

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

%

Date of decision: May 25, 2023

+ W.P.(C) 7276/2023, CM APPLs. 28299-28300/2023

COMMISSIONER OF POLICE AND ORS.

..... Petitioners

Through: Mrs. Avnish Ahlawat, SC with
Ms. Tania Ahlawat, Mr. Nitesh
Kumar Singh, Ms. Palak Rohmetra,
Ms. Laavanya Kaushik and Ms. Aliza
Alam, Advs.

versus

EX CT VINOD KUMAR

..... Respondent

Through: Mr. Ankur Chhibber, Mr. Yogesh
Kumar Mathur and Mr. Rohit
Sambher, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 28300/2023 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 7276/2023

1. The challenge in this writ petition filed by the Commissioner of Police and its functionaries is to the order dated September 23, 2022 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in

Original Application No.2212/2018, whereby the Tribunal has allowed the OA filed by the respondent herein by stating in paragraph 8 as under:

“8. It is relevant to mention that all possible evidences will be placed by the prosecution and then a view was to be formed and the respondents themselves were contesting parties’, which miserably failed to prove the case against the applicant in the Criminal Case (FIR No. 495/96) dated 26.05.2022. Merely a visit of an officer by submitting a report without having the original documents is not tenable in the eyes of law and secondary evidence only can be led, when the original is not traceable or missing. In the present case, the respondents have not made any effort whatsoever to trace the original document(s) from the concerned unit. In view of this, the present Original Application stands allowed. In view of this, we hereby direct the respondents to have liberty if department chose to take any action against the applicant, they may proceed further in accordance with law as per Rule 12 of Delhi Police (Punishment and Appeal) Rule, 1980, within a reasonable period. This OA stands allowed in the aforesaid terms. No costs.”

2. Some of the facts noted from the record are that, on September 20, 2016, a complaint was received in Second Battalion, DAP from one Sanjeet Kumar alleging that Vinod Kumar, S/o Hanuvant Singh, got himself enrolled in Delhi Police as a Constable on January 13, 1988 by submitting a forged matriculation certificate, which is an offence under the Indian Penal Code (‘IPC’, for short). On receipt of the same, SI Kishore Pandey was deputed to get the matriculation certificate of

Constable Vinod Kumar verified from Board of School Education, Bhiwani, Haryana. Based on the matriculation Certificate bearing Roll No.792460, SI. No. C-33664, vide which the respondent had passed his matriculation examination held at Govt. High School, Bhatgaon, Sonipat in March, 1978 and got himself enlisted in Delhi Police as Constable, was also sent to the Education Board, Bhiwani for verification.

3. On November 14, 1996, Secretary, Board of School Education, Bhiwani, Haryana, intimated that Roll No.792460 was not allotted to any student in District Sonipat, Haryana during the matriculation examination held in March, 1978 and the matriculation certificate of Vinod Kumar, bearing Roll No.792460 is bogus and stern action may be taken against him under intimation to Education Board, Bhiwani, Haryana.

4. On receipt of above report, an FIR No. 495 under Section 420/468/471 of the Indian Penal Code, 1860, was registered at P.S. Mukherjee Nagar, Delhi against respondent for seeking job in Delhi Police by adopting deceitful means by producing forged document.

5. It is the case of the petitioners that, since the respondent was involved in a grave misconduct, holding a regular Departmental Inquiry against him was not reasonably practicable as the main and material witnesses in the case belongs/resides at Bhiwani, Haryana and it would be quite difficult to procure their presence for expeditious Departmental Inquiry proceedings.

6. Moreover the witnesses will adduce nothing new except to prove the verification report dated November 14, 1996. The matriculation certificate of the respondent had already been verified by deputing a responsible officer and the same was found to be forged. The documentary evidence on record fully proved that the respondent got himself enrolled in Delhi Police as Constable (Driver) fraudulently which indicated criminal tendency in him. He committed a very serious misconduct / offence which called for immediate action against him. Therefore, the Disciplinary Authority ('DA', for short) after considering overall facts and circumstances of the case and documentary evidence on record, dismissed the respondent from the service with immediate effect exercising power under the provisions of Article 311(2)(b) of the Constitution of India.

