

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA NO.1942/2012

RESERVED ON 02.09.2015
PRONOUNCED ON 01.10.2015

HON'BLE SHRI JUSTICE B.P. KATAKEY, MEMBER (J)
HON'BLE SHRI K.N. SHRIVASTAVA, MEMBER (A)

Ravinder Solanki
S/o Sh. Harpal Singh
R/o C1/57, Street No.19,
Khajoori Khas Colony,
Delhi-94.

...Applicant

(By Advocate: Shri Ajesh Luthra)

VERSUS

1. Commissioner of Police
PHQ, MSO Building,
IP Estate, New Delhi.
2. Addl. Commissioner of Police
(PCR), Modal Town-II,
Delhi.
3. Addl. Deputy Commissioner of Police
PCR, Modal Town-II,
Delhi.

...Respondents

(By Advocate: Mrs. P.K. Gupta)

:ORDER:

HON'BLE SHRI JUSTICE B.P. KATAKEY, MEMBER (J):

The applicant, who was a Constable (Driver) in Delhi Police, was served with the order dated 21.01.2010 issued by the Deputy Commissioner of Police (OPS), Police Control Room, Delhi, directing conduct of a regular departmental enquiry against him

on the basis of the allegation that he has joined Delhi Police by producing fake documents regarding his age vis-à-vis the date of birth. Pursuant to the said order, the proceeding was conducted against the applicant where the department in support of the allegation leveled against him examined the witnesses. The Inquiry Officer, under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980, framed the following charges against the applicant:-

"I, K.P. Singh, Inspr/Admn North West Zone/PCR, hereby charge you constable driver Ravinder Solanki, No.9523/PCR that you joined Delhi Police as constable driver on the basis of fake documents regarding your age. In fact you were overage at that time of your appointment in Delhi Police. Your original date of birth was ascertained from the school of your native village i.e. Jivana, Baghpat U.P. A driving licence was issued in his name from Loni Authority and again he obtained another commercial driving licence from Mathur, U.P. showing his date of birth less than the original one. The matter was enquired through the Vigilance Branch/PCR which revealed that const driver Ravinder Solanki, No.9523/PCR submitted documents in this department showing his date of birth as 12.02.83 whereas as per record of Poorv Madhyamik Vidhyalaya and Primary School No.1, Jivana, Baghpat, U.P. where he studied his original date of birth is 01.01.73. In this way const driver Ravinder Solanki, No.9423/PCR gave wrong information to the department at the time of enlistment in Delhi Police as well as produced fake age certificate. In fact he was overage at the time of enlistment in Delhi Police.

The above act on the part of you constable driver Ravinder Solanki, No.9523/PCR amounts to gross misconduct, carelessness, negligence, concealment of facts and unbecoming of a police officer which renders you liable for punishment under the provisions of Delhi Police (Punishment & Appeal) Rules 1980."

The applicant pleaded not guilty to the charge framed against him. He has also not examined any defence witness despite the opportunity given. The applicant, however, filed his written defence statement on 01.11.2010 denying the charge framed against him. The Inquiry Officer, thereafter, submitted his report with the finding that the charge framed against the applicant has been proved. The Disciplinary Authority, upon appreciation of the report submitted by the Inquiry Officer and also the materials available on the record of the disciplinary enquiry imposed the penalty of removal from service vide order dated 28.01.2011. The applicant though filed the departmental appeal before the Departmental Appellate Authority, the same has also been dismissed by the Additional Commissioner of Police, PCR, Delhi vide order dated 11.11.2011. Hence the present OA.

2. We have heard the learned counsel Mr. Ajesh Luthra appearing for applicant and the learned counsel Mrs. P.K. Gupta appearing for respondents.

