

7

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O. A. NO. 1821/1997

New Delhi this the 25th day of October, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI M. P. SINGH, MEMBER (A)

Ex. Const. Harpal Singh
S/O Jaswant Singh No. 936/T,
Delhi Police (Traffic),
Barrack No. I, Old Police Line,
Rajpur Road, Delhi. Applicant

(By Shri A.K. Bhardwaj, Advocate)

-versus-

1. National Capital Territory of Delhi
through the Chief Secretary,
Old Secretariat, Rajpur Road,
Delhi.

2. Addl. Commissioner of Police,
Security & Traffic,
Delhi Police, Police Hqrs.,
Indraprastha Estate,
New Delhi.

3. Addl. Dy. Commissioner of Police,
Traffic, Delhi Police,
Police Hqrs., I.P. Estate,
New Delhi.

4. The Enquiry Officer
(S. Chaudhary), ACP/Traffic North,
Police Headquarters,
Indraprastha Estate,
New Delhi. Respondents

(By Shri Ram Kawar, Advocate)

O R D E R (ORAL)

Shri M.P. Singh, AM :

The applicant has filed this OA challenging the order dated 22.12.1994 passed by respondent No. 3 and the order dated 31.10.1996 passed by respondent No. 2.

2. Brief facts of the case are that the applicant at the time of recruitment had produced an educational certificate for high school examination having shown his date of birth as 26.1.1965 as



completing their requirements in the year 1985 for enlistment in Delhi Police as a constable. It is also alleged that the applicant was a student of high school in Gandhi Vidya Niketan, Meerut in the year 1981 and was declared fail in the high school examination. His date of birth was recorded as 5.8.1960. The applicant secured 169 marks out of a total of 500 marks and thus was declared failed. Thereafter the applicant managed to seek admission at Gandhi Vidya Inter College, Khekra, Meerut concealing his prior actual date of birth, i.e., 5.8.1960. The applicant also managed to record his date of birth as 26.1.1965 instead of 5.8.1960 and availed the opportunity of getting himself enlisted in Delhi Police having undue benefit of the age factor as the maximum age for enlistment as a constable is 21 years. For the above lapse, applicant was placed under suspension by an order dated 6.1.1992.

3. A regular enquiry was ordered to be conducted against the applicant. Enquiry officer during the D.E. proceedings examined four prosecution witnesses (PWs) and prepared a formal charge against the applicant and served it upon him on 19.5.1993. The applicant submitted a list of three defence witnesses (DWs) who were examined in his presence. The enquiry officer after assessing all the statements of PWs/DWs and the defence statement of the applicant submitted his findings concluding that the allegations could not be proved beyond doubt. After going through the findings of the enquiry officer and other record available on the D.E. file, the disciplinary authority disagreeing with the findings, ordered a



supplementary enquiry in pursuance of a circular dated 26.4.1991, from the stage of recording the statement of PW2.

4. The second enquiry officer after examining the evidence recorded by the former enquiry officer and the material brought on record, found that the charge of managing a forged educational certificate showing his date of birth as 26.1.1965 instead of 5.8.1960 for getting a job in Delhi Police against the applicant stood proved. Copy of the findings of the enquiry officer was served upon the applicant on 14.11.1994. He submitted his representation against the contents of the findings of the enquiry officer stating therein that the findings of the enquiry officer had no weightage because he had submitted his findings on the same evidence which was recorded by the earlier enquiry officer. The disciplinary authority after taking into consideration the findings of the enquiry officer and the representation submitted by the applicant passed the impugned order imposing a penalty of dismissal from service on the applicant. The applicant preferred an appeal which was also ~~came to be~~ rejected. Aggrieved by this, the applicant has filed the present OA challenging the aforesaid orders and seeking a direction to the respondents to reinstate him in service with all consequential benefits.

5. Heard both the learned counsel for the rival contesting parties and perused the record.

Amritpal Singh

6. The learned counsel for the applicant submitted that the penalty of dismissal from service has been imposed on the applicant on the charge of a misconduct alleged to have been committed before joining the service. According to him, any act of omission and commission committed by the applicant before joining service cannot constitute a misconduct. In support of this contention he has cited the judgment of the Allahabad High Court in *Abdul Aziz Khan v. Union of India*, 1974 (1) SLR 67. The contention advanced by the learned counsel cannot be accepted as the Supreme Court in the case of *Delhi Administration & Ors. v. Sushil Kumar*, JT 1996 (10) SC 34 has held as under :

"3. ...It is seen that verification of the character antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was physically found 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 reconsideration of his 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. In the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant to the case is of the antecedents of the candidate. Appointing authority, therefore, has rightly focussed this aspect and found him not desirable to appoint him to the service."

7. The learned counsel for the applicant further submitted that the disciplinary authority has

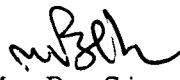


entrusted the disciplinary proceedings to another enquiry officer for recording fresh evidence from the stage of the evidence of PW2. Rule 16(x) of the Delhi Police (Punishment & Appeal) Rules, 1980 envisages that the enquiry officer so appointed should record additional evidence and the delinquent officer will be given an opportunity to lead further defence. In this case, no additional evidence was recorded by the second enquiry officer and the applicant was also not given an opportunity to lead further defence. It is seen from the record that at the time of entrusting the enquiry proceedings to the new enquiry officer the statements of not only PWs 2, 3 and 4 but the statements of DWs 1 and 2 had already been recorded. The enquiry officer, therefore, did not consider it necessary to record additional statements. He has given his findings on the basis of the statements recorded by the earlier enquiry officer. The contention of the learned counsel for the applicant that the applicant was not given further opportunity to lead his defence has no force as no additional evidence was recorded by the new enquiry officer. By not giving an opportunity at that stage to the applicant has not caused any prejudice to his case. Moreover, the applicant was given an opportunity and he was heard in orderly room by the disciplinary authority before the order of imposing the penalty of dismissal from service was passed. It is seen from the record that the enquiry has been held in accordance with the rules and instructions. Charges framed against the applicant have been proved.

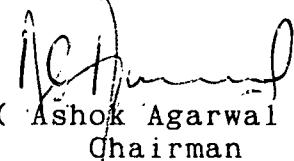


8. In view of the aforesaid discussion and reasons, we see no reason to interfere with the orders dated 22.12.1994 and 31.10.1996.

9. In view of the above, the OA is devoid of merit and the same is accordingly dismissed. There shall be no order as to costs.


(M. P. Singh)

Member(A)


(Ashok Agarwal)

Chairman

/as/