

CAT/1

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 301/96
T.A. No.

199

30-5-97

DATE OF DECISION

Shri Ved Ram

Petitioner

Shri A.K.Pandey

Advocate for the Petitioner(s)

Commissioner of Police & Ors

Respondent

Sh. Rajinder Pandita

Advocate for the Respondent

CORAM

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

The Hon'ble Shri R.K. Ahooja, M(A)

1. To be referred to the Reporter or not? *yes*

2. Whether it needs to be circulated to other Benches of the Trib.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench.

O.A. 301/96

New Delhi this the 30th day of June, 1997

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

Hon'ble Shri R.K. Ahooja, Member(A).

Shri Ved Ram, Ex. Constable,
S/o Shri Kishan Shai,
R/o Vill & PO -Dayalpur,
Distt. Faridabad(Har).

...Applicant.

By Advocate Shri A.K. Pandey.

Versus

1. Commissioner of Police,
Delhi Police Headquarters,
ITO, Delhi.
2. The Principal,
Police Training School,
Jharoda Kalan,
Delhi.

...Respondents.

By Advocate Shri Rajinder Pandita.

O R D E R

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

The applicant is aggrieved by the termination order dated 27.1.1992 issued by the respondents. By this order, the respondents in pursuance of the proviso to sub-rule (i) of Rule 5 of the CCS (Temporary Service) Rules, 1965, terminated the services of the applicant who was a recruit constable under training, forthwith.

2. The applicant states that he joined the Delhi Police in pursuance of the call letter dated 26.7.1991 and was asked to report for duty on 7.8.1991. He submits that since the termination order did not give any reasons as to why his services were terminated, he had approached the respondents who had told him that since a criminal case was pending against him, he had been terminated from service. He submits that he made ~~two~~ representations against the impugned order dated 27.1.1992, on 3.3.1992 and 28.3.1995. The respondents

18

gave him reply to his representation dated 3.3.1992, stating that the same has been rejected by the Commissioner of Police, Delhi and hence no further action is called for, which, according to him, he has received on 15.4.1995. The learned counsel for the applicant has alleged that the rejection of his representation does not disclose any reasons nor does the impugned termination order which are, therefore, illegal. The applicant's counsel submits that at the time of the pre-selection inquiry, there was no case pending against the applicant and in any case the criminal case instituted against the applicant was finally judgement dated 9.12.1994. disposed of acquitting him by/ He has, therefore, submitted that the termination order has been passed without holding of proper inquiry and it cannot, therefore, be sustained in law and that the same may be quashed directing the respondents to take him back in service with all consequential benefits, including compensation for the period he remained unemployed.

2. The respondents have filed their reply in which they have submitted that the application is not maintainable as the applicant has not exhausted the departmental remedy. They have submitted that the applicant was enlisted in Delhi Police in 1991 against constabulary No. 3009/D. On receipt of ~~the~~ two complaints against the recruit constable/applicant that he was involved in a case, FIR No. 237/90 dated 14.11.1990 under Sections 498-A/406 IPC in Faridabad (Haryana), the case was referred to ^{the} Supdt. of Police, Faridabad for necessary clarification/report which was received on 31.12.1991. In this report, it was stated that the applicant was involved in the above said case and the matter was pending trial in the court. The respondents have, therefore, submitted that at the time of recruitment of the applicant, he had concealed the facts and adopted deceitful means for seeking employment in Delhi Police and hence his services were terminated under Rule 5(i) of the CCS(Temporary Service) Rules, 1965. Shri Rajinder

18.