3. Referring to the deposition of the witnesses examined by the department in support of the allegation of production of fake documents by the applicant at the time of joining in the Delhi Police as Constable (driver) relating to his age vis-à-vis the date of birth, it has been submitted by the learned counsel for the applicant that though such allegation has been leveled, it is

evident from the enquiry report submitted by the Inquiry Officer as well as the order of punishment passed by the Disciplinary Authority and the Departmental Appellate Authority that no finding has been recorded as to which of the documents submitted by the applicant at the time of joining in the Delhi Police is fake or has been forged by the applicant. The learned counsel submits that qua the allegation against the applicant of having produced the fake documents relating to his age at the time of joining in the Delhi Police as Constable (driver), the burden lies on the department to prove that the applicant has produced the fake documents, which having not been discharged, the disciplinary action taken against the applicant needs to be set aside.

4. The learned counsel referring to the deposition of the witnesses examined by the department has also submitted that it is evident from their deposition that there are two 'Ravinder' in Village Jivana, Bhagpat (UP), one is Ravinder Kumar son of Shri Harpal Singh, who has unfortunately expired, and the other is Ravinder Solanki (applicant) son of another Shri Harpal Singh. It has also been submitted that the school authority, where said Ravinder Kumar son of Shri Harpal Singh was a student, has testified about his age vis-à-vis his date of birth and not of the applicant, whose name is Ravinder Solanki. Hence, according to the learned counsel, the Inquiry Officer would not have held the charge

framed against the applicant proved, consequently, the Disciplinary Authority as well as the Departmental Appellate Authority would not have passed the impugned orders. The learned counsel, therefore, submits that the disciplinary action taken against the applicant needs to be set aside and direction may be issued to reinstate the applicant with all consequential benefits.

5. Per contra, the learned counsel appearing for the respondents, referring to the findings recorded by the Inquiry Officer in his report as well as the orders passed by the Disciplinary Authority and the Departmental Appellate Authority, has submitted that it is evident that the department had established the charge framed against the applicant of submission of fake documents at the time of joining in the Delhi Police as Constable (driver) and, hence, it cannot be said that there was no evidence at all to substantiate the charge framed against him, as contended by the applicant.

6. The submission advanced by learned counsel for the parties received our due consideration. We have also perused the pleadings apart from the records of the disciplinary proceeding conducted against the applicant as well as the personal file of the applicant, which has been produced by the learned counsel appearing for the respondents during the course of argument.

7. As noticed above, the applicant was charged for submission of the fake documents regarding his age at the time of joining in the Delhi Police, on the basis of the allegation that his date of birth is not 12.02.1983 as recorded in the documents filed by him, which is found to be 01.01.1973 based on the record of the Poorv Madhyamik Vidhyalaya and Primary School No.1, Jivana, Baghpat, U.P., where he studied. Such allegation having been leveled against the applicant, the burden lies on the department to substantiate that the applicant has submitted fake documents regarding his age at the time of joining in the Delhi Police as Constable (driver).

8. The department in order to substantiate such plea, has examined 10 witnesses, namely, Shri Mahak Singh (witness no.1), Smt. Rambiri Devi (witness no.2), Shri Raj Pal Singh (witness no.3), Shri Iqbal Singh (witness no.4), Smt. Nirmal Rani (witness no.5), Shri Madan Mohan (witness no.6), Shri Virender Singh (witness no.7), Shri Jagdish Kumar (witness no.8), Shri Manvender Singh (witness no.9) and Shri C.J. Suri (witness no.10). As noticed above, no defence witness was examined by the applicant, who, however, had filed his written defence statement.

9. Out of the aforesaid 10 witnesses examined by the department, the disposition of the witness no.1, Shri Mahak Singh, witness no.2, Smt. Rambiri Devi, witness no.3, Shri Raj Pal Singh, witness no.4, Shri Eqbal Singh are important, they being teachers in the schools where, according to the department, the applicant was a student. That apart, the deposition of the witness no.8, namely, HC Jagdish Kumar is also important because before issuance of the order directing conduct of disciplinary proceeding against the applicant, he made an enquiry relating to the age vis-à-vis the date of birth of the applicant in the aforesaid schools and submitted his report, so also the deposition of the witness no.9, SI Manvender Singh, who also made an enquiry relating to the age vis-à-vis the date of birth of the applicant, based on which the direction for conducting disciplinary enquiry against the applicant had been issued by the Disciplinary Authority.

