

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

OA No.903/89

Date of decision: 29.5.92

Sh.Sushil Kumar .. Applicant  
versus

Commissioner of Police & .. Respondents  
ors.

CORAM:THE HON'BLE MR.T.S.OBEROI, MEMBER(J)  
THE HON'BLE MR.I.K.RASGOTRA, MEMBER(A)

For the Applicant .. Sh.Shyam Babu,  
Counsel.

For the Respondents .. Ms. Kum Kum  
Jain, Counsel.

1. Whether the Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*

JUDGEMENT

(DELIVERED BY HON'BLE MR.T.S.OBEROI, MEMBER)

In this OA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant, a Constable(Driver), in Delhi Police, is aggrieved by the respondents' order dated 3.7.87(Annexure A-1) whereby, accepting the inquiry officer's report, the disciplinary authority ~~refused~~ dismissed the applicant from service, as Constable(Driver), and the appellate and the revisional authorities, vide their orders dated 12.1.88(Annexure A-2) and 17.5.88(Annexure A-3), respectively, dismissed the appeal and revision, filed by the applicant against the order of the disciplinary authority. The period of suspension from 13.2.86(A/N) to 12.3.86 was also treated as not spent on duty.

2. The applicant's case, in brief, is that he was appointed as a Constable(Driver), in Delhi Police, with effect from 13.11.82,

on the basis of a driving licence, allegedly issued by the Regional Transport Authority, District Meerut. After serving for quite some time, a complaint was lodged by one Sh.Naresh Kumar, against the applicant, to the effect that the applicant has procured a forged certificate and produced the same, for entering into service in Delhi Police. On a reference made by the authorities in Delhi Police to the Regional Transport Authority, Meerut, the latter, vide Annexure A-5 confirmed that the driving licence No.S-13150, issued by the Licencing Authority, Meerut is genuine. However, the complainant sent another reminder that the applicant was manipulating with the officers concerned who had issued the licence in question. Upon this, the Deputy Commissioner, 6th Battalion, Delhi Armed Police, where the applicant was posted, ordered that <sup>a</sup> Sub Inspector of Police be detailed for verifying the genuineness or otherwise of the licence in question, from the Regional Licencing Authority, Meerut. SI Om Prakash who was detailed for the purpose, after verification of the record, gave his report that no licence of the Sl.No.S-13150 was issued, on the date on which the same is purported to have been issued. Upon this, a departmental enquiry was ordered to be held against the applicant and Inspector H.K.Vohra, the then SHO, Najafgarh, was appointed as inquiry officer, who after examining the witnesses and also considering the defence statement/defence evidence, adduced by the applicant, gave the finding that the charges against the applicant are duly proved. The disciplinary

authority, accepted the report of the inquiry officer, gave a show cause notice to the applicant as to why the proposed punishment of dismissal from service be not awarded to him, and after considering applicant's representation in this regard, and not granting the same, passed the impugned order, dismissing him from service. On appeal as well as on filing of the revision, both were declined and hence this CA.

3. In the counter filed on behalf of the respondents, the applicant's case was opposed to which rejoinder was also filed.

4. We have heard the learned counsel of the parties and have carefully perused the material on record.

5. The learned counsel for the applicant pleaded that it does not stand to reason that for a post like driver, the applicant would have dared to procure employment, without knowing driving and without possessing a driving licence. Further, the plea of the learned counsel for the applicant was that, at the time of initial scrutiny of the documents, while considering applicant's candidature for the post, a driving licence produced by him must have been scrutinised, which *prima facie* goes to show that he possessed a driving licence on the relevant date. Furthermore, the applicant performed the duties of a driver, that too on heavy vehicle, for a number of years, about which no fault was detected by his superiors, which also goes to show that he was well proficient in driving heavy vehicles. Added to this, there is a certificate on record (Annexure A-5) by

*Deen*

the concerned authority at Meerut, which confirmed the genuineness of the licence issued to the applicant, and later, on a complaint from Shri Naresh Kumar, who admitted to have enmity with the applicant, on account of some family litigation, the matter was raked up again, was detailed and a Sub Inspector/ to verify the genuineness or otherwise, of the licence in question. This was done at the back of the applicant, without calling upon him to associate in the inquiry to be made by the said Inspector. Further, a perusal of the testimony of the SI Om Prakash( pages 79-80 of the paperbook), before the inquiry officer, would show that the said inquiry officer fumbled over the material aspect of the case, when he stated that he himself had not checked the record of the RTO Meerut, as the latter had told him that the said record was confidential and that in reply to the written request by him, whatever information was furnished by the said authority, the same was incorporated by him in his report, submitted to the higher authorities. The learned counsel for the applicant thus pleaded that this report which is the basis of all incriminating circumstances against the applicant in this case, carries the prosecution case nowhere, nor any reliance can be placed thereon, specially in view of the same authority's confirmation that the licence issued in favour of the applicant was genuine(Annexure A-5). The learned counsel also pleaded that the inquiry officer has just given a verbatim narration of the statements of various witnesses, without his own assessment or analysis thereof, as to how the case against the applicant is established,

