

IN THE HIGH COURT OF DELHI AT NEW DELHI**+ W.P.(C) 647/2012**

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Date of decision: 26th September, 2012

RAVINDRA KUMAR SHARMA Petitioner

Through : Ms. Barkha Babbar, Adv.

versus

UOI AND ORS

..... Respondents

Through : Mr. Himanshu Bajaj, Adv.

CORAM:**HON'BLE MS. JUSTICE GITA MITTAL****HON'BLE MR. JUSTICE J.R. MIDHA****GITA MITTAL, J. (Oral)**

1. The petitioner assails an order dated 22nd March, 2011 whereby the respondents have withdrawn the offer of appointment issued to the petitioner for the post of Constable/Driver & DCPO – 2010 on the ground that the same has been done arbitrarily and illegally.

2. The facts giving rise to the present writ petition are in a narrow compass. The petitioner applied for recruitment pursuant to the advertisement issued in 2010 by the CISF for the post of Drivers-cum-Pump Operators which was published in the Employment News dated 24-30 July, 2010. The petitioner successfully undertook the eligibility test as well as the physical

efficiency test. It is not disputed that the petitioner qualified the trade test as well as the written test and his name appeared in the merit list of successful candidates after which he was medically examined as well to assess his fitness.

3. On 27th February, 2011, the petitioner received a communication from the Chairman of the medical recruitment informing him that his candidature for the post of Constable/Driver & DCPO – 2010 was provisionally accepted subject to clearance of all required documents. Mr. Himanshu Bajaj, learned counsel appearing for the respondents has emphasized upon clauses (xiv) and (xv) of the letter dated 27th February, 2011 for the purposes of the present case which therefore deserve to be extracted and read as follows:

“xiv) The certificates in proof of age, education qualification, caste, technical qualification like Driving License etc. produced by you will be verified on a subsequent date and if found false/forged, your services would be liable to be terminated.

xv) The offer of appointment is purely provisional and subject to verification of your eligibility criteria as well as suitability for Government service, the offer of appointment can be revoked/ cancelled till publication of formal Service Order appointing you in the rank of Constable/DCPO.”

4. The petitioner has claimed that he had reported for training, as informed, at the Regional Training Centre, Bhillai on the 22nd March, 2011 when he was handed over a letter dated 22nd March, 2011 to the effect that the letter of offer of appointment issued to

the petitioner was withdrawn “*with immediate effect due to forged certificate produced by you during the time of recruitment*”. The petitioner made a representation dated 29th March, 2011 requesting that he be permitted to join and his documents be enquired and he be intimated about the shortcomings in his documents.

5. In this regard, by a letter dated 11th April, 2011, the Assistant Commandant (Recruitment) on behalf of the DIG informed the petitioner that an enquiry was being held at the departmental level of the attested copies of all the educational and other certificates which were placed by the petitioner before the Recruitment Board at the time of recruitment by the petitioner and that any decision taken would be intimated to the petitioner after completion of the enquiry.

6. The respondents have placed on record a communication dated 17th March, 2011 issued by the Deputy Inspector General/ Personnel to the Inspector General at the CISF Head Quarters in New Delhi to the effect that an anonymous complaint dated 28th February, 2011 had been received in respect of the petitioner regarding forged certificates for recruitment which was being sent for a detailed enquiry into the matter. A request was made that in view of the “allegations” of fake/forged certificates of the individual, the offer of appointment issued to the individual may be withdrawn immediately.

7. The above narration would show that at the time of issuance of the letter dated 22nd March, 2011, the respondents had taken action against the petitioner on the anonymous complaint making

allegations alone. No verification had been done and no enquiry had been conducted into the matter. The respondents had no material on record in support of the allegations in the anonymous complaint on which the withdrawal of the offer was based.

8. The respondents have annexed to their counter affidavit a copy of an anonymous complaint dated 10th March, 2011 wherein it was stated that the petitioner had submitted different documents for recruitment at Ghaziabad and Deoli. It was further stated therein that the petitioner's academic documents from Rajasthan and Uttar Pradesh be compared in which his date of birth is different from those issued from Uttar Pradesh and that the documents have been forged.

