
(2019) 08 J&K CK 0012

In the Jammu And Kashmir High Court

Case No : Letter Patent Appeal (LPASW) No. 71 Of 2018

Imtiyaz Ahmad Malla

APPELLANT

Vs

State Of Jammu & Kashmir & Ors

RESPONDENT

Date of Decision : 09-08-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 304, 324, 325, 392, 411, 509
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 379
Code Of Criminal Procedure, 1973 — Section 320(8)
Indian Forest Act, 1927 — Section 6
Jammu And Kashmir Police Rules, 1960 — Rule 179, 185

Citation : (2019) 08 J&K CK 0012

Hon'ble Judges : Gita Mittal CJ; Rashid Ali Dar, J

Bench : Division Bench

Advocate : B.A. Dar

Final Decision : Dismissed

Judgement

Gita Mittal, Cj

1. The appellant has filed the present appeal assailing the judgment dated 14 th of May, 2018 passed by the learned Single Judge dismissing the SWP No. 1766/2017.

2. By way of the writ petition, the appellant had sought issuance of writ of certiorari for quashing an order No. 2580 of 2017 dated 31st July, 2017 whereby the respondents have rejected the claim of the appellant for reinstatement in service as a Constable with the Jammu & Kashmir Police with consequential benefits.

Factual Narration

3. The facts giving rise to the present appeal, to the extent necessary for the present adjudication, are briefly noted hereafter.

4. The appellant had successfully participated in the selection process conducted

in 2008-09 for constables in the Jammu and Kashmir Executive Police. Towards the process for issuance of formal appointment orders, a board of officers/officials was constituted under communication dated 10 th July, 2009 of the Police District Headquarter, Handwara to check the original testimonials and to conduct physical measurements of the selected candidates.

5. It is on record that, thereafter, the Director General of Police, CID, J&K, Jammu was approached by a letter dated 18th March, 2009 for CID verification into the character and antecedents of the candidates through the Supervisory officer of the concerned police station. Vide a letter dated 26th June, 2009, a report was received from the respective offices. So far as the appellant is concerned, the verification report forwarded by the Deputy Superintendent of Police, DAR, Handwara, (Supervisory officer of Police Station, Kralgund) was to the effect that the verification stood conducted through the SHO, Police Station, Kralgund and that, as per its record, no case stood registered against the appellant.

6. A medical checkup of the candidates including the appellant was conducted at the Police Hospital, Srinagar. After completing all requisite formalities, an appointment letter dated 20th August, 2009 was issued to the selected candidates including the appellant who was placed at S. No. 13 of this communication as resident of Gundchobotra, Tehsil Handwara, District Kupwara. The appellant thereafter was deputed to the Police Training School, Manigam for undergoing the nine months BRTC course.

7. It appears that the search slips of the ten newly recruited constables including the appellant were also submitted to the Director, Finger Print Bureau (CPPB) NCRB East 7-R.K.Puram New Delhi for record and reference. The Director, Finger Print Bureau, New Delhi responded by a letter dated 7th December, 2009 that, so far as the appellant was concerned, he stood involved in a case which was registered as FIR No. 52/2007 under Sections 379 of the Ranbir Penal Code and 06 of Forest Act, by the police Station, Kralgund.

The case arising out of this FIR was stated to be sub-judice before the Court of Chief Judicial Magistrate, Handwara.

8. A view was taken that true facts have been suppressed by the police with ulterior motive to benefit the selected candidates. A preliminary inquiry was also ordered to be conducted by the SDPO, Handwara by a letter dated 17th December, 2009 to fix responsibility for concealing facts by the staff of Police Station, Kralgund.

9. Simultaneously, vide a letter dated 18th of December, 2009, the matter was taken up with the Deputy Inspector General of Police, NKR, Baramulla by the Police District Headquarter, Handwara, for cancellation of the selection of the appellant.

10. In this background, by a letter dated 2nd of February, 2010, the Principal,

Police Training School, Manigam was requested to revert the appellant so as to enable him to face the disciplinary inquiry which stood ordered.

11. During the course of inquiry, the summary of allegations was served upon the appellant, statements were recorded and thereafter, a detailed charge sheet was served upon him. Findings were submitted with the recommendation that action under rules may be taken following the involvement of the appellant in a criminal case which was still sub-judice before the court of law, in which he had been released on bail after four days.

12. The Superintendent of Police, District Handwara examined the record of the inquiry and was of the view that the appellant had good knowledge of his involvement in the criminal case and that he had consciously concealed the information. It was further observed that the appellant had shown his residence in village Gundchobotra instead of Pakhribal in order to get a clean chit at the time of police verification and, therefore, the appellant had knowingly and deliberately concealed the facts. It was concluded that police personnel are required to disclose this type of information and that nothing can be expected from such a person who would manage to join the department concealing facts which are otherwise mandatory for him to expose. In this background, by the order dated 1st of March, 2010, the appointment order dated 20th August, 2009 of the appellant was cancelled.

13. The order of 1st of March, 2010 was challenged by the appellant by way of the writ petition being SWP No. 2616/2011.

14. So far as the criminal case is concerned, another important fact intervened. By a judgment dated 26th April, 2011, passed by the Court of Chief Judicial Magistrate, Handwara, the appellant was acquitted of the charges for which he was tried. The material portion of this judgment reads as follows:

"That the I.O has not been produced and examined which is legal infirmity in the prosecution case as material contradictions have not been answered nor the site plan has been proved. Further, the seizure of timber has not been proved by the witnesses. None of witnesses has deposed that accused committed theft in the forest and willow trees were found in possession of the accused persons. On the basis of contradictory evidence accused cannot be convicted, as benefit of doubt goes to the accused. Prosecution has miserably failed to fulfill the ingredients of section 379 RPC, 6 F.Act. against the accused persons. So, prosecution case fails. Challan is dismissed. Accused are acquitted of the charges for the commission of offence under section 379 RPC 6 F.Act. Accused are on bail. Their bail bonds and personal bonds stand discharged. Since the confiscation proceedings were initiated by the Forest department, timber has been disposed of. Challan be consigned to records after due completion."

(Emphasis supplied)

15. This acquittal was noted by the police authorities. The office of the Inspector

General of Police addressed a letter dated 16th June, 2011 to the Director General of Police, J&K on the subject. This letter referred to a communication dated 1st of January, 2011 addressed by the Police Headquarter regarding the present status of the case FIR No. 52/2007 Police Station, Kralgund. By the letter dated 16th June, 2011, the Staff Officer of the Inspector General of Police, Kashmir informed the Director General of Police that information has been received from the Deputy Inspector General of Police, NKR, Baramulla that the appellant had been acquitted in the said case by judgment dated 26th April, 2011. Copy of the letter was also enclosed.

16. In the hearing of SWP No.2616/2011 on the 18th of May, 2016, the learned Single Judge noted that the Chief Judicial Magistrate, Handwara in his decision dated 26th April, 2011 has recorded the findings that the prosecution miserably failed to prove the guilt against the appellant and acquitted him of all the charges framed against him. After taking on record the letter dated 27th February, 2012 wherein in similar circumstances, appointment orders in favour of two persons similarly situated had been directed, it was observed that in view thereof, the Inspector General of Police, Kashmir Zone was duty bound to issue appropriate orders in favour of the appellant.

