

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 213/95

199

T.A.No.

20

DATE OF DECISION 13.10.99

Narender Singh

....Petitioner

Sh.Shankar Raju

....Advocate for the
Petitioner(s)

VERSUS

UII/Lt.Governor of NCT ofRespondent
Delhi through Commissioner of Police
and others.

Ms.Jyotsna Kaushik, learnedAdvocate for the
counsel through proxy counsel Sh. Respondents.
Ajesh Luthra

CORAM

The Hon'ble Smt.Lakshmi Swaminathan, Member (J)

The Hon'ble Shri S.P.Biswas, Member (A)

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

Lakshmi Swaminathan

(Smt.Lakshmi Swaminathan)
Member(J)

Central Administrative Tribunal
Principal Bench

O.A. 213/95

New Delhi this the 13th day of October, 1999

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri S.P. Biswas, Member(A).

Ex. Const. Narender Singh No. 7743/PCR,
son of Shri Jag Pal Singh,
R/o Vill & PO - Bhaproda, PS: Sampla,
Distt. Rohtak (Haryana).

Applicant.

By Advocate Shri Shanker Raju.

Versus

1. Union of India/Lt. Governor of
NCT of Delhi through
Commissioner of Police,
Police Headquarters,
MSO Building, I.P. Estate,
New Delhi.
2. Dy. Commissioner of Police,
(Police Control Room),
Police Headquarters, MSO Building,
I.P. Estate,
New Delhi.

Respondents.

By Advocate Shri Ajesh Luthura proxy for Ms. Jyotsna
Kaushik.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant who was working as Constable with Delhi Police, is aggrieved by the order passed by the respondents dated 18.5.1993 terminating his services under Rule 5 of the CCS (Temporary Services), Rules, 1965 (hereinafter referred to as 'Temporary Service Rules'). He made a representation against this order which has also been rejected by the Commissioner of Police by his letter dated 1.7.1994 (Annexures A-1 and A-2). The applicant had applied for recruitment as Constable in Delhi Police in pursuance of the Notification issued by the respondents. After his selection in the written and physical tests, he was medically examined at Civil Hospital, Delhi on 17.7.1990. He has submitted that at about 4 P.M. on the same date he proceeded to his

native place at Rohtak. On that day, he had filled up an attestation form before the medical examination. On 17.7.1990, a criminal case FIR No.153/90 under Sections 147/149/323/324 IPC was registered at Police Station Sampla at District Rohtak and according to the applicant, his name was falsely given by the complainant when he was in Delhi in connection with his medical examination. He states that the matter pertains to family feud between a number of persons and he has stated that he had nothing to do with the criminal case. He has also stated that he was released on bail on 30.7.1990 and the case is pending in the court.

2. The applicant was selected and appointed as Constable in Delhi Police by letter dated 1.8.1991 and his training concluded on 16.9.1992. The learned counsel for the applicant has very vehemently submitted that the applicant could not have been terminated from service by the impugned order under the Temporary Services Rules. He has submitted that the respondents in their reply have disclosed that the action was taken against the applicant because he had not informed the department about the aforesaid criminal case having been registered against him. He has submitted that since the respondents have stated that he had concealed the relevant facts relating to the criminal case which constitutes violation of Rule 3 of the CCS (Conduct) Rules, 1964 as he has acted in a manner unbecoming of a police officer, they ought to have held an inquiry before proceeding to punish him. He has contended that although on the face of it, the termination order may appear to be without any stigma but in actual fact this was by way of punishment. He has contended that the respondents ought to have issued him a show cause notice before proceeding to terminate his services and on this ground alone he states

that the termination order should be quashed and set aside. According to him, he has an excellent service record without any punishment or warning and, therefore, the respondents could not have proceeded to terminate his services without issuing a show cause notice and affording him a reasonable opportunity to defend his case. Shri Shanker Raju, learned counsel, has contended that the termination order is not an order simpliciter but it is penal in nature on the basis of the misconduct alleged to have been committed by the applicant by suppressing the material facts of his involvement in the criminal case on which an FIR has been filed. He has relied on the judgements of the Supreme Court in **Dipti Prakash Banerjee Vs. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta & Others** (JT 1999 (1) SC 396), **Raj Kumar Vs. Union of India** (1996(1) SLR 378) and **Pramod Kumar Rastogi Vs. Union of India** (1991 Apex Decisions Delhi 1).

3. The respondents have filed their reply controverting the above and we have also heard Shri Ajesh Luthra, learned proxy counsel. The respondents have submitted that the applicant had failed to inform the department about the criminal case registered against him under FIR No.153/90 under Sections 147/149/323/324/ 326 IPC at Police Station Sampla (Haryana). They have stated that they had received a complaint dated 18.6.1992 against the applicant that he was involved in the said criminal case. They have further stated that they made an inquiry and during the course of the inquiry they found that the applicant had given a false statement dated 19.10.1992 where he had clearly denied his involvement in the said criminal case. They have stated that on verification, it was established that the applicant and his family members were very much

