

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. NO. 829/1995

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New Delhi this the 16<sup>th</sup> day of March, 1999.

HON'BLE SHRI JUSTICE S. VENKARARAMAN, VICE CHAIRMAN

HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

Ashok Kumar S/O Baldev Raj (deceased)  
through L.Rs. :

1. Mrs. Shanti Devi W/O  
Baldev Raj Sharma,  
R/O 59, Ram Nagar,  
Panipat, Haryana.
2. Baldev Raj Sharma,  
R/O 59, Ram Nagar,  
Panpat, Haryana.
3. Tilak Raj Sharma S/O  
Baldev Raj Sharma,  
R/O 59, Ram Nagar,  
Panpat, Haryana.
4. Sanjay Sharma S/O Baldev Raj Sharma,  
R/O 59, Ram Nagar,  
Panipat, Haryana. ... Applicants

( By Shri George Parackin, Advocate )

-Versus-

1. Lt. Governor,  
National Capital Territory of Delhi,  
Raj Niwas Marg,  
Delhi-110006.
2. Commissioner of Police,  
Police Headquarters,  
MSO Building, IP Estate,  
New Delhi-110002. ... Respondents

( By Shri Girish Kathpalia, Advocate )

O R D E R

Shri Justice S. Venkataraman :

The applicant was appointed as a temporary Head  
Constable (Ministerial) in Delhi Police w.e.f.

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22.2.1989. According to the applicant, he was afflicted with psychoneurosis in the later part of 1991 and he took treatment for the same. Having been on leave for some time, he reported for duty on 23.9.1991 after he was certified to be fit to resume duty. Even after reporting for duty, the applicant is stated to have been attending for maintenance therapy. According to the applicant, during the period of his treatment the examination for Head Constable was held in March, 1992 and on 1.5.1992 the results of the examination were announced. As the applicant could not prepare well on account of his illness he could not succeed in the examination. The respondents by order dated 8.1.1993 terminated the services of the applicant under sub-rule (1) of rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 giving the sum equivalent to the amount of his pay plus allowances for the period of notice. Though the applicant submitted a mercy appeal and a representation, the applicant has not been given relief. Hence he has filed this application challenging the order of termination of his services.

2. The respondents in their reply have pleaded that the applicant was initially deputed to PHQ to undergo basic training course w.e.f. 1.3.1990; that the applicant did not qualify in the test and was declared failed in June, 1990; that he was again deputed along with the next batch for the examination held in September, 1990; that then also he did not

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succeed; that he did not succeed even in the third attempt in February, 1991; that a last chance was given to him to appear for the examination in June, 1991, when also he failed and that, however, the department took a lenient view and gave the applicant a special chance to appear for the examination in March, 1992; and that as the applicant failed even in that examination, the department had no other alternative but to terminate his services. They have denied any knowledge about the applicant's ailment.

3. After the filing of this application, the applicant expired and his L.Rs. have been brought on record.

4. The learned counsel for applicant straneously contended that under the provisions of the Delhi Police (Appointment and Recruitment) Rules, 1980, a candidate would be on probation for two years and that the probation period would be extended by one year and that beyond three years a candidate cannot be kept on probation; that in the instant case, as the applicant was appointed on 22.2.1989, the maximum period of probation expired on 22.2.1992; and that after that period he must be deemed to have been confirmed and the respondents could not have made use of the provisions of the C.C.S. (Temporary Service) Rules to terminate the applicant's services. He further contended that the applicant was suffering from a severe ailment and that after being found fit

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he joined service and this order of termination has been passed because of his ailment, and that the impugned order is virtually passed as a punishment and the respondents could not have taken such an action without holding an inquiry under Article 311 of the Constitution. He cited some authorities to contend that the Tribunal can lift the veil and find out the real object in passing the impugned order. He also contended that there is no provision stipulating that departmental examinations had to be passed before the probation period is declared to have been completed satisfactorily, and that the impugned order could not have been passed on the ground that the applicant did not pass the departmental examinations. Lastly, relying on the decision of the Supreme Court in **Narendra Kumar Chandla v. State of Haryana**, AIR 1995 SC 519, he contended that as the applicant was suffering from a serious ailment, the department should not have terminated his services but should have provided him with a suitable job in view of Article 21 of the Constitution.

5. We are unable to accept any of the contentions urged by the learned counsel for the applicant. It is no doubt true that under the Delhi Police (Appointment and Recruitment) Rules, the maximum period of probation is three years. But the contention that once that period is over, the employee automatically becomes a confirmed employee, is untenable. The applicant's appointment itself is

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temporary in nature as made clear in the order of appointment. Till there is an order declaring that he had completed his period of probation satisfactorily and confirming him, he would have continued to be a temporary employee.

6. The respondents have produced standing order No.27/1991 which stipulated<sup>that</sup> an appointee will have to undergo training and pass certain departmental examinations. It is also specifically stipulated that the District Unif DCP will not declare a Head Constable confirmed till he or she qualifies in the final examination at Police Training School. It is further provided that successive failure in two chances will be a ground <sup>to infer</sup> ~~for~~ unsuitability. In the instant case, the applicant has been given several chances to pass the examination, though he appears to have suffered from psychoneurosis in the later part of 1991, Even earlier to that he had failed four times in the examination. In spite of that, the department gave another special chance to him in March, 1992 when again he failed. Under these circumstances, there was no other <sup>go</sup> ~~how~~ for the department but to terminate the services of the applicant.

7. The question of lifting the veil and finding out whether the order of termination is passed on account of a misconduct does not arise here, as the termination has been effected mainly on account of the failure of the applicant to pass the departmental

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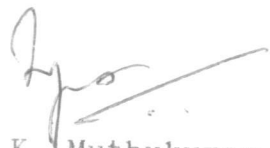
examination even after several chances were given. The standing order shows that failure in two attempts could be taken to indicate unsuitability for the job. There is no basis for the submission of the learned counsel for respondents that it is because of the applicant's ailment the impugned order has been passed.

8. So far as the judgment in **Narendra Kumar Chandla**<sup>case</sup> (supra) is concerned, that was the case of a permanent employee undergoing amputation on account of cancer ~~and~~ the department had absorbed him in the pay scale of Rs.825-1300. In the appeal preferred by the employee, the Supreme Court after observing that Article 21 protects the right to livelihood as an integral facet of right to live, held that when an employee is afflicted with unfortunate disease due to which he is unable to perform the duties of the post he was holding, the employer must make every endeavour to adjust him in a post in which the employee would be suitable to discharge the duties. This is not a case where the applicant was discharged on the ground of his illness. That authority can be of no help to the present case where he had to be discharged on account of his failure to pass the departmental examinations in spite of several chances given to him. We do not find any illegality in the impugned order.

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9. For the above reasons, this application fails and the same is dismissed. No costs.



( K. Muthukumar )  
Member (A)



( S. ~~Venkataraman~~ )  
Vice Chairman

/as/