10. Shri Mahak Singh (witness no.1), who is a teacher in Prathmik Vidyalaya Jivana No.1, has deposed that on 24.12.2009 he had given a certificate to HC Jagdish (witness no.8) in respect of Ravinder Kumar son of Shri Harpal Singh, resident of Village Jivana Gulyan, who was a student in the said school on 26.07.1978 and his date of birth was recorded as on 01.01.1973. During the cross-examination, this witness has stated that in the school register, though the name of Ravinder Kumar appears, the

name of Ravinder Solanki does not appear. Smt. Rambiri Devi (witness no.2), in her deposition, has stated that she is the Pradhan Adhyapika in Poorve Madhumik Vidyalya Jivana Binoli area, Distt. Baghpat, U.P., and on 24.12.2009 she had given a certificate to HC Jagdish Kumar (witness no.8) stating that as per school register Ravinder Kumar son of Shri Harpal Singh was admitted in the school on 24.09.1984 and according to the said register his date of birth was 01.01.1973. This witness during the cross-examination, however, has stated that the document, which has been shown to her during examination in the enquiry was not written by her but was written by HC Jagdish Kumar. During the cross-examination, she has further stated that in the register produced by her, the name of Ravinder Solanki does not find place. In reply to the query made by the Inquiry Officer, this witness further stated that she does not know Ravinder Solanki and there was only one Ravinder Kumar son of Shri Harpal Singh in Jivana village, who unfortunately has died. It has also been stated that she had put her signature in the certificate, which the said HC Jagdish Kumar has prepared.

11. Shri Raj Pal Singh (witness no.3), another teacher in Poorve Madhyamik Vidyala Jivana, in his deposition, has stated that on 24.12.2009 a Delhi Police Head Constable had approached him in the school and enquired about Ravinder Kumar son of Shri Harpal Singh and had given him a written statement. During cross-

examination, this witness, however, has stated that the statement was obtained by the Delhi Police Head Constable under threat and such statement was not his voluntary statement. Shri Iqbal Singh (witness no.4), another teacher by profession, has stated that on 24.12.2009 a Delhi Police Head Constable had visited him at his house, who enquired about Harpal Singh and his son and the said Head Constable had obtained his signature on his statement. During cross-examination, this witness has also stated that there is one more Harpal Singh in his village, the name of whose son is also Ravinder.

12. Witness no.8, Head Constable Jagdish Kumar, in his deposition, has stated that on 24.12.2009, as per the instructions of the Inspector (Vigilance), he went to Village Jivana Gulian in connection with the enquiry relating to the age of Constable (driver) Ravinder Solanki and visited Poorve Madhyamik and Prathmik Schools where the Head Master and Principal were asked to produce the record of date of birth of Constable Ravinder Solanki, and accordingly the Head Master of the Prathmik Vidhyala, Shri Mahak Singh (witness no.1), gave his report that the date of birth of Ravinder son of Harpal, Village Jivana, as per record, is 01.01.1973. During cross-examination, this witness had admitted that he did not find the name of Ravinder Solanki anywhere in the school record and such school record pertains to Ravinder Kumar only. The Inquiry Officer has

also noted that the said witness could not offer any reply to the question as to whether Constable (driver) Ravinder Solanki and the Ravinder Kumar is one and the same person, rather the witness offered a totally unreasonable answer which has no relevance to this question. Shri Manvender Singh (witness no.9), in his deposition, has stated that on 09.12.2009 he was asked to make an enquiry on the complaint received relating to the submission of a false date of birth by Constable (driver) Ravinder Solanki and during the enquiry he collected the relevant documents which demonstrate that Ravinder Solanki's date of birth is shown as 12.02.1983.

