

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

+ **W.P.(C.)No.2371/2004**

% **Date of Reserve :22.07.2010**
Date of Decision :27.07.2010

JOGINDER SINGH (456/NE) Ex.Constable Petitioner
Through Mr.Arun Bhardwaj, Advocate

Versus

GOVT OF NCT OF DELHI AND OTHERS Respondents
Through Mr.Darpan Wadhwa and Mr.Divya Jha,
Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether reporters of Local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

MOOL CHAND GARG, J.

*

1. Shri Joginder Singh S/o Shri Charanjeet Singh, the petitioner herein, had been working as Constable with Delhi Police. In 1996 an FIR bearing No. 355/1996 under Section 420/468/471 IPC was registered against him at Police Station Welcome, Delhi. The FIR was registered on a complaint made by one Ashwani Kumar, who alleged that the petitioner is not actually Joginder Singh and his actual name is Jogwinder Singh and that he changed his name after getting a duplicate copy of the matriculation certificate which had been issued in the name of Joginder Singh S/o Ranjeet Singh and that he had changed the name Ranjeet Singh by adding "Ch" (in Hindi) so as to make it Charanjeet Singh, his father's name. On that basis after the receipt of a complaint lodged by one Ashwani Kumar a criminal prosecution was launched against the petitioner which ultimately resulted in acquittal vide order dated 04.09.2001.

2. Simultaneously, the respondents also initiated a departmental enquiry against the petitioner under Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter referred to as 'the Rules) on the allegations that the petitioner concealed facts at the time of enlisting himself in Delhi Police and used forged documents for the purpose of obtaining employment with Delhi Police which is not accepted of a member of disciplined force. The Enquiry Officer to whom the enquiry was entrusted framed following charges:

"I, Inspr. Sukhbir Singh, Addl. SHO/Gokalpuri charge you const. Joginder Singh No.456/NE that a complaint was received from one Ashwani Kumar, Press Reporter, Ludhiana (Punjab) alleging that Const. Joginder Singh S/o Sh. Charanjeet Singh r/o vill. Kheri Sharfli, Distt. Karnal (Haryana) is not actually Joginder Singh. His name is Jogwinder Singh. He changed his name because he had withdrawn the duplicate copy of Matric Certificate of Joginder Singh S/o Charanjeet Singh and he has succeeded in getting him enlisted in Delhi Police on the basis of forged certificate and his aim to take revenge of his brother, who was killed in an encounter by the Punjab Police, by killing some VIPs, Police Siksha Board, Bhiwani clarified that duplicate matric certificate bearing Roll No.666668-M-84 belongs to Joginder Singh S/O Sh. Ranjeet Singh not Jogwinder Singh s/o Sh. Charanjeet Singh and it appears that additional word (Ch.) has been added by the Applicant himself. A case vide FIR No.355/96 u/s 40/468/471 IPC has been registered at P.S. Welcome against you Const. Joginder Singh No.456/NE. This clearly shows that you Const. Joginder Singh No.456/NE concealed the facts and get yourself enlisted in Delhi Police on the basis of forged documents, which cannot be expected from a member of disciplined force./

The above act on the part of you Const. Joginder Singh 456/NE amounts to grave misconduct, remissness and unbecoming of a police officer, which renders you liable for departmental action under the Delhi Police (Punishment & Appeal) Rules, 1980.

(Sukhbir Singh)
E.O.
Addl.SHO/Gokalpuri"

3. During the course of inquiry five witnesses were examined by the department before the enquiry officer including Ashwani Kumar, the complainant in FIR No.355/1996 as PW-1 & PW-2 Smt.Manju Bhandari, an officer from Haryana Education Board in a statement deposed that as per their record the certificate in question had been issued to Joginder Singh S/o Ranjeet Singh and not to Joginder Singh s/o Charanjeet Singh.

4. After completing the enquiry, the enquiry officer returned a finding that the word "Cha" was subsequently added in the certificate produced before Delhi Police stating that it was in the name of Joginder Singh S/o Charanjeet Singh who appeared for matriculation examination in the year 1994 and passed from the Haryana Board. However, the fact that it was the petitioner who appeared in that examination could not be proved by the enquiry officer. Accordingly, it was held that the charges against the petitioner stood proved. The Disciplinary Authority based upon the aforesaid enquiry report and after giving an opportunity to the petitioner to show cause as to why report be not accepted, concluded that the petitioner was unfit to be retained in disciplined Force like Delhi Police and dismissed him from service vide order dated 23.08.1999. An appeal filed against the said order was also dismissed.

5. The petitioner then filed the Original Application before the Central Administrative Tribunal, Principal Bench (hereinafter referred to as "the Tribunal") registered as OA No. 742/2002. However, the said OA has also been dismissed by the Tribunal vide order dated 19.08.2003. A review application filed by the petitioner against the judgment delivered by the Tribunal also met the same fate vide order dated 14.11.2003. It is against the aforesaid order, the present writ petition has been filed by the petitioner before us.