Pandita, learned counsel for the respondents, has submitted that at the time the applicant joined Delhi Police on 7.8.1991, he had not disclosed the fact of his being involved in the criminal case, referred to above. He relies on the judgement of the Supreme Court in Delhi Administration Vs. Sushil Kumar (JT 1996(10) 34). He contends that as held by the Supreme Court in this case, the applicant being involved in a criminal case at the time of joining the Delhi Police was undesirable and he had, therefore, been correctly terminated from service as recruit constable under the CCS (Temporary Service) Rules, 1965 on the basis of the report of the Supdt. of Police, Faridabad, which was received on 31.12.1991. One of the main contentions of the learned counsel for the respondents was that the applicant had failed to disclose when he applied for recruitment to Delhi Police in 1990 that he was involved in a criminal case. The respondents have produced/original application form filled by the applicant in April/May, 1990 in which against the column whether he has been chargesheeted in any criminal case, he had answered in the negative. Shri Pandita, learned counsel, however, submits that this shows that the applicant had not disclosed the fact of his involvement in the criminal case at the time when he was recruited in the Delhi Police which he was required to disclose at the time of joining on 7th of August, 1991. Therefore, he submits that the application may be dismissed as the applicant has been correctly terminated from service under the provisions of the CCS (Temporary Service) Rules, 1965.

3. From the reply filed by the respondents and the submissions made by the learned counsel, it is clear that their main contention is that the applicant had failed to disclose the fact of his involvement in the criminal case at the time of joining the Delhi Police. At the time when he made the original application to the Delhi Police in April/May, 1990, he had answered the query whether any criminal case was pending against him in the negative. The FIR No. 237 is

dated 14.11.1990 and, therefore, his non-disclosure at that time cannot be held against him. When the Haryana Police had done his police verification on 11.11.1990, that was three days prior to the registration of the FIR on 14.11.1990. On these facts, the learned counsel for the applicant has contended that there was no criminal case pending against him and he had not concealed any material facts on the material date, that is the date when he had applied for the post for which his services could be terminated. However, at the time when the applicant joined the Delhi Police on 7.8.1991, the criminal case FIR no. 237/90 has already been registered in Faridabad, Haryana and the case was pending against him. Admittedly, he did not disclose this fact either at the time of joining the Delhi Police or thereafter to the authorities. At the same time, it appears that there were no specific instructions or form which he had to fill at the time of joining. It was only later when on receipt of the report of the Supdt. of Police, Faridabad on 31.12.1991 that the respondents were apprised of the situation regarding the pending criminal case. The question is whether this is a relevant material which could be taken into account by the competent authority in passing the impugned order terminating his service on 27.1.1992, within about 5 months. The Delhi Police being a disciplined force, the character and antecedents of the recruit constable are important, and the fact that he was facing a criminal case on the date of his appointment cannot be ignored. By fortuitous circumstance, it might be that the applicant filled the application form in 1990 correctly, but he cannot take undue advantage of that fact alone, as contended by his counsel. In our view, the decision of the respondents cannot be faulted. The fact that he has been later acquitted by the judgement dated 9.12.1994 will also not assist him in considering the relevant circumstances at the time of his appointment and termination. The decision of the Supreme Court in Delhi Administration Vs. Sushil Kumar (supra), is relevant to the

82

facts in this case. In this case, the respondents had on verification of the applicant's antecedents come to the conclusion that his appointment to the post of Constable was not found desirable. The respondents had appealed in the Supreme Court against the Tribunal's order allowing the application. On the question whether the view taken was correct in law, the Supreme Court has held as follows:

"...The question is: whether the view taken by the Tribunal is correct in law? It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was physically found fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant to the case is of the antecedents of the candidate. Appointing Authority, therefore, has rightly focussed this aspect and found him not desirable to appoint him in service".

4. Therefore, in the totality of the facts, the decision of the respondents to terminate the services of the applicant by the impugned order dated 27.1.1992 when the criminal case was pending against him cannot be said to be unwarranted. The impugned termination order has been passed under Rule 5(i) of the CCS (Temporary Service) Rules, 1965 which are applicable to the Delhi Police under Notification

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dated 17.12.1980. This order does not cast any stigma on the applicant but is an order simpliciter. We, therefore, find no good ground to justify any interference in the matter.

5. In the result, this application fails and it is accordingly dismissed. No order as to costs.

R.K. Ahuja
(R.K. Ahuja)
Member(A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'