HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 16957 of 2000

ORDER:

Aggrieved by the orders of the first respondent (Inspector General of Police, C.R.P.F., Hyderabad), vide proceedings No. R-XIII-3/99-Adm.-1 dated 06.08.1999 in confirming the orders of the second respondent (Deputy Inspector General of Police, C.R.P.F., Chennai), vide proceedings No. R.XIII.12/98-Estt-3, dated 06.10.1999, who inturn confirmed the orders dated 24.07.1998 passed in Proceedings No. P.VIII.6/98-58-EC-II by the third respondent (Commandant, C.R.P.F., Yelahanka, Bangalore), the present writ petition is filed seeking issuance of a writ of Certiorari, to set-aside the said order and consequently direct the third respondent to reinstate the petitioner into service with all consequential benefits from the date of termination i.e. 21.10.1998.

The averments in the affidavit filed in support of the writ petition are as under:

Pursuant to a notification issued for recruitment of constables in C.R.P.F., the petitioner applied for the same and was selected as a constable on 05.08.1992 in C.R.P.F. at Khargona. It is stated that the petitioner worked for 1 ½ month at Neemuch and later assigned to 58th Batallion at Srinagar. While discharging his duties at Srinagar, the third respondent initiated disciplinary proceedings against the petitioner under Rule 27 of C.R.P.F. Rules, 1955 vide office Memo No. P-VIII-6/98-58-EC-II dated 24.07.1998 alleging that the petitioner committed

misconduct under Section 11 (1) of the C.R.P.F.Act, 1949 read with Rule 3 (1) (ii) (iii) of C.C.S. Conduct Rules by intentionally and dishonestly producing a fake high school certificate (Matriculation). It is the case of the department that the petitioner produced a certificate issued by Madhyamik Siksha Mandal having roll No. 165999 at the time of selection, which on enquiry was found to be fake.

Sri K.Babu, Deputy Commandant was appointed as an enquiry officer vide office Order No. P-VIII-6/95/58-EC-II, dated 03.08.1998. The said enquiry officer submitted his report, after conducting a detailed enquiry to the third respondent by his proceedings dated 28.09.1998. The third respondent issued a show-cause notice dated 28.09.1998 along with the enquiry report for which the petitioner gave an explanation. Not being satisfied with the explanation, the third respondent issued proceedings, dated 21.10.1998 imposing punishment of removal from service with effect from 21.10.1998 A.N. Aggrieved by the said order, the petitioner filed an appeal before the second respondent which was also dismissed vide proceedings dated 06.01.1999. Then the petitioner preferred a revision before the first respondent. By an order, dated 06.08.1999, the third respondent dismissed the said revision. Challenging the said orders the present writ petition is filed.

Heard Smt. M.Bhaskara Laxmi, learned Senior Counsel appearing for the petitioner and learned Standing Counsel for the respondents.

Learned Senior Counsel for the petitioner mainly submitted that the present case is a case of no evidence. According to her, there is no material to prove that it was the petitioner, who has

produced the alleged fake certificate at the time of submitting the verification roll (application form) for the post of CRPF Constable. According to her, there is no explanation from the respondents as to how the said documents came into possession of the department. She further submitted that the enquiry officer failed to examine any one of the employees of the Board of Secondary Education, Madhya Pradesh or Madhyamik Shiksha Mandal, Madhya Pradesh, to speak about the falsity of the document which was appended to the verification roll. It is her case that the findings of the enquiry officer are based on the documents of the superior officers, wherein an opinion has already been expressed with regard to the fakeness of the said certificate. In view of the above, it is stated that the petitioner was denied an opportunity to cross examine the persons, who gave information about the genuineness of the certificate and that he was prejudiced by the procedure followed by the Enquiry Officer.

It is the argument of the learned Senior Counsel that the certificate which is produced before the third respondent are inadmissible in evidence since the same was not marked or proved by examining the person who issued the certificate. In other words, it is the argument of the learned Senior Counsel that the enquiry before the third respondent is in gross violation of principles of natural justice.

