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

+ W.P.(C) 7248/2008

% ***Judgment dated 18th July, 2016***

DELHI DEVELOPMENT AUTHORITY Petitioner

Through : Mr.Arun Birbal, Adv.

versus

SUBHASH CHAND Respondent

Through : Mr.Siddharth Aggarwal and Mr.Ambar
Bhushan, Advs.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (ORAL)

1. Present writ petition has been filed by the petitioner under Article 226 of the Constitution of India seeking to challenge the order dated 28.2.2008 passed by Central Administrative Tribunal (hereinafter referred to as '*the Tribunal*') in TA No.135/2007 whereby the T.A. filed by the petitioner was allowed by the Tribunal.
2. The necessary facts to be noticed for disposal of the present petition are that the petitioner had published an advertisement in the Employment Newspaper on 15.6.1985 thereby inviting applications from eligible candidates for appointment as Junior Engineer. The requisite eligibility, as per the advertisement, was either a degree in Civil Engineering or a Diploma in Civil Engineering with two years' experience after attaining the Diploma. Pursuant to the said advertisement, the respondent submitted his application on 24.6.1985. Along with the application for the said post, the petitioner, *inter alia*, submitted a photocopy of a Certificate dated 19.10.1983 showing his experience with effect from 1.11.1982 to 19.10.1983 as Work Assistant with DDA on casual basis

under the purported signatures of one Mr.S.R. Solanki, Executive Engineer, DDA. The respondent also submitted a photocopy of another Certificate dated 24.6.1985 showing experience w.e.f. 22.9.1983 to 24.6.1985 with U.P. Jal Nigam. The respondent being successful joined the petitioner on 17.4.1986 as a Junior Engineer (Civil).

3. On 30.6.1983, the Personal Department of the petitioner, during scrutiny of documents submitted by the respondent, noticed that there was overlapping of periods as mentioned in the two certificates issued by the two different authorities i.e. DDA and U.P Jal Nigam to the respondent. The overlapping period was w.e.f. 22.9.1983 to 19.10.1993. Thus, an enquiry was made from the concerned Assistant Engineer, Mr. R.S. Solanki, who had purportedly signed the Certificate on behalf of the DDA, as to whether the said certificate bearing his signatures was a genuine certificate or not. Mr. R.S.Solanki denied his signatures on the said certificate. Resultantly the respondent was asked to produce the original certificate on 30.1.1987, however, he did not produce the original certificate on the ground that it has been misplaced, instead he enclosed another certificate dated 27.5.1986 from Sh.R.S. Solanki showing his experience with DDA between 1.11.1982 to 17.9.1983. On account of the aforestated circumstances, the case of the respondent was referred to the Vigilance Department of the petitioner for investigation. Pursuant to the investigation conducted, the respondent was charge sheeted and he was issued a charge sheet on 6.12.1984, the relevant portion of which reads as under:

“Shri Subhash Chand, JE(C) at the time of applying for the post of JE(C) in DDA in 1985 submitted a certificate of experience dated 9.10.83 with forged signature of S.R. Solanki the then A.E. (C), DD-VII, DDA in which Shri Subhash Chand was shown as worked on the post of Work Assistant on daily wages for the period from 1.11.82 to 19.10.83, whereas on the basis of another certificate

issued by the same AE of DD-VII on 27.5.96, Shri Subhash Chand, JR had worked only for the period from 1.11.92 to 17.9.83 on daily wages.”

4. After the Departmental Enquiry was concluded, the Enquiry Officer submitted his report on 28.10.1986 in which he held that the charges levelled against the respondent stood proved. Upon examination of the findings recorded by the Inquiry Officer, the Disciplinary Authority issued a Show Cause Notice to the respondent annexing therewith a copy of the inquiry report. Thereafter on 23.2.1988 the Disciplinary Authority, after considering the material on record, held the respondent guilty of submitting a false experience certificate and decided to impose the punishment of removal of respondent from the service. An appeal filed by the respondent before the Appellate Authority was also dismissed on 7.7.1998. Thereafter, the respondent preferred a writ petition, being Civil Writ Petition No.6244/1988, before the Delhi High Court, however, in view of the notification issued by the Central Government in exercise of powers conferred upon Section 14(2) of the Administrative Tribunals Act, 1985, the said writ petition was transferred to the Central Administrative Tribunal, Principal Bench, New Delhi, which was registered as T.A.No.135/2007. By the impugned order dated 28.2.2008, the Tribunal allowed the T.A., set aside the order of removal dated 23.2.1998 and the order dated 17.7.1998 passed by the Appellate Authority. The Tribunal directed the petitioner to reinstate the respondent in service.
5. Mr.Birbal, learned counsel for the petitioner, submits that the learned Tribunal has erred and has not taken into consideration that the respondent had produced a tampered document. It is further submitted that there was no justification for the Tribunal in upsetting the finding of the Appellate Authority, which was based on the report of the Enquiry