13. It is evident from the discussion of the deposition of the aforesaid witnesses examined by the department in support of the allegation leveled against the applicant that the department did not even bother to make an attempt to demonstrate that the documents submitted by the applicant at the time of joining Delhi Police as Constable (driver), relating to his age vis-à-vis date of birth, were fake and false. No attempt has also been made by the department to prove the documents furnished by the applicant in support of his date of birth before the RTO Agra and Delhi at the time of securing his driving licence from the said authorities. The department even did not secure the documents furnished by the applicant at the time of his registration in National Open School authorities, from where he has passed the

Secondary School Examination. The personal record of the applicant, maintained by the department, reveals that the applicant, at the time of joining Delhi Police as Constable (driver), has submitted the marks statement of Secondary School Examination held in the month of May, 2000 issued by the National Open School, New Delhi as well as the certificate issued by the authority of the said school certifying that the applicant has passed secondary examination in May 2000 and also certifying his date of birth as 12.02.1983 as per the school record. No attempt has been made by the department to prove that the date of birth recorded in the said mark statement as well as the certificate issued by the authority of the said school is not correct and those documents are fake and false, despite there being allegation against the applicant that he has produced false documents in support of his age at the time of joining Delhi Police as Constable (driver). No evidence has also been adduced to prove that Ravinder Kumar son of Shri Harpal Singh, whose date of birth was recorded in Prathmik Vidyalaya Jivana No.1 as 01.01.1973, and Ravinder Solanki (applicant), whose father's name is also Harpal Singh, is one and the same person. On the other hand, as discussed above, Smt. Rambiri Devi (witness no.2) in her deposition has stated that there was only one Ravinder Kumar son of Shri Harpal Singh in Jivana Village, who unfortunately has died and she does not know Ravinder Solanki,

son of Harpal Singh. As noticed above, witness no.3 Shri Raj Pal Singh, who is a teacher in Poorve Madhyamik Vidyalaya Jivana, in his deposition has stated that his statement was obtained by the Delhi Police Head Constable under threat and such statement was not voluntary. Witness No.4 Shri Iqbal Singh, who is also a teacher, as discussed above, in his deposition has also stated that there is one more Harpal in his village, the name of whose son is also Ravinder. It is also evident from the deposition of HC Jagdish Kumar (witness no.8) that on the record of the aforesaid two schools the name of Ravinder Kumar Solanki son of Harpal Singh does not appear. In the absence of any proof that Ravinder Kumar and Ravinder Solanki are one and the same person, it cannot be held that the date of birth of Ravinder Solanki is 01.01.1973. In any case, the allegation against the applicant being submission of false documents at the time of joining Delhi Police as Constable (driver), the burden lies on the department to prove the same, which they have miserably failed to do.

14. The disciplinary action taken against the delinquent can be interfered with by the Tribunal when there is violation of the principles of natural justice, which caused prejudice, or such disciplinary proceeding has been conducted in violation of relevant rules, or the authority who issued the charge memo or taken the disciplinary action was not competent to do so or there

is no evidence to substantiate the charge framed against the delinquent. In the instant case, as discussed above, though the allegation of submission of fake documents by the applicant at the time of joining Delhi Police has been leveled against him, the department could not substantiate the same by adducing any cogent evidence and, hence, it is a case of 'no evidence' to record the finding that the charge framed against the applicant has been proved.

15. In view of the aforesaid discussion, we are of the considered opinion that the department has failed to prove the charge leveled against the applicant and hence the order dated 21.01.2010 passed by the Disciplinary Authority as well as the order dated 11.11.2011 passed by the Departmental Appellate Authority need to be interfered with and accordingly the aforesaid orders passed by the aforesaid two authorities are set aside and quashed. Consequently, the respondents are directed to reinstate the applicant in service with all consequential benefits including the salary with effect from the date of his removal from service till the date of reinstatement.

16. OA is accordingly allowed. No costs.

(K.N. Shrivastava)
Member (A)

(B.P. Katakey)
Member (J)

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