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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 2958/2014 & CM No.6149/2014**

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Date of decision: 20th May, 2014

KHEM CHAND

..... Petitioner

Through : Mr. Raman Duggal,
Mr. Sudhir Kumar and
Mr. Anish Shresta, Advs.

versus

GOVT OF NCT OF DELHI & ANR.

..... Respondents

Through : Ms. Ruchi Sindhwani, ASC
with Ms. Bandana Shukla,
Adv. with R.P. Sharma,
GI/STA and Mr. Ram
Narain, GI STA.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE DEEPA SHARMA

GITA MITTAL, J. (Oral)

1. The petitioner assails the order dated 19th December, 2013 passed by the Central Administrative Tribunal rejecting his application being O.A.No.2068/2012.

2. The facts giving rise to the instant petition are largely undisputed and to the extent necessary are noticed hereafter.

3. We have called for the original record of the respondents and carefully perused the same.

4. A requisition was made by the Government of NCT of Delhi – respondent no.1 herein to the Delhi Subordinate Services Selection Board (DSSSB for brevity) - respondent no.2 herein resulting in publication of an advertisement no.03/07 by the respondent no.2 in the Employment News. The respondents thereby notified vacancies of 14 posts (12 in the category of unreserved and 2 in the category Scheduled Caste) of Instructor/Mathematics in the Department of Training and Technical Education of the respondent no.1. As per the advertisement, the respondents had notified the following eligibility conditions: -

7.	Educational and other qualifications required for direct recruits:-	:	1. Matriculation or equivalent From a recognized University/Board. 2. Diploma in Mechanical Engineering from a recognized Institute. 3. One year's practical experience in an Engineering Workshop of repute. OR
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			One year training at the Central Training Institute.
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5. The advertisement also informed all candidates of the following:-

“The selection of the above 14 candidates (UR 12, SC – 02) shall further be subject to the fulfilment of all eligibility conditions as prescribed by the statutory RRs and the terms and conditions of the advertisement indicated in the advertisement inviting applications and also subject to thorough verification of their identity with reference to their photographs, signatures, handwriting and thumb impression etc., on the application forms, admit card, etc. The candidature of candidate is liable to be cancelled by the user Department also, in case the candidate is found not fulfilling the eligibility conditions or for any other genuine reasons. The competent authority of the user Department shall arrange to verify the correctness of information/documents as furnished in the application form after verification of the same from the original documents. Mere inclusion of name in the result notice does not confer any right upon the candidate over the post.”

6. It is an admitted position that petitioner submitted an application as Scheduled Caste candidate; successfully appeared in the written examination and by the notice No.22 dated 6th April, 2011 was provisionally selected as one of the two scheduled caste

category candidates for the post of Instructor/Mathematics apart from 12 candidates in the unreserved candidates.

As a result, the respondent no.2 forwarded the dossier of the petitioner along with the other selected candidates to the respondent no.1 for issuing the offer of appointment to the selected candidates after due verification.

7. The respondent no.1 had found the educational certificate and the caste certificate of the petitioner as genuine. We, however, are concerned with the verification effected of the experience certificate submitted by the petitioner. To support his plea that he possessed the requisite one year experience in an engineering workshop of repute, the petitioner had submitted a certificate dated 8th June, 2006 issued to him by “**TANDAN** Diesel Service. As per the letter head, the firm was located at 3778 Mori Gate, Delhi – 110006. The certificate dated 8th June, 2006 was in the following terms:

“Certificate

To Whomsoever It May Concern

This is to certify that Mr. Khem Chand has been

working in Tandan Diesel Service since 02nd May 2003 to 13th May, 2006 as a Assistant/helper (Mech.)

His performance in this period was good. He bears a good moral character. We hope for his prosperous future.”

8. When the respondents attempted to verify the certificate at the address on the letter head, no response was received from the firm. As per the record, at this stage, the petitioner submitted a letter dated 24th October, 2011 to the respondent no.1 informing that the firm which had issued the experience certificate had changed his address since the issuance of the certificate and that it was at the following address:

TANDON Diesel Service,
Shop No.3794/3, (3rd in the Gali),
Mori Gate, (in front of Bholla Ram Market),
Delhi – 110 006.

The petitioner informed the respondents that in case they wanted to exchange correspondence with the firm, they should communicate with the firm on this address.

