

**Central Administrative Tribunal
Principal Bench, New Delhi**

R.A.No.15/2014 in O.A. No.1031/2012

Wednesday, this the 9th day of December 2015

**Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. A.K. Bhardwaj, Member (J)**

Sunil Kumar Malik, Roll No.803225
s/o Mr. Nafe Singh
r/o H.No.1071/9, Uttam Vihar Colony
Near New Bus Stand
Rohtak, Haryana 124001

..Applicant

(By Advocate : Mr. Rajesh Kumar Chauhan)

Versus

1. Govt. of NCT of Delhi
Through the Commissioner of Police
Police Headquarters, IP Estate
MSO Building, New Delhi
2. The Dy. Commissioner of Police
Establishment
Through Commissioner of Police
Police Headquarters, IP Estate
MSO Building, New Delhi
3. The Transport Officer
Regional Transport Authority
Jalpaiguri, West Bengal

..Respondents

(By Advocate : Mr. N K Singh for Mrs. Avnish Ahlawat)

O R D E R (ORAL)

Mr. A.K. Bhardwaj:

The only argument put forth on behalf of the applicant is that he was in possession of licence No.WB-71/79914/07 and due credence should have been attached to the same while considering his suitability for the post of Driver in Delhi Police. The controversy involved in the matter was not of competence of the applicant to drive the vehicle or possession of a valid

licence by him but the issue involved in the matter was production of forged driving licence by him.

2. In the Order under review, we have specifically noted that the licence produced by the applicant for consideration of the authorities was not issued in his name but was issued in the name of Subrata Tarafder s/o late Shri S. Tarafder, r/o 4 No.Gumti, Jaipaiguri. In the wake, we could find no infirmity in the action of the respondents in cancelling the candidature of the applicant for the post of Driver in Delhi Police. The plea espoused by the applicant now in the Review Application was duly considered at the time of disposal of the Original Application. Paragraph 26 of the Order under review reads thus:-

“26. In OA 1031/2012 (Sunil Kumar Malik Vs. The Comm. of Police), a copy of HTV driving licence submitted by the applicant was sent to the DCP (Crime) who submitted his report on 15.06.2011 along with verification report dated 5.05.2011 issued by the Licencing Authority, Jalpaiguri, West Bengal. From the report, it could be revealed that the licence, particulars of which were mentioned by the applicant in his application, was issued in the name of Subrata Tarafder s/o Lt.Shri S.Tarafder, r/o 4 No. Gumti, Jaipaiguri. In the circumstances, a show cause notice dated 5.08.2011 was served upon the applicant. In his reply to the show cause notice, the applicant claimed to have a different licence issued in his name. According to him, the licence issued to him was not WB-71/78845/06 but was WB-71/79914/07, which was genuine. In fact, the respondents were concerned with particulars of the licence submitted by the applicant along with his application form. Besides, the claim of the applicant that another licence with different particulars was possessed by him, could only strengthen the doubt regarding the practice of procurement/issuance of driving licences. Nevertheless, finding the driving licence particulars of which were mentioned by the applicant in para 5 of the application form to be incorrect, the competent authority issued order canceling his candidature. Apparently, before canceling his candidature, the applicant was served with a show cause notice.”

3. Besides, it is worth to note that in terms of the Order under review a batch of Original Applications was decided and certain applicants

whose Original Applications were decided along with the batch of Original Applications had approached the Hon'ble High Court of Delhi by way of W.P. (C) No.5987/2014 (**Manoj Kumar v. The Commissioner of Police & others**) and W.P. (C) No.961/2015 (**Rajnikant v. The Commissioner of Police & another**). Both the Writ Petitions were dismissed by the Hon'ble High Court in terms of Orders dated 09.09.2014 and 02.02.2015 respectively, with the following observations:-

“W.P. (C) No.5987/2014

7. The CAT refuted the contentions of the petitioner with regard to the duty of the employer to satisfy itself decidedly as to the validity of the licenses in the following manner:

"43. With reference to the aforementioned provisions of the Rules and Act, we asked the counsel for the applicants to establish that the applicants procured the licence as per procedure mentioned in the Motor Vehicles Act and rules thereunder. In response, the learned counsels submitted that it is not for this Tribunal to make a declaration on the validity of the driving licence as in terms of Section 14 of the Administrative Tribunals Act, the jurisdiction of the Tribunal is only to deal with the matters in relation to recruitment, and matters concerning recruitment to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence service, being, in either case, a post filled by a civilian. Similar reaction came from them when we referred to the photocopies of certain licences placed on record. Once it has been a stand taken by the counsel for the applicants that it is not for this Tribunal to go into the question of validity of the licence, it is not understood as to how they are seeking direction from this Tribunal to the recruiting agency to take a decision on the said issue. In fact, it is not for the recruiting agency to pronounce on the validity of the licence and the said authority could only rely on the report of the authority competent to issue licence and when a responsible officer from the Crime Branch deputed for the purpose was apprised that the licences, particulars of which were mentioned by the applicants in para 5 of the application form were not issued to them, the recruiting agency had no option but to cancel the candidature of the applicants.

