

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

...

OA.No.2273 of 1994

New Delhi, this 27th day of July, 1999.

HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN(J)
HON'BLE SHRI S.P. BISWAS, MEMBER(A)

Vinod Kumar
S/o Shri Mahabir Singh
R/o Village Daryapur Khurd
P.O. Ujwa, P.S. Jafferpur Kalan
Distt. South-West
NEW DELHI-73.

... Applicant

By Advocate: Shri S.P. Sharma

versus

1. Commissioner of Police
Police Headquarters
I.P. Estate
NEW Delhi.
2. The Deputy Commissioner of Police
Security Lines P.O. Ashoka Hotel
Vinay Marg
New Delhi.110003. ... Respondents

By Advocate: Shri Rajinder Pandita

O R D E R (ORAL)

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

The applicant, a Constable in Delhi Police seeks to challenge the orders dated 24.11.93 and 22.9.94 respectively. By the former, he has been removed from service by the Deputy Commissioner of Police whereas by the latter his appeal against the order of the disciplinary authority dated 24.11.93 under Sub Rule (1) of Rule 5 of CCS(Temporary Service) Rules, 1965, has been rejected.

2. The learned counsel for the applicant seeks to challenge the aforesaid orders on the following grounds:-

Firstly, the order is not a speaking order. Neither the charges against the applicant have been explained, nor there are any discussion of evidence based on which the disciplinary authority has held the charges as established.

Secondly, the order of the disciplinary authority in that the provisions of Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980 have not been complied with. Under these provisions, approval of the Additional Commissioner of Police was required before proceeding with the departmental enquiry. This has not been done.

Thirdly, the applicant had attained the status of a confirmed employee having completed his period of probation for two years. The respondents have not come out with an order of confirmation even though he had worked beyond two years. The mere continuation of his services beyond the aforesaid period could be taken as having granted confirmation automatically.

3. The learned counsel for the respondents controverted all the claims. It has been submitted that the applicant had been supplied the summary of allegation, list of witnesses and list of documents relied upon. It has been contended that the applicant should have

applied for supply of copies of documents in writing in case he really wanted. The order of disciplinary authority mentions the documents provided and also the reasons why the services of the applicant have been terminated under Sub-Rule (1) of Rule 5 of the CCS(Temporary Service)Rules, 1965 read with Delhi Police(Punishment & Appeal)Rules,1980. The respondents would also submit that there was no requirement for obtaining the prior approval of the Additional Commissioner of Police since the applicant was not involved in a public dealing case. The requirements of Rule 15(2) of Delhi Police (Punishment & Appeal) Rules,1980 is applicable only when an officer deals with the matter involving public interest.


4. We have heard the learned counsel for both parties and perused the records.

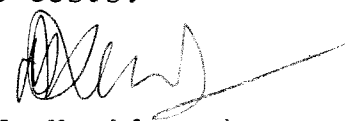
5. It is well settled in service jurisprudence that confirmation has to be preceded by a positive action or decision by the appropriate authorities. Mere continuation in office beyond the prescribed period of probation does not automatically confer the right to confirmation as has been held by the Apex Court in a long line of decisions. If any authority is required for this proposition, it is available in the ^{cases} **State of Punjab Vs Dharam Singh Vs 1968 SC 1210 and Jai Kishan Vs. Com. Of Police, Delhi & Anr. (1995) 31 ATC 148.**

6. One of the basic issues which goes to determine the guilt of the applicant is his

counter signatures on each of the vouchers in token of having received petrol from different petrol pumps. Admittedly, the applicant has not denied that ^{those} signatures on the vouchers are not his. In his defence statement the applicant has not denied that he did not receive the petrol from pumps as mentioned in the charge. In a departmental enquiry like this, preponderance of evidences go to establish applicant's involvement/irregularity in receiving petrol for official purposes but without adhering to the prescribed procedure for the same.

7. In view of the detailed positions as aforesaid, the OA is dismissed. No costs.


(S. P. Biswas)
Member(A)


(A.V. Haridasan)
Vice Chairman(J)

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