

\$~58 (2021)

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

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Date of decision: 24.08.2021

+ **W.P.(C) 8933/2021**

MURARI LAL MEENA AND ORS.

..... Petitioners

Through: Mr. A.K. Behera, Sr. Advocate with
Mr. T.N. Tripathi, Advocate.

versus

C.P.W.D AND ORS.

..... Respondents

Through: Mr. Arnav Kumar, SPC.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

[Court hearing convened *via* video-conferencing on account of COVID-19]

RAJIV SHAKDHER, J.: (ORAL)

CM APPL. 27792/2021

1. Allowed, subject to just exceptions.

W.P.(C) 8933/2021 and CM APPL. 27791/2021 [*Application filed on behalf of the petitioners to grant permission to file additional document*]

2. This writ petition is directed against the order dated 19.02.2020, passed by the Central Administrative Tribunal (in short 'the Tribunal') in OA No. 301/2016.

2.1. The grievance of the petitioners is, in a way, encapsulated in the prayers made in the aforementioned original application (O.A.) filed before the Tribunal.

2.2. The petitioners aver that, a special recruitment drive was taken up in 2006 by respondent no.1/CPWD, for filling up backlog of vacancies, in

Scheduled Tribe (ST) category, qua posts, concerning Beldar, Khalasi, Motor Lorry Driver, Sweeper and Sewerman.

2.3. The recruitment process was undertaken by making date of birth of the candidate as the basis and therefore, each candidate was required to submit their respective birth certificates.

2.4 It appears that, many candidates submitted birth certificates, which were fake, which resulted in the Tribunal, in an earlier round, passing the order, dated 23.01.2014. This order was passed by the Tribunal in OA Nos. 302/2012 and 376/2012.

2.5. The Tribunal, *via* the aforesaid order, *inter alia*, directed an investigation in the matter.

2.6. The investigation resulted in the generation of an enquiry report dated 11.08.2015. The relevant part of the said report is extracted hereafter:

“6.0.0 RECOMMENDATIONS

6.1.0 The investigation was done on test sample basis taking 13 cases for Investigation/verification and it was observed that (i) in cases the documents appear to be fabricated (I) I denied appointment offered (ill) the case of one candidate could not be verified and (iv) Date of Birth of 2 candidates appear to be genuine. Out of the 13 cases Investigated, it appears that majority (8 Nos.) candidates secured appointment based on the faked/fabricated Date of Birth. Since the appointments were in larger scale there is every likelihood that more cases may be there where Date of birth certificates have been fabricated for securing appointment. The investigation into this matter of false/cheating and falsification of records will involve nonofficial persons and Government/Non-Government institutions which are not part of CPWD and is complicated in nature. Vigilance Unit of CPWD has limitations in thoroughly examining these types of cases. The case can best be thoroughly examined by Police agency like CBI or ACB, as envisaged in CVC Manual 2005 Vol.I under Chapter IV (Preliminary Inquiry/Investigation), which is reproduced below:

4.1.1 As soon as a decision has been taken to investigate the allegations contained in a complaint, it will be necessary to decide whether the allegations should be inquired into departmentally or whether a police investigation is necessary. As a general rule, investigation into the allegations of the types given below should be entrusted to the Central Bureau of Investigation or the Anti-Corruption Branch in the Union Territories:

(i) Allegations involving offences punishable under law which the Delhi Special Police Establishment are authorised to investigate; such as offences involving bribery, corruption, forgery, cheating, criminal breach of trust, falsification of records, possession of assets disproportionate to known sources of income, etc.

(ii) Cases -in which the allegations are such that their truth cannot be ascertained without making inquiries from nonofficial persons; or those involving examination of non-Government records, books of accounts etc. and

(iii) Other cases of a complicated nature requiring expert police investigation.

It is, therefore, recommended that the case be handed over to a Police Agency, either CBI or ACB, for thorough examination. ”

2.7. A perusal of the said enquiry report shows that, a sample check was carried out, which revealed that a large number of candidates had, in fact, submitted fabricated birth certificates.

2.8. Having regard to this, recommendation was made that the matter should be examined thoroughly by a police agency, such as Central Bureau of Investigation (CBI) or Anti-Corruption Bureau (ACB).

3. We are told that, the matter was not taken up by the CBI or the ACB.

4. It is in this background that, the petitioners approached the Tribunal, once again, by way of OA No. 301/2016.

4.1. The Tribunal, *via* the impugned order, instead of examining the issue threadbare has, to our minds, given a short shrift to the main issue at hand.

4.2. The operative directions contained in the paragraphs 5 and 6 of the

impugned order of the Tribunal are, as follows:

“5. The short solution could be found observing that pending disposal of this original application, if the department chooses to fill up these vacancies, they may consider the case of the applicants and pass a reasoned and speaking order in case of non-selection. If appointments are given, there shall not be any grievance for the applicants in regard to seniority or promotion. It is also clarified that settled position of seniority shall not be unsettled and in case the department found the applicants eligible, they shall be put at the bottom of seniority.

6. With the above observations, we dispose of the present original application. The exercise shall be completed within a period of 90 days. In case, any grievance still subsists, the applicants may re-approach this Tribunal. There shall be No order as to costs.”

4.3. A perusal of the operative part of the impugned order would show that the Tribunal has simply put the ball, back in the court, of the respondents, that if they chose to fill up the vacancies qua subject posts, they could consider the case of the petitioners.

4.4. Learned counsel for the respondents has pointed out that, on 18.03.2020, an order was passed, whereby a complete ban was placed on such special recruitment drives.

5. Mr. A.K. Behera, learned senior counsel, who appears on behalf of the petitioners, says that the ban concerns future appointments, and does not deal with the appointments, which have already taken place pursuant to the special recruitment drive undertaken in 2006, which, as noticed above culminated into actual appointments in 2010-2015.

6. Given the aforesaid circumstances, we are of the view that, the Tribunal needs to decide the matter afresh, having regard to the findings

contained in the enquiry report, dated 11.08.2015.

7. The impugned order is, accordingly, set aside.

7.1. The Tribunal will hear the matter afresh, and pass an order, on merits, after giving due opportunity, to all concerned.

7.2. To hasten the process, counsel for the parties are directed to appear before the Registrar of the Tribunal, on 13.09.2021.

8. The writ petition is disposed of in the aforesaid terms. Pending application is, accordingly, closed.

RAJIV SHAKDHER, J.

TALWANT SINGH, J.

AUGUST 24, 2021

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