

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 926/94

New Delhi this the 24thday of April, 1998.

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Devender Singh

...Applicant

(By Advocate Smt. Avnish Ahlawat)

-Versus-

Govt. of National Capital
Territory of Delhi,
through Commissioner of Police,
Delhi Police & Others

...Respondents

(By Advocate Shri S.K. Gupta, proxy counsel for Shri B.S.
Gupta, Advocate)

1. To be referred to the Reporter or not? Yes
2. To be circulated to other Benches of the Tribunal? No

AV
(Dr. A. Vedavalli)
Member (J)

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HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Devender Singh,
R/o Village & Post office Kandera,
Police Station Ramlal,
District Meerut, U.P.

...Applicant

(By Advocate Smt. Avnish Ahlawat)

-Versus-

1. Govt. of National Capital
Territory of Delhi,
through Commissioner of Police,
Delhi Police,
M.S.O. Building, I.P. Estate,
New Delhi.

2. Sh. S.N. Srivastava,
Dy. Commissioner of Police,
Central District,
Darya Ganj,
Delhi.

...Respondents

(By Advocate Shri S.K. Gupta, proxy Counsel for Sh. B.S.
Gupta, Advocate).

O R D E R

HON'BLE DR. A. VEDAVALLI, MEMBER (J):

The applicant, Devender Singh, is aggrieved by an order dated 13/15.2.93 terminating his services under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 (Annexure A) and has impugned the same in this O.A.

2. The facts of this case, briefly stated, are as under:

2.1 The applicant submitted his application form for the post of Temporary Constable in the Delhi Police in July, 1990 after qualifying in the required tests. He joined the training on 12.8.91 and was enlisted in that post by an order dated 5.10.91. He filled up an attestation form on 4.10.90.

But, he did not disclose in the aforesaid form that two criminal cases were registered against him and pending before the Court under several provisions of the Indian Penal Code at the time of submission of his application form and enlistment. Both the criminal cases were decided and as per the judgement of the 6th Additional District and Sessions Judge, Meerut dated 29.8.91 (Annexure C) and the 8th Additional Sessions Judge dated 22.4.92 (Annexure B) the applicant was acquitted. However, his services were terminated by the impugned order. He submitted a representation to respondent No.1 dated 4.3.93 (Annexure D) followed up by reminders.

2.2 The applicant seeks quashing of the impugned order under direction to reinstated him in service with all consequential benefits including seniority, pay and allowances etc. on the grounds stated by him in the O.A.

3. The respondents have contested the OA and have filed their reply.

4. The impugned order dated 13/15.2.93 (Annexure A) runs thus:-

"O R D E R

"In pursuance of the proviso to Sub Rule (1) of Rule 5 of Central Civil Services (Temporary Service) Rules, 1965, I, S.N. Srivastava, Addl. Dy. Commissioner of Police, Central District, Delhi hereby terminated forthwith the services of Constable Devender Singh No.2510/C and directed that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice at the same rates at which he was drawing them immediately before the termination of



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his service or as the case may be, for the period by which such notice falls short of one month.

He is not in occupation of Govt. Qr.

sd/-
(S.N. SHRIVASTAVA)
ADDL. DY. COMMISSIONER OF POLICE,
CENTRAL DISTRICT : DELHI."

5. The aforesaid order prima facie does not contain any reasons for termination of the services of the applicant. However, the respondents have submitted that the applicant adopted deceitful means for seeking employment in Delhi Police after his involvement in two criminal cases and concealed the concerned facts in the application form as well as in the attestation form at the time of final selection to the post and also gave a wrong permanent address at District Muzzafar Nagar to avoid detection in the aforesaid criminal cases in spite of the clear warnings at serial No.1,2 & 3 of the aforesaid forms. Accordingly his services were terminated under the provisions of Rule 5 of the CCS (TS) Rules, 1965 by the impugned order dated 13/15.2.93.

6. Applicant's case in a nutshell is that he was falsely involved in the aforesaid criminal case due to enmity and was wrongly advised by some individuals and hence he did not give this information though it was required to be given while filling up column 11 of the attestation form and that ultimately he was acquitted by the criminal court in both the cases. Learned counsel for the applicant contended that though the impugned order appeared to be innocuous, it was in fact an order of punishment because he did not mention about two cases in the aforesaid form. She submitted that the said order is illegal and void as being violative of the principles of natural justice since no notice was given.

(21)

7. Learned counsel for the respondents in reply submitted that the applicant's representation dated 4.3.93 against the termination of his service has already been rejected by the Commissioner of Police by an order dated 1.6.94 which was conveyed to him by office order dated 3.6.94. He has also submitted that the reasons given by the applicant for not furnishing the information in column 11 of the attestation form in spite of the clear cut warning given in the said form as well as the application form cannot be a valid excuse and that whether he was acquitted or not in the criminal cases is not material. The non disclosure or concealment of the required information and also the furnishing of a wrong permanent address is a deliberate one which was done with an intention to deceive the authorities and hence he was considered unfit to be retained in a disciplined force. It was also submitted by him that the impugned order is valid being an order simpliciter and even in the absence of notice the applicant's services were lawfully terminated forthwith under Rule 5 of the aforesaid rules by giving him a sum equivalent to the amount of his pay and allowances for the period of notice at the same rates at which he was drawing then immediately before termination of his services. He argued that in view of the above position the OA is devoid of merit and deserves to be dismissed.

