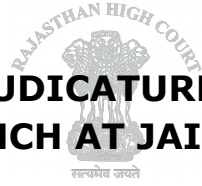




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 814/2001

Shri Sunder Pal s/o Shri Thakuri @ Gyarsi Ram, aged 42 years,
Resident of Village Nangla Dulekhan, Tehsil Bari, District Dholpur,
Rajasthan

-----Petitioner

Versus

1. State of Rajasthan through the Principal Secretary, Home & Justice, Government of Rajasthan, Jaipur
2. The Director General of Police,
Rajasthan, Jaipur
3. The Deputy Inspector General of Police,
RAC, Rajasthan, Jaipur
4. The Commandant, Vith Battalian, RAC Dholpur

-----Respondent

For Petitioner(s) : Ms. Sarita Chaudhary
For Respondent(s) : Mr. Pradeep Kalwania GC with
Mr. Shivam Chauhan
Mr. Vijay Shankar, Assistant
Commandant, RAC, Dholpur present
in person

HON'BLE MR. JUSTICE GANESH RAM MEENA

Order

Reserved on ::: **May 24, 2024**

Pronounced on ::: **July 01, 2024**

1. The petitioner by filing this writ petition has made a challenge to the order dated 17.10.1996 issued by the Commandant 6th Battalian, RAC, Dholpur, whereby he has been removed from service from the post of Constable and so also the order dated 31.03.1997 passed by the Dy. Inspector General of Police, RAC Range, Jaipur, whereby the appeal filed



by him against the penalty order was also dismissed. The petitioner has further prayed to reinstate back him in service with all consequential benefits.

2. The facts in brief of the matter are that in furtherance of the recruitment process initiated by the respondents, the petitioner was selected by the Recruitment Board and was appointed as a Constable (Band)- a Member of the Rajasthan Police Subordinate Service on 23.12.1981 on probation for a period of two years and thereafter he was confirmed in service.

On 02.04.1996 the petitioner was served a charge-sheet with the allegation that he was appointed as a Constable in RAC 6th Battalion on 23.12.1981 for which he appeared before the Recruitment Board on 06.07.1981 and submitted a Transfer Certificate issued by the Government Upper Primary School, Japawali, Badi Dholpur wherein his date of birth was mentioned as 15.01.1958 and was given appointment whereas his exact date of birth as per the record is 15.01.1950. He has obtained the appointment on the basis of forged educational certificate about his date of birth.

The explanation was submitted by the petitioner in regard to the charge-sheet and the Enquiry Officer was appointed so as to make an inquiry into the allegations leveled against the petitioner. The Enquiry Officer submitted the inquiry report on 06.09.1996 and the Disciplinary





Authority agreeing with the Enquiry Report said to have issued a show cause notice to the petitioner on 19.08.1996 and after hearing the petitioner in person on 17.10.1996 passed the order on the same day and imposed the major penalty of dismissal from service.

Aggrieved by the order of dismissal from service, the petitioner preferred an appeal before the Appellate Authority and the Appellate Authority dismissed the appeal vide his order dated 31.03.1997.

3. Counsel appearing for the petitioner submitted that as regards the allegations leveled in the charge-sheet, a criminal case bearing No.190/1996 for offences under sections 420 and 471 IPC was also got registered at Police Station Nihalganj, District Dholpur, wherein after investigation the police submitted the charge-sheet against the petitioner. Counsel also submitted that the Court of learned Civil Judge-cum-Judicial Magistrate, Dholpur (for short 'the trial court') after completion of the trial acquitted the petitioner from the charge under section 468 IPC, however, he was convicted for the offences under sections 420 and 471 IPC. Counsel also submitted that against the judgment of conviction, the petitioner preferred an appeal before the learned Addl. Sessions Judge, Dholpur (for short 'the Appellate Court'). The learned Appellate Court allowed the appeal vide judgment dated 28.09.1999 and acquitted the petitioner from



all the charges. Counsel submitted that when in a criminal case based on same facts the petitioner has been acquitted by the Competent Court, the penalty imposed upon the petitioner by the respondents on same facts and allegations stated to be proved, is not sustainable.

