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CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 732 of 1998

New Delhi, dated this the 15th JUNE 1999

Hon'ble Mr. S.R. Adige, Vice Chairman (A)
Hon'ble Mr. Jasbir Singh Dhaliwal, Member (J)

Shri Amar Singh Chauhan,
(3331/PCR-8116/PCR)
S/o Shri Chhida Singh,
R/o Vill.&P.O. Korali,
Dist. Meerut (U.P.) ... Applicant

(By Advocate: Shri Shyam Babu)

Versus

1. Commissioner of Police,
Delhi, Police Headquarters,
M.S.O. Building,
New Delhi-110002.

2. Dy. Commissioner of Police,
Police Control Room,
Police Headquarters,
I.P. Estate,
New Delhi. ... Respondents

(By Advocate: Shri H.L. Jad)

ORDER

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant impugns respondents' order dated 19.1.98 (Ann. A) terminating his services under Rule 5(1) CCS (Temporary Services) Rules, 1965. He prays for reinstatement with consequential benefits.

2. Applicant was appointed as a temporary constable in Delhi Police w.e.f. 7.8.91. He contends that although his work, conduct and performance was satisfactory his services were arbitrarily terminated by order dated 4.10.91 (Annexure B) under Rule 5(1) CCS (Temporary Services) Rules. Respondents in their reply to the O.A. however, state that although his work,

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conduct and performance was satisfactory his services were arbitrarily terminated by order dated. 4.10.91 (Annexure B) under Rule 5(1) CCS (Temporary Services) Rules. Respondents in their reply to the O.A., however, state that applicant while undergoing training in RTC, Jharodhakalan, New Delhi was sharing a tent with his relative Recruit Constable Maharaj Singh. They contend that applicant connived with Maharaj Singh such that the latter would slip away from RTC and if roll call was taken, applicant would take care of his absence. Respondents contend that Maharaj Singh left RTC on 29.9.91 at 6.00 A.M. and when roll call was taken at 10 A.M. he was marked absent. Respondents further contend that at about 11 A.M. applicant came to the duty office wearing the baniyan of Maharaj Singh and requested him to mark his (Maharaj Singh) arrival in the daily diary. The duty officer did so, and asked the recruit to sign on the daily diary entry, but applicant who was impersonating Maharaj Singh forgot the fact of impersonation and signed his own name (Amar Singh) in Hindi on the daily diary entry. The duty officer got suspicious, and applicant crossed out the name of Amar Singh which he had signed a moment previously and this time signed as Maharaj Singh. This created further doubts in the duty officer's mind who asked applicant to sign again and this time he signed Maharaj Singh wrongly. Respondents state that when questioned why he was not signing correctly applicant signed his real name. Thereupon the confused duty officer called the

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Platoon Munshi who confirmed that the recruit was actually applicant Amar Singh and not Maharaj Singh and that applicant had won Maharaj Singh's baniyan to impersonate the latter. Respondents further assert that as soon as applicant noticed the gravity of the misconduct he slipped away from the RTC and remained unauthorisedly absent from duty for 17 hours 35 minutes returning only the next day at 8.35 A.M. They also state that applicant also got his father Shri Chidda Singh to meet the RI/RTC in his office and requested him to hush up the matter.

3. Respondents state further in their reply to the O.A. which applicant has not specifically denied in his rejoinder that when all the facts came to the notice of RI/RTC he asked both recruits to give their written statements and both recruits admitted their faults in their statements recorded on 30.9.91 (emphasis supplied). On the same day the R.I. submitted a detailed report to ACP/ADJ with the following observations:

- i) Hatching a conspiracy to absent and to shield each other which is criminal misconduct and which speaks of their criminal attitude.
- ii) Unauthorised absence from duty for the period state above.
- iii) Applicant was guilty of impersonation, cheating and forgery for wrongly gain to his colleague and wrongful loss to Police Dept.
- iv) Applicant was guilty of bringing about an external pressure to hush up the matter.

v) Recording of false entry in Roznamcha.

4. Respondents state further that ACP/ADJ while forwarding the report to Principal, PTS observed that on 23.9.91 all recruit constables had been warned by him that if any one would absent himself from RTC without permission, he would lose his service. This has not been denied by applicant in rejoinder.

