

Central Adminisrative Tribunal
Principal Bench

O.A.No.702/2002

Hon'ble Shri Govindan S. Tampi, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 13th day of January, 2003

Rajesh Kumar
s/o Shri Ex. Hav. Kanwar Lal Singh Maan
r/o Vill. & PO, Siddipur Lowa
Teh. Bahadurgarh
Distt: Jhajjar
Haryana. Applicant
(By Advocate: Sh. U.Srivastava)

Vs.

Govt. of NCT Delhi, through

1. The Chief Secretary
Govt. of NCT Delhi
5 Sham Nath Marg
New Delhi.
2. The Commissioner of Police
Delhi Police Headquarters
MSO Building, I.P.Estate
New Delhi.
3. The Dy. Commissioner of Police
Delhi Police Headquarters (Estt)
MSO Building
I.P.Estate
New Delhi.
4. The Addl. Commissioner of Police
Delhi Police Headquarters (Estt.)
MSO Building, I.P.Estate
New Delhi. Respondents
(By Advocate: Ms. Jasmine Ahmed)

O R D E R(Oral)

By Shri Shanker Raju, M(J):

Applicant impugns respondents' orders dated 14.9.1999, 17.1.2000 and 1.2.2002 whereby, after a show cause notice, services of the applicant had been terminated under Rule 5(1) of CCS (Temporary Service) Rules, 1965 (hereinafter called as 'TS Rules') and representations preferred against the same have been rejected. Applicant has sought quashment of these orders with reinstatement in service with all consequential benefits.

2. Applicant, in response to an advertisement issued by respondents for appointment to the post of Constable (Executive) in Delhi Police, has filled up an application as well as attestation forms. Thereafter, he was selected and was allowed to join in service on 25.11.1998 subject to verification of character and antecedents. Thereafter, on receipt of a report regarding involvement of the applicant in criminal case (FIR No.10 dated 2.1.1998) under Section 399, 402 IPC, which was pending at the time the applicant had filled up application and attestation form and had suppressed the fact of the aforesaid criminal case despite warning and moreover, given an undertaking that he was not involved, arrested, prosecuted of in any criminal case. A show cause notice was issued proposing his termination under Rule 5(1) of the TS Rules ibid. Applicant responded to the show cause notice by filing his reply taking plea of an inadvertent mistake.

3. By an order dated 14.9.1999, as applicant was found to have suppressed the fact of his involvement in the criminal case, and adopted deceitful means to get employment, after taking into his pleas, the show cause notice was confirmed and services of applicant have been terminated under Rule 5(1) of the Rules ibid.

4. Being aggrieved, he made a representation to the Commissioner of Police, which was rejected in the light of the decision of the Apex Court in CA No.13231 of 1996 in DAD v. Sushil Kumar, giving rise to the present OA.

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5. Shri U.Srivastava, learned counsel appearing on behalf of applicant, contended that the order passed against applicant is illegal as the same is founded on a grave misconduct of applicant of suppression of material fact in the relevant forms. As such without holding the departmental inquiry, the same would not be sustainable. He places reliance on the decision of Apex Court in Dipti Prakash Banarjee v. S.N.Bose, National Centre for Basic Science, Calcutta & Others, 1999(1) SCSLJ 232.

6. Shri U.Srivastava further contended that as applicant was already appointed, Temporary Service Rules cannot be resorted to dispense with the services of applicant and a regular departmental inquiry under Delhi Police Act, 1978 should have been held which would be a valid compliance of the principle of natural justice, and in this manner, he could have been afforded a reasonable opportunity.

7. Shri U.Srivastava, also stated that the representations rejected are non-speaking and without any application of mind.

8. Shri U.Srivastava, relying upon the decision of this Bench in OA 382/2001 decided on 6.11.2001 in Ex-Ct. Dinesh Rana v. Govt. of NCT of Delhi & Others, contended that respondents have gone into in the facts of suppression of material information behind the back of applicant, and no reasonable opportunity was afforded, as such the order is liable to be set aside. It is further stated by

Sh. U. Srivastava that the order passed is, on the face of it, stigmatic as applicant has been alleged to have committed a grave misconduct and concealed facts reflected his mala fide intention.

9. On merits, it is stated that applicant has already been acquitted in the criminal case, on merit, by the trial court by a decision dated 22.10.2001, as such any stigma attached to the criminal case is obliterated and according to him, applicant has inadvertently failed to mention about the pendency of the criminal case in the relevant forms.