Ms. Barkha Babbar, learned counsel appearing for the petitioner has vehemently urged that in this anonymous complaint, there was no allegation that the petitioner had produced forged or a fabricated experience certificate.

9. It appears that the petitioner had also applied for recruitment to the post of Constable/Driver for which he had appeared at Deoli. The petitioner was declared unsuccessful during this recruitment for the reason that he had not produced any experience certificate. It is pointed out by the respondents that the recruitment at Deoli was conducted only one week prior to recruitment at Ghaziabad. The petitioner has explained in the present proceedings that while appearing at Deoli, the petitioner was of the mistaken impression that the date of issuance of his driving licence was sufficient proof of his possessing the requisite experience and had therefore not

taken any experience certificates from the organization/firm where he had been employed. He realized his error in the recruitment process at Deoli. When he learnt of the requirement of the experience certificate from the employer at the recruitment process at Deoli, he had made a request to the concerned officers for two hours time to produce the experience certificate. However, such request was not granted by the recruiting authority and the candidature of the petitioner was rejected in this recruitment drive.

10. It is submitted by Ms. Barkha Babbar, Advocate, that having become aware of the requirement of the experience certificate from his employer the petitioner obtained the certificate dated 12th November, 2010 from his employer Andhyana Travels where he had been working. The petitioner has annexed this certificate issued to him by this firm which certifies that the petitioner was holder of license No.RJ05/DLC/07/68308 and had satisfactorily worked with this firm as a bus driver from 1st July, 2007 till 12th November, 2010.

11. After the withdrawal of the offer to the petitioner, correspondence between the different authorities within the CISF ensued. The respondents appointed Deputy Commandant, V.K. Awasthi as an Enquiry Officer to conduct an enquiry into the complaint against the petitioner regarding forged certificates for recruitment.

12. It is not disputed that the Deputy Commandant V.K. Awasthi conducted a detailed enquiry into the matter with regard to documents relating to his educational qualification, experience as

well as character produced by the petitioner at the time of recruitment at Deoli as well as those which were produced at the time of recruitment at Ghaziabad. The enquiry was conducted by deputing Inspector R.K. Pandey who made physical local visits to Bharatpur (Rajasthan); Mathura and Jhansi in the State of Uttar Pradesh. The enquiry was also conducted by all concerned authorities / government offices / private institutions. Statements of several persons from the community including the village Sarpanch were recorded.

13. During the course of enquiry, the documents submitted by the petitioner were duly verified and certificates/authentication in writing was obtained from concerned institutions/offices. The Enquiry Officer got not only the educational qualifications verified but physically verified also the work experience certificates including the certificate relied upon by the petitioner which has been issued by Andhyana Travels at Bharatpur (Rajasthan).

14. Based on the detailed enquiry, the Deputy Commandant V.K. Awasthi submitted an enquiry report dated 28th June, 2011 reporting that the allegations made by the complainant in the anonymous complaint with regard to the certificates produced by the petitioner at Ghaziabad and Deoli having been forged was baseless.

15. It would appear that Deputy Commandant V.K. Awasthi, had conducted an independent verification from Andhyana Travels through Inspector R.K. Pandey. This firm had then issued a handwritten certificate dated 10th May, 2011 to him.

16. However, unfortunately the matter did not end here. The respondents had already taken a categorical stand in the communication dated 22nd March, 2012 that the petitioner had produced a forged certificate during the recruitment. On this allegation, the offer of recruitment to the petitioner stood withdrawn. It, therefore, appears to have become necessary to seek a justification for the order which already stood passed against the petitioner.

17. Interestingly, in this communication dated 22nd March, 2011 there was no reference as to which of the certificates submitted by the petitioner was found by the respondents to be forged.

