

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 1480/2004

New Delhi, this the 6th day of August, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.K. NAIK, MEMBER (A)

Goklesh Meena
Recruit Constable (Dvr.) in Delhi Police
s/o Sh. Kanhaiya Lal Meena
r/o Vill: Nathlvara Ki Dhan
PO: Nathlvara, Tehsil: Rajgrah
Distt.: Alwar, Rajasthan. Applicant

(By Advocate: Sh. Anil Singhal)

Versus

1. Govt. of NCT of Delhi
through Commissioner of Police
Police Headquarters
IP Estate, New Delhi.
2. Dy. Commissioner of Police
Hdqrs. (Estt.) Police Head Quarters
IP Estate
New Delhi. Respondents

(By Advocate: Sh. Ajesh Luthra)

O R D E R

Justice V.S. Aggarwal:-

Applicant (Goklesh Meena) had applied for the post of Head Constable (Driver) in Delhi Police during the recruitment year of 2002. As per the terms and conditions mentioned in the advertisement for the post, the candidate who intends to apply for the post, was required to be in possession of Driving Licence for Heavy Motor Vehicle. In Column No.14, the applicant mentioned that he possessed the Driving Licence dated 11.1.1999 issued by the Regional Transport Authority, Alwar. During the course of the scrutiny, the photocopy of the said driving licence had been found illegible. The applicant had provisionally been selected for the post subject to verification of his driving licence. The applicant's driving licence was verified by the concerned

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licensing authority, Alwar, who intimated that driving licence had been issued to the applicant, details of which are:

- i. L.M.V. from 25.10.96 to 24.10.2016
- ii. HGV added 11.01.99 to 10.01.2002
- iii. HGV renewed 16.11.02 to 15.11.05"

2. The respondents on basis of said information felt that applicant did not have a valid driving licence when he applied for the post, namely, 6.2.2002.

3. A notice to show cause was issued to the applicant as to why his candidature be not cancelled. A reply was filed. After considering the reply, vide the impugned order dated 2.4.2004, the candidature of the applicant had been cancelled with the following order:

"I have gone through your reply to show cause notice but did not find convincing. In the interest of justice, you were also called for a personal hearing. You appeared before the undersigned on 05.03.2004 & 22.03.2004. As per conditions laid down in the advertisement for the post, you were supposed to possess a valid driving licence for heavy motor vehicles on the date of applying to the post. It is a fact that you did not have a valid heavy driving licence on 06.02.2002. You applied for the post by enclosing an illegible photocopy of your driving licence. There is purpose behind fixation of such conditions & cut off dates etc. I am of the considered view that such conditions should be adhered to strictly in all fairness and the conditions once fixed should not be relaxed in an individual case.

I, therefore, confirm the proposed show cause notice and cancel your candidature for the post of Constable (Driver) in Delhi Police."

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4. By virtue of the present application, the applicant seeks quashing of the impugned order and a direction to the respondents to issue the letter of appointment for the post of Constable (Driver).

5. In the reply filed, the basic facts that have been mentioned above have been reiterated. They are not, in fact, in controversy. As per the respondents, on 6.2.2002 when the applicant applied for the post, he did not have a valid driving licence and therefore, his candidature has rightly been cancelled.

6. In face of the facts to which we have referred to above, the sole question that comes up for consideration is as to whether on 6.2.2002 when the applicant applied for the post of Constable (Driver), he was holding a valid driving licence or not. If he was not holding a valid licence, the impugned order would be in order otherwise, the result would be different.

7. We mention the facts once again. The driving licence of the applicant had been granted on 10.1.1999 for a period of three years. Learned counsel for the applicant had urged that though the driving licence expired on 10.1.2002, it remains valid for a further period of one month and, therefore, when he applied for the post on 6.2.2002, the applicant was holding a valid driving licence. The learned counsel for the respondents urged that since the driving licence was renewed only after 10.1.2002 (i.e. on 16.11.2002), the applicant was not eligible.