4. Counsel for the petitioner further submitted that the order of the Disciplinary Authority is a cryptic and innocuous order and same has been passed ignoring various objections raised by the petitioner relating to inquiry and therefore, same is not sustainable. Counsel also submitted that the order of dismissal from service is a non-speaking order passed without application of mind and so also the order is not sustainable for the reason that the objections raised by the petitioner in response to the show-cause notice have not been dealt with. Counsel submitted that the petitioner raised the issues like that his request for change of defence counsel was not considered, in spite of filing the list of defence witnesses and defence documents on 02.06.1996 the Enquiry Officer did not summon the witnesses, the Enquiry Officer did not give opportunity to him to present his arguments, the copies of the statements of the witnesses as well as the documents were not made available to him, the allegations levelled against the petitioner have not been proved by any evidence on record that the alleged fabrication has been done in the Transfer Certificate by him and thus the



order passed by the Disciplinary Authority is a non-speaking order.

5. A detailed reply to the writ petition was submitted by the respondents and it was averred that the petitioner submitted a forged Transfer Certificate in which his date of birth was altered as 15.01.1958 whereas his actual date of birth was found to be 15.01.1950. The upper age limit for appointment as a Constable was 25 years and according to the correct date of birth, the petitioner's age was 31 years at the time of appointment. The petitioner altered and forged the date of birth in the Transfer Certificate in order to bring himself within the age limit. The petitioner obtained the service with the help of forged document and therefore, he has been rightly dismissed from service after conducting regular inquiry as per the procedure given under the Rules. It has also been submitted that merely acquittal from criminal charge does not confer any right upon the petitioner. The standards of proof of both-Criminal Court and the Departmental Enquiry are different.

6. Considered the submission advanced by both the counsels appearing for the respective parties.

7. The Disciplinary Authority while passing the order of penalty of dismissal from service has observed that the upper age limit for appointment at the relevant time was 31 years and at the time of appointment, the petitioner was 31





years 11 months and 16 days, whereas the maximum age limit was 25 years but so as to bring himself within the age limit, the petitioner submitted a forged Transfer Certificate with the date of birth as 15.01.1958 in place of exact date of birth 15.01.1950. Nothing has been mentioned in the order of the Disciplinary Authority that what was the evidence which brought them to conclusion that the petitioner has submitted the forged Transfer Certificate making alteration in the date of birth as 15.01.1958 in place of 15.01.1950.

8. The criminal case was also got registered in regard to making alteration in the date of birth in the Transfer Certificate and finally the petitioner was acquitted from all the charges. While acquitting the petitioner from all the criminal charges, the learned Addl. Sessions Judge, Dholpur, observed as under:-

“निचले न्यायालय की पत्रावली के अवलोकन से यह स्पष्ट है कि अपीलाण्ट अभियुक्त ने दिनांक 25. 4. 81 को धौलपुर में आरएसी में सिपाही के पद के लिए नियुक्ति प्राप्त करने के लिए राज. उच्च माध्यमिक विद्यालय जपावली के प्रधानाध्यापक द्वारा दिनांक 10. 3. 81 को जारी टी. सी. प्रमाणपत्र में अपनी जन्मतिथि 15. 1. 50 के बजाय 15. 1. 58 करके उक्त प्रमाणपत्र में कूटरचना की, उसे नौकरी प्राप्त करने के लिए आरएसी के अधिकारियों को प्रस्तुत कर उन्हें धोखा दिया। इस प्रकार धारा 468 आई. पी. सी. के जुर्म का आवश्यक तत्व चीटिंग वाई फौरजरी है। यही मुलजिम पर प्रिंसीपल एलीगेशन है। विद्वान सी. जे. एम. ने इस मल धारा 468 आई. पी. सी. के जुर्म को साबिल नहीं मानकर अपीलांट को इस जुर्म से संदेह का लाभ देते हुए बरी कर दिया है। इस बिंदु पर माननीय सर्वोच्च न्यायालय ने गुरु विपिन सिंह के केस 1997 क्रि. ला. रि. एस सी. 16 के निर्णय में यह प्रतिपादित किया है कि जहां पर फौरजरी का प्रिंसीपल एलीगेशन हो तथा चीटिंग का अपराध उसके परिणामस्वरूप हो, यदि फौरजरी का ही अपराध चला जाता है या साबित नहीं हो पाता है तो चीटिंग का अपराध स्टेण्ड नहीं करता है। वर्तमान केस ठीक इसी तरह का है।