18. In this backdrop, instead of letting the matter rest, the respondents initiated a second enquiry into the entire matter taking a stand that the petitioner had submitted a forged experience certificate. The basis for initiating this enquiry was that the petitioner had not produced this certificate in the recruitment drive held at Deoli on 11th November, 2010. The respondents were also of the view that during the period of 1st July, 2007 till 2008, the petitioner was a full time student of Guru Nanak Higher Secondary School, Gandhi Park, Bharatpur, Rajasthan and therefore he could not have been employed as a driver at the same time. The respondents were also of the impression that the college between 2008 – 2009 was located in Agra which was at a distance of 55 kms from Bharatpur.

19. In this backdrop, by a communication dated 26th September, 2011, a second enquiry to be conducted by the Deputy

Commandant Biswa Baruti was ordered.

20. Despite the above two certificates, it appears that this Enquiry Officer again went to Andhyana Travels at Bharatpur (Rajasthan). In this enquiry, the Andhyana Travels issued a letter dated 30th September, 2011 now stating that the petitioner had approached the firm with a person who was known to them and on the request of this person, they had issued an experience certificate whereas actually the petitioner had never worked with the firm. Deputy Commandant Biswa Baruti submitted an enquiry report dated 13th October, 2011 based on this communication dated 30th September, 2011 to the effect that the experience certificate issued by M/s Andhyana Travels was fake and false.

21. Upon receipt of this enquiry report, the respondents informed the petitioner by a letter dated 1st February, 2012 to the effect that the withdrawal of the offer of appointment by the letter dated 22nd March, 2011 holds good.

22. The petitioner has assailed the order dated 22nd March, 2011 and 1st February, 2012 as well as the actions of the respondents which has been taken after the passing of the order dated 22nd March, 2011.

23. It is contended that the order dated 22nd March, 2011 was passed on no material or proof. It has been vehemently urged by Ms. Barkha Babbar that recourse to such action behind the petitioner's back was not open to the respondents and that, the order of withdrawal of the offer of appointment could have been passed only after verification of the facts. It is submitted that the

second enquiry conducted by the respondents was malafide and arbitrary intended only to obtain a report so as to justify the wrongful conduct of the respondents. The said enquiry is further assailed on the ground that the same has been conducted behind the back of the petitioner and in fact by putting pressure on the private firm which had no concern with this matter.

24. The respondents were of the view that the period for which the experience certificate dated 12th November, 2010 which has been issued by M/s. Andhyana Travels overlapped with the period of the petitioner's education in the Senior Secondary School between 2007-2008 and then for the period when he did Bachelor of Arts from 2008-2009.

25. The petitioner has explained that he was a student of Guru Nank Higher Secondary School, Bharatpur, Rajasthan between 2007-2008 and his school timings were from 7.00 am to 12.00 noon. It is submitted that he used to drive the vehicles of Andhyana Travels between 2.30 pm to 10.30 pm during the period 2007-2008. The petitioner was thereafter a student of Bachelor of Arts in Shrimati Ram Dulari College at Ole, Mathura for the period 2008-2009 and his college timings were from 9.00 am to 1.00 pm after which he used to go for driving work between 2.30 pm to 10.30 pm.

26. It is brought to our notice that the respondents have erroneously taken a stand that the college of the petitioner, located in Agra was at a distance of 55 kms. from Bharatpur, Rajasthan where he has claimed employment and that, therefore, he could not

have worked at the transporters. The petitioner has placed reliance on the certificates, which have been duly verified by the respondents, to the effect that the said college of the petitioner was at Ole Mathura, at a distance of barely 12 kms. from Bharatpur which enabled him to easily proceed for his driving work after attending his school, and later, college. The petitioner's college in Bharatpur was affiliated to the Bhimrao Ambedkar University which was in Agra. This has not been disputed before us.

27. Both the enquiry reports have verified that the educational certificates of the petitioner were genuine and that he had regularly attended his classes. The explanation given by the petitioner as to the manner in which he was also employed is certainly plausible and reasonable.

28. No complaint has been found about the driving licence of the petitioner which has been issued by the competent transport authority at Bharatpur, Rajasthan. It is also pointed out that the allegation of anonymous complaint with regard to the birth certificate issued to the petitioner was also unfounded.

29. The petitioner has further explained on affidavit that he has subsequently learnt that the officers of the respondents had in fact pressurized the Andhyana Travels to give in writing that his experience certificate was false.

