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**(2019) 03 CAT CK 0146**

**In the Central Administrative Tribunal**

**Case No :** Original Application No. 774 Of 2019, Miscellaneous Application No. 872 Of 2019

Harish Deshwal

APPELLANT

Vs

Government Of NCT, Delhi And Ors

RESPONDENT

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**Date of Decision :** 18-03-2019

**Acts Referred:**

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5(1)

**Citation :** (2019) 03 CAT CK 0146

**Hon'ble Judges :** V. Ajay Kumar, J; Pradeep Kumar, J

**Bench :** Division Bench

**Advocate :** Pooja Singh

**Final Decision :** Dismissed

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**Judgement**

1. M.A. No. 872/2019 for exemption is allowed.
2. Heard Ms. Pooja Singh, the learned counsel for the applicant.
3. The applicant, a Fire Operator under the respondents, earlier filed O.A. No. 3411/2011 when his services were terminated under Sub-Rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 (in short "CCS(TS)Rules, 1965"), vide notice dated 30.08.2011, challenging the said termination order. The said OA along with number of identical batch of OAs were disposed of by this Tribunal vide its order dated 12.10.2011 in OA No.3302/2011 and batch (Annexure A-13) as under:-

"16. In the facts and circumstances of the case, the respondents could have proceeded against the applicants in one of the following three manners, namely, (1) to proceed against him in regular departmental inquiry in case his services are proposed to be terminated for having committed a misconduct rendering him unsuitable in retention in service; (2) to cancel the applicant's appointment on the ground of disqualification under the terms and conditions of employment; and (3) under the Civil Service (Temporary Service) Rules, 1965 in case of

temporary servant. The respondents have preferred to proceed with the 3rd option under sub-rule (1) of Rule 5 of the Civil Service (Temporary Service) Rules, 1965 but in the process have committed an infirmity of non-supply of reports referred to in the show cause notice issued to the applicant which has vitiated their action in law.

17. The show cause notice refers to two divergent reports, one such information is dated 21.01.2009 indicates authenticity of the driving license whereas the letter dated 15.11.2010 discloses the contrary information i.e. the driving license has been found to be fake and forged. Admittedly, the applicant has not been supplied both letters of 21.01.2009 and 15.11.2010. Surely, the non supply of the copies of these two letters/documents has prejudiced the applicant, so much so he has been disadvantaged to defend himself properly. We are, therefore, of the considered opinion that they should have been given both the letters, more specifically, the letter dated 15.11.2010 received from the concerned Authority and on receipt of their response apt decision could have been taken. The very fact that the respondents have not given the applicants a copy of the confidential letter dated 15-11-2010 to show their driving licenses as fake ones has, of course, denied them the opportunity in the sense they have stated that driving license copies were earlier authenticated by the Agra Transport Authority. Both cannot be correct, one of those two will surely be correct. Then, which one is correct can be properly decided by the third respondent only if the applicant can be supplied with both information and copies of relevant letters / documents, receive the response to decide the controversy. To the extent of non supply of reports referred to in the show cause notice issued to the applicant has prejudiced him. The applicant succeeds in this respect only.

18. For the reasons stated above and in the facts and circumstances of the case, the impugned orders in terminating the temporary service of the applicants are quashed and set aside and the respondents are directed to reinstate the applicants forthwith. The respondents shall, however, be at liberty to place them under suspension till they take decision in the matter after providing them the copies of all documents referred to in the show cause notice and more specifically the confidential report dated 15-11-2010, and after getting the reply from the applicants the competent authority is directed to pass speaking and reasoned order in each case. If the applicants feel aggrieved by such decision of the respondents, it will be open for them to challenge the same in appropriate proceedings as and when such occasion arises and as may be advised".