6. It was pleaded before the Tribunal that the disciplinary proceedings taken against the petitioner which resulted in the order of dismissal were liable to be set aside for the reason that he had been acquitted in case FIR No. 355/1996 vide order passed by the Magistrate on 04.09.2001. It was also pleaded that even otherwise

the continuation of the enquiry proceedings against him was bad as it was on the same charge on which the criminal prosecution was also launched against him. He also relied upon Rule 12 of the Delhi Police (Punishment and Appeal) Rules 1980.

7. Perusal of the order passed by the Tribunal goes to show that the Tribunal has not agreed with the submission made by the petitioner including his submission regarding the applicability of Rule 12, after acquittal order was passed by the Court in case FIR No. 355/1996. The Tribunal has made the following observations in this regard.

5..... A first information report with respect to offense under Section 420/468/471 of the Indian Penal Code had been registered against the applicant on almost all the same facts. The learned Metropolitan Magistrate on 4.9.2001 had acquitted the applicant with respect to the above-said charges giving him the benefit of doubt. As already pointed above, the disciplinary proceedings had been initiated by the Disciplinary Authority dated 23.8.1999 i.e. before the applicant had been acquitted.

6. Rule 12 of the Rules reads as under:

“12. Action following judicial acquittal when a police officer has been tried and acquitted by a criminal court, he shall not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case, whether actually led or not unless:-

(a) The criminal charge has failed on technical grounds, or

(b) in the opinion of the court, or on the Deputy Commissioner of Police the prosecution witnesses have been won over; or

(c) the court has held in its judgment that an offence was actually committed and that suspicion rests upon the police officer concerned; or

(d) the evidence cited in the criminal case discloses facts unconnected with the charge before the Court which justify departmental proceedings on a different charge; or

(e) additional evidence for departmental proceedings is available,”

A perusal of Rule 12 of the Rules clearly shows that in the five exceptions that have been carved in the said rules, it has been prescribed that when a police officer has been tried and acquitted by a criminal court, he should not be punished departmentally on the same charge but the fact which assumes importance is that the applicant has already been punished by the Disciplinary Authority but the acquittal came afterwards. Therefore, the rigour of Rule 12 will have no application.

8. At this stage it will also be appropriate to take note of some of the observations made by the trial judge in the criminal case, on the basis of the report of the forensic expert who was examined as a witness by the prosecution and gave his report exhibit PW4/A:

"5..... that there was a difference in the letter 'Ch' (in Hindi) and the rest of the word "Ranjit Singh" (in Hindi) and further opined that the letter "Ch" (in Hindi) is not the original character and was typed subsequently with different typewriter. However in the cross examination he admitted that in case a type script is added later on, if it is left out earlier, a different bound to be observed in the location and the alignment of the added typed script with respect to the original typed script. He did not observe any difference in the date of birth mentioned on the said certificate Ex.PW1/4.

9. From the aforesaid observation made by the Magistrate who decided the case FIR No. 355/1996 registered against the petitioner it is apparent that it was not a case of clean acquittal. Rather the observations referred to above goes to show that there was a manipulation in the certificate produced by the petitioner for availing employment with Delhi Police. The very fact that no other person could have been benefited by the interpolation of the certificate as has been found by the forensic experts in their report exhibit PW4/A, establishes that probably it is the petitioner only who might have done so.

10. In the Inquiry report also the inquiry officer relying upon the evidence on record including the statement of PW2 appearing for Haryana School Education Board, observed:

"The LDC of the school concerned stated that Joginder

Singh S/o Charanjeet Singh was admitted in school but the vital link that the Joginder Singh s/o Charanjeet Singh admitted in school was the same who appeared in the Haryana Board Examination is not linked to the person who passed the examination, since the passed candidate is Joginder Singh s/o Ranjeet Singh. Since claimed by the defaulter that it was a clerical mistake could not be relied upon, since the certificate was issued in the name of Joginder Singh s/o Ranjeet Singh against the same Roll No. as shown by defaulter in the name of Joginder Singh s/o Charanjeet Singh who made Ranjeet Singh to Charanjeet Singh? The liability goes on the bearer of the document to prove that it was true & genuine one as issued by the issuing authority but the defaulter could say that it was a clerical mistake since when it came to the notice though after the complaint in the instant case what efforts he made to get the mistake rectified by the concerned board. Also how an unanimous person came to know that Joginder Singh s/o Charanjeet Singh is Joginder Singh s/o Ranjeet Singh in the board document. Also the sequence of Hindi Alphabets i.e. 'Cha' is different to other words of word 'Charanjeet Singh'. It appears that word 'Cha' has been subsequently added. The defaulter has to prove that he is the same Joginder Singh s/o Charanjeet Singh who appeared for Matric examination in 1984 and passed from Haryana Board but the defaulter could not prove this fact. The document of the board proves that the bearer of Matric certificate Joginder Singh s/o Charanjeet Singh is not the bonafied candidate who declared passed by the board."