30. The record produced before us shows that the respondents were seeking documents in the nature of proof of salary payments, statutory compliances by the Andhyana Travels log books of vehicles etc. Unfortunate but a hard reality – in our country the

unorganized labour sector is much larger than the organized sector. There is seldom, if at all, compliance with statutory requirements qua employees in this sector. To expect records relating to service rendered by a part time driver from a small firm is to ask for the impossible. The firm would have obviously got fed up with the intrusion into their records and business affairs by the respondents for the sole reason that they had issued a certificate to their driver. Disowning the same would have seemed the easiest way out.

31. There is yet another aspect to this matter. The reluctance of members of the public to get involved in matters official, or which may result in involvement in litigation, concerning third parties, is proverbial. The criminal justice system is a casualty for this reason. The observations of the Supreme Court on such reluctance of persons who have witnessed even serious crimes and have a public duty to bring the guilty to book, deserve to be considered in extenso. In this regard the Supreme Court in (1983) 3 SCC 327 entitled *Rana Partap & Ors. v. State of Haryana*, has held as under:

“6. Yet another reason given by the learned Sessions Judge to doubt the presence of the witnesses was that their conduct in not going to the rescue of the deceased when he was in the clutches of the assailants was unnatural. We must say that the comment is most unreal. Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-

attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way.”

32. On this aspect in **AIR 1988 SC 696** entitled **Appabhai v. State of Gujarat**, the Apex Court has held as follows:

“11. ...Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability if any, suggested by the accused. The Court, however, must bear in mind that witnesses to a serious crime may not react in a normal manner. Nor do they react uniformly. The horror stricken witnesses at a dastardly crime or an act of egregious nature may react differently. Their course of conduct may not be of ordinary type in the normal circumstances. The Court, therefore, cannot reject their evidence merely because they have behaved or reacted in an unusual manner...”

(Emphasis supplied)

33. In **(1999) 9 SCC 525** entitled **Leela Ram v. State of Haryana & Anr.** the Supreme Court has held as under:

“The Court shall have to bear in mind that different witnesses react differently under different situations: whereas some become speechless, some start wailing while some others run away from the scene and yet there are some who may come forward with courage, conviction and belief that the wrong should be remedied. As a matter of fact it depends upon individuals and individuals. There cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction not falling within a set pattern is unproductive and a pedantic exercise.”

Why then would Andhyana Travels bother to stick their neck out or risk exposure or inquiry into their records by authorities, that too for a part time driver? It was matter of his employment with the CISF – why should Andhyana Travels get involved.

34. It is a matter of common knowledge that the members of the general public are hesitant to interact with officials, even more reluctant if they are in uniform. This would be more so when a uniformed member of the CISF, who would be perceived as the police by the ordinary public, would have been visiting the premises of a small time transport firm in the small city of Bharatpur. The same would not only have been embarrassing and inconvenient to the firm but would have been a matter for an explanation to the public (including customers) as to why persons in uniform were repeatedly visiting their premises.

35. We find that all the three communications from M/s. Andhyana Travels, that is the letter dated 12th November, 2010, 10th May, 2011 as well as 30th September, 2011, are in the writing of the same person. The same are also signed by the same person.

36. The second communication dated 10th May, 2011 is a detailed certificate issued by Andhyana Travels to the independent enquiry conducted by the respondents. The petitioner was not joined in this enquiry. There is no allegation that the petitioner influenced the enquiry or that the enquiry officer Deputy Commandant V.K. Awasti or Inspector R.K. Pandey were biased in favour of the petitioner or had malafide. The second certificate dated 10th May, 2011 categorically states that Inspector R.K. Pandey had visited the firm and enquired about the engagement of the petitioner. The firm reiterated that it had issued the previous certificate to the effect that the petitioner had satisfactorily worked with them from 1st July, 2007 till 12th November, 2010. The firm certified that the experience certificate which had been issued were correct and valid. In fact, by the communication dated 10th May, 2011, M/s. Andhyana Travels has categorically authenticated the previous certificate dated 12th November, 2010.