7. It is the case of the petitioners that the respondent herein filed an appeal against the order of the DA dated February 04, 1997 to the Appellate Authority ('AA', for short). The AA after considering the order passed by the DA, documentary evidence on record and grounds raised in the appeal, rejected the same.

8. Mrs. Avnish Ahlawat, learned Standing Counsel appearing for the petitioners submits that, on January 1, 2014, the respondent filed a time barred representation to the Commissioner of Police against the punishment order dated February 04, 1997 passed by the DA seeking reinstatement. As the appeal was addressed to the Commissioner of Police, Delhi, he was called upon to file an appeal before the Additional Commissioner of Police / Joint

Commissioner of Police. As the respondent had already filed an appeal against the order dated February 4, 1997, the same was rejected vide detailed speaking order dated April 25, 1997, which became final, as the same has not been challenged by the respondent in any Court of Law.

9. According to her, it was on February 8, 2016, the respondent filed a hopelessly time barred Second Appeal. The same was considered and rejected by the AA as there is no provision for Second Appeal. She submits that, it was on September 20, 2016, the respondent after four years of acquittal, filed a representation seeking review of punishment order under Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980 ('Rules of 1980', for short). The same was considered and rejected by the Competent Authority and decision was conveyed to the respondent vide letter dated October 10, 2016.

10. Mrs. Ahlawat submits that, it was only in the year 2018, the respondent filed a hopelessly time barred OA seeking quashing of the order of the DA and AA along with an application for condonation of delay. According to her, the respondent was required to challenge the said order within one year of the passing of the order and not after 21 years. She submits Tribunal has condoned the delay and allowed the OA and set aside the orders passed by the DA as well as AA with a direction to the petitioners herein to revisit/review the petitioners' order in terms of Rule 12 of the Rules of 1980, by taking cognizance of acquittal of respondent in the criminal case.

11. She states that the petitioners herein filed a Review Application No.238/2018, of the said order of the Tribunal, on the ground that the representation filed by the respondent under Rule 12 of the Rules of 1980, was already considered and rejected vide order dated October 10, 2016 by the Competent Authority. Accordingly, the Review Application was allowed and order dated August 31, 2018 was set aside / recalled by the Tribunal and the OA was listed for final hearing.

12. She submits it was in this factual scenario that the Tribunal vide impugned order by only discussing the acquittal order in criminal case, without any reasoning allowed the time barred OA and directed the petitioners herein to revisit the action taken against the respondent under Rule 12 of the Rules of 1980, within a reasonable period. She submits that the Tribunal has failed to appreciate that the Review Application was allowed by the predecessor bench on the ground that, petitioners herein, had already examined the case of the respondent under Rule 12 of the rules of 1980 and rejected the same vide order dated October 10, 2016 and hence the directions given were not called for.

13. In fact, it is her submission that the Tribunal has entertained a hopelessly time barred OA, in which respondent had challenged punishment order of DA/AA after 21 years and six years after his acquittal in the criminal case. She states that the order of the Tribunal is contrary to the judgment of the Supreme Court in the case of *Union of India v. M.K. Sarkar, 2010 (2) SCC*

59 and also of this court in *Balwan Singh v. Delhi Agricultural Marketing Board and Ors., W.P.(C) 10112/2021*

14. She states that the findings of the Tribunal are against the settled position of law, inasmuch as, a regular departmental inquiry against the respondent was not reasonably practicable as the main and material witnesses in the case belongs to Haryana State Education Board, Bhiwani and it will be quite difficult to ensure their presence for expeditious departmental inquiry proceedings. Moreover, the witnesses will adduce nothing new except to prove the verification report dated November 14, 1996. She submits that the Tribunal has failed to consider the documentary evidence on record which proves that the respondent got enrolled himself in Delhi Police as Constable (Driver) fraudulently and it indicates that the respondent has criminal tendency in him. Therefore, the DA after considering overall facts and circumstances and documentary evidence on record dismissed the respondent from the service by invoking the provision of Article 311(2)(b) of the Constitution of India.

15. She further submits that the Tribunal failed to appreciate degree of proof which is required in criminal case and disciplinary proceedings, is totally different. Once it is brought on record after verification by SI from the Secretary, Board of School Education Bhiwani, Haryana, that matriculation certificate is forged, there is no requirement to hold a regular departmental enquiry. She seeks the setting aside of the impugned order of the Tribunal.