17. It appears that the appellant also brought to the notice of the learned Single Judge in SWP No. 2616/2011 the fact that two other persons namely, Aijaz Ahmad Khan and Bashir Ahmed Teedwa had also undergone criminal trials and were acquitted in the cases against them. Because of their acquittals from the criminal charges, the Director General of Police J&K, Jammu, had passed the order dated 27th February, 2012, directing issuance of the formal appointment orders in their favour. This communication was brought on record in the hearing on 18th of May, 2016. The appellant sought parity of treatment before the learned Single Judge.

18. We find that on 18th of May, 2016, the learned Single Judge has also observed that:

"Since the Police Headquarter has itself taken a decision for appointing the petitioner, nothing survives for further consideration of the Court in this case at this stage."

In view thereof, the learned Single Judge disposed of the writ petition in the following manner:

"The impugned order dated 1st March, 2010, passed by Respondent no. 5 is set aside. Respondent no. 3 is directed to take further action on the communication dated 27th February, 2012, send him by AIG (P) for Director General of Police, J&K Jammu. The necessary orders in this behalf be passed within two weeks from the date copy of this order is served. Registry to provide copy of this order to Mr. N.A. Beigh, Sr. AAG within two days time."

(Emphasis supplied)

19. In the above order dated 18th May, 2016 of the learned Single Judge, reference stands made only to the letter dated 27th February, 2012 which does not relate to the appellant. It is submitted by Mr M. A. Qayoom,

learned counsel for appellant, that this was an oversight. The submission is that, actually, reference has been made to the afore detailed communication dated 16th June, 2011 which had been sent by the Inspector General of Police, Kashmir Zone to the Director General of Police seeking further action.

20. The reconsideration as directed by the judgment dated 18th May, 2016 was kept pending for almost one and half year. Consequently, the appellant filed Contempt Petition no.156/2017 before the Court. Filing of this petition resulted in passing of the order dated 31st January, 2017, by the Director General of Police, J&K, Srinagar. In this order reliance was placed on the pronouncement of the Supreme Court reported at 2013 (7) SCC 685 titled Commissioner of Police v. Mehar Singh and a judgment of this Court passed in SWP No. 2489/2001 titled Muneer Hussain v. Union of India and ors. It was stated in the order dated 31st January, 2017 that in view of the "criminal background" of the appellant, he was found unsuitable for the post of Constable in a disciplined force. Therefore, the claim of the appellant was rejected on merits.

21. Aggrieved by the order dated 31st January, 2017, the appellant filed SWP No. 1766/2017 praying for setting aside of the order dated 31st July, 2017 and a direction to the respondents to reinstate the appellant back in service with consequential benefits.

22. This writ petition was contested by the respondents, finally considered by the learned Single Judge and dismissed by the judgment dated 14th May, 2018. The learned Single Judge placed reliance on the pronouncement of the Supreme Court reported at 2018 (1) SCC 797 titled Union Territory, Chandigarh, Administration & Ors. V. Pradeep Kumar & Anr. and held that the decision of the Director General of Police, being the highest functionary in the hierarchy of police department to consider the suitability of the appellant for induction into police force, could not be called into question. The appellant has challenged this decision of the learned Single Judge by way of the instant appeal.

23. We have heard Mr. M.A.Qayoom, learned counsel for the appellant in support of the challenge and Mr. B.A.Dar, learned senior Additional Advocate General for the respondents at length.

Appellants Contentions

24. Mr. M.A.Qayoom, learned counsel for the appellant has contended that the order dated 1st March, 2010 was premised on the following two reasons:

(a) that the appellant had not divulged his criminal case.

(b) that the appellant had given a wrong address.

It is submitted by Mr. Qayoom that both these reasons are unfounded and

contrary to the record.

25. It is further submitted that the order dated 1st March, 2010 was set aside by the learned Single Judge by the judgment passed in SWP No. 2616/2011 and the respondents were specifically directed to take into consideration the letter dated 27th February, 2012 whereby in similar circumstances, two other persons had been given appointment as they stood acquitted from the criminal charges. The submission is that the appellant ought to have been given similar treatment.

26. Mr. Qayoom has also urged at length that the respondents were bound to take into consideration the letter dated 16th June, 2011 addressed by the Inspector General of Police Kashmir Zone to the Director General of Police.

27. It is also submitted that the order dated 31st January, 2017 does not refer letter dated 16th June, 2011, that it also does not even consider the letter dated 27th February, 2012 as directed by the learned Single Judge by the order dated 18th of May, 2016.

28. It is the submission of Mr. Qayoom that by the judgment dated 26th April, 2011, the appellant was acquitted from the charges with which he has been charged after full trial and a detailed discussion of the evidence which was led before the court. The submission is that the judgment of the criminal court tantamounted to anhonourable acquittal of the appellant entitling him to a favourable consideration of his claim to appointment.

29. In support of the contentions, the appellant has placed reliance on the following judicial precedents:

- i) 2011 (4) SCC 644 Commissioner of Police v. Sandeep Kumar (Paras 8 to 12).
- ii) 2013(3) SLJ 890 Jasbir Singh v. State of J&K.
- iii) 2012 (4) JKJ 689 Narinder Singh v. State of J&K (Paras 9 to 12).
- iv) 2016 (8) SCC 471 Avtar Singh v. Union of India &Ors. (paras 28 and 38).
- v) 2018 (1) SCC 268 Avtar Singh v. Union of India &Ors. (paras 3 to 6).
- vi) 2018 (1) SCC 293 Union of India v. Amit Singh (paras 3 to 5).
- vii) 2018 (1) SCC 308 Vikram Singh v. Commissioner of Police (paras 2 to 4)
- viii) 2018 (1) SCC 797 Union Territory Chandigarh Administration v. Pradeep Kumar (Paras 10, 11,13, 15 and 17).

30. It is the contention of MrQayoom that the learned Single Judge was bound by the three judge pronouncement in Avtar Singh v. Union of India and others, and the reliance placed in the impugned judgment dated 14th May, 2018 by the learned Single Judge on Union Territory, Chandigarh, Administration and others v. Pradeep Kumar &anr, was erroneous.

Respondents Contentions

31. It has been contended by Mr. Dar that Rule 185 of the Jammu and Kashmir Police Rules requires verification of the character of every recruit. The submission is that the appellant had given the wrong area in his address and, therefore, came to be cleared by the CID in the initial verification. This had resulted in the appointment being offered initially to the appellant. It is submitted that the appellant deliberately gave the wrong address to mislead the authorities.

32. The submission is that it is only after the verification was got effected in Delhi, in terms of Rule 185 of the Jammu and Kashmir Police Rules, that the criminal background of the appellant was disclosed.

33. Mr. Dar contends that the order of appointment of the appellant was recalled after due inquiry. It is urged at length that the appellant was not honourably acquitted from the criminal case but was given the benefit of doubt by the Trial Court. It is Mr Dar's submission that the order dated 31st July, 2017 was fully merited, as the appellant was found unsuitable in view of his criminal background.

34. It is also contended by Mr. Dar that the views of the Director General of Police in the order dated 31st January, 2017 cannot be faulted. It is submitted that the police force is a disciplined force and persons with criminal background cannot be recruited. The submission is that in these facts the judgment dated 14th May, 2018 of the learned Single Judge was in accordance with law.