37. Given the verification which has been conducted in the first enquiry and noted therein, the second certificate issued by the firm as well as the enquiry report dated 28th June, 2011, the controversy really stood concluded. There was little scope for further examination so far as the allegations of forgery against the petitioner was concerned.

38. It is the case of the respondents before us that the enquiry and the verification of the document which was effected was without joining the petitioner. Therefore, when Deputy Commandant V.K. Awasthi had conducted the enquiry from M/s.

Andhyana Travels, the petitioner was not joined in the same. In the fact, when Inspector R.K. Pandey had visited the transporter, neither the petitioner nor any person on his behalf was part of the first enquiry which had been conducted. Therefore, there was neither pressure nor influence of any kind, least of all by any person known to the transporters, to motivate the issuance of second certificate which was issued by the firm.

39. Perusal of the third certificate dated 30th September, 2011 shows the cryptic manner in which it was written. It clearly manifests the only intention of the transporter to get rid of the whole issue.

40. The firm would have issued the third certificate so as to get rid of the whole matter and put an end to the inquisition into their business affairs. The certificate dated 30th September, 2011 is incomplete at the face of it and unreliable.

41. We may note that to support the fact that the petitioner had been a driver with M/s. Andhyana Travels, before this Court, the petitioner has placed reliance on affidavits attested by other drivers in the area to this effect. The same are strictly not necessary for the purposes of the present writ petition inasmuch as we are required to test the legality of the order dated 22nd March, 2011 passed by the respondents on the basis of the materials which were before the respondents.

42. In view of the above discussion the inevitable conclusion is that the third certificate dated on which the respondents have placed reliance does not inspire any confidence and lack bonafide.

The third certificate dated 30th September, 2011 does not reject the second certificate at all. In fact it does not even refer to the enquiry by Inspector R.K. Pandey. The second certificate dated 10th May, 2011 issued in an independent enquiry in which the petitioner was not a party (which also reiterates the first certificate) deserves to be accepted.

43. It needs no elaboration that the respondents as an employer are entitled to verify the antecedents and conduct verification of documentation which is relied upon by a prospective employee to seek engagement. However, such inquiry must be reasonable, fair and proper.

44. Mr. Bajaj, learned counsel for the respondents has drawn our attention to the pronouncement of the Supreme Court reported at 1998 (1) SCALE 444 entitled Union of India v. Shri Rati Pal Saroj & Anr. to support his argument that as an employer the respondents have an absolute right to withdraw the offer of appointment. It has further been contended that the order of withdrawal of the offer of appointment cannot be subject to judicial review and the present writ petition is wholly misconceived.

45. We find that in para 9 of Union of India v. Shri Rati Pal Saroj & Anr. (supra) the Court was of the view that the Central Government as an employer would have the right to terminate the offer of appointment on the ground of the prospective employee's unsuitability. It was further held that an employee who has not yet joined the Central Government Service cannot be put on a higher pedestal than a probationer. The Court further held that the

withdrawal of the offer of appointment does not cast any stigma on the prospective employee. These observations have been made in the facts and circumstances of that particular case. It may be noted that in that case, *Rati Pal Saroj and the other* respondents were not in a position to join the offered post within a reasonable period. So far as suitability of the candidate is concerned, the following observations of the Court may be set out in extenso and read as follows:

“9. ...If the circumstances raise a doubt about the suitability of the candidate for the post or the Service in question, the doubt should be dispelled within a reasonable time. Otherwise the employer is entitled to cancel the appointment. This is not by way of a punishment nor does it cast a stigma on the prospective employee.”

46. A reading of the above observations would show that the Supreme Court was of the view that the candidate must dispel the doubt entertained of a prospective employer within a reasonable time. It is inherent in these observations that the prospective employee would have an opportunity to meet the doubt, apprehension or suspicion being nurtured by the employer. It is also noteworthy that the Court has observed that withdrawal of offer of appointment would not by way of punishment cast stigma on the prospective employer. The instant case meets neither of the two directions.

