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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 2440 of 1997

New Delhi, this the 13th day of January 1999

HON'BLE MR. A.V. HARIDASAN, V.C. (J)
HON'BLE MR. R.K. AHOOJA, M (A)

Sh. Nand Kishore Agarwal, S/O Sh. Duli
Chand Agarwal, R/O H.No. 283, Sector -
15A, Faridabad, Haryana.

--APPLICANT.

(By Advocate Sh. Jog Singh)

Versus

1. Union of India through Commissioner
of Police, Police Headquarter, I.P.
Estate, New Delhi.
2. Principal, Additional Commissioner of
Police, Police Training School,
Jharoda Kalan, New Delhi.

--RESPONDENTS.

(By Advocate Sh. Anoop Bagai)

ORDER

By Hon'ble Mr. R.K. Ahooja, M (A)

The applicant is aggrieved by the termination of his services as A.S.I. in Delhi Police by the the order dated 15.7.1995 issued by the Principal, Police Training School in exercise of the provision under proviso Sub-rule (i) of Rule 5 of C.C.S. (Temporary Service) Rules, 1965. The representation made by the applicant was rejected by the respondents vide order dated 9.2.1996

2. The applicant was selected for the post of A.S.I. in Delhi Police on the basis of the result of the tests and interview conducted by the Staff Selection Commission followed by medical examination and found fit physically as well as mentally. The appointment was purely on a temporary basis. The applicant was thereafter sent to Police Training School on 15.5.1995. He states that during the training he had some physical problem but he

was wrongfully referred to psychological department of Ram Manohar Lohiya Hospital, Delhi on 24.6.1995 by the Civil Surgeon where he was advised to take rest which was extended for two weeks and yet again for another two weeks. Due to his illness, he made a representation to the Principal Police Training School for extension of his training but the same was rejected by Sr. Additional Commissioner of Police as per reply received dated 14.6.1995 (Annexure-4). Thereafter his services were terminated by the order dated 15.7.1995 (Annexure A-1) which reads as follows:-

"In pursuance of the proviso to Sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I Seva Dass, Principal, Police Training School, Jharoda Kalan, New Delhi hereby terminate forthwith the services of temporary SI, Nand Kishore, No. D/1105 and direct that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of one months notice, at the same rates at which he was drawing immediately before the termination of his services.

He is not in possession of any government accommodation."

3. The applicant assails the order of termination on various grounds. He contends that even though on the face of it, the impugned order is an order simpliciter, the basis of this order is the conclusion of the respondents that he is mentally weak and this constitutes a stigma on the applicant. The applicant, therefore, claims that his services could not have been terminated without giving him due opportunity to produce his defence under Article 311(2) of the Constitution. The applicant

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further submits that he had joined as A.S.I. in Police Department after a proper medical examination and hence, there was no basis for concluding that he was medically unfit. He also alleges that he has been treated in a discriminatory manner because in similar circumstances another ASI, similarly situated Sh. Prem Singh during his illness was allowed to join the training with the next batch but the same consideration was not given to him despite his request.

4. A Reply has been filed by Principal, Police Training School in which it has been stated that after joining the Institution, the applicant was absent on 7 different occasions between 17.5.1995 to 27.6.1995. Thereafter he was continuously on medical rest upto the date of his discharge i.e. 15.7.1995. It had been informed that the applicant was not able to eat properly or do any out-door activities, he could not sit the full duration of the Class nor could concentrate on his studies. It was also found that the applicant was taking treatment for mental depression. This was also admitted by the applicant before Addl. Commissioner of Police Training in O.R. on 15.7.1995. Keeping in view his unauthorized absence from training as well as his inability to undertake basic training and unsuitability for Police Service, Principal, PTS terminated the services of the applicant under Sub-rule (1) of Rule 5 of C.C.S. (Temporary Service) Rules, 1965.

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5. We have heard the counsel on both sides and have carefully gone through the pleadings. Sh. Jog Singh, learned counsel for the applicant argued that relying on the various judgements of the Hon'ble Supreme Court that the veil had to be lifted to ascertain the real cause behind the termination. He submitted that if it was found that the foundation of the order caused a stigma then the impugned order had to be regarded as punitive in nature and since the applicant had not been given an opportunity to be heard, the impugned order was liable to be set aside. He pointed out that the period of absence, cited by the respondents in the reply, had been regularised by the respondents and, therefore, it could not form the base of the order of termination. It was also submitted by Sh. Jog Singh, learned counsel that since the respondents had not handed over one months' salary in lieu of the notice period alongwith the order of termination, the order could not be considered valid.