Officer which was passed by the Enquiry Officer after considering the entire material on record. Mr.Birbal further submits that the Tribunal has erred in not appreciating that initially the respondent submitted a tampered certificate, he was not able to produce the original of the said document and subsequently he produced another tampered certificate, and, thus, this was sufficient to show that the respondent has failed to act in a manner becoming of a public servant and lacks *bona fides*. Mr.Birbal also submits that the Tribunal has lost track of the fact that the present case is not a fit case where the respondent could have been reinstated in service and it would be difficult for the respondent to place confidence in such a person, more particularly as the post of a Junior Engineer (Civil) is a post of trust and confidence.

6. It is also submitted by Mr.Birbal that the petitioner is also aggrieved by the direction issued by the Tribunal that the services of the respondent are to be considered as uninterrupted for all purposes i.e. due increment and revisionary benefits and seniority are to be given to him as if he had continued in service. Counsel further submits that this direction passed by the Tribunal would come in the way of the Department as a criminal case has been instituted against the respondent. It is further submitted that although the respondent stands acquitted but this Court may clarify that this finding would not come in the way of the Department while passing the appropriate orders against the respondent on that issue for the purpose of continuity of service and fixing of seniority.
7. Mr.Agarwal, learned counsel for the respondent, submits that there is no infirmity or impropriety in the impugned order passed by the Tribunal which would require interference in proceedings under Article 226 of the Constitution of India. Mr.Agarwal further submits that the respondent would not have gained by either tampering with the document or

producing false information as even if the certificate is looked into from any point of view the respondent met the eligibility criteria of two years' experience after the diploma and, thus, the respondent would not have gained in any manner in either tampering with the document, which was issued by the Executive Engineer of the DDA, Mr.S.R. Solanki. It is further submitted by Mr.Aggarwal that in case the respondent had produced a fabricated certificate, a second certificate would not have been issued by the same person i.e. Mr.Solanki to the respondent and he would have taken strong objection to the fact that the respondent had tampered or forged his signatures.

8. We have heard learned counsel for the petitioner and respondent and also perused the impugned order.
9. The learned counsel for the petitioner submits that there was certain amount of overlapping in the service claimed by the respondent under different organizations. According to the petitioner the certificate issued by the Assistant Engineer of Delhi Development Authority, dated 19.10.1983, it had been shown that the respondent had experience as Work Assistant from 01.11.1982 to 19.10.1983. The certificate from the U.P. Jal Nigam showed his experience from 22.09.1983 onwards and the two certificates did not tally, since there was overlapping of twenty-seven days. The petitioner submitted that at the time of applying for the post, the respondent had submitted a certificate of experience dated 19.10.1983 with forged signature of Shri S.R. Solanki.
10. The learned counsel for the respondent submits that there would not have been any earthly purpose for the respondent to produce any fabricated materials, as the minimum experience required by the advertisement had been already there available, uninterruptedly. An addition of 27 days could not have had any impact on his claims. Further, counsel for the

respondent submits that Mr. Solanki had attempted to disown his certificate, which, as a matter of fact, had been issued to the respondent perhaps by an error, for which the respondent could not have been proceeded against. Perhaps, a clerical error would have been there but of no consequence.

11. At this stage, it would be useful to reproduce the observations made by learned Tribunal in paras 13, 14 and 15 of the impugned judgment:

“13. But the most that we can find from the record of the inquiry is that Shri S.R. Solanki had went upto the extent that the signature on the photo copy of the experience certificate cannot be recognized and not signed by him. This, of course, also has come at a stage when he had been confronted with Exhibit P-8 letter to the Deputy Director. It is further recorded by enquiry officer as following:

He was shown Ex. P-4 i.e. photo copy of the experience certificate and he confirmed that his signature appears to be fabricated.

Learned counsel for the applicant points out that this alone is suggested by the prosecution and relied upon as incriminating material. Mr. Solanki had given Vigilance Department a letter wherein he had stated that signature on the photocopy of the experience certificate cannot be recognized. In the inquiry, perhaps he has gone one step further stating that his signature in the photo copy of the experience certificate appeared to be fabricated.

14. Counsel points out that a finding is arrived as against applicant nevertheless, and practically ignoring presence of other materials, which were more relevant. With reference to the office note, especially it is asserted that there was no dispute about the position that at the initial time of application, applicant was expected to submit photo copies of all certificates and, in fact, it is indicated that attested certificates filed by him are present in the office files at all times. One document was made available as a defence document viz copy of Exhibit D-3. Counsel refers to the observation of the Inquiry Officer in the report which runs as following:

In his cross examination, he (PW-3) stated that Ex. D-3 is available in Personal File of C.O. as on date alongwith its enclosures.

