

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR**BEFORE****HON'BLE SHRI JUSTICE SHEEL NAGU****&****HON'BLE SMT. JUSTICE SUNITA YADAV****ON THE 8th OF FEBRUARY, 2022****MISC. PETITION No. 503 of 2022****Between:-****VINOD KUMAR****.....PETITIONER*****(BY SHRI VIJAY KUMAR TRIPATHI, ADVOCATE)*****AND**

1. **UNION OF INDIA MINISTRY OF DEFENCE
THROUGH ITS SECRETARY ROOM NO. 136,
SOUTH BLOCK NEW DELHI (DELHI)**
2. **ORDNANCE FACTORY THROUGH ITS
GENERAL MANAGER AYUDH NAGAR, ITARSI
(M.P.) A UNIT OF MUNITIONS INDIA LTD.
(MADHYA PRADESH)**

.....RESPONDENTS***(BY SHRI J.K. JAIN, ASSTT. SOLICITOR GENERAL)*****(Heard through Video Conferencing)**

This appeal coming on for admission this day, JUSTICE SHEEL NAGU passed the following:

ORDER

This petition under Article 227 of the Constitution is filed assailing the order of the Central Administrative Tribunal, Jabalpur Bench dated 21.12.2021 by which OA No.200/00350/2021 preferred by the petitioner was dismissed thereby upholding impugned order dated 13.03.2019 cancelling the candidature of petitioner for appointment to the post of Chemical Processor Worker(Semi-skilled) in Ordnance Factory, Itarsi.

2. The candidature was cancelled since on verification of criminal antecedents it was found that though petitioner had been acquitted on 26.05.2017 of the charges for offences punishable under Section 376, 384,

509 of IPC read with Section 4 of POCSO Act but the said acquittal was treated by the employer to be based on benefit of doubt and not honourable/clean.

3. Learned counsel for the petitioner Shri Vijay Kumar Tripathi has drawn attention of this Court to the judgment of acquittal dated 26.05.2017 specially paragraph 29, 30, 31 and 32 to contend that bare reading of the same reveals that the trial court came to a finding from the evidence on record that the very complaint made by the prosecutrix against the petitioner, which was the genesis of the entire incident was made by prosecutrix to save herself from disrepute. In this background, learned counsel submits that when the genesis of the crime itself was doubted then the trial court ought to have treated the acquittal as clean and honourable. For this purpose, learned counsel for the petitioner relied upon the decision of Apex Court in *Mohammed Imran vs. State of Maharashtra and others*, (2019) 17 SCC 696, the judgment 13.10.2020 passed by this Court in WA No.594/2020 (*State of M.P. and others vs. Yogesh Choudhary*) and judgment of Bombay High Court Nagpur Bench dated 30.08.2018 in WP No.2800/2018 (*Union of India and others vs. Ganesh Wasudeo Padhal and another*).

4. It is now well settled that unless the acquittal in criminal trial is honourable and clean, the employer has enough discretion to find a candidate to be unfit for employment, subject to various other factors such as sensitivity and job requirement of the post involved.

5. The post in question herein was Chemical Processor Worker(Semi-skilled) in a defence establishment (Ordnance Factory, Itarsi) and therefore, it cannot be said that the post was not sensitive. The sensitivity involved in a post may not be of such high degree as involved in a disciplined/uniformed service but since the organization where the petitioner would have been employed was under the Ministry of Defence catering to the requirements of the Armed Forces, the element of sovereignty of the nation comes into being.

6. More so, the judgment of acquittal dated 26.05.2017 as aforesaid, in

the considered opinion of this Court, is not honourable and clean. Learned counsel for the petitioner does not dispute that the prosecutrix who was minor supported her police statement by making implicative testimony in the Court. It is only that the Trial Court after indulging in marshalling of evidence came to a finding that initial complaint made by prosecutrix appears to be false. Thus, the prosecution story was not out-rightly rejected or the offence was not disproved.

7. In this view of the matter, the judgment of acquittal is based more on benefit of doubt and therefore is not a clean and honourable acquittal.

8. Reliance of learned counsel for petitioner to the decision of Apex Court in *Mohd. Imran* (supra) is of no avail since in the said case the prosecutrix in a trial involving offence of rape resiled from her earlier statement. Reliance on the Division Bench decision in the case of *Yogesh Choudhary* (supra) is also of no avail since it is based on the decision of Apex Court in the case of *Mohd. Imran* (supra). The case of Division Bench of Bombay High Court, Nagpur Bench rendered in *Ganesh Wasudeo Padhal* (supra) is further of no avail to the petitioner as in the said case the offences involved were punishable under Section 323, 447, 506 read with 34 IPC which were minor in nature.

9. Consequently, no case for interference is made out and the present petition stands **dismissed**.

(SHEEL NAGU)
JUDGE

(SUNITA YADAV)
JUDGE

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