इसके अलावा मूल विवादित टी. सी. विचारण न्यायालय के समक्ष पेश नहीं हुयी है मात्र उसकी कच्ची, अप्रमाणित फोटो प्रति प्रदर्श पी 4 ही साक्ष्य में पेश हुयी है। इस बात की भी कोई साक्ष्य नहीं है कि वह तथा कथित फौरजरी स्वयं अपीलाण्ट- अभियुक्त ने ही की थी। ऐसी सूरत में मनी लाल के केस 1998 क्रि. ला. ज. 3785 के निर्णय में यह प्रतिपादित किया गया है कि ऐसी सूरत में धारा 471 आई. पी. सी. के तहत भी कानूनन सजा नहीं दी जा सकती है। वर्तमान में केस भी ठीक इसी तरह का है।



जहाँ तक मूल टी. सी. के पेश नहीं होने का प्रश्न है चितरंजन चौधरी के केस 1987 क्रि. ला. ज. 773 के केस में माननीय सर्वोच्च न्यायालय ने यह प्रतिपादित किया है कि ऐसी परिस्थिति में अभियुक्त की सजा किया जाना कानूनन संभव नहीं है। मूल फौरजरी की हुई टी. सी. कहा गयी इसका कोई स्पष्टीकरण अभियोजन के पास नहीं है।

अब साक्ष्य को देखें तो यह प्रकट होगा कि पी. ड. 1 मोहन लाल लाठर पुलिस अधीक्षक ने अपनी जिरह में प्रारंभ में ही यह स्वीकार कर लिया है कि :-

“जॉच रिपोर्ट साथ में भेजी गई थी प्रथम सूचना के साथ थानाधिकारी को भेजी थी किन्तु न्यायालय की पत्रावली पर आज नहीं है।”

यह महत्वपूर्ण है कि यह गवाह इसी जांच रिपोर्ट के आधार पर पुलिस में केस दर्ज कराना कहता है। केस के तफतीशी पुलिस अधिकारी पी. ड. 5 रामलाल एस आइ ने अपनी जिरह में यह स्वीकार किया है कि :- मुझे एकजी पी-1 के साथ प्राथमिक जांच पृष्ठ के 12 पृष्ठ प्राप्त हुये इसके अतिरिक्त विभागीय जांच के 5 पृष्ठ प्राप्त हुये अगर इस पत्रावली पर एकजी पी-1 के साथ प्राप्त हुये 17 दस्तावेज मौजूद नहीं हों तो इस बात की जानकारी आई. ओ. दे सकता है। नोट- यह 17 दस्तावेज न्यायालय की पत्रावली पर उपलब्ध नहीं है। मैंने तो यह 17 दस्तावेज आई. ओ. को सौंप दिये थे। इसके विपरीत पी. ड. 7 हनुमानसिंह एएसआई को इस बाबत कोई कथन नहीं करता है। यह जॉच रिपोर्ट 17 पृष्ठों वाली कहा गयी इसका कोई स्पष्ट कारण अभियोजन के पास नहीं है।

पी. ड. 7 हनुमान सिंह एएसआई ने अपनी जिरह में प्रारंभ में यह स्वीकार कर डाला है कि :-