6. The Principal, PTS by his order dated 4.10.91 (Annexure B) terminated applicant's services under Rule 5(1) CCS (Temporary Services) Rules. Against that order applicant filed a representation to the Commissioner of Police on 1.11.91 which was rejected by order dated 14.8.92 (Annexure B) and he was informed accordingly. Thereupon he filed O.A. No. 2765/92 which was allowed by order dated 3.3.97 on the short point while the Principal, PTS might be said to have held a post equivalent to the appointing authority viz. DCP, the impugned order showed that he had exercised his power as Principal, PTS and not as DCP while terminating applicant's services. Accordingly the impugned order dated 4.10.91 was quashed and respondents were directed to reinstate applicant forthwith, with consequential benefits, with liberty given to respondents to take appropriate decision/action on the basis of which the impugned order was passed earlier by the Principal, PTS.

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7. Respondents filed CWP No. 2534/97 against the aforesaid order dated 3.3.97 in the Delhi High Court, who by their order dated 11.6.97 stayed its operation till the next date of hearing. The CWP was eventually dismissed by the Delhi Court on 29.7.97 upon which respondents filed SLP in the Hon'ble Supreme Court which was also dismissed on 10.11.97. Meanwhile applicant had filed a C.P. No. 164/97 for action against respondents for their failure to implement the aforesaid order dated 3.3.97. Respondents reinstated applicant vide order dated 12.11.97, upon which CCP was disposed of and applicant reported for duty at PTS, Jharoda Kalan on 20.11.97.

8. Thereupon respondents issued impugned order dated 19.1.98 signed by the DCP against which applicant has filed this present O.A.

9. The main ground advanced by applicant's counsel Shri Shyam Babu is that the foundation of the impugned order dated 19.1.98 is the misconduct alleged to have been committed by applicant in Sept. 1991 for which an enquiry should have been held and applicant given a reasonable opportunity to defend himself, and hence there has been a violation of Art. 311 of the Constitution, and non-application of mind as the DCP who passed the impugned order on 19.1.98 had no occasion to see applicant's performance/conduct during August-October 1991. It has also been contended that applicant having joined as Constable on 7.8.91

and by virtue of order dated 3.3.97 having been reinstated in service had completed the two years probation period in August, 1994 and must be deemed to have been confirmed, and hence his services could not have been terminated under Rule 5 CCS (CCA) Rules.

10. We have heard applicant's counsel Shri Shyam Babu who has relied upon the Hon'ble Supreme Court's decision in Governing Council K.M. I.O. vs. Pandurang Godwalkar AIR 1993 SC 392. Shri Jad appeared for respondents and was heard. We have given the matter our careful consideration.

11. In so far as applicant's claim to be deemed to be confirmed w.e.f. August, 1994 is concerned, the Hon'ble Supreme Court in Jai Krishan Vs. Commissioner of Police and Anr. 1995 (31) ATC 148 has held that under Rule 5 Delhi Police Rules, successful completion of probation is a condition precedent for confirmation. In other words there must be a positive finding of successful completion of probation by applicant for him to be deemed to be confirmed. Applicant has not been able to show any materials to establish that respondents reached such a finding and under the circumstances applicant's claim to have been deemed to have been confirmed and hence beyond the ambit of Rule 5(1) CCS (Temporary Service) Rules fails.

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12. Coming to the question whether applicant's services could have been terminated only after an enquiry, we have perused the Hon'ble Supreme Court's judgment in Pandurang Godwalkar's case (Supra) carefully. We notice that Dr. Godwalkar was appointed as a Lecturer in Surgical Oncology on 3.7.81. He was to be on probation for one year. Before the expiry of one year a termination order simpliciter was issued to him on 30.1.82. He challenged that order in the Karnataka High Court on the ground that an order ofr dismissal had been passed in the garb of an order of termination. According to him to the Director of the Institute who instead of initiating departmental proceedings on the basis of charges levelled against him, put up the matter before the Governing Council of the Institute for termination of service during the probation period. The Karnataka HighCourt directed the Institute to produce the original records including certain confidential papers and documents. From the note of the Director it appeared that complaints had been made in respect of the performance of duties by Dr. Godwalkar. In that note it was also mentioned that he was unsympathetic towards patients. It was also brought to the notice of the Governing Council that he had attempted to obtain the signatures of some of the patients stating that he was a good doctor. On one occasion, it was reported that he had taken away a girl attendant of a patient in the hospital, on his scooter and brought her back late at night. The Karnataka High Court concluded that as