35. In support of his submissions, reliance is placed by the learned Sr.AAG, on the pronouncements of the Supreme Court reported at:

i) 2008 (1) SCC 660 R. Rada Krishan v. Director General of Police (Paras 5 and 10).

ii) 2013(7) SCC 685 Commissioner of Police, New Delhi v. Mehar Singh. (Para 25 and 35).

iii) 2018 (1) SCC 797 Union Territory, Chandigarh, Administration &ors v. Pradeep Kumar (Para 17).

iv) 2019 SCC Online 430 (Decision in CA No. 3046/2019 State of Madhya Pradesh v. Bunty) (Paras 9, 10,11 and 13).

v) 2018 SCC Online 2555 State of Madhya Pradesh v. Abhijit Singh Pawar (Paras 14,15 and 23).

vi) The decision of this Court reported in 2003 (4) JKJ 765 Fayaz Ahmad Panchoo v. State of J&K.

Rule Position

36. In support of his submissions, Mr B. A. Dar, learned Sr AAG, has relied upon Rules 179 and 185 of the Jammu & Kashmir Police Rules, 1960, which, for expediency, are extracted hereunder:

"179. Supervision of recruitment

The standard of performance and the reputation of a police force depends above all upon the quality of its Constables. Standards for recruits are laid down in the rules which follow but over and above these, constant attention and effort to raise the general standards of recruitment are essential. Gazetted Officers should at all times devote special attention to discovering and encouraging men of a thoroughly good stamp to enroll themselves. Efforts shall be made to enroll a proportion of men belonging to communities or classes whose representation in the force may not be adequate. The examination and the taking of measurements of candidates for enrolment shall invariably be carried out by a gazetted officer who shall take meticulous care to ensuring that no unfair or unwholesome methods are adopted by the candidates in taking the examination or by such subordinate officers as are Incharge of the test. Deputy Inspector General, in addition to exercising a careful control over recruitment generally, and preventing the enrolment of undesirable types, shall at their inspections; formal and informal pay special attention to the observance of this rule.

185. Recruits verification of character of

(1) The character and suitability for enrolment of every recruit shall be ascertained by a reference to the Lambardar of the village or Ward Officer of the Town of which the recruit is a resident. A second slip may also be sent to the Finger Print Bureau in order to establish his freedom or otherwise from conviction. Such Lambardar or Ward officer shall if the recruit is of good character, furnish a certificate to that effect in Form 27 which shall be verified and attested by the Sub- Inspector Incharge of the local Police Station. Recruits shall be provisionally enrolled pending result of the reference."

(Emphasis supplied)

What constitutes suppression of information and its effect?

37. Before considering the merits of the rival contentions, we may consider the principles laid down in the judicial precedents on the issues pressed which would guide the present adjudication.

38. Both sides have drawn our attention to the three judge pronouncement of the Supreme Court reported at (2016) 8 SCC 471: *Avtar Singh v. Union of India* and others. By this judgment conflict of opinion between various Division Benches of the Supreme Court, as noticed in (2012) 8 SCC 748 : *Jainendra Singh v. State of U.P.*, on the question of suppression of information or submitting false information in the verification form with regard to the issue of criminal prosecution, arrest or pendency of a criminal case at the time of recruitment, was considered and resolved. The Supreme Court has considered all aspects of this issue and laid down the manner in which the same must be dealt with. Mr M. A. Qayoom, learned counsel for the appellant, has drawn our attention to paragraphs 28 and 36 while as Mr Dar, learned AAG, has drawn our attention to

the discussion in paragraph 30 and the principles laid down in paragraph 38 of the judgment.

39. Let us examine the authoritative binding principles laid down in Avtar Singh on different facets of this issue. We may usefully extract paragraphs 28 and 30 of this pronouncement hereunder:

"28. This Court has also opined that before a person is held guilty of suppression of a fact it has to be considered whether verification form is precise and is not vague, and what it required to disclose. In Daya Shankar (supra) it was held that in case verification form is vague no fault can be found on the ground of suppression. However, facts which have come to knowledge it has to be determined by employer whether antecedents of incumbent are good for service, to hold someone guilty of suppression, query in the form has to be specific. Similarly, in B. Chinnam Naidu (supra) when column in verification form required to disclose detention or conviction, it did not require to disclose a pending criminal case or fact of arrest, removal on the ground of material suppression of pending case and arrest was set aside as that was not required to be disclosed.

30. The employer is given 'discretion' to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an incumbent for services in question. In case the employer come to the conclusion that suppression is immaterial and even if facts would have been disclosed would not have affected adversely fitness of an incumbent, for reasons to be recorded, it has power to condone the lapse. However, while doing so employer has to act prudently on due consideration of nature of post and duties to be rendered. For higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However same standard cannot be applied to each and every post....."

The employer thus has wide discretion to take action on or to condone an omission by an applicant to disclose a criminal case.

40. Let us also examine the impact of deliberately furnishing false information in the attestation form.

41. In this regard, Mr Dar has drawn our attention to the judgment of the Supreme Court reported at (2008) 1 SCC 660 : R. Radhakrishnan v. The Director General of Police and others. In this case, the appellant who was a candidate for appointment as a Fireman furnished wrong information about his involvement in a criminal case. Though he was acquitted thereof, the appointment to the service was denied for the reason that he had made a false statement in the verification roll. The appellant's Original Application before the Tamil Nadu Administrative Tribunal was accepted. However, on appeal the High Court overturned the

judgment of the Tribunal. Aggrieved thereby, the appellant took the matter to the Supreme Court of India. The observations of the Supreme Court in paras 10 and 13 deserve to be considered in extenso and read as follows:

"10. Indisputably, Appellant intended to obtain appointment in a uniformed service. The standard expected of a person intended to serve in such a service is different from the one of a person who intended to serve other services. Application for appointment and the verification roll were both in Hindi as also in English. He, therefore, knew and understood the implication of his statement or omission to disclose a vital information. The fact that in the event such a disclosure had been made, the authority could have verified his character as also suitability of the appointment is not in dispute. It is also not in dispute that the persons who had not made such disclosures and were, thus, similarly situated had not been appointed.

13. In the instant case, indisputably, the appellant had suppressed a material fact. In a case of this nature, we are of the opinion that question of exercising an equitable jurisdiction in his favour would not arise."

(Emphasis supplied by us)

42. Thus, clearly the standards on which the suitability of a person for appointment to a uniformed service ought to be evaluated are different from a person who would seek appointment to other services. Suppression of a material fact at the state of submission of an application for scrutiny brings stringent consequences. The scrutiny by the authorities of such conduct by a person seeking recruitment to a uniformed service has to be stricter.

The above principles bind all courts and authorities.

Impact of acquittal from criminal charges on consideration for recruitment into uniformed forces?

43. Let us now examine the submission on behalf of the appellant that he stood acquitted from the criminal charges and hence was entitled to restoration of his appointment.

44. Does acquittal from a criminal case or discharge therefrom ipso facto entitle a candidate to recruitment into the police or a uniformed force? We find that the law on this issue is also well settled.