Citing from the report, it is shown that in the cross examination of the DW-2, he had stated that he was shown Exhibit D-3. The document bore an attestation by somebody that it was a true copy. But there is a `cutting` on the date of experience. As rightly pointed out by the counsel for the applicant, the applicant could have been fastened with authorship of D-3 alone. Exhibit P-4 is a photo copy obviously and as presently made available for our perusal, it does not contain attestation. What we see is that the applicant is made answerable in respect of Exhibit P-4 of which he had no direct authorship or responsibility. When it is admitted that attested copies made available by him at the time of his application were very much in the office, no effort is taken to confront him with such documents or place it before Mr. Solanki, for him to make a statement one way or the other whether the said document contained his signature or not.

15. *Normally, correction in a document may, per se, point an accusing finger against the person who would have derived benefits, because of the correction even though it may not be generally possible to pin point as to, at which point of time, correction was incorporated. The general presumption of this nature, however, is not possible to be placed on the alleged and relied on incriminating documents because the correction, in no manner, would have been advantageous for the applicant, since the admitted position was that even otherwise there was no doubt about the position that he had had the requisite experience and need not have gone to discredit himself by creating a situation. We cannot also possibly at this point rule out the possibility of correction even at the instance of Mr. Solanki or any other person at his behest in an effort to extricate him from the allegation of an indiscretion or negligence. The documents were not kept in the custody of the applicant at any time. Others would have had access to the files. Mr. Solanki himself had a reason for disowning the certificate, and the easiest course would have been to suggest that signature was forged and he had not himself signed it. The figures also could have been corrected, by intervention of any third person and it would have been unsafe to come to a conclusion wholly on such a circumstance against the applicant albeit the position that there was possibility of a suspicion. Therefore, we are not in a position to endorse the report of the Inquiry Officer. He, in fact, was expected to go in depth to the issues. The penalty advice has been issued, on the basis of the above report. Necessarily we will have to observe that the final decision was not called for."*

12. The Tribunal, in our view, has correctly analysed the report of the Inquiry Officer and there is no fault in the reasoning.
13. The respondent had met the requisite experience as required by the advertisement dated 15/06/1985. Further, an addition of 27 days would not have had any impact. The certificate dated 27/05/1986 issued by Sh. S.R. Solanki that the respondent had worked for the period from 1-11-82 to 17-9-83 on daily wages which was found to be genuine.
14. That the respondent has not committed any misconduct with respect to the certificate dated 19/10/1983. Further, the statement of the Mr. Solanki was not proved in the manner known to law.
15. On the question that there is no misconduct, it is necessary to refer to the judgment of the Supreme Court in **Union of India v. J. Ahmed** [1979 (2) SCC 286]. The following passages found in paragraphs 9 and 11 of the judgment may be usefully extracted:

“9. The words act or omission contemplated by Rule 4 of the Discipline and Appeal Rules have to be understood in the context of the All India Services (Conduct) Rules, 1954 (Conduct Rules for short). The Government has prescribed by Conduct Rules a code of conduct for the members of All India Services. Rule 3 is of a general nature which provides that every member of the service shall at all times maintain absolute integrity and devotion to duty. Lack of integrity, if proved, would undoubtedly entail penalty.... If Rule 3 were the only rule in the Conduct Rules it would have been rather difficult to ascertain what constitutes misconduct in a given situation. But Rules 4 to 18 of the Conduct Rules prescribe code of conduct for members of service and it can be safely stated that an act or omission contrary to or in breach of prescribed rules of conduct would constitute misconduct for disciplinary proceedings. This code of conduct being not exhaustive it would not be prudent to say that only that act or omission would constitute misconduct for the purpose of Discipline and Appeal Rules which is contrary to the various provisions in the Conduct Rules. The inhibitions in the Conduct Rules clearly provide that an act or omission contrary

thereto so as to run counter to the expected code of conduct would certainly constitute misconduct. Some other act or omission may as well constitute misconduct...."

11 *"Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see Pierce v. Foster¹). A disregard of an essential condition of the contract of service may constitute misconduct [see Laws v. London Chronicle (Indicator Newspapers)]. This view was adopted in **Shardaprasad Onkarprasad Tiwari v. Divisional Superintendent, Central Railway, Nagpur Division, Nagpur, and Satubha K. Vaghela v. Moosa Raza**. The High Court has noted the definition of misconduct in Stroud Judicial Dictionary which runs as under:*

Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct"."

16. The impugned judgment rendered by the learned Tribunal is a well-reasoned judgment. The Tribunal has taken into consideration and dealt with all the grounds, which have been urged.

17. We find no grounds to entertain this petition. With the above clarification, the writ petition stands dismissed.

G.S.SISTANI, J

I.S. MEHTA, J

JULY 18, 2016

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