44. Since the matter was kept on Board approximately for a period of 50 days, we had an opportunity to look at the photocopies of the documents claimed by the applicants, as driving

licences issued to them. Even we could not inspire our confidence about the validity of the said documents. Nevertheless, when we proposed to seek clarification from the counsel in this regard, they declined to respond taking the plea that this Tribunal has no jurisdiction to go into the said facts.

45. In rejoinder, Shri Sachin Chauhan, learned counsel categorically submitted that they never expected this Tribunal to pronounce on the validity of the licence. We also countenance the view of the learned counsel. The recruiting agency was neither competent to go into the question of validity of driving licence nor they could have gone into the correctness of the conflicting reports issued. The best course they could adopt was to make direct verification about the fate and status of the licence which they did by sending an officer of Crime Branch and finally acted upon his report. "

8. Thereafter, the CAT considered a host of decisions of the Supreme Court on the question of what constitutes fraud, or suppression of material facts, which disentitles the candidate from claiming public employment. The CAT also noted that in the application, each candidate had to furnish a declaration as to the veracity of the particulars and documents furnished by him or her with the request for employment. It was concluded that having regard to the report and the entirety of the circumstances, the respondent Commissioner's order cancelling the candidature, could not be termed arbitrary.

9. It is evident from the above discussion that the petitioner's initial grievance-when he approached the Tribunal, was that no appropriate opportunity was given to him and that the order cancelling his appointment -made on 28.12.2010, was unreasoned. This application found favour with CAT, which directed the matter to be dealt with afresh. In the fresh round, the respondents have duly considered the entire materials on record, as noticed by the Tribunal. Pertinently, the petitioner has not obtained any reconfirmation/recertification of his licence from the original licencing authority. His real remedy lies in taking up the issue with the licensing authorities, as it is that authority which has disowned the licence relied upon by the petitioner.

10. One of the grounds urged was that the impugned order in this case is unreasoned. We do not agree. Such exhaustive and elaborate discussion of facts, as is recorded in the order of the respondents, would suggest that the matter has received not only serious but detailed examination.

11. The question is whether, given the circumstances, out of the 220 selected candidates, the concerned authority (which is alleged to have issued the licenses) could certify that only 32 licenses were valid (in the sense some were merely irregular), and that in respect of the balance 188, the record kept or maintained by it did not tally with the licenses produced by the candidates, the respondent was justified in

cancelling the candidature of the petitioner- whose licence was also found to be doubtful. The extracted portions of the CAT's order, which dealt with this aspect as well as the discussion with respect to the petitioner's particulars, in the opinion of this Court, clarify that the license produced by him- which was at serial No.6, clearly fall among the 188 entries which did not so tally. Such being the case, there was, facially, sufficient cause for the employer to hold that the offer of employment ought not to be proceeded with.

12. As to the correctness of the CAT's view with regard to the validity of the licence, this Court wholly affirms the decision of the CAT that neither the employer, nor the judicial authority- in this case the CAT, is expected to go into the validity or otherwise of the documents furnished by the candidate. At the stage of securing employment, the candidates had to disclose all particulars truly and faithfully. Any cloud of suspicion over such candidature, would disentitle him the right to be appointed. There is authority for the proposition that the public employer is not obliged to issue appointment letter merely because someone's name figures in the select list. It is open to the employer- if circumstances so justify, to either seek recourse to the list partially, or to entirely cancel the process (*Shankaran Dash v. Union of India*, (1991) 3 SCC 47). In the present case, the materials on record, in the form of the report which was considered by the Police Commissioner, according to Court's opinion, constituted sufficient reason for the cancellation of the petitioner's candidature. The Tribunal's finding upon its elaborate analysis of the fact cannot be faulted with.