The counsel further submitted that pending appeal, the petitioner produced genuine certificates of his qualification, namely the High School Certificate Sn. 0042373 with Roll No.0215265 of U.P. Higher Secondary Board of 1986 issued by the Principal, Nehru Smarak Inter College, Samar, Mainpuri and

also the ration card and affidavit of his uncle to show that he was staying in Gwallior and completed his education from the above mentioned college. It is the case of the writ petitioner that though he produced the original certificates to the middleman at the time of recruitment, but for the reasons best known some fake certificates are attached to the form by the middleman. Relying upon the following judgments of this Court and the Apex Court in ***Apparel Export Promotion Council v. A.K.Chopra***[1]***, Life Insurance Corporation of India v. Ram Pal Singh Bisen***[2] ***and Judgment of this Court in W.A.Nos. 1910 of 2005 and batch,*** the learned Senior Counsel submits that the order under challenge is liable to be set aside.

Per contra the learned counsel for the respondents vehemently opposed the same contending that since the rules of Evidence Act would not apply to the enquiries conducted by the authorities, the question of examining the persons who issued the certificates would not arise. It is the argument of the learned counsel for the respondents that the allegation of a violation of principles of natural justice during the course of enquiry or appeal is absolutely incorrect and false. He submits that if really the petitioner was aggrieved by the evidence adduced, no reasons are forthcoming as to why he did not cross examine the person, who was examined on behalf of the Department and also did not adduce any evidence to disprove the same. Relying upon the judgment of the Constitution Bench of the Apex Court in ***Union of India v. T.R.Varma***[3]***,*** learned counsel for the respondents would submit that there is no illegality or irregularity in the procedure followed and as such the orders under challenge

warrant no interference.

A perusal of the material on record, which has been produced before the Court and also the orders of the authorities, would show that two charges were framed against the petitioner, which are as under:

> "Article-I: A misconduct u/s 11 (1) of CRPF Act, 1949, in that he dishonestly produced a fake High School Education Certificate (Matriculation) issued by so called Madhmik Siksha Mandal, Madhyapradesh, Bhopal, as intimated by ADIGP, GC, CRPF, Neemuch vide their letter No. V.I.2/97-EC-5, dated 21.02.1997. The Roll No.165999 is found to be fake. The above fake certificate has been produced by him before the recruitment board for his personal gain to get enlisted in CRPF where the minimum educational standard prescribed for recruitment for the post of constable is matriculation.
> Article-II: Misconduct in his capacity as a member of the Force u/s 11 (1) of CRPF Act, 1949, in that, he concealed the fact that he is not possessing the required educational standard/valid matriculation certificate to the recruitment board/authority with the malafide intention and continued in CRPF as constable.

All the authorities, who have dealt with the case, namely, the Commandant, CRPF, Bangalore, Dy.Inspector General of Police, CRPF, Chennai and Inspector General of Police, CRPF, Hyderabad, have categorically held that the Matriculation Certificate which was produced by the petitioner at the time of attending the interview for the post of Constable is a fake one.

Before proceeding further it would be useful to refer to few observations made by the Apex Court while dealing with the departmental enquiries.

A Constitution Bench of the Apex Court in ***Union of India case*** (3 supra) observed as under:

> "Now, it is no doubt true that the evidence of the respondent and his witnesses was not taken in the mode prescribed in the Evidence Act; but that Act has no application to enquiries conducted by tribunals, even though they may be judicial in character. The law requires that such tribunals should observe rules of natural justice in the conduct of the enquiry, and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that, which obtains in a Court of law.
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> Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them. If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed."

I n ***Apparel Export Promotion Council v. A.K.Chopra*** case (1 supra) the Apex Court held as under:

> "It is settled position that in departmental proceedings, the Disciplinary Authority is the sole Judge of facts and in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact finding authorities. Once findings of fact, based on appreciation of evidence are

recorded, the High Court in Writ Jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since, the High Court does not sit as an Appellate Authority, over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot normally speaking substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the Disciplinary or the Departmental Appellate Authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though Judicial Review of administrative action must remain flexible and its dimension not closed, yet the Court in exercise of the power of judicial review is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial Review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process.

Judicial Review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the Court while exercising the power of Judicial Review must remain conscious

> of the fact that if the decision has been arrived at by the Administrative Authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the Court cannot substitute its judgment for that of the Administrative Authority on a matter which fell squarely within the sphere of jurisdiction of that authority.

Keeping in view the principles laid down in the judgment referred to above, I shall proceed further with the case.