47. Ms. Barkha Babbar, learned counsel for the petitioner has placed reliance on the pronouncement of the Supreme Court

reported at (2010) 7 SCC 678 entitled *East Coast Railway & Anr. v. Mahadev Appa Rao* and other connected appeals. In this case, the East Coast Railway had cancelled a departmental test on the basis of certain complaints that proper facilities for taking the typewriting test were not provided to some of the candidates who failed in the test. The observations of the Supreme Court on the question of the right of candidates in the select list; the legality of administrative or executive function; the question of proper application of mind as well as the nature of the power conferred on the authority and the manner of its exercise shed valuable light on the issues raised before this Court and deserves to be considered in extenso. The relevant extract reads as follows:

“14. It is evident from the above that while no candidate acquires an indefeasible right to a post merely because he has appeared in the examination or even found a place in the select list, yet the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list prepared at the end of the selection process. The validity of the State's decision not to make an appointment is thus a matter which is not beyond judicial review before a competent Writ court. If any such decision is indeed found to be arbitrary, appropriate directions can be issued in the matter.

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23. Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making the order is only one

of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or the record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary hence legally unsustainable.

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26. If a test is cancelled just because some complaints against the same have been made howsoever frivolous, it may lead to a situation where no selection process can be finalized as those who fail to qualify can always make a grievance against the test or its fairness. What is important is that once a complaint or representation is received the competent authority applies its mind to the same and records reasons why in its opinion it is necessary to cancel the examination in the interest of purity of the selection process or with a view to preventing injustice or prejudice to those who have appeared in the same. That is precisely what had happened in Dilbagh Singh's case (supra). The examination was cancelled upon an inquiry into the allegations of unjust, arbitrary and dubious selection list prepared by the Selection Board in which the allegations were found to be correct.

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28. That is not, however, the position in the instant case. The order of cancellation passed by the competent

authority was not preceded even by a prima facie satisfaction about the correctness of the allegations made by the unsuccessful candidates leave alone an inquiry into the same. The minimum that was expected of the authority was a due and proper application of mind to the allegations made before it and formulation and recording of reasons in support of the view that the competent authority was taking.

29. There may be cases where an enquiry may be called for into the allegations, but there may also be cases, where even on admitted facts or facts verified from record or an enquiry howsoever summary the same maybe, it is possible for the competent authority to take a decision, that there are good reasons for making the order which the authority eventually makes. But we find it difficult to sustain an order that is neither based on an enquiry nor even a prima facie view taken upon a due and proper application of mind to the relevant facts. Judged by that standard the order of cancellation passed by the competent authority falls short of the legal requirements and was rightly quashed by the High Court.”

(Emphasis supplied)

48. So far as the powers of the High Court under Articles 226 in the writ petition are concerned, in para 31 of the *East Coast Railway* (supra) the Court held as follows:

- “31. So also whether the competent authority ought to have conducted an enquiry into or verification of the allegations before passing an order of cancellation is a matter that would depend upon the facts and circumstances of each case. It may often depend upon the nature, source and credibility of the material placed before the authority. It may also depend upon

whether any such exercise is feasible having regard to the nature of the controversy, the constraints of time, effort and expense. But what is absolutely essential is that the authority making the order is alive to the material on the basis of which it purports to take a decision. It cannot act mechanically or under an impulse, for a writ court judicially reviewing any such order cannot countenance the exercise of power vested in a public authority except after due and proper application of mind. Any other view would amount to condoning a fraud upon such power which the authority exercising the same holds in trust only to be exercised for a legitimate purpose and along settled principles of administrative law.”

49. We may note that admittedly in the instant case the respondents passed the order dated 22nd March, 2011 against the petitioner for the reason that he had produced a “forged certificate” without any verification. There was admittedly no relevant material before the authorities on that date. It has not been contended before us that such an allegation does not cast an aspersion on the conduct of the petitioner.

