

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

-10-

OA No. 831/98

New Delhi, this the 8th day of January, 1999

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

Ex. Recruit Constable Omvir Singh,
s/o Shri Vijay Pal Singh,
r/o Village & Post Office Jadol,
Distt. Bulandshher (UP).

... Applicant

(By Advocate: Shri Shanker Raju)

vs.

Union of India through

1. Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. Commissioner of Police,
Police Headquarters,
I.P. Estate, MSO Building,
New Delhi.
3. Deputy Commissioner of Police,
Traffic, Police Hd. Quarters,
I.P. Estate, New Delhi.

... Respondents

(By Advocate: Shri Amresh Mathur)

O R D E R

delivered by Hon'ble Shri T.N. Bhat, Member (J)

The applicant herein had applied in the month of June, 1995 for recruitment to Delhi Police as a Constable and he was selected and sent for training course. On 1.7.1996 he was deputed in the 4th Bn. of D.A.P. However, vide the impugned order dated 7.3.1997 issued by Deputy Commissioner of Police (Traffic), Police Headquarters, New Delhi the services of the applicant have been terminated in purported exercise of powers under sub rule (1) of Rule 5 of CCS (Temporary Service) Rules, 1965. The applicant has been allowed one month's pay and allowances in lieu of notice.

lunw 8.1.99.

2. Aggrieved by the aforesaid order the applicant has come to the Tribunal contending, inter-alia, that although the impugned order purported to be an order under the aforesaid Temporary Service Rules it was actually based upon an act of alleged misconduct on the part of the applicant in not informing the respondents that prior to his recruitment in Delhi Police he had been implicated in two criminal cases. It is averred by the applicant that both the aforesaid criminal cases were false and that the applicant was never arrested in those cases but had been granted bail. It is further stated that in one of the cases the applicant was later acquitted by the Chief Judicial Magistrate, Anup Shahar.

3. The applicant accordingly prays for the following reliefs:-

"(i) to set aside the impugned order of termination at Ann A-1 and direct the respondents to reinstate the applicant in service w.e.f. 7.3.1997 with all consequential benefits including pay and allowances and continuity of service.

"(ii) to set aside the order of representation dated 2.12.1997 at Annexure A-2.

May 1961

"(iii) any other relief which this Hon'ble Court deems fit in the circumstances of the O.A. may also be awarded to the applicant."

4. Respondents have contested the claim of the applicant on the ground that the impugned order is not stigmatic but is an order of termination simplicitor. It is further contended that the respondents have validly acted in the matter as a person who had at one time been involved in criminal cases could not be held entitled as a matter of right to claim recruitment in Delhi Police. The respondents have relied upon the judgement of the Apex Court in Delhi Administration & Ors. vs. Sushil Kumar.

5. We have heard the learned counsel for the parties and have also perused the material on record.

6. It is not disputed that the termination of the services of the applicant was based upon the fact that he had concealed his involvement in two criminal cases, one under section 323/504 IPC and the other in respect of offence under Section 379 IPC (Theft). The learned counsel for the applicant, relying upon an earlier judgement of this Tribunal dated 8.10.1993 in Vinod Kumar vs. Delhi Administration & Anr. (OA 66/89) argues that once the Tribunal finds that the order of termination is based upon some acts of alleged misconduct a regular disciplinary enquiry has to be taken and recourse cannot be taken to the provisions under Rule 5 of Temporary Service Rules. He also relies upon the judgement of the Apex Court in Commissioner of Police Vs. Virender Pal Singh [Civil Appeal No. 5510 of

W.W.

1997 arising out of SLP (C) No. 10403/97] wherein it was held on the facts of that case that in all fairness a show cause notice should have been given to the delinquent police constable.

7. As already stated, the Apex Court in the aforesaid judgement in Virender Pal Singh (Supra) directed issuance of show cause notice on the peculiar facts of that case. We may add that the Apex Court has specifically stated in the order that they are not laying down any law but that it is only on the facts of the case that the Apex Court was of the view that in all fairness a show cause notice should be given. It is further significant to note that the Apex Court in the said case set aside the order of the Tribunal by which the action of the higher authorities in terminating the services of a police constable had been quashed. However, the appellants in that case were directed to give a show cause notice to the said police constable. Therefore, we are of the considered view that the said judgement of the Apex Court does not help the applicant herein.

8. As regards the judgement of the Tribunal in Vinod Kumar (supra), we find that the Tribunal in that case came to the conclusion that the foundation of the order of termination really was the misconduct attributed to the petitioner in that case. In the instant case, the respondents have taken the plea that even after giving provisional appointment to the applicant the respondents were within their rights to verify his character and

Wyan

antecedents and if the same is found to be suspect the applicant could be validly discharged from service under the Temporary Service Rules.

9. On consideration of the rival contentions made by the learned counsel for the parties, we find ourselves in agreement with the contention raised by the respondents' counsel, for the simple reason that the contention is supported by a later judgement of the Apex Court in Delhi Administration vs. Sunil Kumar reported in 1997 (1) Supreme Court Services Law Judgements 10. The respondents in that case had been selected to the post of Constable in Delhi Police but on verification of his character and antecedents he was not found fit. Accordingly his application was rejected. It was found that he was involved in an offence punishable under Section 304, 324 and 341. The Apex Court held that even though the respondent therein had been acquitted by the criminal court the higher police authorities would be within their rights, on verification of his character and antecedents, to form an opinion that his appointment to the post of Constable would not be desirable. Setting aside the order of the Tribunal by which a direction had been issued for reconsideration of the case of the respondents therein the Apex Court held that the view taken by the appointing authority in the background of that case could not be said to be unwarranted, as the consideration relevant to the case was the antecedents of the candidates and not the result of the criminal case.

10. In view of what has been discussed above, we find no merit in this OA which is accordingly dismissed, leaving the parties to bear their own costs.

Biswas
 (S.P.BISWAS)
 Member (A)
 na

1. May 1999
 (T.N.BHAT)
 Member (J)