The first ground which was raised by the learned Senior Counsel is that the present case is a case of no evidence, as there is no material before the Court to show that it was the writ petitioner, who has produced the fake educational certificate along with verification roll. Relying upon the observations made by the Apex Court in ***Apparel Export Promotion Council case (1 supra)*** the counsel strenuously contends that this being a case of no evidence, the entire proceedings are liable to be set aside.

It is to be noted that the writ petitioner got appointment in CRPF on 14.09.1992 through General Commandant, CRPF, Neemuch by producing Matriculation certificate issued by Madhmik Siksha Mandal, Bhopal bearing Roll No. 165999. The enquiry officer, who conducted the enquiry framed two charges against the petitioner. As the writ petitioner pleaded not guilty the enquiry officer allowed the petitioner to inspect the listed documents, take note of all the points required to him or to take copy there upon. The statement of the sole witness was recorded in the presence of the writ petitioner and the petitioner was asked to cross examine the witness. It is seen from the record that the petitioner herein was asked to inspect the list of

document and was also furnished with verification roll and a copy of the Matriculation certificate on 28.08.1998, which was acknowledged by the writ petitioner. It was not even suggested to the witness that these documents which are being placed on record were not submitted by him and that the same do not belong to him. During the course of enquiry, the writ petitioner did not make any effort to cross examine the witness. He kept quiet all through the enquiry without subjecting the lone witness to any cross examination. Neither did he make any endorsement on the proceedings expressing his dissent or protest with regard to the manner in which the proceedings were conducted on the ground that he was not conversant with the languague with which the proceedings were going on. He subjected himself to the proceedings without raising his little finger. Therefore, the argument of the learned counsel for the petitioner that the documents which are sought to be relied upon by the enquiry officer or by third respondent were not produced by the petitioner and the mediator to whom the originals were given has played mischief in substituting the same with the fake certificates cannot be accepted. Even the argument of the learned counsel for the petitioner that the proceedings were conducted in English Language to which the petitioner was not conversant with, cannot be accepted in view of the above findings.

The second ground which was advanced by the learned Senior Counsel for the petitioner is that the procedure which has been followed by the enquiry officer in marking the documents through a person, who has no connection with the said documents is contrary to the provisions of Evidence Act.

In order to substantiate the plea that even in departmental

proceedings the documents are to be marked only through the person, who is conversant or issued the said document, learned Senior Counsel for the petitioner relied upon the judgment of the Apex Court in ***Life Insurance Corporation of India and another v. Rampal Singh Bisen (2 supra).***

A perusal of the said judgment would show that in the said case, the delinquent was appointed by L.I.C. of India on probation, as a Development Officer on 05.04.1963. He was confirmed in the said post on 01.04.1966. A charge sheet dated 16.04.1974 came to be served on the officer imputing six charges. He was placed under suspension and later supplementary charge sheet was also served on him on 21.10.1974. After completing the enquiry, the report of the enquiry officer was furnished to the disciplinary authority on 29.01.1976. A show-cause notice stating as to why the officer should not be removed from service came to be served on him. A reply to the show-cause notice was submitted on 02.04.1976 pointing out the irregularities committed during the course of enquiry. Taking note all the submissions, the authority dismissed him from service. Feeling aggrieved and dissatisfied, the officer submitted a mercy appeal before the Chairman of LIC but the same was dismissed on 12.10.1977. Aggrieved by the orders passed by the Chairman of LIC, the delinquent officer filed a suit before the Court of Additional District Judge No.2, Ajmeer for a declaration that the departmental proceedings which culminated into an order of dismissal from service is null and void.

While dealing with the procedure which has been followed by the District Judge in trying the suit, the Apex Court observed that mere admission of a document in evidence does not amount

to its proof. In other words, the Court held that mere marking of a document as an exhibit does not dispense with its proof, which is required to be done in accordance with law. The Apex Court further observed that under the law of evidence, it is necessary that contents of documents are required to be proved either by primary or by secondary evidence. At the most, admission of documents may amount to admission of contents but not its truth. Documents having not been produced and marked as required under the Evidence Act cannot be relied upon by the Court. The Apex Court further held that contents of the document cannot be proved by merely filing in the court. From the judgment of the Apex Court, which has been relied by the learned Senior Counsel, it is clear that the Apex Court was dealing with the procedure to be followed by the trial Court in the suit filed by the officer questioning his termination of service. It was not a case whether the delinquent or officer filed any writ petition before the High Court questioning his termination of service. As seen from the judgment referred to above, provisions of Evidence Act would apply to a case which are tried before the Court and not while dealing with the same before the disciplinary authority. Therefore, in my view the said judgment which dealt with the applicability of Evidence Act to the trial of a case before a Court, may not be of any helpful to the petitioner.