9. Consequently, the respondent no.1 sent a letter dated 4th November, 2011 to the proprietor of the firm at the address

disclosed by the petitioner, enclosing the copy of the experience certificate of the firm submitted by the respondent to the petitioner requesting verification thereof.

10. The original record produced before us discloses that in response to its letter dated 4th November, 2011, the proprietor of the firm responded by a communicated dated 28th November, 2011 which reads as follows:

“Ref. No. TDS
2/2011

Dated : 28/11/11

TO,

DEPARTMENT OF TRAINING &
TECHNICAL EDUCATION
MUNI MAYA RAM MAR,
PITAMPURA, DELHI - 110088

REF: - LETTER NO.F.21(12)/96/TRG. ADMN./
1239 / 6939 DATED 04.11.2011

TO WHOM IT MAY CONCERN

Certified that Sh. Khem Chand S/o Sh. Padam Singh has worked in this workshop as Assistant/Helper Mechanical from 02nd May 2003 to 13 May 2006.

He bears a good moral character.

We wish him all the best for his future career.”

11. It is important to note that the letter head on which the certificate dated 28-11-11 was typed describes the name and address of the firm as **TONDON** Diesel Service, 3793/3, Kucha Ravi Das, Opp. Bhola Ram Market, Mori Gate, Delhi 110006.

12. This communication was also sent to the respondents by registered speed post. The original envelope is also available in the records wherein the address of the sender is scribed in hand writing and reads as follows:-

TONDON Diesel Service
3793/3, Kucha Ravi Dass,
Opp. Bhola Ram Market,
Mori Gate, Delhi 110006.

13. The name and address of the firm as scripted on the envelope in hand writing corroborates the certificate dated 8th June, 2006 which had been filed by the petitioner along with his application, certifying that he had worked in the workshop as Assistant/Helper Mechanical from 2nd May, 2003 to 13th May, 2006.

14. In fact, the issue of the petitioner's experience stood conclusively settled and no doubt ought to have remained hereafter so far as the experience of the petitioner is concerned. However,

the matter did not end here. We find that inexplicably, yet another communication dated 15th December, 2011 was issued by the respondents, again addressed to the proprietor of ‘**Tandan** Diesel Service, Shop No.3794/3, 3rd in the Street, Mori Gate, Opp. Bhola Ram Market, Delhi – 110006’ referring to the verification dated 18th November, 2011 of the experience certificate issued by the firm. By this letter, verification was sought by the respondents from proprietor of the firm as to the name of the company for the reason that name on the letter heads was reflected as “**TONDON DIESEL SERVICE**” while the rubber stamp affixed was mentioning the firm’s name as “**TANDON DIESEL SERVICE**” while on the original certificate, the firm was referred to as “**TANDAN DIESEL SERVICE**”.

14. It is undisputed that this communication was sent by the respondents by speed registered post. The firm responded promptly by a certification sent by registered speed post to the respondent no.1 on 16th December, 2011, again on a letter head wherein the address of the firm was reflected as 3793/3, Kucha Ravi Das, Opp. Bhola Ram Market, Mori Gate, Delhi 110006.

Reference was made to the letter of respondent no.1 dated 13th December, 2011, and it was once again certified that Shri Khem Chand, the present petitioner had worked in the workshop as assistant/helper mechanical for the aforementioned period. The firm certified the good moral character of the petitioner as well.

We may note that this letter is erroneously dated 16th November, 2011. It refers to the letter of the respondent no.1 dated 13th December, 2011. The original envelope available in the shows that it has been posted on 16th December, 2011. There is thus an error in mentioning 'November' in the date which is actually 'December'.

15. It may also be noted that the address on the envelope in which the certificate was sent on 16th December, 2011, the following name and address of the firm stands scribed in hand:

“Tandon Diesel Service
Sh. No.3794/3, 3rd In the street,
Mori Gate, Opp. B. Ram Market,
Delhi 110006”

16. It is noteworthy that all letter heads of the firm on record

contain the following two telephone numbers:-



2925217
2947828 PP

17. It would appear that the spelling of the surname ‘Tandon’ has been varied on the letter head as is borne out from the endorsement of the name of the firm on the various envelopes and letter heads. There can be no dispute at all with regard to the identity of the firm. The respondent no.1 had sent its letters seeking verification by posts. The firm responded to the same under registered covers by speed post. Therefore, irrespective of the communication being sent to “TONDON Diesel Service” or “TANDON DIESEL SERVICE” or to “TANDAN Diesel Service”, it was duly received and identical responses received. It is evident that spelt in any manner as noted above, the reference is to one and the same person and firm which has responded to the query made.