“मैंने 1. 3. 66 को प्रवेश लेने एवं 11. 5. 71 को छोड़ने के बाबत मैंने उस रिकॉर्ड का अवलोकन किया। मैंने प्रिंसीपल से यह लिखित में लिया कि सुंदरपाल ने 1. 3. 66 को विद्यालय में प्रवेश नहीं लिया। यह भी लिखकर लिया था कि सुंदरपाल ने 11. 5. 71 को पांचवी कक्षा उत्तीर्ण नहीं की तथा यह भी कर प्राप्त किया था कि 1. 3. 66 को लिये गये प्रवेश पत्र में 15. 3. 58 अंकित नहीं है यह सही है कि ऐसा लिखा हुआ इस रिकॉर्ड पर उपलब्ध नहीं है।”

हैडमास्टर की यह लिखावट कहाँ गई इसका भी कोई स्पष्टीकरण अभियोजन के पास नहीं है। इसके भी अलावा इस गवाह ने यह भी स्वीकार किया है कि उसने यह पता नहीं लगाया था कि 1. 3. 56 को प्रवेश लेने वाला सुंदरपाल कोई अन्य तो नहीं था। इस फर्जी टी. सी. प्रदर्श पी-4 बाबत इसका यह कथन है कि यह उसके सामने पेश नहीं हुई थी।

स्कूल के प्रधानाध्यापक पी. ड. 4 नारायनसिंह ने अपनी मुख्य परीक्षा में ही यह स्वीकार कर लिया है कि एकजी पी. 4 देख कर यह नहीं बता सकता कि हमारे स्कूल से जारी हुआ है या नहीं असल होता है तो मैं बता सकता था। टी. सी. की प्रतिलिपि प्रदर्श पी 5 मेरे हस्ताक्षर से जारी की गयी है” जिरह में उन्होंने यह कथन किया है कि “ मैं नहीं कह सकता कि अगर सुंदर पाल पुत्र ठकुरी उर्फ ग्यारसी राम ने इस विद्यालय में 1. 3. 66 को प्रवेश लिया हो और 11. 5. 71 को छोड़ा हो तथा उसकी जन्म तिथि 15. 1. 58 हो तो मैं नहीं बता सकता। यह सही है कि इन तथ्यों बाबत पुलिस ने मेरे से कोई पूछताछ नहीं की है” इससे यह प्रकट होता है कि शायद टी. सी. प्रदर्श पी. 4 बाबत कोई जॉच की ही नहीं गयी थी, ना ही इस टी. सी. की कोई जिल्द ही जप्त की गयी हैं एकजी पी5 टी. सी. की प्रतिलिपि बतायी जाती है मगर इसकी कोई कारबन प्रति या कार्यालय प्रति भी जप्त नहीं की गयी जबकि ऐसा किया जाना नितांत आवश्यक था।

केस के कुल तथ्यों को अत्यंत ध्यान पूर्वक देखने के उपरांत मेरे मतानुसार अपीलान्ट/ अभियुक्त को धारा 420, 471 आई. पी. सी. के जुर्मों में दोषी ठहरा पाना या आक्षेपित निर्णय को बहाल रख पाना कानून सम्मत नहीं है। तदनुसार यह अपील स्वीकार की जानी चाहिए।

—: निर्णय :-

फलतः यह अपील स्वीकार की जाती है। सी. जे. एम. धौलपुर के दिनांक 19. 12. 97 के धारा 420, 471 आईपीसी के दोष सिद्धि के निर्णय को अपास्त किया जाता है तथा उसे सन्देह का लाभ दिया जाकर इन दोनों जुर्मों से बरी किया जाता है।”



9. The Appellate Authority while dismissing the departmental appeal observed that in the verification form filed by the petitioner at the time of appointment under Rule 18 he has stated that he is a married person having three children which goes to show that in ordinary situations it cannot be said to be less than 25 years of age. This observation of the Appellate Authority is without any cogent evidence and merely on his own assumptions, which cannot be sustained in the eye of law. In the remote rural areas in 1970's-80 the child marriages were solemnized in many cases and even today also because of child marriages prevalent in some areas, the Division Bench of this Court in one of the matter has issued directions to the Administration to stop the child marriages and also observed that the local public representatives would be held accountable in case of any child marriage, if traced out. These things are being referred for the reason that even at the olden times i.e. in the year 1981 a person may be married and may have three children before he attains the age of 25 years. Therefore the finding of the Appellate Authority that the petitioner cannot be below the age of 25 years at the time of appointment as he was a married and having three children, cannot be accepted.

