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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA-93/91

Date of decision: 25.9.92

Shri Gyanender Singh

.... Applicant

Versus

Delhi Admn. & Others

.... Respondents

For the Applicant

.... Shri Shyam Babu, Advocate

For the Respondents

.... Shri M.C. Garg, Advocate

CORAM:

The Hon'ble Mr.P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr.B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*

2. To be referred to the Reporters or not? *Yes*

JUDGMENT

(of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice Chairman(J))

The applicant, who is working as an Assistant Sub-Inspector in the Fingerprint Bureau of Delhi Police, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for setting aside and quashing the enquiry report dated 12.12.1990 and the show-cause notice dated 26.12.1990 and for granting him all consequential benefits.

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2. We have gone through the records of the case carefully and have heard the learned counsel for both the parties. At the outset, it may be stated that in case of a disciplinary proceeding against a Government servant, the Tribunal would not ordinarily entertain the applications unless the applicant has exhausted the departmental remedies available to him in respect of his grievance. In the instant case, no final orders have been passed by the disciplinary authority in the disciplinary proceedings initiated against him. After holding an enquiry against him, the Enquiry Officer has held in his report that the allegation made against him has been substantiated and on the basis of that, a show-cause notice has been issued to the applicant as to why he may not be dismissed from the Force for his lapse. After carefully considering the records before us and hearing the learned counsel for both the parties, we are of the opinion that this is a fit case in which the applicant is entitled to the reliefs sought by him.

3. The applicant was recruited in the Delhi Police as a Constable in 1982. Since then, he has been working there and presently he is holding the rank of A.S.I. The respondents received a complaint from one, Jitender Singh, resident of Village Milak Rawali, Distt. Ghaziabad, U.P., addressed to the Commissioner of Police, alleging

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that the applicant was enlisted in the Delhi Police as a Constable by producing a forged matriculation certificate showing the date of birth as 23.12.1960, whereas his actual date of birth is 3.7.1958. On receipt of the said complaint, the respondents conducted an enquiry and on that basis, initiated a departmental enquiry against the applicant.

4. The applicant has produced along with the application, the matriculation certificate issued by the Madhyamik Shiksha Parishad in 1975 in which his date of birth has been indicated as 23.12.1960. When he applied for recruitment to the Delhi Police, he gave the same date of birth in his application form. He had also stated therein that he had passed the matriculation examination in July, 1975. The departmental enquiry has been initiated against the applicant on the basis of a character certificate issued by the Head Master of Chunni Lal Inter College, according to which, his date of birth is 3.7.1958. It is significant to note that the character certificate was issued on 5.3.1990. There is no indication as to the circumstances in which such a certificate was issued to the applicant. At any rate, he did not apply to the Head Master for the issue of any such character certificate in 1990.

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5. The applicant has alleged that the complaint made against him was totally mala fide as he had left the sister of the Complainant lawfully and married subsequently after getting a divorce. According to him, the Complainant was not favourably disposed towards him because of the said event and he has procured the character certificate from the High School in order to damn his career. He has also stated that even if the date of birth were to be corrected as 3.7.1958, it would not have rendered him ineligible to be recruited as a Constable in 1981. In the charge framed against him, there is no allegation that he secured employment in the Delhi Police when he was not eligible. He was eligible for employment on the basis of both dates of birth.

6. In the counter affidavit filed by the respondents, the aforesaid contentions of the applicant have not been controverted. In the charge issued to the applicant on 19.9.1990, it has been alleged that enquiries made revealed that he manipulated and thereby got changed his date of birth as 23.12.1960 in the High School certificate, 1975 obtained from the Madhyamik Shiksha Parishad, U.P. by arranging forgery in S.R. Register and Cross List, etc., maintained in Chunni Lal Inter College in place of real date of birth which is found to be 3.7.1958 and on the basis of the changed date of birth, he secured employment

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in the Delhi Police when otherwise he would not have been eligible. There is no indication in the report of the Enquiry Officer or the show-cause notice as to how the applicant was ineligible for entering into the Delhi Police in 1982 at the age of 23 years, in case his date of birth is reckoned as 3.7.1958. No evidence has been adduced in this regard in the enquiry initiated against the applicant. The only material witness in the enquiry is PW6, Shri Karan Lal Sharma, Principal of the Chunni Lal Inter College. According to him, the exact date of birth of the applicant is 3.7.1958, as per the Attendance Register, S.R. and Admission Register, Class X-B (1974-75), but a forged date has been given as 23.12.1960. In the original Cross List, the exact date of birth of the applicant is still entered as 3.7.1958. He has not, however, stated as to the circumstances leading to the issue of the character certificate issued by him in 1990. He has also not alleged that the applicant was responsible for the changes made in the registers to this effect.

