

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

O.A.No.1934/2012

Thursday, this the 3rd day of January 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Pradeep Kumar, Member (A)**

Raj Pal
Ex. Constable of Delhi Police
PIS No.28950807
Aged about 38 years
s/o Sh. Tara Chand
r/o VPO Goth, PS Singhana
Distt. Jhunjhunu, Rajasthan

..Applicant

(Mr. Anil Singal, Advocate)

Versus

1. Govt. of NCT of Delhi through
Commissioner of Police
PHQ, IP Estate, New Delhi
2. Special C.P. (Armed Police)
PHQ, IP Estate, New Delhi
3. DCP (3rd Bn. DAP)
Vikas Puri Police Lines
New Delhi

..Respondents

(Mrs. Harvinder Oberoi, Advocate)

O R D E R (ORAL)

Justice L. Narasimha Reddy:

The applicant was employed as Constable in Delhi Police on 04.12.1995. Disciplinary proceedings were initiated against him on 02.01.2004 alleging that he was enlisted in Delhi Police on the basis of false education certificate. The Delhi Police (Punishment & Appeal) Rules, 1980 (for short "the Rules") prescribe a typical

procedure whereunder the charges are required to be framed by the inquiry officer after conducting the inquiry to certain extent, i.e., after examination of the witnesses. An inquiry officer was appointed and after he examined the witnesses, he submitted a report dated 19.11.2004 expressing his inability to frame a charge. The disciplinary authority, however, disagreed with that and ordered supplementary inquiry. On the basis of the supplementary inquiry so held, a charge was framed on 03.01.2005 alleging that the applicant has resorted to alterations of date of birth (DOB), i.e., from 05.12.1972 to 05.12.1974. The charge was held proved and taking the same into account, the disciplinary authority passed order dated 13.06.2005 dismissing the applicant from service. Appeal preferred by him was rejected by the appellate authority through an order dated 22.11.2005.

2. The applicant filed O.A. No.782/2006 before this Tribunal challenging the order of dismissal. The said O.A. was allowed through an order dated 16.04.2007 holding that serious procedural illegalities have crept into the entire proceedings. The order of punishment was set aside. The applicant was reinstated in service.

3. Thereafter, he was issued a summary of allegations stating that he fabricated the DOB in the education certificate. The inquiry officer was appointed and he, in turn, examined the witnesses and framed a charge on the same lines. He submitted a report dated 15.04.2011 holding the charge as proved. Taking the

same into account, the disciplinary authority passed order dated 15.06.2011 dismissing the applicant from service. Appeal preferred by the applicant was rejected by the appellate authority through an order dated 16.12.2011. Hence this O.A.

4. The applicant contends that on an earlier occasion, the order of punishment passed against him was set aside by the Tribunal in O.A. No.782/2006 and though no liberty was given to initiate fresh proceedings, the disciplinary authority initiated the proceedings afresh. He contends that the inquiry officer disregarded the specific evidence of PWs 1 to 4 and framed a charge without any basis and proceeded to hold that the charge is proved. He submits that nowhere in the charge memo or in the inquiry report, it was alleged that the matriculation certificate obtained by him was fabricated and even if the discrepancy in the DOB between the original record on the one hand and the certificate furnished by him on the other, is taken as true, it should not result in imposition of the capital punishment of dismissal. Others grounds are also urged.

5. The respondents filed the counter affidavit opposing the O.A. It is stated that in the order dated 16.04.2007 passed in O.A. No.782/2006, it was clearly mentioned that interference was only on account of procedural lapse and in that view of the matter, the liberty of the Tribunal to conduct the inquiry afresh, remained intact. It is also submitted that the inquiry was conducted strictly

in accordance with law, duly giving opportunity to the applicant, at every stage and no illegality has crept into the proceedings.

6. We heard Mr. Anil Singal, learned counsel for applicant and Mrs. Harvinder Oberoi, learned counsel for respondents.

7. The qualification for the post of Constable in Delhi Police was matriculation, in the year 1995. The applicant submitted his application and on finding the same to be in order, he was subjected to physical test and was ultimately appointed on 04.12.1995. It is almost a decade thereafter, that he was issued a summary of allegations stating that the certificate obtained by the applicant was not genuine. As provided for under the Rules, the inquiry officer examined the witnesses and in his report dated 19.11.2004, he expressed his inability to frame a charge. In other words, he found that the summary of allegations is without any basis.