The Appellate Authority observed that whether there is alteration in the Transfer Certificate as regards the date of birth of the petitioner, that document must have been



got tested by the experts but he said that it was not required in the present case for the reason that the School Record was not denied by the petitioner.

On perusal of the case record, this Court finds that after issuance of the charge-sheet in regard to the alteration of date of birth in the Transfer Certificate submitted at the time of recruitment, the petitioner denied the charges and opted for inquiry which clearly shows that the petitioner has denied the allegations of alteration by him. On the same facts and allegations a criminal case was also registered by the respondents wherein the charges were framed against the petitioner for the offences under sections 468, 420 and 471 IPC which were denied by him and finally the petitioner was acquitted from all the charges. In such circumstances the finding of the Appellate Authority that since the petitioner has not denied the School Record, there was no need to get the alleged document i.e. transfer certificate wherein the alteration has been made, to be tested by the experts. As per the evidence on record, no evidence of the Head of the School from where the alleged transfer certificate has been issued, was collected. The evidence of the Head of the Institution was the important evidence and the respondents have failed to collect the same.

10. The Disciplinary Authority while passing the impugned order of dismissal of service has not made any



discussion about the evidence collected by the respondents during the inquiry so as to prove the charges against the petitioner. The petitioner raised various issues before the Appellate Authority which have been referred by the Appellate Authority in para 2 of its order but no specific findings have been given by the Appellate Authority in regard to the objections raised by the petitioner (appellant). The objections raised by the petitioner (appellant) are very material for holding the complete inquiry process to be valid or invalid. One of the issue raised by the petitioner before the Appellate Authority is that he has not been served with the statements and the documents of the witnesses which have been used to prove the charges against him. Counsel has also raised the issue that the petitioner has not been allowed the opportunity to cross-examine the departmental witnesses. No specific finding has been given by the Appellate Authority on the grounds raised by the petitioner in the appeal in regard to the illegality in the procedure of the inquiry.

11. In view of the discussions made above, the order of the Appellate Authority is also not sustainable as the same does not give out the reasoning about the grounds raised by the petitioner in the appeal.

12. The main allegation against the petitioner is that while seeking appointment he has submitted a Transfer Certificate with the alteration in the date of birth from



15.01.1950 to 15.01.1958 so as to bring himself within the age limit.

13. Taking into consideration the facts and the material available on the record and the discussions made above, this Court finds that the respondents have failed to prove the charges levelled against the petitioner for adducing or collecting the material evidence. In service jurisprudence, the burden to prove the alleged charges lies upon the respondents and not that he has to prove his innocence and therefore the impugned order dated 17.10.1996 whereby the penalty of dismissal from service was imposed and the order dated 31.03.1997 passed by the Appellate Authority are not sustainable in the eye of law as same are non-speaking, illegal and arbitrary and passed without there being any cogent and valid evidence to prove the allegations leveled against the petitioner.

14. Accordingly, the writ petition is allowed. The order dated 17.10.1996 issued by the Commandant 6th Battalion, RAC Bharatpur so also the order dated 31.03.1997 passed by the Dy. Inspector General of Police, RAC Range, Jaipur are quashed and set aside with all consequential benefits.

15. If the petitioner would have been in service then he would have attained the age of superannuation in the year 2018. Thus, the respondents are directed to extend the consequential benefits and retiral benefits to the petitioner



within four months from the date of submitting the certified copy of this order treating him to be in service as if no dismissal order was ever passed.

16. In view of the order passed in the main petition, the stay application and pending application(s), if any, also stand disposed of.

(GANESH RAM MEENA),J

Sharma NK/Dy. Registrar