

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.382/2001

(9)

New Delhi this the 6th day of November, 2001.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Ex-Ct. Dinesh Rana (No.3051/DAP),  
S/o Shri Ajay Pal Singh,  
R/o Vill & PO Bhada,  
Distt. Baghpat (UP)-250 622 -Applicant

(By Advocate Shri U. Srivastava)

-Versus-

Govt. of NCT Delhi, through

1. The Chief Secretary,  
Govt. of NCT Delhi,  
5, Sham Nath Marg,  
New Delhi.
2. The Commissioner of Police,  
Police Headquarters, MSO Building,  
IP Estate, New Delhi.
3. The Deputy Commissioner of Police,  
IV Bn., DAP Delhi. -Respondents

(By Advocate Shri Ajay Gupta)

ORDER (ORAL)

Heard the parties. The applicant, a Constable in the Delhi Police was selected in pursuance of a notification of the Delhi Police and during the verification of his antecedents it has been found that the applicant has managed to appear in the High School Examination in 1997 in UP by showing his date of birth as 25.2.79 whereas his actual date of birth was 1.1.76 which has made him ineligible for being selected or appointed to the post of Constable in the Delhi Police. In pursuance there a show cause notice was served upon the applicant, proposing to terminate his services under Rule 5 (1) of the CCS (Temporary Service) Rules, 1965. The applicant preferred his reply to the show cause notice, denying all the allegations and contending that the report of the

enquiry which has been conducted by the respondents to come to the conclusion that the certificate was manipulated and the applicant has concealed the actual date of birth has not been served upon and further demanded the copy to effectively defend the proposal of the respondents to terminate his services.

(10)

2. The respondents thereafter conducted an enquiry through SI V.P. Sharma and on submission of the enquiry report confirmed the show cause notice and terminated the services of the applicant under Rule 5 (1) of the CCS (TS) Rules, 1965. The representation filed against the termination order was also rejected by the Commissioner of Police on 14.12.2000.

3. The applicant has assailed the order on the ground that his services have been dispensed with on the alleged misconduct to manipulating the date of birth and submission of a certificate showing the date of birth as 25.2.79 whereas the actual date of birth is 1.1.76. It is in this backdrop it is stated that the order of termination is though simple in nature and innocuous in terms but yet it is a punitive order founded on an alleged misconduct of the applicant and before resorting to termination he has been deprived of a reasonable opportunity to defend by according him a right to be heard in a regular departmental proceedings. For this the learned counsel for the applicant has placed reliance on a decision of the Apex Court in Dipti Prakash Banerjee v. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta & Ors., JT 1999 (1) SC 396, wherein the test is to whether the

misconduct forms foundation or the motive of the order of termination. The following observation has been made by the Apex Court:

"21. 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 circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid."

4. In this background it is stated that as the findings are arrived at by SI Sharma behind the back of the applicant without affording him a participation as to his misconduct and the same have been placed reliance the misconduct of the applicant is certainly <sup>to</sup> a foundation on the allegation that would be bad in law in absence of any reasonable opportunity by way of holding a departmental enquiry. In this decision the Apex Court has further held, according to the applicant, that findings arrived at by an informal committee on the complaint by the appellant cannot be used for terminating the probationer without a proper departmental enquiry. It is stated that a show cause notice is not sufficient compliance of the principles of natural justice and more particularly having specific request of the applicant in reply to the show cause notice to serve him a copy of the enquiry report. It is, therefore, stated that as the order is founded on misconduct of the applicant a departmental enquiry was necessary and without resorting to it the termination of

the applicant is certainly punitive and is liable to be interfered with in view of the provisions of Article 311 of the Constitution of India.

(2)

5. Strongly rebutting the contentions of the applicant the learned counsel for the respondents stated that the order passed by the respondents is an order simpliciter and the applicant's services have been dispensed with on the ground that his date of birth was not found correct and he has submitted a forged certificate and as the age was beyond 21 years the applicant was not eligible to be appointed as Constable in accordance with the relevant rules and instructions. It is stated that an enquiry was conducted while verifying the record of the applicant and a show cause notice was issued thereafter keeping in view his reply another enquiry was conducted through SI and on the basis of his report the show cause notice was affirmed. It is stated that the misconduct of the applicant is not foundation of the order but only a motivated factor. As the applicant was over aged at the time of selection with regard to the actual date of birth he cannot be appointed to the post and further continued as such. It is also stated that a reasonable opportunity to show cause was accorded to the applicant and after considering his reply the orders have been passed and affirmed by the representing authority. It is stated that there is no illegality in the order and the same is valid and in accordance with Article 311 of the Constitution of India.

6. Having regard to the rival contentions of the parties the present OA is liable to succeed. As held by the Apex Court in Dipti Prakash Banerjee's case (supra) the

test to ascertain whether a misconduct is foundation or motive is that the findings were arrived at an enquiry as to the misconduct behind the back of the officer and without holding a regular departmental enquiry the simple order of termination is to be treated as founded on the allegation and will be bad. Applying the said test to the facts and circumstances of the present case I find that having regard to the reply to the show cause the respondents have got conducted an enquiry through SI Sharma who had submitted his finding and admittedly in this enquiry the applicant has not been given a participation. He has also been denied an opportunity to rebut the material collected behind his back. The aforesaid enquiry has been made basis of the order of termination passed against the applicant. In this view of the matter admittedly the misconduct of the applicant was the deciding factor and once the same has been found to be the foundation of the order passed by the competent authority the order of termination cannot be observed to be simpliciter but punitive and founded on the alleged misconduct of the applicant of giving a wrong date of birth in order to get appointment in the Delhi Police. The contention of the learned counsel for the respondents that the show cause notice is a valid compliance of the principles of natural justice cannot be countenanced. In Dipti Prakash Banerjee's case (supra) the Apex Court observation in these circumstances was that a regular departmental enquiry is the compliance of the principles of natural justice and amounts to reasonable opportunity. The applicant in this case in the reply to the show cause notice has also demanded the copy of the enquiry report which has been denied to him.

(B)

7. Having regard to the reasons recorded above, I am of the considered view that the termination order is founded on an alleged misconduct of the applicant and without affording him a reasonable opportunity to show cause and to defend by holding a regular departmental enquiry would vitiate the order as in violation of the principles of natural justice and Article 311 of the Constitution of India.

8. In the result, the OA is allowed. The impugned orders of termination and as affirmed by the Commissioner of Police are quashed and set aside. The respondents are directed to re-instate the applicant in service with all consequential benefits. However, the respondents are at liberty to take up any proceeding against the applicant for his alleged misconduct in accordance with law. No costs.

S. Raju

(Shanker Raju)  
Member (J)

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