8. The disciplinary authority, however, disagreed with that and directed supplementary inquiry. It is in the supplementary inquiry that a charge was framed and it was held proved. The disciplinary authority passed an order dated 15.06.2011 dismissing the applicant from service.

9. In O.A. No.782/2006, this Tribunal dealt with the matter in detail and considered various aspects. Ultimately, it was found that the prescribed procedure was not followed in the entire proceedings and the disciplinary authority has acted without

jurisdiction in ordering a supplementary inquiry. Since the very basis disappeared, the said O.A. was allowed in the following terms:

“20. In the result, for the foregoing reasons, leaving other grounds open, though infirmity in procedural law has resulted in exoneration of the applicant, yet rule of law has to prevail. Accordingly, OA is allowed. Impugned orders are set aside. As a result thereof, applicant would be forthwith reinstated in service with all consequential benefits. The above exercise shall be completed within a period of two months from the date of receipt of a copy of this order. No costs.”

10. It is true, that the Tribunal did not leave it open to the respondents to initiate the inquiry afresh. However, once it was mentioned that the order of dismissal was set aside on account of infirmity in the procedural aspects, the right of the employer to conduct inquiry in accordance with law cannot be taken away. Added to that, if the applicant was of the view that issuance of the fresh summary of allegations dated 07.09.2007 was objectionable in any way, he was supposed to pursue the remedy at that stage itself. Having participated in the inquiry without demur, he cannot raise the contention at this stage.

11. Coming to the merits of the case, the summary of allegations dated 07.09.2007 reads as under:-

“It is alleged against Constable Rajpal no.2155/W (2171/W) that he was enlisted in Delhi Police on 4.12.95 by fabricating the date of birth in educational certificate from 5.12.72 to 5.12.74.”

12. The Rules contemplate framing of charges after the witnesses are examined. As many as, four PWs were examined and on the basis of their deposition and evaluation of records, the inquiry officer framed the charge as under:-

“I. Insp. Om Prakash, No-D/3329, EO hereby charge you Constable Rajpal, No.2449/DAP (PIS No.28950807) that you were enlisted in Delhi Police on 4/12/95 by fabricating the date of birth in educational certificate from 5/12/72 to 5/12/74.”

13. The gist of the charge is that the applicant fabricated the DOB in educational certificate from 05.12.1972 to 05.12.1974. Nowhere, it is alleged that the educational certificate issued from Secondary Education Board, Rajasthan, Ajmer was not genuine. Further, the impact of the DOB on the selection was also not indicated.

14. A perusal of the report of the inquiry officer discloses that none of the witnesses have spoken to the fact that the applicant fabricated the DOB. Assuming that the original records contained the DOB as 05.12.1972 and the certificate submitted by the applicant reflected the year as ‘1974’, the blame cannot be thrown exclusively upon the applicant. It is quite possible that the employee, who issued the certificate, may have indicated the year wrongly. When the very livelihood of the applicant is involved, it is not advisable to draw conclusion on the basis of surmises or conjectures.

15. Further, it is not even alleged that the applicant stood to any benefit on account of DOB different from the one, which is borne out from the records. At the most, it could have impact on his date of superannuation. We are of the view that the charge against the applicant was not proved, and at any rate, the DOB alleged to have been altered did not have any impact on his eligibility to join the service of Delhi Police. The DOB of the applicant can be taken as 05.12.1972 for all purposes, including the one for determining the age of superannuation and the applicant can be denied back-wages for the period he was out of service.

16. We, therefore, allow the O.A. setting aside the impugned orders and directing that the DOB of the applicant shall be treated as **05.12.1972** for all purposes of the service. He shall not be entitled to any back-wages, if he is reinstated within two months from the date of receipt of a copy of this order. If the reinstatement is delayed, we may consider the feasibility of granting back-wages. However, the consequential benefits, such as notional promotion, which he otherwise was entitled, shall be extended to him.

There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

January 3, 2019
/sunil/