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

+ **W.P.(C) 2605/2016 & CM No.11025/2016 (stay)**

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Date of decision: 28.03.2016

COMMISSIONER OF POLICE AND ORS.

.... Petitioners

versus

SH. RAVINDER SOLANKI

..... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr Sanjay Ghose with Ms Pratishtha
Vij, Advocates.

For the Respondents : Mr Ajesh Luthra, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJIV KHANNA

HON'BLE MR JUSTICE SANJEEV SACHDEVA

SANJIV KHANNA, J (ORAL)

CM No.11026/2016 (exemption)

Exemption is allowed subject to all just exceptions.

Cav.276/2016

The learned counsel for the caveator will be heard.

The caveat stands disposed of.

W.P.(C) 2605/2016 & CM No.11025/2016 (stay)

1. The learned counsel for the petitioner, Govt. of NCT of Delhi

submits that impugned order dated 01.10.2015 in OA No.1942/2012 titled Ravinder Solanki vs. Commissioner of Police & Ors. is erroneous as the Tribunal has exceeded its power of judicial review in re-appreciating the evidence and has reversed the factual findings and conclusion drawn in the disciplinary proceedings. He submits that the Tribunal has ignored the statements made by Sh. Mahak Singh, PW1, and Smt. Rambiri, PW2, before the Inquiry Officer and the statements of Rajpal Singh, PW3 and Iqbal Singh, PW4 recorded by Head Constable Jagdish, PW9, who had conducted the preliminary enquiry.

2. We have considered the said contentions but find that this is not a case where the Tribunal has exceeded and erroneously exercised its power of judicial review. The Tribunal has noticed errors and faults in the decision making process that had effected the finding and conclusion recorded by the Disciplinary Authority in his order dated 28.01.2011, imposing penalty of removal from service with immediate effect. The Appellate order dated 11.11.2011 passed by the Additional Commissioner of Police confirmed the findings and the penalty.

3. The charge against the respondent, Constable (Driver) Ravinder Solanki was that he had given wrong information at the time of enlisting

and joining the service, as he had produced a fake age certificate. In fact, he was overage on the date he was enlisted, i.e., on 19.12.2008.

4. The respondent, at the time of enlistment, had submitted documents mentioning his date of birth as 12.02.1983. This included the Class X examination certificate issued by the National Open School and, his affidavit on oath, stating that his date of birth was 12.02.1983. In the driving licences, issued by the Motor Licensing Authorities at Loni Road, Delhi and Mathura in the state of Uttar Pradesh, his date of birth as recorded is 12.08.1983. The certificate and the two driving licences have not been found to be fake or tampered with. The date of births as recorded therein are not disputed or challenged, in the sense that these documents are genuine and no interpolation is alleged.

5. The contention of the petitioners, which was the foundation of the order by the Disciplinary Authority, is that the respondent is no other than Ravinder Kumar, S/o of Harpal Singh, who had studied in Prathmik Vidhyala, Jivana No.1 from Class 1 to 5 and then in Class 6 to 8 in Poorve Madhyamik Vidyalaya, Jivana Binoli area, District Baghpat. The date of birth as recorded in the two school records of Ravinder Kumar is 1.1.1973. Thus, the respondent Ravinder Solanki was born on 1.1.1973

and had given a wrong date of birth.

6. The respondent had contested the said allegation. He was/is known as Ravinder Solanki and it was submitted that the documents procured from the said schools did not relate to him, but pertained to a third person. The said contention was put forth to Sh Mahak Singh, PW1, who had produced the original register pertaining to the years 1975 to 1984 of Prathmik Vidhyala, Jivana No.1. As per the said register, one Ravinder Kumar, Son of Harpal Singh, resident of Jivana Gulyan, Jat by caste had studied in the said school till Class 5. In his cross-examination, PW1 accepted that he had joined the said school on 04.10.2007 and several pages in the book/register had been torn including the page on which the relevant entry at serial No.360 was made. The said page did not have any page number. Ravinder Kumar used to study in the school before PW-1 had joined the school as a teacher and the witness did not know Harpal Singh, father of Ravinder Kumar. Mahak Singh, PW1, did not depose about the identity of the Respondent, and whether the respondent was in fact Ravinder Kumar, mentioned in the school record, who had taken admission in the said school on 26.07.1978 in Class 1 and his date of birth was recorded as 01.01.1973. He did not identify the respondent as

Ravinder Kumar, or that they were one and the same person.

7. Smt Rambiri Devi, PW2 has deposed and affirmed the certificate given by her relating to Ravinder Kumar, Son of Harpal Singh, resident of Jivana Gulian, who was admitted to Class 6 on 24.09.1984. An entry to the said effect was made at Page No.75 in the school register. The date of birth of the said Ravinder Kumar as per records was 01.01.1973. Ravinder Kumar was Jat by caste and his father was in service. He had studied upto Class 8. On being questioned by the Enquiry Officer, PW2 had stated that the said Ravinder Kumar, Son of Harpal Singh had died and she had signed the certificate with dates etc. as prepared by Head Constable Jagdish Kumar. Pertinently, she did not identify Ravinder Solanki, who was present when her statement was being recorded and had averred that she did not know his parentage. PW2 had joined the school on 20.07.2004. Obviously, she was not present and working in the school when Ravinder Kumar had studied in the school, i.e., in the years 1984 – 1986.

