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

+ **W.P.(C) 10055/2017 and CM APPL. 41023/2017**

OMPAL SINGH PANWAR Petitioner

Through: Mr. Vijay Kumar Singh and
Mr. Gaurav Kumar, Advocates

versus

CENTRAL INDUSTRIAL SECURITY FORCE AND ORS

..... Respondents

Through: Mr. Anurag Ahluwalia, CGSC for R-1 to
R-3. with SI Feroz Khan, CISF.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% 14.11.2017

1. The present petition has been filed by the petitioner praying inter alia for setting aside an order dated 11/12.01.1994 passed by the Disciplinary Authority, CISF, dismissing him from service on the ground of submitting a fake birth certificate, which reflected his date of birth as 18.12.1957, whereas his real date of birth was 18.12.1954.

2. The present case has a chequered history. Aggrieved by the dismissal order dated 11/12.01.1994, passed by the Disciplinary Authority, the petitioner had preferred an appeal before the Appellate Authority, DIG, CISF, which was dismissed vide order dated 22.06.1994. Instead of filing a writ petition against the dismissal order, the petitioner elected to file a civil suit for mandatory injunction against the respondents, which was taken to

trial and finally dismissed by the learned Civil Judge vide judgment dated 03.07.2009, holding *inter alia* that the petitioner had failed to make out a case for reinstatement or for grant of mandatory injunction and that his actual date of birth was 18.12.1954 and not 18.12.1957.

3. The petitioner preferred an appeal against the aforesaid judgment. Vide order dated 07.11.2013, the said appeal was dismissed by the learned ADJ, holding *inter alia* that there was no legal infirmity in the impugned judgment. Not satisfied with the said decision, the petitioner filed a Regular Second Appeal in the High Court against the judgment dated 07.11.2013 passed by the learned ADJ, registered as RSA 208/2014. The said appeal was however sought to be withdrawn by the petitioner with liberty to file a writ petition. Vide order dated 07.12.2016, the learned Single Judge dismissed the aforesaid appeal preferred by the petitioner with liberty granted to him to file a writ petition and explain therein the delay in filing the said petition.

4. The present petition was initially filed by the petitioner on 24.07.2017 and was returned under objections on several occasions. Finally, the petition has been listed before this Court today.

5. Learned counsel for the petitioner assails the dismissal order passed against the petitioner on the ground that even if his date of birth is taken as 18.12.1954, the petitioner would still be eligible for appointment in the CISF as a Security Guard because as on 01.08.1980, the cut off date, his age was not above 25 years and therefore, he was eligible for appointment.

6. It may be noted that right through the litigation initiated by the petitioner spanning over more than two decades, the petitioner has not filed his birth certificate. Instead, he has constantly been challenging his dismissal

on the ground that the complaint received by the respondents from a third party to the effect that the petitioner had submitted a fabricated birth certificate, could not be acted upon as the complainant, one Shri Sultan Singh, was never produced by the respondent in the course of the departmental proceedings. On enquiring from the counsel for the petitioner as to whether the birth certificate of the petitioner has at least been filed in the present proceedings, he again states that the birth certificate is not with him and it is the duty of the respondents to have filed the same.

7. We don't find any merit in the aforesaid submission. It is quite apparent from the record that the petitioner was unable to produce his birth certificate, bearing the date, 18.12.1957 before the civil court. The documents produced by the Department in the suit proceedings shows that a departmental enquiry was duly conducted in the case and principles of natural justice were followed inasmuch as the petitioner was granted ample opportunity to defend himself. However, the petitioner miserably failed to prove that he had not tampered with the birth certificate that he had submitted to the respondents at the time of joining service. The position remains the same till date. Instead of producing his birth certificate, which could reflect his correct date of birth, the only plea taken by learned counsel for the petitioner is that even if it is assumed that his date of birth was 18.12.1954 and not 18.12.1957, the petitioner was eligible as on the date of his appointment for the reason that he was not over age as on 01.08.1980.

8. The ground for passing the dismissal order against the petitioner is that he had tampered with his birth certificate at the time of recruitment and thereby committed a fraud. This allegation has been proved by the respondents in the course of the evidence led in the departmental

proceedings and before the learned civil court, that ultimately dismissed the suit for permanent injunction instituted by the petitioner by a detailed judgment dated 03.07.2009, duly affirmed by the Appellate Court vide judgment dated 07.11.2013. In proceedings initiated under Article 226 of the Constitution of India, this Court is not expected to sit as an appellate court and go behind the evidence to arrive at a different conclusion only because two views are possible, as long as the view taken by the Disciplinary Authority and the Appellate Authority is a plausible view, based on the evidence brought on record. The petitioner can therefore not be permitted to urge fresh facts on merits and controvert the assertions of the respondents duly supported by evidence before the trial court. The scope of the present petition is limited to examining if there is any legal infirmity in the dismissal order passed against the petitioner, or principles of natural justice were given a go-by during the departmental proceedings. Nothing on this aspect has been pointed out by learned counsel for the petitioner, for seeking interference.

9. For the aforesaid reasons, we see no merit in the present petition, which is accordingly dismissed in *limine* alongwith the pending application.

HIMA KOHLI, J

REKHA PALLI, J

NOVEMBER 14, 2017

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