13. The writ petition is devoid of merits and is, accordingly, dismissed.

W.P. (C) No.961/2015

4. On bare perusal of the aforesaid reasoning given by the learned Tribunal we find that initially on verification of the petitioner's driving licence bearing no. 76828/Ch., the Issuing Authority, i.e. District Transport Officer, vide report dated 31.03.2010 had intimated that the said driving license produced by the petitioner is false and fabricated. Since there was another report dated 19.5.2010 on which reliance was placed by the petitioner, it was reported that the said licence so produced by the petitioner was genuine, therefore in such circumstances, the respondents had deputed a responsible officer to inquire into the entire matter. Inspector of Crime Branch was deputed to probe into the matter and as per the report submitted by him, the Additional Commissioner of Police had intimated that the driving licence No. 76828/Ch., was not issued in the name of the petitioner but in the name of Ms. Nlangnelholh d/o Liankholal Gante, resident of New Lamka, Churachandpur. In the said report, it was also pointed out that the letter/report dated 19.5.2010 on which reliance was placed by the petitioner was prepared by him due to some clerical mistake and he had signed in a routine manner and as

such the same may be treated as nullified. The inquiry report further revealed that this petitioner had not applied for any driving licence in that office.

5. Keeping in view the fact that the decision of the learned Tribunal is based on the inquiry conducted by the Crime Branch of Delhi Police, we hardly find any tangible reason to interfere with the order passed by the learned Tribunal. The Tribunal has also referred to the decision of the Apex Court in the case of Rubi (Chandra) Dutta vs. United India Insurance Company Limited,: (2011) 11 SCC 269, wherein the Supreme Court held that at the time of giving employment to a driver, the owner is required to be satisfied apropos the correctness and genuineness of the licence he was holding. The tribunal also went on to discuss the judgment of the Hon'ble Supreme Court in the case of New India Assurance v. Kamla and Ors.: (2001) 4 SCC 342, wherein it was held:

“As a point of law we have no manner of doubt that a fake licence cannot get its forgery outfit stripped off merely on account of some officer renewing the same with or without knowing it to be forged. Section 15 of the Act only empowers any licensing authority to "renew a driving licence issued under the provisions of this Act with effect from the date of its expiry." No licensing authority has the power to renew a fake licence and, therefore, a renewal if at all made cannot transform a fake licence as genuine. Any counterfeit document showing that it contains a purported order of a statutory authority would ever remain counterfeit albeit the fact that other persons including some statutory authorities would have acted on the document unwittingly on the assumption that it is genuine.

The observation of the Division Bench of the Punjab and Haryana High Court in National Insurance Co. Ltd. vs. Sucha Singh (supra) that renewal of a document which purports to be a driving licence, will robe even a forged document with validity on account of Section 15 of the Act, propounds a very dangerous proposition. If that proposition is allowed to stand as a legal principle, it may, no doubt, thrill counterfeiters the world over as they would be encouraged to manufacture fake documents in a legion. What was originally a forgery would remain null and void forever and it would not acquire legal validity at any time by whatever process of sanctification subsequently done on it. Forgery is antithesis to legality and law cannot afford to validate a forgery.

Similarly in the case of United India Insurance Company Limited v. Lehu and Others (2003) 3 SCC 338 the Apex Court held:

“When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner

would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver.....

6. The genuineness and authenticity of the driving licence is one of the indispensable conditions for considering the petitioner's appointment and for assessing his eligibility for the said post. Based on the inquiry report submitted by the Crime Branch, on which the learned Tribunal has placed reliance holding that the licence produced by the petitioner is fake and not genuine, we find no illegality, perversity, or any ground for interfering with the impugned order dated 24.09.2013 passed in O.A. No. 2920/2011 passed by the learned Central Administrative Tribunal, the present petition is dismissed.”

4. It is settled position of law that after passing the order, the Tribunals and Courts become *functous officio*. Only exception to such principle is review, which is permissible only on limited grounds, i.e., there being an error apparent on the face of record, some documents, which could not be brought to the notice of the Court despite due diligence, are found and brought on record or any other sufficient reason. We do not find any of the yardsticks fulfilled/satisfied in the present Review Application.

5. In **Union of India v. Tarit Ranjan Das**, 2004 SCC (L&S) 160, the Hon’ble Supreme Court has viewed as under:-

“13. The Tribunal passed the impugned order by reviewing the earlier order. A bare reading of the two orders shows that the order in review application was in complete variation and disregard of the earlier order and the strong as well as sound reasons contained therein whereby the original application was rejected. The scope for review is rather limited and it is not permissible for the forum hearing the review application to act as an appellate authority in respect of the original order by a fresh order and rehearing of the matter to facilitate a change of opinion on merits. The Tribunal seems to have transgressed its jurisdiction in dealing with the review petition as if it was hearing an original application. This aspect has also not been noticed by the High Court.”

6. In view of the aforementioned, Review Application is dismissed. No costs.

(A.K. Bhardwaj)
Member (J)

(Sudhir Kumar)
Member (A)

December 9, 2015
/sunil/