16. On the other hand, Mr. Ankur Chhibber, learned counsel for the respondent would contest the writ petition by stating that the Tribunal is justified in directing the petitioners to hold departmental inquiry against the respondent as per Rule 12 of the Rules of 1980, within a reasonable time period. He further submits that there is no order of reinstatement or payment of back wages and as such no prejudice will be caused to the petitioners for holding an inquiry.

17. That apart, he submits that the plea of Ms. Ahlawat that the OA was barred by time is totally misplaced, inasmuch as, the respondent along with the OA, had filed an application seeking condonation of delay, which was allowed by the Tribunal vide order dated August 31, 2018. According to him, the said order of allowing the application for condonation of delay was never challenged by the petitioners, and as such the Tribunal was justified in going into the merits of the order passed by the DA and the AA dismissing the respondent from the service. Hence, the plea of delay by Ms. Ahlawat is liable to be rejected.

18. He submits that the OA was decided on merit on August 31, 2018, when the Tribunal directed the petitioners herein to revisit the order in terms of Rule 12 of the Rules of 1980 taking cognizance of acquittal of respondent in the criminal case. He states that the Tribunal has rightly set aside the order of the dismissal as well as AA order, for the reason that the petitioners could not have invoked provisions of Article 311(2)(b) of the Constitution of India only on the ground that, it is not practicable

to call witnesses from the Department of State Education Board, Bhiwani, Haryana. The said ground has no basis and in fact, the officials had appeared before the Criminal Court wherein the Criminal Court had acquitted the respondent.

19. He states that the order of the Tribunal cannot be faulted as the petitioners are at liberty to hold an inquiry on the basis of the material which is available in their record.

20. Having heard the learned counsel for the parties, the short issue which arises for consideration is: (i) whether the OA filed by the respondent herein before the Tribunal challenging the order of the DA and the AA passed on February 04, 1997 and April 25, 1997 were barred by time and (ii) whether even otherwise, the Tribunal was justified in interfering with the order passed under Article 311(2)(b) of the Constitution of India, which was invoked by the petitioners on the ground that, it is not practicable to call the officials of the State Education Board, Bhiwani, Haryana for adducing evidence in the departmental inquiry.

21. On both issues, we are of the view that the petitioners have not made out any case. This we say so, though the orders of the DA / AA were passed on February 04, 1997 and April 25, 1997, the challenge was only made in the year 2018 by the respondent along with an application seeking condonation of delay which has been allowed and the delay was condoned by the Tribunal. Concedingly, the said order has not been challenged by the petitioners in any forum. The order having become final, the Tribunal was justified in going into the merit of the issue with

regard to the dismissal of the respondent by the petitioners by invoking Article 311(2)(b) of the Constitution of India. The judgments in the cases of *M.K. Sarkar (supra)* and *Balwan Singh (Supra)* relied upon by Mrs. Ahlawat shall not be applicable, in view of our finding above, as the Tribunal has allowed the application for condonation of delay in filing the petition challenging the orders passed in the year 1997.

22. Insofar as the order of dismissal by invoking Article 311(2)(b) of the Constitution of India vide order dated February 4, 1997 is concerned, the same is primarily on the ground that, it was not practicable to call the officials of the State Education Board, Bhiwani, Haryana, from where the respondent said to have done his matriculation. The said ground is clearly unsustainable, inasmuch as, it is a fact that the officials of the Board had appeared before the Court/proceedings in the criminal case which was initiated against the respondent. So in that sense, the petitioners' argument the official of the Board shall not appear in the proceedings, if initiated is unmerited. Hence, the order dated February 4, 1997 is clearly unsustainable.

23. It follows the order of the dismissal passed by the petitioners being clearly unsustainable, the Tribunal is justified in setting aside the same. We find that the Tribunal having set aside the impugned order has neither directed reinstatement nor payment of back wages to the respondent. It has stated the petitioners may proceed against the respondent as per Rule 12 of the Rules of 1980.

24. The petitioners shall be at liberty to proceed against the respondent under Rule 12 of the Rules of 1980, on the basis of the documents available in their record.

25. The present petition being without merit is dismissed. No costs.

CM APPL. 28299/2023

Dismissed as infructuous.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

MAY 25, 2023/aky