4. In compliance of the aforesaid orders, the respondents issued Annexure A-14 Show Cause Notice dated 04.04.2012 to the applicant. The applicant submitted his reply on 03.05.2012 to the said Show Cause Notice. However, the respondents vide order dated 16.01.2013, again terminated his services under Rule 5(1) of CCS(TS) Rules, 1965.

5. Number of persons identically placed like the applicant, i.e., whose services were terminated earlier and who challenged the same in O.A. No. 3302/2011 and

batch, and who were again terminated after issuance of Show Cause Notice and after considering the representations made thereto, filed O.A. 260/2013 and batch - Vijesh Kumar and Others Vs. Chief Secretary, Govt. of NCT of Delhi and Others challenging the identical termination orders of even dated 16.01.2013. This Tribunal, vide its common order dated 07.07.2014 dismissed the said batch of OAs, i.e., O.A. No.260/2013 and batch - Vijesh Kumar and others Vs. Chief Secretary, Govt. of NCT of Delhi and Others as under:-

"19. Firstly, none of the counsels appearing for the applicants denied the fact that the facts and law involved in OA No.807/2013 and batch are similar and identical to the facts and law involved in this batch of OAs. It is also not denied that the earlier O.As filed by the applicants in OA No.807/2013 and batch were also disposed of jointly along with the earlier O.As filed by the applicants herein vide common Judgement dated 12.10.2011 in OA 3302/2011 and batch. However, it is submitted that the facts were not correctly placed before the Bench which dismissed the OA No.807/2013 and batch, and hence, this batch of OAs are to be decided independently basing on the pleadings now advanced.

20. Before examining this contention of the applicants, it is necessary to consider the Judgement of a Coordinate Bench of this Tribunal in the said OA No.807/2013 and batch. Relevant paragraphs of the said judgment read as follows:-

"3. The main grounds urged in OA No.807/2013 are, namely, that the appeal filed by the applicant has not been disposed of and that the impugned order dated 16.01.2013 suffers from vice of non-consideration of the relevant factors. The Two- Member Committee constituted by the Respondents which gave its report on 15.11.2010 never summoned the applicant to put up his defence. The finding of the Two-Member Committee was not supplied to him and he was thus unable to defend himself properly. Due procedure for holding the disciplinary proceeding has not been followed. The applicant had been appointed vide letter dated 24.06.2008 as Fire Operator according to which the probation period of two years came to an end on 26.6.2010 and, therefore, the respondents did not take any action during this period of probation. The respondents after the judgment of the Tribunal were not justified in reopening the entire issue. The report of the Agra Transport Authority dated 15.11.2010 only stated that due procedure was not adopted by the concerned Licensing Authority while issuing the 81driving licenses. There is no such evidence that the applicant had procured the driving license fraudulently. Malice has also been attributed to the respondents.

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12. We have also perused the Office Order dated 03.09.2010 (Annexure-J) by which two Officers were deputed to visit the office of Regional Transport Officer, Motor Vehicle Department, Transport Nagar, Agra in connection with the verification of driving license of 81 Fire Operators. This Two Member Committee gave its report on 15.11.2010, a copy of which is placed at Annexure J-I. The

report states that all the 81 Driving Licenses should be treated as 'fake' and that further action should be taken in the matter. This conclusion is based on reasons that the requisite fee had not been deposited, there was no approval of the competent authority to issue the license, the address of the license holder was incomplete because of which proper verification of the address was not possible and that the fee for issuing the license for its endorsement had not been deposited. Moreover, the findings of the Two-Member Committee were such that it could not be ignored in as much as they were based on facts detected during verification"

21. The Coordinate Bench, having observed that the applicants therein were still on probation and in view of the fact that their Driving Licenses were fake, held that there is no irregularity in the impugned termination order.

22. It is true that some of the grounds raised by the learned counsel for the applicants in this batch, were neither raised nor answered by the Coordinate Bench while deciding the OA No.807/2013 and batch. However, once, as rightly contended by the learned counsel for the respondents that the applicants neither questioned the finding of the RTO, Agra, that their Driving Licenses are fake nor proved that they obtained the same in a proper and valid method, none of their grounds have no legs to stand, since no one can claim any right basing on a document alleged to have been obtained/issued under fraudulent circumstances.

