

Central Administrative Tribunal

Principal Bench

New Delhi, this day of January 12, 1996.

OA No. 1409/95 along with
GA 93/91

Hon'ble Member Mrs. Lakshmi Swaminathan, Member (J)
Hon'ble Member Shri R.K. Ahooja, Member (A)

Sh. Gyanender Singh
S/o Sh. Ram Charan Singh
B-14, Pitampura Police Lines
Delhi.

Applicant

(Advocate : Sh. Shyam Babu)

versus

N.C.T. of Delhi

Through: The Chief Secretary,
NCT Delhi.

2. The Dy. Commissioner of
Police (Crime & Railways)
Police Headquarters,
IP Estate, New Delhi.

3. Mr. SS Menon
ACP (Crime Branch)
Police Hqs,
IP Estate, New Delhi.

Respondents

(Advocate : Sh. Rajinder Pandita)

ORDER

Hon'ble Shri R.K. Ahooja, Member (A)

This case has a chequered history. The applicant Sh. Gyanender Singh joined Delhi Police as a Constable in 1982 on the basis of a matriculation certificate giving the date of birth as 23.12.1960. He was selected as ASI in 1983. A complaint was there ~~after~~ received from one Sh. Jitender Singh that his date of birth was not 23.12.60 but 3.7.1958. and This resulted in a departmental enquiry/vide order

dt. 18.2.94, the applicant was dismissed from service on the charge of misrepresenting the date of birth at the time of his recruitment.

The applicant filed an application No.93/91 before the Tribunal and vide its order dt. 25.9.92, the Tribunal set aside ~~his~~ order of dismissal giving liberty to the respondents to verify the correct date of birth of the applicant by an independent and clinching evidence. The respondents thereafter conducted ^a fresh enquiry and based on that the applicant was placed under suspension. ~~The~~ applicant approached

the Tribunal again vide OA No.516/94 seeking to quash the suspension order as well as the fresh Departmental enquiry, ~~on~~ the ground, amongst others, that a criminal case based on the same set of facts on which the Departmental Enquiry had been initiated was pending ^{against him}. The said application was dismissed

since, ~~apart from other reasons~~ no chargesheet had

been filed in the Court till then and the ~~proceedings~~

in the Criminal Court had not commenced. The applicant's

case/^{now} is that the fresh Departmental Enquiry is barred

since the earlier DE had already been quashed by the

Tribunal and alternatively since ^a Criminal case on same ground has been initiated, the DE should pend

the ~~completion~~ of the criminal ~~case~~ as his defence would otherwise be prejudiced.

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2. The respondents have controverted the allegations of the applicant and have submitted that the decision of the Tribunal in OA.93/91 did not debar a fresh DE. They have also claimed that DE and the criminal case can concurrently go together as held in Koesheswar Dubey vs. M/s Bharat Cooking Coal Ltd. - 1988(4) SCC 319 and the judgement of this Tribunal in OA.1485/92 Tara Chand vs. Commissioner of Police Delhi.

3. We have heard the Id. counsel on both sides and have perused the records. The first question to be decided is whether the present impugned disciplinary proceedings are in the nature of de novo proceedings, as the earlier proceedings were quashed by the orders of this Tribunal (supra). For this it is necessary to see the directions of the Tribunal in the aforesaid case. The operative part of the Order (Annexure-E) reads as follows:

i) In the conspectus of the facts and circumstances of the case, we are of the opinion that the disciplinary proceedings initiated against the applicant by Memorandum dated 12.7.1990 and the show-cause notice dated 26.12.90, are not legally sustainable. We therefore, set aside and quash the same.

ii) We however make it clear that even at this point of issue the respondents are not precluded from verifying the correct date of birth of the applicant, not on the basis of the character certificate issued by the Principal of Chunni Lal Inter College but by other independent and clinching evidence if any and taking appropriate action regarding the entry of the date of birth in the service records of the applicant after giving him opportunity to his explanation.

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4. The ld. counsel for the applicant has argued that the aforesaid order gave liberty to the respondents to correct^{the} date of birth "taking appropriate action" regarding the incorrect date of birth in the certificate of the applicant after giving^{him} opportunity to explain the same. Thus the respondents could only correct the entries in the record if their enquiry showed it^{to be} necessary, after giving an opportunity to the applicant to explain as to how the mistake had arisen. It was argued that if^a fresh enquiry was contemplated then the order would have stated the same in explicit terms. We are however unable to concur with this view. The Tribunal expressly stated that the respondents "are not precluded from verifying the correct date of birth of the applicant^{and} taking appropriate action² after giving him opportunity to^{give his} explanation^{ation}" (Emphasis supplied). What would be^{the} objective of verifying the date of birth if not to ascertain whether the applicant had given the correct date of birth or not? Nor would there have been any occasion^Q to call for the explanation if^{if} action against him could not be taken. of the applicant/ A natural corollary of verifying the facts and calling for the explanation of the applicant is that in case the explanation

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is not found satisfactory then necessary consequences of disciplinary action against the applicant should follow. In our view therefore, there could be no other inference or implication of the directions of the Tribunal but ^{that} a fresh DE could be initiated if there was an independent and clinching evidence against the applicant.

4. The second question is the relief alternatively sought for by the applicant, namely, stopping the impugned disciplinary proceedings till such time the criminal proceedings are completed. The ld. counsel for the applicant cited an order of this Bench in OA-963/95 wherein the respondents were directed to proceed with DE only to the extent of completion of examination of witnesses in support of the summary of allegation and thereafter ^{or} keeping the DE proceedings in abeyance till the criminal case on the basis of identical allegation was disposed of by the Court. ^{He claimed} ² ~~We find~~ that in this case also facts and allegations in the criminal case as well as the disciplinary proceedings are the same. The applicant's claim ^{is} that if he is required to conduct cross-examination of the prosecution witnesses, he would be obliged to disclose his defence and this would adversely affect his case before the criminal Court. We are unable to agree with this reasoning. ^{The} independent and clinching evidence claimed by

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the respondents is that the High School Certificate produced by the applicant at the time of his recruitment was not genuine as disclosed by the report of the Secretary, Madhyamik Shiksha Parishad, UP Allahabad. Whether the certificate produced by the applicant was genuine is a matter of record and we do not agree that the cross-examination of the prosecutorial witnesses in this case would prejudice the case of the applicant. However, the applicant may not be compelled to produce his defence in the DE before the criminal proceedings are over. We accordingly direct that the disciplinary proceedings in pursuance of the impugned order may continue till the framing of chargesheet, if any and applicant may not be required to produce his defence thereafter till the criminal proceedings based on the same facts are over. The application is therefore partially allowed with the aforesaid directions to the respondents. No order as to costs.

R.K. Ahuja
(R.K. Ahuja)
Member(A)

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)
Member (J) 12/1/96.