10. On the other hand, respondents' counsel, Ms. Jasmine Ahmed, denied the contentions and stated that applicant had not disclosed the fact of criminal case in application, attestation form and in the undertaking given by him. On verification of his character and antecedents the fact of criminal case has come to light, he was afforded a reasonable opportunity to show cause, and after considering all his contentions, he has been terminated and appeals made against his termination are also rejected. It is further stated that suppression of criminal case, material information in the forms, is a motive in the foundation of the order. Moreover, as per the terms and conditions of applicant and in the light of warning reflected on the relevant attestation forms, any wilful suppression would have an affect of termination of his services.

11. According to respondents, despite being aware of the pendency of the criminal case, applicant has wilfully and mala fide suppressed the same with a view to seek employment in Delhi Police. Ms. Jasmine denies violation of Articles 14 and 16 of the Constitution of India.

12. Lastly, it is contended that acquittal in criminal case would have no affect over the termination in the light of the decision of the Apex Court in Sushil Kumar's case supra.

13. We have carefully considered the rival contentions of the parties and perused the material on record.

14. At the outset, needless to mention the fact of non-disclosure of the criminal case, despite its pendency, by applicant in the application and attestation form is not disputed.

15. Applicant was appointed provisionally as Constable subject to the verification of his character and antecedents. Applicant has suppressed the information of a criminal case, pending against him, registered under Section 399/402 IPC on 2.1.1998 under heinous offence of dacoity. This fact has been disclosed on the basis of report submitted by the police. In compliance of the decision of the Apex Court in CA 5510/97 C.P., Delhi v. Virender Pal Singh, a reasonable opportunity to show cause was given to the applicant and on receipt of reply, the competent authority took a conscious decision to

terminate the services of applicant in the light of the fact that he suppressed the information in his application as well as attestation form about his criminal case, and moreover an undertaking which has to be given on an affidavit also proved wrong where the involvement has not been declared. This is a wilful and deliberate act of the applicant which smacks of mala fide and his intention to procure employment in Delhi Police by suppression of a material fact of his criminal case being known to the Department, the result would have^{been} different.

16. The competent authority, after going into the representation of applicant, where apart from pleading an inadvertent mistake, no other justification was tendered on the ground of suppression of the fact, and as per the terms and conditions of the appointment, which was subject to the verification and antecedents, and as applicant was not found fit, on account of his involvement in heinous offence, his services have been dispensed with resorting to Rule 5(1) of the Rules ibid. Though no inquiry has been held behind the back of the applicant and the suppression is only a motive, as no findings have been arrived at, and the respondents without holding an inquiry, the competent authority has taken a conscious decision to discontinue the services of applicant, resorted to simple termination as per the terms and conditions of the services would not make it a punitive order.

17. The Apex Court, in Dipti Prakash Banarjee's case supra, while dealing with the aforesaid issue, has observed as follows:

"If findings were arrived at in inquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as founded on the allegations and will be bad. But, if the inquiry was not held, no findings were arrived at and the employer was not inclined to conduct an inquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to inquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstances, the allegations would be a motive and not the foundation and the simple order of termination would be valid."

18. As regards the contention that the order is stigmatic, mere use of the word "grave misconduct" would not itself make an order as stigmatic and it depends upon the facts and circumstances of each case. In the attestation and application form a warning has been given that in case the disclosed material is found wrong or false, and some material information is suppressed, services of applicant are liable to be terminated. Applicant, who was very much aware of this warning has himself deliberately withheld the information and suppressed with malice, the simple order of termination, in our view, an order of simplicitor based on the terms and conditions of appointment.

19. In so far as the rejection of representation and non-speaking order is concerned, the authorities have considered representation of applicant and rejected on the basis of the decision of the Apex Court in *Delhi Administration v. Sushil Kumar*, CA 13231/96 wherein it has been held that if

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one suppressed the information, and even after he is acquitted from the charges in criminal case, the law shall take its own course but what matters is the conduct of an employee and particularly when it is a disciplined force, the suppression is sufficient to warrant cancellation of candidature. Moreover, nothing has been brought on record or to our notice to indicate that immediately on filling up the attestation form, applicant realised his inadvertent mistake and pointed out to the respondents. The orders have been reasoned, and moreover, the order passed terminating the services of the applicant is a reasoned one.

20. In so far as the contention that a departmental inquiry should have been held, as we have found that the termination is neither founded on misconduct and the order is not stigmatic, termination during the probation and before a person is confirmed, we are of the considered view that holding of a disciplinary proceedings is not necessary, and moreover, applicant has already been afforded a reasonable opportunity to put forth his case by way of a show cause notice and as the defence has not been found plausible, we do not find any infirmity in the order passed by the respondents. Our view is fortified by the decision of the Apex Court in *Sailaja Shvaji Rao v. President, U.G.S.Sansthan*, JT 2002(i) SC 431.

21. In the result, the OA is bereft of merit and is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)
Member(J)

(Govindan S. Tampi)
Member(A)

/rao/