45. Mr B. A. Dar, learned AAG, has also placed reliance on the pronouncement of the Supreme Court reported at (2013) 7 SCC 685 : Commissioner of Police, New Delhi and another v. Mehar Singh (Paragraphs 23, 25, 26, 35 and 38). In this judgment the Court has adverted to the Delhi Police Rules and noted that while past involvement of a person in a criminal case is not a disqualification for appointment under the rules. However, under Clause 6 of the Standing Order No.398/2010 of the Delhi Police, the Screening Committee has the discretion to take the appropriate decision in a case where the candidate who has disclosed

his involvement in a criminal case, is acquitted or discharged of serious offences, not honourably but by extending benefit of doubt or because the witnesses have turned hostile. It was held that as a matter of rule, such candidates have to be avoided and that the Screening Committee is entitled to keep persons involved in criminal cases of moral turpitude out of the police force, even if they are acquitted or discharged, if it feels that the acquittal or discharge is on technical grounds or is not honourable. What was held was that in considering whether a person acquitted or discharged in a criminal case should be appointed to a post in police force or not, what is of relevance is the nature of offence, extent of his involvement, whether acquittal was a clean acquittal or an acquittal by giving benefit of doubt and the propensity of such person to indulge in similar activities in future. It was held that such decision can only be taken by the Screening Committee. If the decision of the Screening Committee is not mala fide nor actuated by extraneous considerations, it cannot be questioned. In this regard, in paragraphs 23 and 26 of the judgment, the court had laid down the following principle:

"23. A careful perusal of the policy leads us to conclude that the Screening Committee would be entitled to keep persons involved in grave cases of moral turpitude out of the police force even if they are acquitted or discharged if it feels that the acquittal or discharge is on technical grounds or not honourable. The Screening Committee will be within its rights to cancel the candidature of a candidate if it finds that the acquittal is based on some serious flaw in the conduct of the prosecution case or is the result of material witnesses turning hostile. It is only experienced officers of the Screening Committee who will be able to judge whether the acquitted or discharged candidate is likely to revert to similar activities in future with more strength and vigour, if appointed, to the post in a police force. The Screening Committee will have to consider the nature and extent of such person's involvement in the crime and his propensity of becoming a cause for worsening the law and order situation rather than maintaining it. In our opinion, this policy framed by the Delhi Police does not merit any interference from this Court as its object appears to be to ensure that only persons with impeccable character enter the police force.

26. In light of above, we are of the opinion that since the purpose of departmental proceedings is to keep persons, who are guilty of serious misconduct or dereliction of duty or who are guilty of grave cases of moral turpitude, out of the department, if found necessary, because they pollute the department, surely the above principles will apply with more vigour at the point of entry of a person in the police department i.e. at the time of recruitment. If it is found by the Screening Committee that the person against whom a serious case involving moral turpitude is registered is discharged on technical grounds or is acquitted of the same charge but the acquittal is not honourable, the Screening Committee would be entitled to cancel his candidature. Stricter norms need to be applied while appointing persons in a disciplinary force because public interest is involved in it."

(Emphasis supplied)

46. In this case, the Supreme Court also rejected the argument based on the submission that the respondent had not concealed the factum of pendency of the criminal case as distinguished from the facts in (1996) 11 SCC 605 DelhiAdmn.v. Sushil Kumar in the following terms:

"30. It was argued that Sushil Kumar must be distinguished from the facts of the instant case because the respondent therein had concealed the fact that a criminal case was registered against him, whereas, in the instant case there is no concealment. It is not possible for us to accept this submission. The aspect of concealment was not considered in Sushil Kumar at all. This Court only concentrated on the desirability to appoint a person, against whom a criminal case is pending, to a disciplined force. Sushil Kumar cannot be restricted to cases where there is concealment of the fact by a candidate that a criminal case was registered against him. When the point of concealment or otherwise and its effect was not argued before this Court, it cannot be said that in Sushil Kumar this Court wanted to restrict its observations to the cases where there is concealment of facts."

These principles bind our consideration.

47. On this aspect in Avtar Singh v. Union of India, the Supreme Court had held as follows:

"30.xxxxxxxIn concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence etc. have to be considered. Even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or dubious character. In case employer comes to conclusion that conviction or ground of acquittal in criminal case would not affect the fitness for employment incumbent may be appointed or continued in service.

36. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by concerned authorities considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.

38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize 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 recourse 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."

(Emphasis supplied)

48. First and foremost is the consideration as to whether the information was required to be disclosed in the form. Action cannot be taken against a candidate on the basis of suppression or giving false information with regard to a fact which was not even asked for. So far as information regarding a concluded criminal prosecution is concerned, the employer has the right to consider antecedents of the prospective employee, background facts and nature of offences. If the trial resulted in an acquittal then the employer is required to examine as to whether the acquittal was an honourable one on merits or the result of a technicality or grant of benefit of doubt on technical reasons. If omission or suppression is attributable to the candidate, the employer has the discretion to condone the same, after taking the attendant circumstances including of the effect of the omission or suppression into consideration. Wide discretion is conferred on the employer to consider the nature of conviction as well-whether conviction is in a case involving a heinous offence, moral turpitude or in an offence of a trivial or petty nature.

49. In view of the mandate of the law laid down by the Supreme Court, every acquittal from a criminal case would not ipso facto entitle a candidate to a favourable consideration for recruitment by the appointing authority. It is trite that the Screening Committee would still have to consider the nature and extent the person's involvement in the crime and evaluate the candidate's propensity for criminal activity.

50. It isamply clear that every acquittal from a criminal case has to be considered by the selecting authority from the aspect as to whether the acquittal was "honourable" or "technical".

It, therefore, becomes necessary to consider as to when an acquittal/ discharge from criminal charges is "honourable" and when it would be considered a "technical" one. When can it be held that an acquittal/ discharge from a criminal

case is honourable and not merely an outcome of the conferment of benefit of doubt or a technical acquittal.

51. The issue as to when an acquittal in a criminal case would be considered as an honourable acquittal and not a technical one has also been the subject matter of consideration before the Supreme Court. In the pronouncement reported at (2013) 7 SCC 685 : Commissioner of Police, New Delhi and another v. Mehar Singh this was considered at length and the Supreme Court observed as follows:

"21. The expression 'honourable acquittal' was considered by this Court in S. Samuthiram. In that case this Court was concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under Section 509 of the IPC and under Section 4 of the Eve-teasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal[12], where in somewhat similar fact situation, this Court upheld a bank's action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in departmental proceedings. This Court observed that the expressions 'honourable acquittal', 'acquitted of blame' and 'fully exonerated' are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression 'honourably acquitted'. This Court expressed that when the accused is acquitted after full consideration of prosecution case and the prosecution miserably fails to prove the charges leveled against the accused, it can possibly be said that the accused was honourably acquitted."

(Emphasis by us)

52. This very issue was also considered in the pronouncement of the Supreme Court reported at (2018) 1 SCC 797 : Union Territory, Chandigarh Administration and others v. Pradeep Kumar and another. In this case the respondents had contended that the criminal case against them was a case of "no evidence" and their acquittal was honourable acquittal and it cannot be termed as a case of "benefit of doubt". The respondents had also fairly disclosed the factum of facing criminal trial by giving the complete details while applying for the post and there was no issue of suppression of material information on their part.