11. The aforesaid findings were accepted by the disciplinary authority while imposing the punishment of dismissal upon the petitioner.

12. At this juncture we may also observe that before the inquiry officer the petitioner had submitted a list of witnesses which included the name of his father Charanjeet Singh, Nishan Singh and Laskar Singh. However, except for examining one Rajbir Singh s/o Bhim Singh, resident of Shehar Malpur, the petitioner did not examine any other person. He only filed written statements of his father Charanjeet Singh, Nishan Singh and Lashkar Singh. These statements in the absence of the appearance of the witnesses before the inquiry officer cannot be of any consequence.

13. As far as Rajbir Singh is concerned he has produced school record regarding admission of Joginder Singh in 9th and 10th class and

has deposed that in the 8th class and 9th class no other boy in the name of Joginder s/o Ranjeet Singh or Jogwinder s/o Charanjeet Singh was admitted in the school. However, in the cross examination, he has also stated that he did not bring any such record which can prove that in 1984 Joginder Singh s/o Charanjeet Singh appeared in Haryana Board Examination. His deposition in no way helps the case of the petitioner. It was in these circumstances the inquiry officer gave a report against the petitioner.

14. It is well settled that in a domestic inquiry the standard of proof is not like criminal case. Case is required to be proved by the theory of preponderance of probability. One thing which is very clear in this matter is the allegation that the certificate which has been found by the forensic expert in the criminal case as forged one containing manipulation by adding word 'Cha' in Hindi before the word 'Ranjeet Singh' have not been reverted by any cogent evidence led by the petitioner before the enquiry officer. In fact the petitioner has not even cared to appear as his own witness. He also did not produce his father before the inquiry officer. Thus, no evidence to prove that the petitioner undertook matriculation examination with the Haryana Board to give strength to its submission that the certificate in question was issued to him on the basis of passing the said examination by the Board has not been established. The petitioner could have also led evidence by producing some other student who might have undertaken a similar examination along with the petitioner and who would have studied with the petitioner to substantiate his version with the certificate produced by him belongs to him. But this has also not been done.

15. The Supreme Court in the case of High Court of Judicature at Bombay through its Registrar Vs. Udaysingh s/o Ganpatrao Nasik Nimbalkar & Ors. JT 1997 (5) SC 298 held:-

“But the disciplinary proceedings are not a criminal trial. Therefore, the scope of enquiry is entirely different from that of criminal trial in which the charge is required to be proved beyond doubt. But in the case of disciplinary enquiry, the technical rules of evidence have no

application. The doctrine of “proof beyond doubt’ has no application. Preponderance of probabilities and some material on record would be necessary to reach a conclusion whether or not the delinquent has committed misconduct. The test laid down by various judgments of this Court is to see whether there is evidence on record to reach the conclusion that the delinquent has committed misconduct and where as a reasonable man, in the circumstances, would be justified in reaching that conclusion”

16. It is well settled that a person who uses a forged document for his benefit is presumed to be responsible for forging his document. Reference is made to a judgment of the Hon’ble Supreme Court delivered in the case of Rampreet Yadav Vs. U.P. Board of High School & Intermediate Education and Ors. 2003 (8) SCC 311 wherein it has been held that taking benefit of a provisional mark sheet issued by the principal of a college to the appellant (respondent No.3 in the original proceeding) at his instance without mentioning that the result of the incumbent was withheld and obtaining employment thereupon on that basis was held to be a case of exercising fraud.

17. In these circumstances, the submission made by the learned counsel for the petitioner that it is a case of no evidence cannot be accepted.

18. Mere fact that the petitioner has been acquitted in the criminal case which in view of the observation made by the Learned Magistrate while passing the judgment of acquittal is not a clean acquittal but is based upon benefit of doubt inasmuch as the complainant turned hostile does not entitle the petitioner to take benefit thereof as his case is not covered by any of the exceptions in Rule 12 more so when the acquittal has come only after the departmental proceedings were over.

19. We therefore find no reason to disturb the findings reported by the inquiry officer and the order of disciplinary authority based upon the said finding. A person who obtains employment by suppressing material fact and by going to the extent of forging documents is certainly not entitled to remain in service of a disciplined force.

Accordingly, we find no reason to interfere with the order passed by the Tribunal in this case. We therefore do not find even the punishment as excessive. The writ petition is therefore dismissed.

MOOL CHAND GARG, J

JULY 27, 2010
dc/ag/anb

PRADEEP NANDRAJOG, J