18. The original record also contains an official noting which has been numbered as 291 dated 27th February, 2012 which records that the firm’s response stood received by post and that the

experience certificate with regard to the petitioner was found 'okay'. The noting notes that on a physical verification report was not found genuine. It is because of this stand of the respondents that it becomes necessary to also refer to the physical verification which the respondent no.1 claims to have effected. This verification reflects an extremely sordid state of affairs.

19. Mr.Tandon, the proprietor of the TANDON DIESEL SERVICE sent a letter dated 19th March, 2012 to the Secretary of the Department of Training and Technical Education, Government of NCT of Delhi Muni Maya Ram Marg, Pitam Pura, Delhi – 110088 referring and enclosing the letters dated 4th November, 2011 and 13th December, 2011 sent by the respondents. He adverts in detail as to what transpired when the inspector of the respondent visited the firm to effect physical verification of the certificate issued by the firm in respect of Khem Chand.

20. The letter dated 19th March 2013 also reiterates that Khem Chand had worked in this workshop as Assistant/Helper Mechanical from 2nd May, 2003 to 13th May, 2006. It confirmed that the aforementioned letters dated 28th June, 2006; 28th November,

2011 and 16th December, 2011 had been sent by the firm to the respondents.

The original record of the respondents again shows that the letter dated 19th March, 2012 was sent by registered speed post by TANDON Diesel Service and was received in the office of the respondent no.1 on 23rd March, 2012.

21. Grave anxiety has been expressed by the proprietor in this letter when he narrates the manner in which the firm was pressurized by the Inspector under the pretext of the physical verification. In the letter dated 19th March, 2012, the proprietor of the firm has stated thus:

“It is further stated that after some time, one person, Mr.Malik came in person and enquired about the experience certificate of Sh. Khem Chand. He also shown the copy of the experience certificate issued by my Supervisor on 28.06.2006 to Shri Khem Chand. Further, he told me to show his attendance register relating to the period during his tenure of service in my workshop and also demanded Sale Tax Number etc. It is submitted that the records of this period cannot available with me. Then he asked me to give in writing that the signature on the experience certificate is not mine. It admitted that the signature is not mine and the experience certificate was signed by my supervisor, who was authorized to issue such type of certificates. Actually, Mr. Malik cheated me

and took my signature to use this certificate at their own, to prove as fake. The fact is that Shri. Khem Chand has worked in my workshop as Assistant/Helper Mechanical from 2nd May 2003 to 13th May, 2006. It is also a fact that earlier my workshop was situated at 3778, Mori Gate, Delhi – 110006, which I have shifted to new address at 3793/3, Kucha Ravi Das, Opp. Bhola Ram Market, New Delhi – 110006.”

22. It is therefore, apparent that in the guise of physical verification, the Inspector who was sent to verify the same has in fact harassed the firm's proprietor for extraneous reasons, which are not disclosed. The grievance of the sole proprietor reflected as above shows how the inspector sent by respondents, pressurized the firm to disown its pervious certificate.

23. It is noteworthy that even the physical verification by Mr.Malik establishes the existence of TANDON DIESEL SERVICE at the given address. This puts the issue of identity of the firm beyond the pale of suspicion.

24. Our attention is drawn to the endorsement made on a photocopy of the certificate dated 28th November, 2011 which is to the effect that TANDON Diesel Service exists at the above

mentioned address since 1986. *“I never changed my address during this period”* Interestingly, even in this certificate there is no denial to the fact that Khem Chand had worked with the firm as Assistant/Helper Mechanical.

25. So far as change of address is concerned, the same has been informed by the firm in its communication. No effort has been made by the respondents to verify the address of the firm for the year 2006 when the original certificate was issued.