53. So far as the question as to what would constitute an honourable acquittal is concerned, the same was considered in paragraph 10 of the judgment whence, placing reliance on the earlier pronouncement of the Supreme Court reported at (2013) 1 SCC 598 : Inspector General of Police v. S. Samuthiram, the Court (in Union Territory, Chandigarh Administration and others v. Pradeep Kumar and another) held as follows:

"10. The acquittal in a criminal case is not conclusive of the suitability of the candidates in the concerned post. 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. What is honourable acquittal, was considered by this Court in Deputy Inspector General of Police and Another v. S. Samuthiram (2013) 1 SCC 598, in which this Court held as under:-

"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. 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)

54. There is one other aspect of the outcome of a criminal case. Several cases are found where the courts give benefit of doubt to the accused and so acquits him of the charges for which he faces trial. What is the effect of such an acquittal, Mr Dar, learned AAG, has placed reliance on the pronouncement of the Supreme Court reported at 2019(2) SCT 523(SC) : 2019 SCC Online SC 430 : State of Madhya Pradesh and others v. Bunty, in this regard before us. The respondent in this case had applied for the post of a Constable in the year 2013. After appearance in the police constable recruitment test, physical endurance test and medical examination, he was selected on the 9th May, 2014. On the 5th of June, 2014, he was called for verification of the marks sheet and the caste certificate as well as the police verification by the Screening Committee on the 25th of February, 2015. Thereafter, on the basis of the report of the Screening Committee, the police department decided on 11th March, 2015 to deny appointment to the respondent. Bunty-the respondent was involved in a case involving moral turpitude for the commission of offences punishable under Sections 392 and

411 IPC. He was given benefit of doubt in the case and acquitted vide the judgment dated 7th January, 2015. Bunty's challenge to the denial of the appointment by way of the writ petition was dismissed by the Single Judge of the High Court. The Division Bench, however, accepted the appeal against the decision of the Single Judge holding that the respondent stood acquitted since the offence had not been proved beyond reasonable doubt and, therefore, the

appointment order has to be issued as a matter of course. The State appealed the decision of the Division Bench. The Supreme Court considered the impact of the respondents involvement in the criminal case, the nature of the allegations against him and the reasons for the acquittal, and accepted the appeal of the police department. In paragraphs 8 and 9 of the judgment, the Supreme Court observed as follows:

"8. After hearing learned counsel for the parties, we are of the opinion that the respondent had participated in the selection process in the year 2013, at that time the said criminal case was pending consideration and he has been acquitted subsequently, vide judgment and order dated 7.1.2015 all throughout during selection process the case was pending consideration and as certain witnesses have turned hostile which is not unusual. The respondent knew very well about the pendency of the case against him and it is not uncommon to see that witnesses turned hostile. In the aforesaid circumstance, it cannot be said to be case of clear acquittal, in criminal case, he was given benefit of doubt not acquitted because the case against him was found to be false. Thus, due to such acquittal appointment could not have followed as a matter of course as observed by the Division Bench of the High Court.

9. Considering the nature of allegation in the case, it was a case of impersonation as a police officer and thereby committing the offence under Sections 392 and 411 of the IPC.

It was a case of the serious kind, which involved moral turpitude and having not been granted the clean acquittal in the criminal case merely by the grant of benefit of the doubt, clouds cannot be said to be clear as to the antecedents of the respondent. Thus, the perception formed by the Screening Committee that he was unfit to be inducted in the disciplined police force was appropriate. In the aforesaid factual matrix, decision of Scrutiny Committee could not be said to be such which warranted judicial interference."

(Emphasis by us)

55. Placing reliance on the principles laid down in Commissioner of Police, New Delhi and another v. Mehar Singh in the judgment reported at (2019) 2 SLR 1 (S.C) : 2018 SCC Online SC 2555 : State of Madhya Pradesh v. Abhijit Singh Pawar, a case in which the respondent was relying on an acquittal premised on a compromise in the criminal case, the Supreme Court held that even though the acquittal was based on compromise, it was open for the Screening Committee to examine the suitability of the candidates and take decision. The Supreme Court upheld the decision of the police authorities that the respondent was not suitable observing as under:

"14. In Avtar Singh (supra), though this Court was principally concerned with the question as to non-disclosure or wrong disclosure of information, it was observed in paragraph 38.5 that even in cases where a truthful disclosure about a concluded case was made, the employer would still have a right to consider

antecedents of the candidate and could not be compelled to appoint such candidate.

15. In the present case, as on the date when the respondent had applied, a criminal case was pending against him. Compromise was entered into only after an affidavit disclosing such pendency was filed. On the issue of compounding of offences and the effect of acquittal under Section 320(8) of Cr.P.C., the law declared by this Court in Mehar Singh (supra), specially in paragraphs 34 and 35 completely concludes the issue. Even after the disclosure is made by a candidate, the employer would be well within his rights to consider the antecedents and the suitability of the candidate. While so considering, the employer can certainly take into account the job profile for which the selection is undertaken, the severity of the charges levelled against the candidate and whether the acquittal in question was an honourable acquittal or was merely on the ground of benefit of doubt or as a result of composition."

(Emphasis by us)

56. On the other hand, Mr M. A. Qayoom, learned counsel for the appellant has placed reliance on the pronouncement of the Supreme Court reported at (2011) 4 SCC 644 : Commissioner of Police and others v. Sandeep Kumar, wherein the appointment of the respondent as Constable stood cancelled on the ground that he had been involved in a criminal case. It has been urged by MrQayoom that in this case, the respondent had not disclosed the fact that he and his family are involved in a criminal case being FIR No.362 under Sections 325/34 IPC in the application form for appointment to the post of Head Constable even though there was a specific column for the same. The Supreme Court held that the cancellation of the appointment was illegal for the reason that the incident had occurred when respondent was only 20 years old at which age young people often commit indiscretions and approach should be to condone such indiscretions for the reason that they are not expected to behave in a mature manner as older people. The Court took the view that the approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives. So far as the concealment was concerned, the Court observed that this was probably done out of the apprehension that if the respondent disclosed the fact he would automatically be disqualified. What ultimately weighed with the Court was that the offence in which the respondent stood implicated was not a serious offence of murder, dacoity or rape and a lenient view should be taken in the matter. This judgment has been rendered purely in the facts of the case. Even otherwise, so far as the present case is concerned, the applicant stood implicated in FIR No.52 of 2007 under Section 379 RPC and 6 Forest Act, wherein allegations of stealing of timber had been made, a serious matter.

57. Mr Qayoom has also placed reliance on the pronouncement of this Court reported at 2013 (III) SLJ : Jasbir Singh v. State and others and 2013 (III) SLJ 894 : Naranjan Singh v. State and others, in support of his submission that even

this Court had held that even though the appointment order was withheld because of involvement of a candidate in a criminal case, his acquittal would entitle him to the relief which has been sought. In *Naranjan Singh v. State and others*, this Court has placed reliance on pronouncement of the Supreme Court in *Commissioner of Police and others v. Sandeep Kumar (supra)*.

58. The judgments of the Single Bench of this court in *Jasbir Singh v. State and others* and *Naranjan Singh v. State and others* on which reliance is placed by Mr Qayoom, were rendered before the authoritative pronouncement of law by the Supreme Court in (2016) 8 SCC 471: *Avtar Singh v. Union of India and others* and (2013) 7 SCC 685 : *Commissioner of Police, New Delhi and another v. Mehar Singh*. It is the principles laid down in the judgments of the Supreme Court which would bind this Court.