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Dr. Godwalkar's services had been terminated because of complaints made against him it really amounted to his removal for the misconduct alleged in the Director's Note and the Institute should have initiated a Departmental Proceeding in respect of the alleged charge and only after the inquiry should any action have been taken.

13. The Hon'ble Supreme Court, however, disagreed with the Karnataka High Court's findings and allowed the appeal. While doing so it observed thus:

.....If an employee who is on probation or holding an appointment on temporary basis is removed from the service with stigma because of some specific charge, then a plea cannot be taken that as his service was temporary or his appointment was on probation, there was no requirement of holding any enquiry, affording such an employee an opportunity to show that the charge levelled against him is either not true or it is without any basis. But whenever the service of an employee is terminated during the period of probation or while his appointment is on temporary basis, by an order of termination simpliciter after some preliminary enquiry it cannot be held that as some enquiry had been made against him before the issuance of order of termination it really amounted to his removal from service on a charge as such penal in nature.

.....The Principle of tearing of the veil for finding out the real nature of the order shall be applicable only in a case where the Court is satisfied that there is a direct nexus between the charge so levelled and the action taken. If the decision is taken to terminate the service of an employee during the period of probation, after taking into consideration the overall performance and some action or inaction on the part of such employee then it cannot be said that it amounts to his removal

from service as punishment.. It need not be said that the appointing authority at the stage of confirmation or while examining the question as to whether the service of such employee be terminated during the continuance of the period of probation, is entitled to look into any complaint made in respect of such employee while discharging his duties for purpose of making assessment of the performance of such employee.

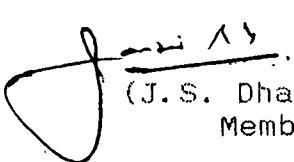
.....the Governing Council examined the different reports in respect of the respondent during the period of probation and considered the question as to whether he should be allowed to continue in the service of the Institute. The decision appears to have been taken by the Governing Council on the total and overall assessment of the performance of the respondent, in terms of the condition of the appointment and Rule 4 aforesaid."

14. Applying the ratio of the aforesaid ruling to the facts and circumstances of the present case, we find that while no doubt applicant had not been confirmed at the time the impugned order was passed, and the impugned order was an order of termination simpliciter which cast no stigma upon him, respondents themselves have admitted in their reply in Para 4 (10) of the O.A. that applicant's services were terminated by impugned order dated 19.1.98.

"In view of gravity of his misconduct which was already established in Sept., 1991 that how he was found guilty of cheating by impersonating, hatching a conspiracy to shield another, absenting and recording false entry in Roznamcha....."

15. In the present case the decision to terminate the applicant's services was not taken on total and overall assessment of his performance during the period 7.8.91 to 4.10.91 but the impugned termination order dated 19.1.98 was issued against the specific acts of misconduct which applicant is alleged to have committed on 29-30 September, 1991. Furthermore, there is merit in Shri Shyam Babu's contention that the DCP who passed the impugned order dated 19.1.98 had no occasion to assess applicant's performance/conduct during August/October, 1991. In our view the ratio of the Hon'ble Supreme Court's judgment in Godwalkar's case (Supra) covers the present case and the impugned order dated 19.1.98 cannot therefore be sustained in law.

16. Accordingly this O.A. succeeds and is allowed to the extent that the impugned order dated 19.1.98 is quashed and set aside. Applicant should be reinstated within two months from the date of receipt of a copy of this order. The intervening period between 4.10.91 and 19.1.98 and between 19.1.98 till the date of reinstatement shall be treated in accordance with rules and instructions on the subject. It will be open to respondents to proceed against applicant, after his reinstatement for alleged misconduct, in accordance with law, if so advised. No costs.


(J.S. Dhaliwal)
Member (J)


(S.R. Adige)
Vice Chairman (A)

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