applicant, it is quite clear that the applicant had admitted and disclosed in the column 13 that he had been arrested and prosecuted. However, he was neither fined in the Court of law nor convicted for any offence. At the time of appointment the applicant was not involved in any criminal case.

11. In a recent decision Civil Appeal No. 7935 of 2023 (Arising out of SLP (C) No. 33423 of 2018) ***Ram Lal Vs. State of Rajasthan***[6] dated 04.12.2023, the Hon'ble Apex Court had held as under:-

[6] **(2024) 1 SCC 175**

"24. What is important to notice is that the Appellate Judge has clearly recorded that in the document Exh. P-3 – original marksheet of the 8th standard, the date of birth was clearly shown as 21.04.1972 and the other documents produced by the prosecution were either letters or a duplicate marksheet. No doubt, the Appellate Judge says that it becomes doubtful whether the date of birth was 21.04.1974 and that the accused was entitled to receive its benefit. However, what we are supposed to see is the substance of the judgment. A reading of the entire judgment clearly indicates that the appellant was acquitted after full consideration of the prosecution evidence and after noticing that the prosecution has miserably failed to prove the charge [See ***S. Samuthiram***[7] (Supra).]

25. Expressions like "benefit of doubt" and "honorably acquitted", used in judgments are not to be understood as magic incantations. A court of law will not be carried away by the mere use of such terminology. In the present case, the Appellate Judge has recorded that Exh. P-3, the original marksheet carries the date of birth as 21.04.1972 and the same has also been proved by the witnesses examined on behalf of the prosecution. The conclusion that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge can only be arrived at after a reading of the judgment in its entirety. The court in judicial review is obliged to examine the substance of the judgment and not go by the form of expression used.

26. We are satisfied that the findings of the appellate judge in the criminal case clearly indicate that the charge against the appellant was not just, "not proved" - in fact the charge even stood "disproved" by the very prosecution evidence. As held by this Court, a fact is said to be "disproved" when, after considering the matters before it, the court either believes that it does not exist or considers its nonexistence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. A fact is said to be "not proved" when it is neither "proved" nor "disproved" [See ***Vijayee Singh and Others v. State of U.P.***[8]].

27. We are additionally satisfied that in the teeth of the finding of the appellate Judge, the disciplinary proceedings

[7] **(2013) 1 SCC 598**
[8] **(1990) 3 SCC 190**

and the orders passed thereon cannot be allowed to stand. The charges were not just similar but identical and the evidence, witnesses and circumstances were all the same. This is a case where in exercise of our discretion, we quash the orders of the disciplinary authority and the appellate authority as allowing them to stand will be unjust, unfair and oppressive. This case is very similar to the situation that arose in G.M. Tank (supra).

28. Apart from the above, one other aspect is to be noted. The Enquiry Officer's report makes a reference to the appellant passing 10th standard, and to a 10th standard marksheet exhibited as Exh. P-4 referring to the date of birth as 24.07.1974. Jagdish Chandra-PW1 (in the departmental enquiry) clearly deposed that since the appellant was regularly absent from Class 10, his name was struck off and he did not even pass 10th standard. The appellant has also come out with this version before the disciplinary authority, stating that the 10th class certificate of Ram Lal produced before the Enquiry Officer, is of some other Ram Lal.

29. This issue need not detain us any further because it is not the case of department that the appellant sought employment based on 10th standard marksheet. It is their positive case that the appellant sought employment on the basis of his 8th standard marksheet. Shravan Lal-PW-4 in the departmental enquiry had also furnished the 10th standard marksheet procured from the Secondary Education Board, Ajmer. In cross-examination, on being asked, he admitted that the appellant was recruited on the basis of 8th standard marksheet, and he admitted that there was no alteration in the 8th standard marksheet.

30. In view of the above, we declare that the order of termination dated 31.03.2004; the order of the Appellate Authority dated 08.10.2004; the orders dated 29.03.2008 and 25.06.2008 refusing to reconsider and review the penalty respectively, are all illegal and untenable.

31. Accordingly, we set aside the judgment of the D.B. Special Appeal (Writ) No.484/2011 dated 05.09.2018. We direct that the appellant shall be reinstated with all consequential benefits including seniority, notional promotions, fitment of salary and all other benefits. As far as backwages are concerned, we are inclined to award the appellant 50% of the backwages. The directions be complied with within a period of four weeks from today.

> 32. The appeal is allowed in the above terms. No order as to costs."

> 12. In view of the above, the OA is allowed. The impugned order dated 02.07.2021 stands quashed and set aside. The Competent Authority amongst the respondents is directed to restore the offer of appointment issued on 17.07.2018. We make it clear that the applicant shall be offered appointment, if otherwise found eligible, within a period of two months from the date of receipt of a certified copy of this order. All consequential benefits shall be accorded to the applicant from the date of selection of last selected candidate in respective category, on notional basis. Actual benefits shall accrue from the date of joining."

9. A reading of the aforesaid paragraphs from the impugned judgment, which contain its reasoning and conclusion, reveal that the Tribunal has proceeded on a tangent. It has emphasized the fact that the respondent had disclosed the pendency of the criminal case against him while applying for appointment. That factor, in our view, is of no relevance, as the cancellation of respondent's appointment was not for failure on his part to disclose the existence of the criminal case, but on the ground that the criminal case did not end in an honourable acquittal.

10. The Tribunal has correctly cited the judgment of the Supreme Court in ***Ram Lal v State of Rajasthan*** which deals with the duty of a Court, when faced with a judgment of acquittal, and which holds that, in such circumstances, the Court is not to be carried away by the use of the expression "benefit of doubt" employed by the Trial Court while acquitting the accused, but has to examine the judgment of acquittal holistically to arrive at a conclusion, for itself, whether the acquittal was in fact honourable or otherwise. Having thus set out the judgment in ***Ram Lal***, which clearly exposits in para 24 and 25, the

duty of the Court in such cases, the Tribunal does not appear to have undertaken that exercise. Instead, after extracting the aforesaid passages from ***Ram Lal***, the Tribunal straightaway allowed the OA in para 12 and set aside the order dated 2 July 2021 whereby the respondent's appointment was cancelled.

11. In these circumstances, we suggested to Mr. Sachin Chauhan, learned Counsel for the respondent, that, instead of keeping this matter pending before this Court, we could set aside the impugned order and remand the matter to the Tribunal for re-visiting the issue keeping in mind the decision in ***Ram Lal*** and any other such decisions which may be applicable.

12. With characteristic fairness, Mr. Chauhan agrees to the suggestion.

13. The actual issue before the Tribunal was whether the respondent's appointment as MTS could have been cancelled on the ground that his acquittal by the learned JMFC, on 4 May 2015, was not honourable. The Tribunal has not examined this issue at all.

14. We, therefore, we deem it appropriate to quash and set aside the impugned judgment dated 19 January 2024 of the Tribunal.

15. OA 1431/2022 stands restored to the file of the Tribunal for consideration and decision *de novo*.

16. In order to expedite matters, let both sides appear before the

Tribunal on 19 February 2025.

17. Needless to say, the Tribunal would proceed uninfluenced by any observation contained in the impugned judgment dated 19 January 2024. We also request to the Tribunal to, if possible, take a decision in the matter as expeditiously as possible, preferably within eight weeks from the date when the matter is heard.

18. The writ petition stands disposed of in the aforesaid terms with no order as to costs.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

FEBRUARY 6, 2025*/aky*

Click here to check corrigendum, if any