59. A judgment of acquittal can also result on account of either witnesses not turning up for recording of evidence or turning hostile during the recording of evidence. The prosecution of a criminal charges may fail on account of legal infirmities, say, lack of sanction for the prosecution or other such reasons. Criminal charges may also fail on account of flaws in the prosecution or non-examination of key witnesses. Equally so, a prosecution which fails on account of composition or of settlement with the opposite party/ complainant party cannot be considered as an honourable acquittal entitling a favourable consideration by a prospective employer.

60. An honourable acquittal necessarily means that a person accused of criminal charges stands acquitted after a full trial, complete evidence and a consideration of the prosecution case by the trial court which thereafter concludes that the prosecution has miserably failed to prove the charges against the accused. It has been clearly directed that in cases of grave nature, acquittal or discharge on technical grounds; or because of serious flaw in the conduct of the prosecution or because of witnesses turning hostile would not be considered an honourable acquittal.

61. It is only if, after the consideration of the entirety of the prosecution evidence that the criminal court concludes that the prosecution had miserably failed to prove the charges levelled against the accused, can it be said that the person stands "honourably" acquitted.

Whether the appellant had suppressed material information?

62. Mr M. A. Qayoom, learned counsel for the respondent has stressed on the reason for the passing of the order dated 1st March, 2010, whereby the appointment of the respondent was cancelled. This cancellation was premised on the conclusion of the Superintendent of Police that the "recruit constable who had fairly a good knowledge of his involvement in a criminal case should have divulged the information....." "Since the services of Police personnel are required to expose this type of information"

"who will manage to join the department by hiding and making to hide the facts, which is other wise mandatory on him to expose."

Learned counsel for the respondent, urges that the appointment was not cancelled because the appellant had been implicated in the case or because his acquittal was a technical acquittal, but because of the opinion of the authority that he had concealed his implication in the criminal case of which he was having good knowledge.

63. In this regard, it has also been urged by MrQayoom that the respondent had categorically challenged the order dated 1st March, 2010 on the ground that there was no clause in the application form requiring the applicant to disclose as to whether he was involved in the criminal case or not and, therefore, the conclusion that appellant had failed to divulge information was erroneous. This position is not disputed by the official respondents.

64. Mr Qayoom contends that even if there had been such a requirement, the petitioner could be guilty of suppression, in view of the guidance laid down by the Supreme Court in para 38.10 of Avtar Singh v. Union of India, such suppression had to be condoned and mind applied independent thereof. MrQayoom has pointed out that this judgment has been followed by the Supreme Court in latter judicial pronouncement including (2018) 1 SCC 293 : Union of India and others v. Amit Singh (Paras 3 to 5) and (2018) 1 SCC 308 : Vikram Singh v. Commissioner of Police.

65. In the conclusions drawn up by the Supreme Court of India in the judgment in Avtar Singh v. Union of India, at para 38.10 it has been clearly held that "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."

In the present case, in as much there was no requirement, the appellant cannot be faulted for not disclosing any fact which was not required to be disclosed in the application form.

There is, therefore, substance in the appellant's submission that it was completely erroneous on the part of the authority who passed the order dated 1st March, 2010 to hold that appellant had hidden any fact which he was mandatory required to expose.

66. So far as information which has not been asked for but is relevant and is revealed to the employer subsequently, in para 38.10 of Avtar Singh v. Union of India, the Supreme Court has concluded that "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."

In the present case, the appellant was acquitted from the criminal prosecution.

67. However, this submission cannot impact the consideration in the present case. The order dated 1st of March, 2010 was set aside by the order of the learned Single Judge dated 18th May, 2016 in SWP 2616/2011 and the respondents were directed to take further action and pass order afresh. The respondents have considered the matter afresh and passed the order dated 31st July, 2017. This order does not rest on the allegation that the appellant had suppressed material information. It is, therefore, unnecessary for us to dwell at any length on this issue.

Whether the appellant had given a wrong address to get a clean chit at the time of police verification?

68. Mr M. A. Qayoom, learned counsel for the appellant has also stanchly disputed the second finding recorded by the Superintendent of Police in the order dated 1st March, 2010 that the appellant had wrongly shown his residence at Gundchobutra to get a clean chit at the time of police verification and that thereby he had knowingly and deliberately concealed the fact of his involvement in a criminal case.

69. Mr Qayoom has further stated that even the Investigating Officer had given a wrong address of the appellant while filing the challan in the criminal case and that the appellant cannot be faulted for the same.

70. It has been argued by Mr. M.A. Qayoom, learned counsel for the appellant that the appellant has rightly disclosed his actual residence as Village Gundchobutra. In support of this submission, the appellant has placed on record a Permanent Resident Certificate dated 30th October, 2003 which is in the prescribed Form-A under Rule 4 of the Act No. XIII of 1963, issued by the Office of Assistant Commissioner General, Handwara which certifies that the appellant was resident of Village Gundchobutra, Tehsil Handwara, District Kupwara. The appellant has also placed on record a certificate dated 7th December, 2006 certifying that the appellant was a member of the Socially and Educationally Backward Class which falls under the category of Resident of Backward Area (RBA), which also shows that the appellant was a resident of Village Gundchobutra. These documents do lend support to the appellants contention.

71. In any event, the order dated 31st July, 2017 is not premised on any misrepresentation by the appellant. These submissions are completely unnecessary so far as the present challenge is concerned.

Decision of the Screening Committee- extent of judicial review and interference?

72. Attaching great importance to the consideration by a Screening Committee, keeping in view the nature of the functions discharged by the police force, in paragraphs 35 and 38 of Commissioner of Police, New Delhi & anr. v. Mehar Singh, the Supreme Court held thus:

"35. The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great

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

(Emphasis supplied)

73. So far as the decision of the Selection Committee is concerned, there are limitations on the grounds on which it can be challenged. In (2019 2 SLR 1 (SC) : 2018 SCC Online SC 2555 State of Madhya Pradesh v. Abhijit Singh Pawar, it was observed thus:

17. We must observe at this stage that there is nothing on record to suggest that the decision taken by the concerned authorities in rejecting the candidature of the respondent was in any way actuated by mala fides or suffered on any other count. The decision on the question of suitability of the respondent, in our considered view, was absolutely correct and did not call for any interference. We, therefore, allow this appeal, set aside the decisions rendered by the Single Judge as well as by the Division Bench and dismiss Writ Petition No.9412 of 2013 preferred by the respondent. No costs.

(Emphasis supplied)

74. We find that the recruitment rules into the police department of the States all envisage scrutiny by a Screening Committee and verification of the antecedents of the candidates.

75. The police force is a uniformed and disciplined force which carries the responsibility of maintaining law and order in the society. By its very nature, a police official must inspire absolute confidence and be of unimpeachable character and integrity.

76. The above narration of the principles laid down by the Supreme Court in a series of judgments would show that the Court has emphasized the seriousness

of the functions which are discharged by the disciplined and uniformed police force. The Supreme Court has reiterated the necessity of keeping persons involved in grave cases of moral turpitude, serious misconduct or dereliction of duty out of the police force even if they are acquitted or discharged and the judgment in their favour is on technical grounds and is not honourable. It is the Screening Committee which has to assess as to whether such candidate would have the propensity to revert to similar activities in the future if given the appointment. The consideration by the Screening Committee necessarily entails examination of the nature and extent of involvement of the person in the crime and the possibility of becoming a cause for worsening the law and order situation rather than maintaining it. It is the scrutiny of the Screening Committee which must carry weight. The Supreme Court has held that unless the decision of the Screening Committee is coloured with malafides or suffers from any other legal deficiency, it cannot be interfered with.

