

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 989/97

(15)

New Delhi, this 7th day of August, 1998

Hon'ble Shri T. N. Bhat, Member (J)
Hon'ble Shri S.P. Biswas, Member (A)

In the matter of:

Kartar Singh,
Ex-Constable,
s/o Lila Ram,
r/o village Bir Sunar Wala,
P.O. Nehru College,
Jhajjar, Distt. Rohtak (Haryana)

....Applicant

(By Advocate: Shri A.K. Bajpai)

Versus

1. Commissioner of Police(Delhi)
Police Headquarters,
MSO Building, I.T.O.,
New Delhi.

2. Deputy Commissioner of Police,
10th Bn, DAP, Pitampura Police,
Delhi.

...Respondents

(By Advocate: Shri Rajinder Pandita)

O R D E R

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

The applicant who had been appointed as Constable in Delhi Police on 1.3.1994 is aggrieved by the order dated 13.9.1995 passed by the Deputy Commissioner of Police, 10th Bn D.A.P. by which the applicant's services have been terminated under Rule 5 of the Central Civil Services (Temporary Service) Rules. The impugned order is assailed by the applicant mainly on the ground that it was passed as a measure of punishment without holding a regular enquiry. According to the applicant such a procedure is against the provisions of Article 311 of the Constitution and contravenes the principles of natural

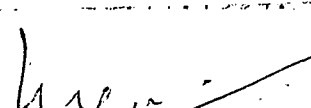
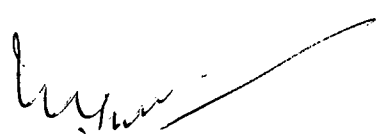
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justice. It is averred by the applicant that the impugned order is not an order of termination simplicitor but is punitive in nature.

2. The respondents have resisted the O.A. by filing a detailed counter in which it is averred that the applicant's performance and conduct were not found satisfactory and, therefore, the respondents were within their rights to terminate the services of the applicant under the aforesaid Temporary Service Rules. It is emphatically denied that the impugned order is stigmatic and it is contended that this is not a case of punishment and, therefore, no enquiry was necessary.

3. It is, however, admitted by the respondents that the applicant had furnished a certificate of his belonging to the Scheduled Tribe community which assertion was later found to be false and that, therefore, his services were terminated on the allegations based on furnishing of such a certificate.

4. We have heard the learned counsel for the parties. Learned counsel for the applicant, basing his arguments on the judgement of Delhi High Court reported in 1984 (2) SLJ 20 and 1973 SLJ 273 contended that the services of even a temporary employee cannot be terminated on the basis of complaints without holding enquiry. He further argues that even according to the respondents' own admission the applicant's services were terminated on the ground that he belonged to the Scheduled Caste community but had furnished a false certificate that he belonged to the Scheduled Tribe community.



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5. Learned counsel for the respondents on the other hand relies upon the judgements of the Apex Court in State of Uttar Pradesh & Ors. vs. K.K. Shukla, reported in 1991 (1) SCC 691 and Kidwai Memorial Institute vs. Dr. Pandurang reported in 1992 (4) SCC 790. He further relies upon some judgements of the Tribunal.

6. It would suffice to refer to just one judgement of this Tribunal delivered by a Division Bench headed by Hon'ble Shri S.R. Adige, Member (A), as he then was. The judgement has been delivered in OA 1945/91 and OA 1946/91 on 21.7.1995. In the aforesaid judgement, the judgements of the Apex Courts in K.K. Shukla (supra) and Kidwai Memorial Institute have been discussed and the relevant observations made by the Apex Court in those judgements have been extracted. In Kidwai Memorial Institute (Supra) the Apex Court, after noticing the judgement in Anoop Jaiswal case [1984 (1) SLR 426 and K.K. Shukla's case, laid down the following principle:

"The principle of tearing of the veil for finding out the real nature of the order shall be applicable only in a case where the court is satisfied that there is a direct nexus between the charge so levelled and the action taken. If the decision is taken to terminate the services of an employee during the period of probation after taking into consideration the overall performance and some action or inaction on the part of such employee then it could not be said that it amounts to his removal from service as punishment".

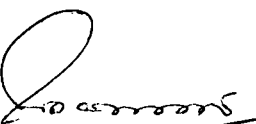
7. A similar view is taken by another Bench of the Tribunal in Shri Vinod Kumar vs. Delhi Administration (OA 639/90) in the judgement dated 25.11.1994. Referring to the Apex Court judgement in K.K.

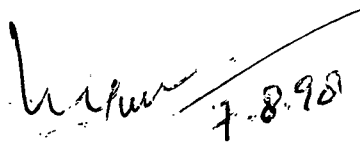
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Shukla's case, the Tribunal held that a temporary government servant has no right to hold the post and whenever the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency it may either terminate his services in accordance with the terms and conditions of the service or it may decide to take punitive action. In the instant case, the competent authority has chosen to terminate the applicant's services and that is why there is no mention of any misconduct in the impugned order of termination. In this view of the matter the applicant cannot insist upon an opportunity of being heard to be given to him before his services are terminated.

8. It is not the case of the applicant that he was a permanent employee and, therefore, the respondents were within their rights to terminate his services on the ground of unsatisfactory performance or even on the ground of misconduct.

9. For the above reasons we find no force in this O.A. The O.A. is accordingly dismissed, leaving the parties to bear their own costs.


(S.P. Biswas)-
Member (A)


(T.N. Bhat)
Member (J)

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