

(2005) 05 DEL CK 0262

In the Delhi High Court

Case No : Writ Petition (C) 3494 of 2005

Ex. Constable Vikas Kumar No. 1351/W

APPELLANT

Vs

NCT of Delhi and Others

RESPONDENT

Date of Decision : 17-05-2005

Acts Referred:

Citation : (2005) 05 DEL CK 0262

Hon'ble Judges : Rekha Sharma, J;Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : Arvind Singh, for the Appellant; Sujata Kashyap, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, J.—The petitioner herein, who was a Constable (Executive) in the Delhi Police, was dismissed from service pursuant to a departmental proceeding initiated against him. Being aggrieved by the said order, he filed an appeal before the appellate authority, which was also dismissed. Thereafter, the petitioner approached the Central Administrative Tribunal with an Original Application which was considered and dismissed by the impugned judgment and order dated 10th February 2004. Consequently this petition is filed in this Court challenging the legality of the order dated 10th November, 2001, whereby he was dismissed from service and order dated 11th December 2002 by which his appeal against the order of dismissal was rejected. The petitioner also seeks for quashing of the order passed by the learned Tribunal on 10th February 2004.

2. A complaint from one Shri Rattan Singh was received in the office of the respondent on 26th April 2000 in which he had alleged that the petitioner passed his high school examination from Shri Gandhi Smarak Janta Inter College, Patla, Ghaziabad in the year 1984 where his date of birth was recorded as 1st April 1969. Despite the said fact, the petitioner got himself enrolled as Constable (Executive) in Delhi Police by producing forged document/certificate showing his

date of birth as 2nd January 1971. The complainant along with his aforesaid complaint enclosed photocopy of the character certificate issued by the said College bearing No. 7939 and copies of high school and intermediate certificates wherein the date of birth of the petitioner was shown as 2nd January 1971. On receipt of the said complaint, the respondent conducted a fact finding inquiry, during the course of which Assistant Secretary, Madhyamik Shiksha Parishad, Meerut, vide his letter dated 28th August 1999 intimated the respondent that both the certificates namely, the high school certificate and intermediate certificate, were not issued by the said Board. It was also intimated that the character certificate of the petitioner sent by the complainant bearing date of birth as 1st April 1969 is genuine. But then the petitioner had not submitted the said certificate at the time of his enrolment with the Delhi Police and, instead, he submitted a forged educational certificate showing his date of birth as 1st April 1971. Subsequently the petitioner withdrew his original educational certificates from the character roll on 22nd February 1995 on the pretext of requirement of the certificate for his appearing in BA second year examination. However, the respondent could verify from the photocopies of the educational certificates appended in his character roll that the petitioner had produced forged educational certificates of high school and intermediate showing false date of birth i.e. 2nd January 1971 at the time of recruitment/appointment in Delhi Police as Constable (Executive).

3. As a prima facie case for instituting a departmental proceeding was made out, the respondent ordered for initiation of departmental proceedings against the petitioner, who was placed under suspension by the order of 22nd May 2001. A memorandum of charge containing the summary of allegations along with the list of witnesses and documents relied upon were served on the petitioner by letter dated 9th September 2000. The petitioner denied the charges and accordingly an Inquiry Officer was appointed to inquire into the allegations leveled against the petitioner. During the course of inquiry the Department examined a number of witnesses and on completion of the inquiry, the Inquiry Officer submitted his report holding the petitioner guilty of the charges. The disciplinary authority considered the inquiry report submitted by the Inquiry Officer including statements of the witnesses recorded and passed the order dated 10th November 2001 dismissing the petitioner from service.

4. The counsel appearing for the petitioner, during the course of his submissions, submitted that some of the witnesses who are vital and important for unfolding the fact were not examined. The next submission which was advanced was that neither before the disciplinary authority nor before the inquiry officer some documents which were material and were required to be produced were not produced despite clear representation from the petitioner and, Therefore, there is violation of the principles of natural justice in conducting the inquiry.

5. We have considered the aforesaid submissions in the light of the record pertaining to the department proceedings. On perusal of the record we find that

the said submissions were also advanced before the Central Administrative Tribunal. In paragraph 11 of the judgment the learned Tribunal has dealt with the submission with regard to the non-supply of relevant documents. As against the said submission it was held that pursuant to the direction of the Tribunal in OA 2163/2000, which was filed by the petitioner during the pendency of the departmental proceedings, the respondent supplied the relevant documents asked for by the petitioner including copies of the statements recorded in the vigilance inquiry. The learned Tribunal also held that the copies of the certificates which the petitioner had asked for could not be given to the petitioner by the respondent as the petitioner himself had earlier withdrawn the same from the office of the respondent on the plea of appearing in his BA Second year examination. The Tribunal, Therefore, held that asking for copies of documents which were very much in the possession of the petitioner could not be made a ground for finding fault with the inquiry.