8. Sh Rajpal Singh, PW3 had joined the school in the year 2006. On the question of certificate given by him, he turned hostile and had stated that the Head Constable had taken his signatures under threat. He had

disowned the statement purportedly recorded by Head Constable Jagdish Kumar. He denied having any knowledge about Ravinder Kumar or about Ravinder Solanki resident of Khajoori Khas.

9. Iqbal Singh, PW4, who is also a teacher, had denied that he knew the respondent, though he knew one Harpal Singh. He did not know the middle school in which Harpal Singh's son had studied. He confirmed that there was one more Harpal in his village whose son was Ravinder.

10. In the light of the aforesaid controversy and dispute, it was important for the petitioner to have made a thorough and detailed verification as to whether the respondent Ravinder Solanki was the same person who had taken admission in the two schools on 26.07.1978 and 24.09.1984 in Class 1 and Class 6, respectively. This would have resolved and decided the controversy and dispute regarding the identity of the respondent, and whether he was the same Ravinder Kumar as mentioned in the school records. We notice the age difference of 10 years between the school records relating to Ravinder Kumar and the age as declared by the respondent. Thus, the age difference is substantial. It would not be correct to rely upon assumptions or instinct. The Tribunal has noticed that the petitioner had failed to collect documents from the

Road Transport Office at Delhi and Agra which had issued the driving licences. The petitioner had also failed to procure documents submitted by the respondent for admission in the National Open School. The petitioner did not examine the records maintained by the Ration Card Office or the electoral rolls of the said village and the date of birth of Ravinder Solanki recorded therein. In this context, we would like to reproduce the findings recorded by the Tribunal in paragraph 13 of the impugned order, which reads as under:-

“13. It is evident from the discussion of the deposition of the aforesaid witnesses examined by the department in support of the allegation leveled against the applicant that the department did not even bother to make an attempt to demonstrate that the documents submitted by the applicant at the time of joining Delhi Police as Constable (driver), relating to his age vis-a-vis date of birth, were fake and false. No attempt has also been made by the, department to prove the documents furnished by the applicant in support of his date of birth before the RTO Agra and Delhi at the time of securing his driving licence from the said authorities. The department even did not secure the documents furnished by the applicant at the time of his registration in National Open School authorities, from where he has passed the Secondary School Examination. The personal record Of the applicant, maintained by the department, reveals that the applicant, at the time of joining Delhi Police as Constable (driver), has submitted the marks statement of Secondary School Examination held in the month of May, 2000 issued by the National Open School, New Delhi as well as the certificate issued by the authority of the said school certifying that the applicant has passed

secondary examination in May 2000 and also certifying his date of birth as 12.02.1983 as per the school record. No attempt has been made by the department to prove that the date of birth recorded in the said mark statement as well as the certificate issued by the authority of the said school is not correct and those documents are fake and false despite there being allegation against the applicant that he has produced false documents in support of his age at the time of joining Delhi Police as Constable (driver). No evidence has also been adduced to prove that Ravinder Kumar son of Shri Harpal Singh, whose date of birth was recorded in Prathmik Vidyalaya Jivana, No.1 as 01.01.1973, and Ravinder Solanki (applicant), whose father's name is also Harpal Singh, is one and the same person. On the other hand, as discussed above, Smt. Rambiri Devi (witness no.2) in her deposition has stated that there was only one Ravinder Kumar son of Shri Harpal Singh in Jivana Village, who unfortunately has died and she does not know Ravinder Solanki, son of Harpal Singh. As noticed above, witness no.3 Shri Raj Pal Singh, who is a teacher in Poorve Madhyamik Vidyalaya Jivana, in his deposition has stated that his statement was obtained by the Delhi Police Head Constable under threat and such statement was not voluntary. Witness No.4 Shri Iqbal Singh, who is also a teacher, as discussed above, in his deposition has also stated that there is one more Harpal in his village, the name of whose son is also Ravinder. It is also evident from the deposition of HC Jagdish Kumar (witness no.8) that on the record of the aforesaid two schools the name of Ravinder Kumar Solanki son of Harpal Singh does not appear. In the absence of any proof that Ravinder Kumar and Ravinder Solanki are one and the same person, it cannot be held that the date of birth of Ravinder Solanki is 01.01.1973. In any case, the allegation against the applicant being submission of false documents at the time of joining Delhi Police as Constable (driver), the burden lies on the department to prove the same, which they have miserably failed to do.”

11. A reading of the aforesaid paragraph indicates the lapses committed by the petitioner in failing to collect the aforesaid material evidence and placing it on record. The said lapses are in the nature of errors in the decision making process as the relevant materials and facts had not been taken into consideration and ignored. In these circumstances, it cannot be said that the Tribunal has exceeded its powers of judicial review. When the Authorities have failed to ascertain material facts, ignored important aspects and collect relevant documents, then the decision making process suffers and is erroneous. The real and extant controversy and question was whether Ravinder Solanki and Ravinder Kumar were/are the same person, and not what was the date of birth of Ravinder Kumar. Failure to advert to the core question and the mistakes and lapses highlighted and set out in paragraph 13 of the impugned order, are errors and defects in the decision making process. These had affected the finding/conclusion, rendering it vulnerable. In the given facts, the Tribunal had rightly interfered and exercised its power of judicial review.

12. We, however, clarify that the dismissal of the writ petition and the order of the Tribunal does not bar the petitioner from taking action, after

ascertaining full facts, as per law. To this extent, the counsel for the respondent, who appears on caveat, does not have any objection.

With the aforesaid observations, the writ petition is dismissed.

SANJIV KHANNA, J

MARCH 28, 2016
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SANJEEV SACHDEVA, J