A handwritten mark or signature, possibly 'A. Sen', is located at the bottom left of the page.

especially when the witnesses from the Transport Authority, Meerut, though included in the list of witnesses, were dropped/not examined. Even the disciplinary as well as the appellate and revisional authorities have not applied their independent minds on this aspect of the case, and have simply accepted the findings of the inquiry officer which too, as earlier pointed out, had not given fair assessment, with regard to the guilt of the applicant, the learned counsel for the applicant went on to argue. Lastly, by referring to the 1967 SLR 518( Kanshi Ram Driver Vs. State of Punjab, relevant para 4, the learned counsel for the applicant pleaded that by treating the period of suspension as 'not spent on duty', it virtually amounted to applicant's removal from service from the date <sup>not</sup> of suspension which was legally/sustainable.

6. We have also heard the learned counsel for the respondents, who pleaded that the original licence must have been returned to the applicant, as no driver could drive a vehicle, without possessing a licence, and, therefore, withholding thereof by the applicant, without clearing himself of the allegations against him, in itself goes to show his involvement in procuring employment on the basis of a forged driving licence. The learned counsel for the respondents also pleaded that the inquiry officer has given a detailed account of the testimony of each witness, giving at the end, his conclusion of the charges against the applicant having been established, and that, for all intents and purposes, should suffice. So is the case with the orders of the disciplinary/appellate/revisional authorities,

which are sufficiently exhaustive, and hence, show the application of mind, the learned counsel for the respondents further contended.

7. We have carefully considered the rival contentions, as briefly summed up above. We have also perused very carefully, the record of the inquiry proceedings, and other related material. In the present case, we have on record, a confirmation issued by the authority concerned at Meerut, relating to the genuineness of the licence issued to the applicant. On the contrary, we have also on record a report of a Sub Inspector, detailed to verify the genuineness of the licence in question, on the basis of the record of the authority concerned. The applicant was not associated with the latter. Besides, as stated by the Sub-Inspector, he himself did not verify from the relevant record, but based his report, on whatever was told by the officer concerned in the office of the said authority. This, thus, is no better than a report based on hearsay material/information. Its evidentiary value can well be imagined, than said. No witness from the office of the authority was examined on this aspect, during the enquiry proceedings, nor any clarification was sought by the respondents concerned, to iron out the discrepancy between the confirmation about the genuineness of the licence, in the name of the applicant(A-5), and the latter position, as emerging from the report of the Sub Inspector. The matter would have been sorted out, had this been done, at appropriate stage. The order of the disciplinary authority, nor those of the Appellate/revisional authorities, show that this

aspect has been given the consideration, it deserved. Complainant, Sh. Naresh Kumar himself, did not support the prosecution case, when examined during the enquiry proceedings, having turned hostile. He even came forward to depose as a defence witness, thereby showing that he was, by no means, a reliable witness. Dismissing a Government servant from service is a very serious matter not only for him, but also for his whole family. At the same time, the gravity of the charge, in procuring employment on the basis of a forged certificate, cannot be lightly lost sight of. Considering this position, we feel that the matter deserves to be looked into afresh, by the respondents. We, therefore, by setting aside the orders of the disciplinary, appellate and revisional authorities, remand the case to the respondents, who may examine this aspect, either by the disciplinary authority, himself, or by deputing a sufficiently senior officer, who may enquire <sup>into</sup> the matter again by summoning the relevant record, from the office of the authority concerned, in the presence of the applicant, by also affording him an opportunity to defend himself. In the meanwhile, the applicant shall stand reinstated forthwith, and the question of his back wages shall be decided by the respondents, in accordance with the provisions contained in FR 54. The respondents' order regarding the period of suspension 'not spent on duty', in view of the citation referred to by the applicant, is not legally sustainable, and set aside. Needless to say that in case the matter is enquired into again, action at all levels, shall be accomplished as early as possible, but not later than six months.

from the receipt of a copy of this judgement,  
by the respondents.

8. OA is disposed of, on the above lines,  
with no order as to costs.

*Dilip*  
(I.K.RASGOTRA)

MEMBER(A)

*Oberoi* 29.5.92  
(T.S.OBEROI)  
MEMBER(J)