involved in the criminal case for which FIR No. 153/90 had been registered. They have submitted that the applicant had given a false statement to the department concealing the facts which constitutes violation of Rule 3 of the CCS (Conduct) Rules, 1964 as he has acted in a manner unbecoming of a Government servant and, therefore, he is unfit for Government service. They have clarified that the applicant was free by 2 PM on 17.7.1990 after his medical examination while the incident took place at 5.30 p.m. on the same date. Shri Ajesh Luthra, learned proxy counsel, has submitted that even after that the applicant could have informed the authorities of the correct state of affairs which he has failed to do and, therefore, has deliberately concealed the facts so as to mislead the department. They have also stated that in his written statement dated 19.10.1990, he had denied having been arrested in any criminal case, whereas in Paragraph 4(ii) of this Original Application, he has stated that he was released on bail on 30.7.1990 and the criminal case is still pending. They have also submitted that whether the case registered against the applicant is justified or not is a matter to be decided by the competent criminal court but the fact is that he did not inform the department about his arrest and bail though he was specifically asked if any criminal case was registered against him and whether he was arrested or bailed out. The learned counsel for the respondents has also submitted that the applicant cannot deny the fact that a criminal case has been registered against him at PS Sampla in which he was arrested and later on released. In fact, he had tried to mislead the department with the plea that the name of his father was "Jagpal" and not "Jaipal" which name was given in the statement, pleading thereby that some other person was involved in the case and not him. This fact was also

2A

JS

25

referred to by Shri Shanker Raju, learned counsel for the applicant, who had stated that the name of applicant's father was wrongly stated by the respondents as "Jaipal" which the applicant had pointed out in reply to the department's queries. In the circumstances of the case, Shri Ajesh Luthra, learned proxy counsel, has submitted that the department had given reasonable opportunity to the applicant to verify the facts and, therefore, his contention that the competent authority had acted totally mechanically is denied. He has also submitted that the services of the applicant were correctly terminated under the Temporary Service Rules and the O.A. may, therefore, be dismissed.

4. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

5. The applicant was appointed as Constable in Delhi Police on 1.8.1991. Although it is well settled that the form of the termination order is not conclusive and in cases where it is warranted, the court has the power to lift the veil to determine the true nature of the order to see if the order is actually punitive or is an simpliciter passed under the Temporary Services Rules, in the facts of the present case, we are not persuaded by the contentions of the learned counsel for the applicant that this is such a case. Shri Shanker Raju, learned counsel, has very vehemently contended that the respondents have proceeded against the applicant without even giving a show cause notice on the specific act of the applicant in trying to conceal the facts that he has been involved in a criminal case and granted bail. It is settled law that in such cases the question whether the impugned termination order is an order simpliciter or is penal in nature will depend on the particular facts and

26

Circumstances of the case. In the present case, while on the one hand the learned counsel for the applicant has vehemently submitted that he has not been involved in the criminal case registered by FIR No. 153/90 on 17.7.1990, at the same time in the Original Application, the applicant has stated that he was released on bail on 30.7.1990. The respondents have stated that the medical examination was over by 2 p.m. on the same date i.e. 17.7.1990. The applicant has also stated that he was got medically examined in Civil Hospital, Delhi on 17.7.1990 and released about 4 p.m. and on the same date he proceeded to his native place at Rohtak where the incident is stated to have occurred later that evening. The respondents have stated that they have made some inquiries from the applicant and he has given a false statement dated 19.10.1992 about his involvement in the said criminal case. The contentions of the learned counsel for the applicant in the rejoinder and at the time of hearing that as there was no case pending against the applicant when he filled up the requisite form, he had also no duty to disclose to the department about his involvement in the criminal case are baseless. There is no denial that the Department had later on made inquiries from the applicant about the criminal case which he had denied. We also see force in the contentions of the learned proxy counsel for the respondents that the applicant did not inform the authorities at any stage about his arrest and release on bail on 17.7.1990 and 30.7.1990, respectively. The applicant's own statement in this application that he was released on bail on 30.7.1990 and he had left for his native place after the conclusion of the medical examination on 17.7.1990 is relevant. His contention that he has been falsely implicated in the criminal case is a matter for the competent criminal court to decide.


YB

27

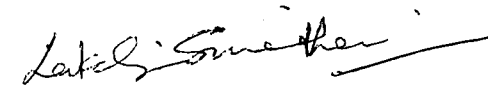
6. In the facts and circumstances of the case, it cannot be stated that the respondents have terminated the services of the applicant without giving any show cause notice to him. The impugned order dated 18.5.1993 is an order simpliciter and does not cast any stigma on the applicant who has been correctly terminated under Rule 5(1) of the Temporary Service Rules. The judgement in **Raj Kumar's case (supra)** relied upon by the applicant will not assist him in the facts of the present case as the applicant had been given an opportunity to clarify the position regarding his involvement in the criminal case by the department later on. The applicant had tried to answer the Department's queries by clarifying that his father's name was "Jagpal" and not "Jaipal" when he could have also given a detailed reply, if he had wanted to. Therefore, in the facts of this case, the contention of the learned counsel for the applicant that the order is a punitive order and it should, therefore, be set aside as the provisions of Article 311(2) of the Constitution and the principles of natural justice have not been complied with, is without merit. In the result, we find no infirmity in the impugned termination order dated 18.5.1993 which is an order simpliciter.

7. For the reasons given above, we find no merit in this application and the same is accordingly dismissed.

No order as to costs.


(S.P. Biswas)
Member(A)

'SRD'


(Smt. Lakshmi Swaminathan)
Member(J)