8. We have heard the learned counsel for the parties and have perused the pleadings and the material papers and documents placed on record. We have also seen the original departmental records made available for our reference by the respondents. The matter has been considered carefully.

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9. The relevant provisions at serial Nos, 1, 2 and 3 of the application form for the post of Temporary Constable in Delhi Police as seen from its English Version submitted by the respondents is as under:

"1. To conceal and giving incorrect information in this form will be a dis-qualification which would disqualify the aspirant for the service.

2. After submission of this Form if you are ever put in custody or held convict by a Court or deprived of any legal right, its detailed information should be given to Deputy Commissioner of Police, IIrd Bn. D.A.P. Delhi-110 009, immediately, failing which it would be presumed suppression of fact.

3. If during the course of employment its found-out that you provided incorrect information or suppressed the fact, you can be terminated from the service."

10. Every applicant is required to give his permanent address in column 8 and the present address in column 9 of the aforesaid form.

11. The attestation form to be filled up by the applicants also contains similar provisions as seen from the English version of the said form furnished by the respondents.

12. While so, the applicant himself has admitted in the OA that due to the reasons given therein, viz. false implication in the criminal cases due to enmity and wrong advice etc. he has not given the information required in the application form and the attestation form regarding the criminal cases pending against him. It is, therefore, quite apparent that he was fully aware of the requirements in the aforesaid form and consciously and wilfully chose to conceal the required information. The reasons given by him for such concealment are absolutely unconvincing and are not valid or tenable. Moreover, his representation dated 4.3.93 (Annexure

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(29)

D) also indicates, *inter alia*, that he has not bothered to furnish the requisite information regarding the criminal cases till he received the impugned termination order and that he was quite aware of the reasons for the issue of the said order, though it is an order *simpliciter*. The absence of bonafide and the lack of even an iota of regret on the part of the applicant for his conduct is quite evident from the said representation.

13. Coming to the validity of the impugned order which is extracted supra it is noticed that the said order has been issued in pursuance of the proviso to sub rule (1) of Rule 5 of the CCS (TS) Rules, 1965. Rule 5 of the said rules is as under:

"(1)(a) The services of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the government servant to the appointing authority or by the appointing authority to the Government servant;

(b) the period of such notice shall be one month:

Provided that the service of any such Government servant may be terminated forthwith and on such termination the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services or, as the case may be, for the period by which such notice falls short of one month.

NOTE.--The following procedure shall be adopted by the appointing authority while serving notice on such Government servant under clause (a) -

- (i) The notice shall be delivered or tendered to the Government servant in person;
- (ii) Where personal service is not practicable, the notice shall be served on such Government servant by registered post acknowledgement due at the address of the Government servant available with the appointing authority;

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(iii) If the notice sent by registered post is returned unserved, it shall be published in the Official Gazette and upon such publication, it shall be deemed to have been personally served on such Government servant on the date it was published in the Official Gazette."

14. It is seen from the said order that the applicant has been given entitlement to claim a sum equivalent to the amount of his pay plus allowances for the period of notice at the same rates at which he was drawing then immediately before the termination of his service or as the case may be for the period by which such notice falls short of one month. The said order obviously is an order simpliciter and does not cast any stigma on the applicant and is not punitive in nature.

15. The law is also quite well settled as seen from a catena of judgements by the Hon'ble Supreme Court in this regard, including the following cases.

i) In State of U.P. and Ors. vs. Krishna Kumar Sharma (1997) (11) SCC 437 it was held by the Hon'ble Supreme Court that the ground of unsatisfactory work or conduct on which the concerned order of termination of temporary service by a temporary Fireman Constable is valid as it is not punitive and does not require complicity of Article 311 (2) of the Constitution.

ii) In State of U.P. & Ors. vs. Rajendra Kumar Singh (1997 (10) SCC 682) the services of a temporary constable in the U.P. Police were terminated on the ground that he was not found

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suitable for retention in service due to his absenteeism. But the said order was without stigma and was held to be valid by the Hon'ble Court.

iii) In Avinash Nagra vs. Navodaya Vidhalaya Samiti & Ors. (1997 (2) SCC 534), the principles of natural justice were held to be inapplicable in the facts of that case where the services of a temporary Teacher were terminated for his improper conduct.

iv) In Secretary, Ministry of Works and Housing, Govt. of India vs. Mohinder Singh Jagdev (1996 (6) SCC 229), the respondent, a temporary Government servant secured appointment on production of a false certificate. His appointment was terminated under Rule 5 of Temporary Service Rules. It was held by the Hon'ble Court that his services as per the terms of his appointment can be terminated without notice and that there is no right to the post until the temporary service matures into the permanent service. It was further held that before that right accrues it was open for the employer to terminate the service of a temporary employee as per the terms of employment following the ratio laid down in Gurdev Singh's case (1991) (4) SCC 1).

16. So far as the ground taken by the respondents regarding furnishing of a wrong permanent address by the applicant is concerned, we do not think it is necessary to go into that ground in view of the aforesaid position.

17. In the facts and circumstances of this case and in view of the foregoing discussion and the well settled legal position as stated above we are of the considered opinion that the impugned order is not vitiated by any legal lacunae or infirmity and hence does not warrant any judicial interference.

18. In the result, the O.A. is dismissed. No costs.

A. Vedavalli 24/4/98

(Dr. A. Vedavalli)
Member (J)

K. Muthukumar

(K. Muthukumar)
Member (A)

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