77. In the judgment of the Supreme Court reported at 2019 SCC OnLine SC 430; State of Madhya Pradesh and others v. Bunt, the Court had considered para 35 of the pronouncement in Mehar Singh in para 10 of the judgment; the three judge decision in Avtar Singh in para 11 and thereafter had extracted para 15 of the pronouncement in Pradeep Kumar, observing thus:

"12. In Pradeep Kumar (supra) this Court has observed:-

"15. From the above details, we find that the Screening Committee examined each and every case of the respondents and reasonings for their acquittal and taken the decision. While deciding whether a person involved in a criminal case has been acquitted or discharged should be appointed to a post in a police force, nature of offence in which he is involved, whether it was an honourable acquittal or only an extension of benefit of doubt because of witnesses turned hostile and flaws in the prosecution are all the aspects to be considered by the Screening Committee for taking the decision whether the candidate is suitable for the post. As pointed out earlier, the Screening Committee examined each and every case and reasonings for their acquittal and took the decision that the respondents are not suitable for the post of Constable in Chandigarh Police. The procedure followed is as per Guideline 2(A)(b) an object of such screening is to ensure that only persons with impeccable character enter police force. While so, the court cannot substitute its views for the decision of the Screening Committee."

(Emphasis by us)

78. So far as the principles which apply is concerned, in para 13 of State of Madhya Pradesh and others v. Bunt, it was observed as follows:

"13. The law laid down in the aforesaid decisions makes it clear that in case of acquittal in a criminal case is based on the benefit of the doubt or any other technical reason. The employer can take into consideration all relevant facts to take an appropriate decision as to the fitness of an incumbent for appointment/continuance in service. The decision taken by the Screening Committee in the

instant case could not have been faulted by the Division Bench."

(Emphasis by us)

In the light of this discussion, the Supreme Court had upheld the decision of the police authorities and allowed the appeal.

79. On the same issue, Mr B. A. Dar, has placed reliance on a division bench pronouncement of this court reported at 2003 (Supp.)JKJ 765 (DB) : Fayaz Ahmed Panchoo v. State of J&K and others, wherein the Court laid down the boundaries within which the writ court would exercise jurisdiction. For expediency, we may extract paras 9, 10 and 18 which reads as follows:

"9. It is not for this court to sit in appeal over the decision taken by the authorities which is supported by an affidavit. One may think to take into consideration these aspects and try to weigh though not permissible, however, we are not able to consider, as the appellant was required in two criminal cases. No reply has been filed by the original petitioner denying his involvement.

10. In this behalf MrQadri, Sr. Additional Advocate General, appearing for the respondents, drew the attention of the court to the decision reported in case of Delhi Administration through its Chief Secretary &Ors. V. Sushil Kumar, 1996(11) SCC 605. In this case, the petitioner/ candidate was found physically fit, passed the written test and after interview he was selected provisionally. However, selection was subject to verification of character and antecedents by the local police. On verification it was found that his antecedents were such that his appointment to the post of Constable was not found desirable. Therefore, he was not appointed. The Central Administrative Tribunal allowed the application, filed by the petitioner, on the ground that since the respondent had been discharged and/ or acquitted of the offences punishable under Section 304 IPC, under Section 324 read with Section 34 IPC and under Section 324 IPC, he cannot be denied the right of appointment to the post under the State. The judgment delivered by the Central Administrative Tribunal was challenged before the Apex Court, and the Apex Court has pointed out as under:

".....It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was found physically fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly unjustified in giving the direction for consideration of the case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof."

18. It was submitted that in view of the provisions indicated in the police Act, the rules framed thereunder, and, the provisions contained in the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, the appointing authority has followed the procedure and the court should not sit in appeal over that decision. xxxxxx x xx"

(Emphasis supplied)

80. The above judicial pronouncements emphasise the principle that the favourable outcome of the criminal trial may not necessarily impact consideration of the fitness of the candidate for selection. The Screening Committee has to undertake a holistic exercise, involving evaluation of the conduct or character of the candidate as well as his potential towards criminal activities, all of which are the relevant considerations. It is trite that the employer has the right to consider the antecedents of the candidates for assessing their suitability. The severity of the charges levelled against the candidate is an important consideration. Most importantly, the writ court cannot sit in appeal over the decision of the Screening Committee/selecting authority. It is well settled that such decision cannot be interfered with unless it was a colourable exercise of power or malafide.

Decision dated 31st July, 2018, in the present case and the order dated 14th May, 2018 rejecting SWP 1766/2017 of the learned Single Judge

81. Let us now examine challenge by the appellant to the order dated 14th May, 2018 of the learned Single Judge upholding the decision of the respondents dated 31st July, 2017 whereby cancellation of his appointment was maintained. This challenge has to be tested in the light of the well settled principles discussed heretofore by us.

82. We have noted above that the cancellation of the petitioner's appointment by the order dated 1st March, 2010 was set aside by this Court by the judgment dated 18th May, 2016 passed in SWP No.2616/2011. By the same order, the respondents were directed to take action on the communication dated 27th February, 2012 sent to the respondent no.3 (IGP, Kashmir) by the AIG(P) for Director General of Police J&K. The Court had directed orders in this behalf to be passed within two weeks from the date of service of the copy of the judgment which was passed in presence of the counsel for the respondents.

83. The two weeks permitted by the Court stretched beyond one year till the passing of order dated 31st July, 2017. This order discloses that the material on which the order was premised consisted of the following:

"i) Copy of FIR No.52/2007 U/S 379 RPC, 06 F.Act of P/S Kralgund registered against the petitioner.

ii) Enquiry papers.

iii) Copy of acquittal order.

iv) Copy of order/ any reference by virtue of which the finger prints of the

petitioner were sent to Finger Print Bureau New Delhi."

84. In the above order, reliance also stands placed on two judicial pronouncements; the first being the pronouncement of Supreme Court reported at (2013) 7 SCC 685 : Commissioner of Police, New Delhi and another v. Mehar Singh and the judgment of the Jammu Wing of this Court passed in SWP No.2489/2001 titled Muneer Hussain v. Union of India and others. Thereafter, it stands observed that the petitioner had a criminal background and was unsuitable for the post of Constable in disciplined force. The claim of the appellant was thereafter rejected as being not maintainable and bereft of genuine grounds.

Aggrieved thereby, the appellant had filed SWP 1766/2017 which came to be dismissed by the judgment dated 14th May, 2018.

85. Before us the order dated 31st July, 2017 and judgment dated 14th May, 2018 have been assailed by the petitioner primarily on the ground that despite the specific directions made in the order dated 18th May, 2015 in the first writ petition, the respondents paid no heed and did not examine the letter dated 27th February, 2012 before passing the order dated 31st July, 2017. The respondents also did not bother about the communication dated 16th June, 2011.

86. The appellant has urged that he was entitled to parity of treatment as was accorded to the persons in whose favour order dated 27th February, 2012 has been passed and that there was no reason or justification at all for not taking into consideration the acquittal of the appellant.