6. So far as the issue with regard to non-examination of material witnesses is concerned, the learned Tribunal dealt with the said allegation also in its judgment. In paragraph 12 of the said judgment the Tribunal has observed that the main thrust of the petitioner was regarding non-examination of the complainant Rattan Singh, the Principal of the school and the Assistant Secretary of Madhyamik Shiksha Parishad, Meerut in the proceeding. The said submission of non-examination of vital witnesses was considered by the learned Tribunal and it was held that the Inquiry Officer made repeated attempts to procure the attendance of those three witnesses. However, despite his best efforts, the said witnesses did not choose to appear in the witness box. The Tribunal held that the documentary evidence available on record was sufficient to find the petitioner guilty on the charge leveled against him. The learned Tribunal also found that there was no violation of principles of natural justice in conducting the enquiry inasmuch as the petitioner was permitted to engage defense assistant and that the petitioner has also cross-examined all the witnesses in the disciplinary proceedings. The Tribunal also drew adverse inference against the petitioner as the petitioner had failed to give any Explanation as to why he had failed to return the original certificates submitted by him at the time of recruitment. The Tribunal found that the documentary evidence clearly suggests that the date of birth of the petitioner was 1st April 1969 and that the said fact is not denied by the petitioner specifically at any stage. Considering the entire facts, the Tribunal held that the petitioner produced forged certificates and, Therefore, the finding of the Inquiry Officer that he misled the department by producing forged documents to show that his date of birth as 2nd April 1971 instead of 1st April 1969 cannot be faulted with. 7. The Inquiry Officer in his report has also recorded the conclusion that the petitioner with a mala fide intention withdrew his original certificates from his character roll on the pretext of further studies but during the vigilance inquiry it was established that the complainant attached photocopy of the character certificate of the petitioner showing his date of birth as 1st April 1969, which was verified from the Principal, Gandhi Smarak Janta Inter College, who

verified that the certificate showing date of birth as 1st April 1969 is genuine while the certificate showing date of birth of the petitioner as 2nd January 1971 was forged. The disciplinary authority agreed with the findings of the Inquiry Officer. The disciplinary authority also came to the conclusion that to get himself enrolled as Constable in Delhi Police he submitted a forged matriculation certificate bearing his date of birth as 2nd January 1971 and knowing fully well that the said certificate is fake and false, he withdrew the said certificate on the pretext of submitting the same to the authorities as he wanted to appear in bachelors degree examination and thereafter he never returned these documents to the department. The disciplinary authority Therefore agreed with the findings of the Inquiry Officer that the petitioner got himself enrolled on the basis of fogged certificate.

8. The plea regarding non-supply of documents is found to be not tenable as all the documents which are referred to in the list of documents were supplied to the petitioner. Even thereafter the petitioner requested for furnishing certain documents under his letter dated 11th September 2000, which were supplied to the petitioner and were received by him under his clear signature given in the said letter itself. A further representation was made on 12th October 2000 in respect of which he filed an Original Application being OA 2163/2000. The said OA was disposed of by the Tribunal by its order dated 20th October 2000 with the direction to the respondent to dispose of the representation dated 12th October 2000. The orders passed in the said OA by the Central Administrative Tribunal was also complied with. So far as the three witnesses, namely, the complainant, the Principal and the Assistant Secretary are concerned, they are independent witnesses. The Inquiry Officer made his best efforts to procure their attendance as witnesses. They, however, did not choose to appear in the witness box and, Therefore, the evidence of those witnesses could not be recorded during the departmental proceedings. We are of the considered opinion that since these thee witnesses did not choose to appear before the Inquiry Officer, the Inquiry Officer had no other option but to close the evidence as he could not have compelled their attendance as witnesses in the inquiry proceedings. The allegations which are brought against the petitioner were proved by the documentary evidence placed on record. The petitioner himself could have taken steps to disprove the said documentary evidence by producing the relevant witnesses in that regard, which was not done. In this view of the matter, we find that the allegations and the submissions made during the course of arguments regarding non-supply of relevant documents and non-examination of witnesses have no merit. The same are found to be without substance. We find no infirmity in the order passed by the Tribunal. Accordingly the petition is dismissed.