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8. On behalf of the respondents, reliance was being placed on the decision of the Supreme Court in the case of STATE OF RAJASTHAN v. HITENDRA KUMAR BHATT, (1997) 6 SCC 574. The Supreme Court held that even when there is an ineligible person who has been called for interview, will not confer a right upon the said person. By the cut off date, he must fulfil the necessary qualifications. As is apparent from the nature of the facts stated above that though there is no dispute on the basic facts, it has little application in the present case because it is not the plea of the applicant before us that on that ground, he should be given a regular appointment.

9. Respondents' learned counsel also relied upon the decision of a Co-ordinate Bench of this Tribunal in the case of SHRI JITENDRA KUMAR v. COMMISSIONER OF POLICE, DELHI, O.A.No.1535/2001, decided on 4.2.2002. In the cited case, the last date for submission of applications was 18.1.1999. After going through the usual tests, the applicant was put to driving/trade test as well on 7.2.2000. He had cleared the same. It was found that he did not possess a valid heavy duty driving licence on 18.1.1999, i.e. the date of submission of his application and his candidature was cancelled. The argument that was before this Tribunal was recorded in the following words:

"2. The learned counsel appearing on behalf of the applicant submits that the impugned order dated 24.4.2001 is illegal and could not have been passed after the applicant had cleared all the tests, including the driving test. He also submits that

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... though the applicant did not possess a valid heavy duty driving licence as on 18.1.1999, the date of submission of application by the applicant, he came to possess a valid licence in that regard on 5.5.1999. The applicant was trade (Driving) tested only after he came to possess a valid heavy duty driving licence. There is thus, according to the learned counsel, nothing against the applicant which could prevent his appointment. The impugned order (A-1), therefore, deserves to be quashed and set aside."

The Tribunal dismissed the application. It is obvious from the aforesaid that the facts were different from the present dispute and therefore, the decision is patently distinguishable.

10. Sub-Section (10) of Section 2 of the Motor Vehicles Act, 1988 defines "driving licence" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive. The definition reads:

(10) "driving licence" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description;"

11. Section 3 of the abovesaid Act also prescribes the necessity for driving licence. It provides that no person shall drive a motor vehicle in any public place unless he holds an effective driving licence. The said provision reads:

"3. Necessity for driving licence.— (1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle other than [a

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motor cab or a motor cycle] hired for his own use or rented under any scheme made under sub-section (2) of Sec. 75 unless his driving licence specifically entitles him so to do."

12. In this regard, it is just and proper to refer to Section 14 of the said Act which provides currency of licences to drive motor vehicles. It provides as under:

"14. **Currency of licences to drive motor vehicles.**— (1) A learner's licence issued under this Act shall, subject to the other provisions of this Act, be effective for a period of six months from the date of issue of the licence.

(2) A driving licence issued or renewed under this Act shall.—

(a) in the case of a licence to drive a transport vehicle, be effective for a period of three years:

[Provided that in the case of licence to drive a transport vehicle carrying goods of dangerous or hazardous nature be effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus; and];

(b) in the case of any other licence,—

(i) if the person obtaining the licence, either originally or on renewal thereof, has not attained the age of [fifty years] on the date of issue or, as the case may be, renewal thereof,—

(A) be effective for a period of twenty years from the date of such issue or renewal; or

(B) until the date on which such person attains the age of [fifty years].

whichever is earlier;

[(ii) if the person referred to in sub-clause (i), has attained the age of fifty years on the date of issue or as the case may be, renewal thereof, be effective, on payment of such fee as may be prescribed, for a period of five years from the date of such issue or renewal:]

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Provided that every driving licence shall, notwithstanding its expiry under this sub-section, continue to be effective for a period of thirty days from such expiry."