87. Mr M. A. Qayoom has pressed the challenge to the judgment dated 14 th May, 2018 of the learned Single Judge on the ground that reliance has been placed on Union Territory, Chandigarh, Administration and others v. Pradeep Kumar &anr, ignoring larger bench decisions of the Supreme Court.We find that in the impugned order, the learned Single Judge has extracted paras 15 to 17 of Union Territory, Chandigarh Administrations and others v. Pradeep Kumar and another, wherein the Supreme Court has conducted an analysis of the factual background of that case. Reference has been made in Pradeep Kumar to the principles laid down in several judgments of the Supreme Court on the importance of integrity and high standard of conduct in the police force. In Pradeep Singh, the parameters as laid down in Meher Singh,within which the decision of the screening committee could be faulted, have also been considered.

The ground of challenge to the order of the learned Single Judge having placed reliance on Pradeep Kumarand ignoring binding judicial precedents is,therefore, baseless and devoid of any merit.

88. The learned Single Judge has sustained the decision of the Director General of Police, Jammu & Kashmir State, against the appellant on the ground that he had been found unsuitable to man the post in view of his

"criminal background". We have noted above that law requires that persons with

impeccable character only can be allowed to make entry to the police force which is a disciplined one. The importance of integrity and high standards of conduct in the police force have been emphasized as the relevant material on which the opinion, as to whether retention in the police force is or is not warranted, must rest.

89. The learned Single Judge has taken the view that the Director General of Police, Jammu & Kashmir, was the highest functionary in the police hierarchy and was the best judge to consider this facet of the case. It has been held that the decision dated 31st July, 2017 has been taken after due application of mind and that the order was based on law and reason and ought not to be disturbed.

Whether failure to refer to the letters dated 16th June, 2011 or 27th February, 2012 in the order dated 31st July, 2017-effect thereof

90. Mr Qayoom has primarily contended that the appellant was honourably acquitted from the criminal case and that other persons similarly situated as noted in the letter dated 27th February, 2012 stand appointed.

91. The above narration of facts shows that by the order dated 18th May, 2016 of the learned Single Judge in SWP 2616/2011, order dated 1st March, 2010 passed by respondent no.5 cancelling the appointment of appellant was set-aside and the respondent no.3 was directed to take further action on the communication dated 27th February, 2012, whereunder the cases of two persons Aijaz Ahmad Khan and Bashir Ahmad Teedwa had been examined after their acquittal from criminal charges and directions for issuance of formal appointment letters as Constables in the Jammu & Kashmir Executive Police were directed to be issued. This communication has not been adverted to in the order dated 31st July, 2017.

92. What is material for the scrutiny which we can undertake, is as to whether the respondents have accorded due consideration to the case of the appellant. Other than the grievance that the letter dated 27th February, 2012, was not considered, that the relevant material stands examined before passing the order dated 31st July, 2017 could not be disputed before us. Before us, the challenge is to the outcome of the consideration.

93. So far as the letter dated 16th June, 2011 is concerned, the same merely raised a query regarding the fate of the criminal case against the appellant.

94. The Director General of Police, Jammu & Kashmir, in the order dated 31 st January, 2017, has recorded that he has conducted a threadbare examination of the available record as well as the pronouncement of the Supreme Court in Commissioner of Police v. Mehar Singh and judgment of this Court in Muneer Hussain v. Union of India and others, it has been observed that "in view of his criminal background, the petitioner has been found unsuitable for the post of Constable in a disciplined force and as such his claim has been decided to be rejected."

95. It is nobody's case that other than FIR no.52/2007, there was any other criminal case against the appellant. It cannot be denied that the charges with which the appellant was charged were serious charges. The Director General has considered the complaint as well as the judgment of the trial court acquitting the appellant. Clearly, it is the proceedings in the case arising out of FIR no.52/2007 which stand considered and has weighed with the Director General of Police.

96. In the present case, the appellant stands acquitted by the judgment dated 26th April, 2011 passed by Chief Judicial Magistrate, Handwara. We have extracted here in before the material portion of the judgment. During the criminal trial, a material witness-the Investigating Officer, a police officer was not produced or examined by the prosecution. No effort was made by the prosecution to prove the site plan or the seizure of the timber. The witnesses who were examined by the prosecution did not support the charges. It cannot be said that the prosecution had led the entirety of the evidence during the trial. It, therefore, cannot be said that the prosecution had failed after the entirety of evidence had been placed before the Court. The trial court was compelled to give the benefit of doubt to the appellant and hold that the prosecution had failed to fulfill the ingredients of Section 379 Ranbir Penal Code or Section 6 of the Forest Act against the accused person.

In the light of the well settled legal principles extracted above and discussion above, we find ourselves unable to agree with the appellant that he stood "hounourably acquitted" from the criminal charges.

97. As noted above, so far as the order dated 31st July, 2017 is concerned, after listing out the four documents which have been considered by him, the documents considered include the FIR 52/2007 as also the acquittal order, the Director General of Police has adverted to two judicial pronouncements and concluded that in view of his "criminal background" the petitioner has been found unsuitable for the post of Constable in disciplined force. It cannot and rightly so has not been contended before us that the relevant material has not been seen by the competent authority.

We note that there is no grievance before us that the order dated 31st July, 2017 is malafide.

98. The order dated 31st July, 2017 has been passed on a consideration of the antecedents of the appellant. Therefore, it is immaterial to the whole matter that the respondents do not make a reference to the letter dated 16th June, 2011.

99. The allegations on which a criminal prosecution rests and the circumstances leading to the acquittal therefrom would be different in each instance. So far as suitability for recruitment into the police is concerned, the appointing authority is required to effect a strict scrutiny into each individual candidate's background. Therefore, merely because the respondents may have recruited some individuals who were acquitted from their criminal prosecutions, would not ipso facto entitle the appellant to the same.

Nothing would also turn on the respondents having offered appointment to some persons who stand acquitted in a criminal case and refusing it in another case. We have no material regarding the nature of the charges against those persons or the reasons for their acquittal.

100. In view of the principles noted by us above, the appellant has to satisfy that his acquittal was in such circumstances as would justify his appointment into the police force.

101. The failure to refer to the letter dated 27th February, 2012 in the order dated 31st July, 2017 is of no legal consequence to the present challenge.

102. So far as the impugned judgment dated 14th May, 2018 of the learned Single Judge is concerned, we find that it has carefully noted the scrutiny by the Director General of Police. It has been rightly observed that as per the applicable principles and law only persons with impeccable character can be allowed to make entry into the police force which is a disciplined one. It has been observed that the importance of the integrity and high standard of conduct in police force has to be taken into consideration in the matter of forming an opinion whether his retention in the police force is or is not justifiable.

103. In this background, the learned Single Judge was also of the view that the Director General being the highest functionary in the police hierarchy is the best judge to consider the suitability of the applicant for induction into police force. Given the above factual background, it has been held that such decision cannot be called into question especially as the same has been arrived at after giving due application of mind to the relevant facts. These observations are in consonance with the binding principles laid down in the judicial precedents extracted above, are legally correct and cannot be faulted.

104. In view of the above discussion, conclusions arrived at by the learned Single Judge are in consonance with the well settled legal principles and unassailable.

Result

105. As a result of the above discussion, we find no merit in this appeal which is hereby dismissed.