50. In view of the above discussion, it is obvious that the respondents had passed the order dated 22nd March, 2011 on an anonymous complaint. Admittedly, there was no other material before the respondents. No enquiry was conducted by the respondents into the matter. They did not even verify the facts from the petitioner or ascertain the position. The petitioner was kept completely in the dark when the withdrawal of the offer of appointment was made. The action of the respondents, therefore,

suffers from the vice of the same being based on no material/evidence at all and as well as the non-application of mind. The action of the respondents has to be held to be arbitrary and certainly unsustainable. This Court has the jurisdiction to entertain the challenge by the writ petitioner in exercise of its power of judicial review.

51. The respondents thereafter caused a detailed enquiry to be conducted and a report dated 28th June, 2011 was placed before them. It is not the respondents' case that the officer who conducted the enquiry was in any manner mixed up with the petitioner. There is no contention also that the enquiry was conducted dishonestly.

52. On pure conjectures and surmises, observations have been made with regard to the impossibility of the petitioner being employed during the period when he was pursuing his educational course. These observations ignored the realities of this country where there is a large population of young students who in order to meet their requirements, probably even to meet the expenses of their education, have simultaneously to seek employment.

53. The petitioner is obviously not from the well to do strata. He was selected for the post of driver. The petitioner was admittedly holding a heavy vehicle driving licence before 2007 when he was still a student, thereby clearly underlying his need for employment.

54. We have observed here to as to the manner in which members of the public may respond when a need arises for them to support any public cause or any third person. It is only on rare occasion that a member of the public will take up a position to

support persons with whom they have immediate connection. Instances galore where close relatives turned hostile in the witness box when they have been called upon to depose with regard to the offences against close and even, blood relatives. Most people will shake off matters involving third parties, deliberately ignoring the truth.

55. Mr. Bajaj has submitted that even if this Court held in favour of the petitioner, it cannot issue a mandamus directing the respondents to employ the petitioner. In this regard, he has placed reliance on the observation of the Supreme Court in para 31 of the *East Coast Railway* (supra), which reads as under:

“32. The next question then is whether the selection should be finalized on the basis of the test held earlier or the matter allowed to be re-examined by the authority in the context of the representation received by it. In our opinion the latter course would be more in tune with the demands of justice and fairness especially when a second test has been conducted in which all the in service candidates have appeared. The result of this examination/test has not, however, been declared so far apparently because of the pendency of these proceedings.”

These observations in para 32 of the pronouncement would not apply in the present case. Any further enquiry from the same firm would really be meaningless in the given circumstances of the case. We may note that the respondents have not stopped at withdrawal of the offer alone, after obtaining the second enquiry report. They have gone to the extent of lodging a police complaint

on 2nd December, 2011 against the petitioner as well as M/s. Andhyana Travels. In this background, it cannot be expected that the said firm would be fair and honest with regard to having given the certificates dated 12th November, 2010 and 10th May, 2011 as well as the explanation given by the petitioner with regard to the timings when he undertook the driving with the firm.

56. We may note that it is an admitted position that the petitioner had successfully cleared the trade test. Before us, the petitioner has placed reliance on several affidavits of other drivers to support his claim of experience including his employment of M/s. Andhyana Travels as well as other engagement. The result of the first enquiry and the documents obtained therein (including the certificate dated 10th May, 2011) were based on an independent verification by an impartial authority. The apprehensions and observations of the respondents resulting in the second enquiry are misconceived and undeserved in the light of the petitioner's explanation which is both plausible and reasonable.

57. In this background, the order dated 22nd March, 2011 as well as the communication dated 1st February, 2012 reiterating the previous decision of withdrawal of offer are unsustainable in law.

58. In view of the above, it is directed as follows:

(i) The order dated 22nd March, 2011 and the communication dated 1st February, 2012 reiterating the same are hereby set aside and quashed.

(ii) As a result, the petitioner will require to be placed in the same position as if the order dated 22nd March, 2011 and the

communication dated 1st of February 2012 had not intervened and the offer of appointment to the petitioner had not been withdrawn.

(iii) Given the passage of time which has passed and the training, the petitioner would require to be accommodated against the next training batch to be conducted by the respondent.

(iv) The appropriate orders in terms of the above shall be passed within ten weeks from today.

This writ petition is allowed in the above terms.

GITA MITTAL, J

J.R. MIDHA, J

SEPTEMBER 26, 2012
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