13. The same can be read along with Sub-Section (1) of Section 15, which is as under:

"15. Renewal of driving licences.- (1) Any licensing authority may, on application made to it, renew a driving licence issued under the provisions of this Act with effect from the date of its expiry:

Provided that in any case where the application for the renewal of a licence is made more than thirty days after the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal:

Provided further that where the application is for the renewal of a licence to drive a transport vehicle or where in any other case the applicant has attained the age of forty years, the same shall be accompanied by a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of Sec. 8, and the provisions of sub-section (4) of Sec. 8 shall, so far as may be, apply in relation to every such case as they apply in relation to a learner's licence."

14. A conjoint reading of the above said provisions would clearly show that there is a non-obstante clause in Section 14(2). It explains that even when the licence period has expired, it would continue to be effective for a period of 30 days of such expiry. This is a mandate of the law. There is no ambiguity about it: It clearly permits to remain the licence valid for a period of one month, i.e., 30 days after it expires. This is obvious that a person can seek renewal of the driving licence after the expiry of the period of thirty days.

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15. Reliance on behalf of the respondents was being placed on Sub Section (1) of Section 15 to contend that applicant applied for a new one after 30 days and therefore, it shall be deemed to be renewed when it was actually renewed. There is no controversy in this regard. But keeping in view the language of Section 14 particularly Section 14(2), once the licence is valid for a period of one month, in other words a person can drive for one month after expiry of the same, it must be held that on the date when he applied for i.e. 6.2.2002, he was in possession of a valid licence.

16. The Supreme Court in the case of NATIONAL INSURANCE CO. LTD. v. SWARAN SINGH & ORS., 109 (2004) Delhi Law Times 304 (SC) was concerned with somewhat a different question. But in this regard provisions of Sections 14 and 15 also came up for consideration before the Supreme Court. The Supreme Court held that licence would remain valid for a period of one month, i.e., 30 days from the date of expiry. We reproduce the relevant portion of the findings of the Supreme Court:

"41. We may also take note of the fact that whereas in Section 3 the words used are 'effective licence', it has been differently worded in Section 149(2) i.e. 'duly licensed'. If a person does not hold an effective licence as on the date of the accident, he may be liable for prosecution in terms of Section 141 of the Act but Section 149 pertains to insurance as regard third party risks.

42. A provision of a statute which is penal in nature vis-a-vis provision which is beneficent to a third must be interpreted differently. It is also well known that the provisions contained in different expressions are ordinarily construed differently.

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43. The words 'effective licence' used in Section 3, therefore, in our opinion, cannot be imported for Sub-section (2) of Section 149 of the Motor Vehicles Act. We must also notice that the words 'duly licensed' used in Sub-section (2) of Section 149 are used in past tense.

44. Thus, a person whose licence is ordinarily renewed in terms of the Motor Vehicles Act and the rules framed thereunder despite the fact that during the interregnum period, namely, when the accident took place and the date of expiry of the licence, he did not have a valid licence, he could during the prescribed period apply for renewal thereof and could obtain the same automatically without undergoing any further test or without having been declared unqualified therefor. Proviso appended to Section 14 in unequivocal term states that the licence remains valid for a period of thirty days from the date of its expiry.

45. Section 15 of the Act does not empower the authorities to reject an application for renewal only on the ground that there is a breach in validity or tenure of the driving licence has lapsed as in the meantime the provisions of disqualification of the driver contained in Sections 19, 20, 21, 22, 23 and 24 will not be attracted, would indisputably confer a right upon the person to get his driving licence renewed. In that view of the matter he cannot be said to be delicensed and the same shall remain valid for a period of thirty days after its expiry."

17. Keeping in view the aforesaid and reasons recorded by us, we are of the considered opinion that applicant on the date when he applied for the post, was holding a valid licence to drive a vehicle. Therefore, on this ground, the impugned order could have been quashed.

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18. For these reasons, we allow the present application and quash the impugned order. It is directed that claim of the applicant should be considered afresh in the light of the findings arrived at.

Naik

(S.K. Naik)
Member (A)

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(V.S. Aggarwal)
Chairman

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