23. In view of the above seminal finding, i.e., the applicants have not questioned the Report dated 15.11.2010 of the RTO, Agra till date, wherein it was stated that the driving licences of the applicants were forged and not issued by the Competent Authority and no fee has been deposited in that office for issuance of the same and against one of its employee Shri Sita Ram, who was responsible for this fraud, departmental and criminal action was initiated, and the impugned action of the respondents is only a consequential action to the said Report dated 15.11.2010, and that they have no other alternative except to accept the same, unless the same is declared invalid and not binding on them by any Authority or Court, and also in view of the judgement in OA No.807/2013 and batch, we do not find any merit in the present OAs. For the same reasons, the grounds now raised and the Judgements relied on, in support of the said grounds, all being relating to the consequential termination basing on the unquestioned Report dated 15.11.2010, need not be gone into.

24. Hence, for the aforesaid reasons, and also for the parity of reasons mentioned in OA No.807/2013 and batch, dated 19.02.2014, we do not find any merit in these OAs and accordingly, the same are dismissed. However, this order shall not preclude the applicants from questioning the Report dated 15.11.2010 of the RTO, Agra, if so advised, in accordance with law. No order as to costs".

6. Thereafter, the applicant filed O.A. No.847/2013 and the said O.A. was dismissed by this Tribunal on 14.08.2014, by following its judgment in O.A. No. 260/2013 and batch dated 07.07.2014 - Vijesh Kumar and Others Vs. Chief

Secretary, Govt. of NCT of Delhi and Others.

7. Some of the applicants in the above referred batch of OAs, i.e., O.A. No.260/2013 and batch, being aggrieved with the said common order dated 07.07.2014, filed W.P. (C ) No.7387/2015 and batch before the Hon'ble High Court of Delhi. However, they have withdrawn the said WPs vide order dated 07.10.2015 of the Hon'ble High Court, which is as under:-

"Counsel for the petitioners seeks leave to withdraw the petitions as the petitioners want to await the report of the Assistant Regional Transport Officer, Agra with liberty that in case an adverse report is received, the petitioners will challenge the same.

The petitions are dismissed are withdrawn".

8. The applicant in the instant OA also filed W.P. (C) No.10549/2015 against the orders in his O.A. No. 847/2013 and the said W.P. was also dismissed as withdrawn as under:-

"Counsel for the petitioner submits that in identical matters being W. P. (C) Nos. 7387/2015, 7392/2015 & 7391/2015, the writ petitions were withdrawn to await the report of the Assistant Regional Transport Officer, Agra. Counsel for the petitioner also wishes to withdraw the present writ petition with liberty that in case an adverse report is received, the petitioner will challenge the same.

The present writ petition and pending application are dismissed as withdrawn".

9. The applicant instead of challenging the report dated 15.11.2010 of the RTO, Agra, whereunder the driving licence of the applicant was declared invalid, as observed by this Tribunal in the OA filed by the applicant himself, , before an appropriate court, again filed the instant OA seeking declaration that the said report dated 15.11.2010 as void. This court has already held that declaration of validity of a driving licence is not within the jurisdiction of this Tribunal and granted liberty to the applicant and others to question the said report dated 15.10.2010 of the RTO, Agra, if they are so advised, in accordance with law, before a competent court of law. The applicant instead of doing so, again filed the instant OA. As observed by this Tribunal in the earlier litigation, unless the applicant obtained an appropriate order from a competent court of law that his driving licence is valid, he cannot maintain any OA before this Tribunal seeking consequential relief of restoration of his service.

10. In the circumstances and for the aforesaid reasons, we do not find any merit in the OA and accordingly the same is dismissed. No costs.