26. Ms. Ruchi Sindhwani, learned counsel for respondent no.1 relies on the endorsement made on the certificate dated 8th June, 2006 to the effect that “this experience certificate was not issued by me – and signature not signed by me”

Here again the respondent no.1 has gravely erred in construing the certificate. The proprietor of the firm has clearly explained the circumstances in which he was compelled to sign the letter by the inspector. The proprietor has also explained that the certificate dated 28th June, 2006 was signed by his supervisor who was authorised to issue such type of certificate and not signed by him.

27. Placing reliance on the above statement on the certificate dated 8th June, 2006 a report has been submitted by one Shri Anil Malik dated 13th January, 2012.

28. As per the communication dated 19th March, 2012, the statement that the certificate of 2006 was not signed by him was correct. However, the proprietor of the firm had clearly explained that the experience certificate was signed by his supervisor who was authorized and who had issued the certificate under various authority.

29. We are further informed that so far as the verification which the inspector claims to have procured is not in the hand writing of the sole proprietor. The circumstances in which his signature was obtained have been explained in the letter dated 19th March, 2012 by the proprietor of the firm.

30. The proprietor of the firm has denied the correctness of the endorsement dated 28th November, 2011, while reiterating the contents of the earlier certificate on which it was endorsed. Yet the respondent no.1 relied upon the endorsement to discredit the certificate so as to deny the consideration for the appointment to

the petitioner.

31. There was therefore, no reasons to doubt the correctness of the authenticity of the certificate dated 8th June, 2006 (wrongly referred as 28th June, 2006 in some places of the record).

32. We are informed by Ms. Ruchi Sindhwani, learned counsel that the petitioner's dossier was returned to the respondent no.2 on the 22nd March, 2012. The letter dated 19th March, 2012 is stated to have been received by the respondent No.1 on the 23rd March, 2012 as per the diarization on the original in the record. The same has been completely ignored by the respondents. Even if the letter dated 19th March, 2012 had not been received, the above narration would show that there is no reason to doubt the letter dated 28th November, 2011 and 16th December, 2011 (wrongly mentioned as 16th November, 2011) received by respondent No.1 in response to its letters of 4th November, 2011 and 15th December, 2011.

33. A facade of suspicion has been created based on the differential spelling of 'Tandon' in the name of the firm. In fact the firm itself has used different spellings for the surname 'Tandon' as appears in the various communications. The doubt thus was

completely without any basis, factually or legally.

34. It is not disputed before us that the educational qualifications of the petitioner as well as his caste certificate as his belonging to the scheduled caste stand duly verified. The petitioner had successfully participated in the selection process and he was denied in the favourable consideration and appointment by the respondents on an erroneous and misconceived notion that he had submitted false experience certificate.

35. Even though the dossier of the petitioner had been sent by the respondents to the respondent No.2 on the 22nd March, 2012, nothing prevented the respondent no.1 from recalling the same and proceeding in the matter in the light of the statements made in the letter of 19th March, 2012. The petitioner belongs to the Scheduled Caste category and deserved the special treatment which law has mandated qua him. There is no dispute also that the vacancy for the post for which the petitioner had applied, still exists and there is no legal prohibition to the appointment of the petitioner.

36. In view of the above discussion, the finding of the Tribunal to the effect that the experience certificate issued to the petitioner

by Tandon/Tondon submitted by the respondents was not genuine is also contrary to the record as well as established facts. Respondent no.1 was not justified in returning the dossier of the applicant to respondent no.2 or denying appointment to the petitioner for this reason.

It is accordingly directed as follows:-

- (i) The order dated 19th December, 2013 is hereby set aside and quashed.
- (ii) A direction is issued to respondent no.1 to proceed in the matter of appointment of the petitioner for the post of mathematician/instructor pursuant to the selection process initiated by the notice advertised No.03/2007 published by the DSSSB.
- (iii) The respondent shall pass appropriate orders in regard thereto within a period of four weeks and communicate the same to the petitioner forthwith. Given the fact that the petitioner was wrongly denied consideration by the respondents, the petitioner shall be entitled to consequential benefits of protection of seniority, notional pay, etc.

(iv) It is made clear that petitioner shall be placed in the seniority list as per his merit in the selection process in question.

(v) The petitioner shall not be entitled to arrears of salary.

The writ petition and pending applications are allowed in the above terms.

Dasti.

(GITA MITTAL)
JUDGE

(DEEPA SHARMA)
JUDGE

MAY 20, 2014
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