Further, the Apex Court in Union of India's Case (3 supra) observed that the provisions of Evidence Act has no application to enquiries conducted by tribunals even though they may be having judicial character.

Even the judgment of this Court in Writ Appeal Nos. 1910 of 2005 batch, relied upon by the learned Senior Counsel for the

petitioner may not be applicable to the case on hand. It was a case where the clerk of Transport Department collected the police warrants from the appellants and later the Corporation came to know through the letters of Additional Director General of Police and Inspector General of Police, CBCID, dated 15.01.1991 and 16.02.1991 respectively that those police warrants are fake. Under those circumstances, a Bench of this Court held that ***there is no evidence that the appellants themselves produced the fake warrants and misappropriated the money collected from the passengers.***

It is to be noted that no motive is suggested to the officer or disciplinary authority to foist a false case or substitute a fake certificates with the original. Infact, even the averments in the writ petition does not show the name of the middle man who is said to have played the fraud. As stated earlier, the writ petitioner not only failed to cross examine the witness on any of the aspects but also did not make any effort to adduce any contra evidence. Therefore, it has to be held that the writ petitioner himself submitted verification roll along with the certificates before the appointing authority while securing employment as a constable. The material placed before the Court further show that in appeal the writ petitioner placed another set of documents which he claims to be genuine certificates. Along with the certificates he placed on record the affidavit of his uncle and also the ration card to show that he stayed at Gwalior and got himself educated at Mainpuri. Totally a different stand was taken in the appeal. Out of the two certificates, one certificate bearing No.0042373 certify that he passed High School Exam with date of birth as 15.05.1971 and another Certificate bearing Sl.No.016611 show that he has passed Intermediate examination. Both the

certificates were issued by U.P.Board of Education. In the said certificates, it has been mentioned that he studied intermediate in Nehru Smarak Inter College, Samar. As stated earlier, it was the case of the writ petitioner in the appeal that these certificates were shown at the time of enlistment and the same were returned after perusal. The stand taken by him now is totally different. During the course of the argument and the averments in the writ petition now made show that these certificates were given to the middle man but for the reasons best known he substituted the same with the fake certificates.

The verification roll which is filled by the writ petitioner show the date of birth as 15.05.1972 but where as the date of birth shown in the High School Certificate, which was produced in the appeal, is 15.05.1971. There is no dispute that the verification roll was filled by the writ petitioner himself. If really the date of birth of the petitioner is 15.05.1971, he could not mention his date of birth as 15.05.1972 in the verification roll as the contents were filled up by the petitioner only. Further the certificates which are produced by him at the time of interview contain the date of birth as 15.05.1972. In order to cover up the alleged fraud done at the time of recruitment, the petitioner has come forward with a new set of documents showing his date of birth as 15.05.1971 but the same landed him in trouble in view of the discrepancy in the date of birth in the verification roll, original certificates and fake certificates appended to the verification roll. The record clearly reveals that the authorities i.e. primary as well as appellate authority including the revisional authority gave ample opportunity to the writ petitioner to contest the matter and also to lead evidence, but for the reasons best known the

petitioner did not avail the opportunity to cross examine the witness and also adduce any contra evidence. Therefore, it cannot be said that the writ petitioner has not received a fair treatment to meet the case against him.

In view of the discussion made above, this Court is of the opinion that there was no violation of principles of natural justice; the charges made against the petitioner are fully established; and the punishment awarded cannot be said to be disproportionate to the offence alleged. Hence, the writ petition is liable to be dismissed.

Accordingly, the writ petition is dismissed. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

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JUSTICE C. PRAVEEN KUMAR

14.08.2015
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[1] (1999) 1 SCC 759
[2] (2010) 4 SCC 491
[3] AIR 1957 SC 882