6. Sh. Jog Singh, learned counsel relied on the judgements in the cases of Shamsher Singh & Anr. Vs. State of Punjab, AIR (1974) SC 814, Anoop Jaiswal Vs. Govt. of India, SLR 1984 (1) 426, Raj Kumar Vs. Union of India, SLR 1996 (1) AT 378, Dr. (Mrs.) Sumati P. Shere Vs. Union of India & Ors., SLR 1989 (2) SC 422, Smt. Rajinder Kaur Vs. Punjab State and another, SLR 1987 (1) SC 33, Nepal Singh Vs. State of U.P. and Others, (1985) 1 SCC 56, Samsher Singh Vs. State of Haryana and Others, SLR 1996 (1) 298 and Ishwari Lal Vs. State Bank of Travancore, 1996 V AD (Delhi) 682.

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7. In Shamsher Singh's case (Supra), the petitioner was a Subordinate Judge on probation whose services were terminated by the Government of Punjab by an order which did not give any reasons for the termination. The Hon'ble Supreme Court decided that while no abstract proposition could be laid down that where the services of probationer are terminated without saying anything more in the order of termination that it can never amount to a punishment in the facts and circumstances of the case, the decisive factor would be whether the order is by way of punishment. In Anoop Jaiswal's case (Supra), the test laid down by the Apex Court was whether the form of the order is merely a camouflage for an order of dismissal for misconduct in which case the order of discharge could be invalid on the ground that a reasonable opportunity to defend, had not been provided. In Raj Kumar's case (Supra), this Tribunal held that in the case of the applicant whose services were terminated under C.C.S. (Temporary Service) Rules, 1965 if the order of termination caused a stigma or blame, it was obligatory to hold an enquiry. In Dr. (Mrs.) Sumati P. Shere's case (Supra), it was held that termination of services on ground of unsatisfactory performance required that employee should be put on notice to improve his work even if no common enquiry was required. In Smt. Rajinder Kaur's case (Supra) it was held that discharge was on account of misconduct then an enquiry had to be conducted.

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8. Viewed in the light of the abovementioned decisions, the question to be decided is whether the impugned order of termination of services, in the present case, is a camouflage for punishment on account of misconduct. The respondents have stated that the applicant had been absent on 7 different occasions right from the beginning of his training. They have also stated that the applicant had not been taking interest in out-door training and was found to be mentally weak. It is not indicated as to how it was concluded that the applicant suffered from mental deficiency since he had been selected for the post of ASI on the basis of tests and interviews conducted by the Staff Selection Commission and what is more he had been medically examined before appointment to the Police force. There is no indication in the reply of the respondents that the conclusion regarding mental proficiency of the applicant was reached either on the basis of any tests which were part of the training curriculum or on the basis of a medical examination. As regards the period of absence, it has not been denied on the part of the respondents that the absence on each occasion was regularised. The conclusion is, therefore, inescapable that the impugned order of termination of services was founded on a perception~~al~~ that the applicant was guilty of misconduct in absenting himself and also on an assessment that the applicant was unfit and unsuitable in Police service because he was mentally weak. The respondents had neither conducted an enquiry to establish the misconduct so that the applicant could have had a fair opportunity to defend himself nor they had conducted any types of

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tests, medical or otherwise to establish that he was mentally weak. Clearly, the order of termination though an order simpliciter was a camouflage for an order of punishment and since no enquiry was conducted in which the applicant was given opportunity to show cause, the impugned order on this ground alone cannot be sustained.

9. We are fortified in our conclusion further by the fact that the respondents failed to pay the amount of one month's salary in lieu of the notice of one month. In L.P.A. No. 93 of 1982 - Prem Chand Gupta Vs. Management of MCD, 1997 (42) DRJ (DB) 555, it was held by Delhi High Court that when the salary and allowances were not paid and the amount was not tendered along with the notice, the order of termination of service, was not valid. In this case, it has been asserted by the applicant and not denied by the respondents that even till date the amount of one month's salary has not been paid to the applicant in lieu of the notice period.

10. In light of the above discussion, we set aside the impugned order of termination of service. The applicant shall be reinstated in service and deputed for training, with all consequential benefits. No order as to costs.

R.K. Ahooja
(R.K. AHOOGJA)
MEMBER (A)

[sunil]

A.V. Haridasan
(A.V. HARIDASAN)
VICE CHAIRMAN (J)