7. Shri Jitender Singh was examined as PW5. He has relied upon the character certificate issued by the Principal of the Chunni Lal Inter College and has stated that the applicant managed to change his date of birth in the High School certificate to get Government job.

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the applicant

He has, however, admitted that / was married to his real sister but he sought divorce by cheating, like seeking Delhi Police job. When he was cross-examined by the applicant, he stated that he sought the character certificate from the Principal of the College and that he made the complaints against him "on the basis of truth and not that the defaulter left his sister and married himself with another. His complaints have nothing to attract the divorce obtained by the defaulter".

8. The Enquiry Officer did not mention about the strained relationship between Shri Jitender Singh and the applicant due to family problems. He did not comment on the delay in coming up with a complaint regarding the date of birth of the applicant years after the latter had been recruited in the Delhi Police. In the concluding paragraphs of the report, the Enquiry Officer has stated that he has found that the High School certificate in question is not a forged document as the applicant obtained the same after passing the examination in 1975 as a regular student of Chunni Lal Inter College. He has, however, stated that the character certificate issued by the Principal is also genuine and according to the College record, the real date of birth of the applicant is 3.7.1958. During the course of enquiry, he noticed that College records have been changed "by someone" as over-

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writing on the Attendance Register and S.R. Register was made and date of birth of the defaulter from 3.7.1958 to 23.12.1960 is shown thereupon. No one else but the applicant is benefited with the forgery noticed in the College records.

9. It will be noticed that the conclusion reached by the Enquiry Officer is not on the basis of the applicant's involvement in the alleged change in the school records as the change has been made by someone. It is well settled that suspension cannot be allowed to take place of proof even in domestic enquiries (vide Union of India Vs. H.C. Goel, AIR 1964 S.C. 364; Nand Kishore Prasad Vs. State of Bihar & Others, 1978 (3) S.C.C. 366).

10. There is also another aspect of the matter. The applicant has worked for about ten years in the Delhi Police. The respondents had ample time to verify the correctness of the date of birth given by the applicant during these years, in case they had entertained any doubt in this regard. In our opinion, it would not be fair and just to initiate disciplinary proceedings on the basis of the complaint made by a person with whom he had strained relations due to family problems. Shri Jitender Singh has admitted during the enquiry that he had procured the character certificate from the Principal

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of the College concerned.

11. Yet another infirmity in the enquiry is that the Enquiry Officer has cross-examined the defence witnesses, as is clear from the enquiry report. The following passages occurring in the report of the Enquiry Officer may be mentioned in this regard:-

"When cross-examined by the undersigned, the DW admitted that the date of birth finds mention in the T.C. when admission is sought in a school/college." (Vide page 52 of the paperbook).

"When cross-examined by the undersigned, the DW stated that the information of birth is given to his department by head of every family. He also admitted that head of the family is given a receipt of birth who later on admits the child in the primary school on the basis of that receipt. He could not produce any carbon copy of the receipts given to the parents of the defaulter. The witness categorically admitted that in the Government service only the date of birth entered in school/college records, is accepted."

(Vide page 53 of the paperbook).

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12. It would be seen that the Enquiry Officer acted as a Judge as well as a Prosecutor. There is ample authority for the proposition that the Enquiry Officer should not cross-examine the delinquent. In Abdul Wajeed Vs. State of Karnataka & Others, 1981 (1) SLR 454, the Karnataka High Court observed that the cross-examination of defence witnesses by the Enquiry Officer was in plain violation of the principle of natural justice and consequently, the enquiry proceedings were viciated. (See also Balu Singh Vs. Union of India & Others, A.T.R. 1986 (1) CAT 195; Prem Babu Vs. Union of India and Others, 1987 (4) A.T.C. 727).

13. 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 ^{are} ~~are~~, therefore, set aside and quash the same.

14. We, however, make it clear that even at this point of time, 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

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regarding the entry of the date of birth in the service records of the applicant after giving him opportunity to give his explanation. There will be no order as to costs.

B. N. Dhoundiyal
(B.N. Dhoundiyal) 25/9/92
Administrative Member

and
25/9/92
(P.K. Kartha)
Vice-Chairman (Judl.)