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SUPREME COURT ON EMPLOYER'S RIGHT TO DETERMINE SUITABILITY OF CANDIDATE

A. Introduction

In the case of *Commissioner of Police v. Raj Kumar*,¹ the Supreme Court (SC) held that public service employers, like any others, have the element and latitude of choice while determining the suitability of candidates applying for service.

B. Brief Facts

1. In 2009, an advertisement was released inviting applications for the cadre of constable in the Delhi Police.
2. The respondent candidates, except for one of them (Deepa Tomar, one of the respondents), had disclosed past criminal cases that had been instituted against them. One such candidate had not disclosed this fact, and that this criminal case had ended in compromise.
3. After consideration of their suitability, these applications were then referred to a Screening Committee.
4. After which, the Central Administrative Tribunal allowed the applications of the candidates and quashed all the orders of the Screening Committees.
5. Subsequently, the Division Bench of the High Court (DB) allowed the petitions and quashed the rejection of the candidatures.
6. The Commissioner of Police (petitioner before the DB) appealed to the SC, arguing that the DB lost sight of the fact that the Standing Orders (SOs) cannot compel the authorities to select applicants whose conduct was not satisfactory in the opinion of the Screening Committee.

C. Order

1. SC held that the acquittal or discharge of a candidate in criminal proceeding would not *per se* enable them to argue that the authorities can be compelled to appoint or reject them.
2. The SC observed that: “Public service – like any other, pre-supposes that the state employer has an element of latitude or choice on who should enter its service. Norms, based on principles, govern essential aspects such as qualification, experience, age, number of attempts permitted to a candidate, etc. These, broadly constitute eligibility conditions required of each candidate or applicant aspiring to enter public service.”²

¹ MANU/SC/0565/2021.

² *Ibid*, para. 29.

D. Conclusion

1. Employers have the element of latitude or choice in determining who they recruit for their service.
2. Although the judgement is in the context of public service, the principle can also be applied in private employment. SC, in the cited paragraph of the judgement, has opined: “*Public service – like any other, pre-supposes that the state employer has an element of latitude or choice on who should enter its service.*”
3. In the event a private employer exercises its discretion not to hire an employee, for their not meeting the hiring criterion is subsequently challenged by said employee, this judgment can be relied upon.

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