

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

(4)

O.A. No. 1718/1994

New Delhi, dated the 21st October, 1994

CORAM

Hon'ble Shri J.P.Sharma, Member(Judicial)

Hon'ble Shri B.K.Singh, Member(A)

Shri Yash Pal
r/o Village & P.O. Khera Hatana
Distt. Meerut U.P.

.. Applicant

(By Advocate Shri J.P.Vergheese)

V/s

1. The NCT of Delhi
through its Chief Secretary,
Old Secretariat Rajpur Road,
Delhi
2. The Commissioner of Police
Police Headquarters
I.P. Estate, New Delhi

.. Respondents

O R D E R (ORAL)

[Hon'ble Shri J.P.Sharma, Member (J)]

The applicant had been a Constable in Delhi Police. His services were terminated under proviso of sub rule (1) of the Rule 5 of the Central Civil Services (Teny.Services) Rules, 1965 vide order dt.19.4.1988. He has referred to OA No.2113/88 decided by the Principal Bench on 26.4.1991, wherein it was observed that:-

" The apparent innocuous order would be linked with the stigma if the link is not far to seek and the

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respondents have disclosed what actually were the grounds for making the order. If the innocuous order is grounded upon features which casts stigma against the affected officer, he is entitled to defend himself in a proceeding provided under the rules applicable to him."

In view of this, impugned order was quashed with a direction to the respondents to re-instate the applicant giving liberty in the following terms. " The respondents, however, are not precluded from taking action against the applicant to proceed against him in accordance with the law to establish his guilt and take further necessary action is warranted."

2. The respondents, consequent to the judgment of the Tribunal, referred to above, reinstated the applicant but issued an order on 21-9-93 holding an enquiry under Section 21 of the Delhi Police Act, 1978. He was served summary of allegations and proceeded under the Delhi Police (Appointment and Recruitment) Rules, 1980. Departmental Enquiry report is still pending.

3. The present application filed on 22-7-1994 in which the applicant has prayed for the following reliefs:-

(i) Declare the applicant eligible after being re-instated lawfully in pursuance of Tribunal order and continuance to be eligible to hold the post of Constable in the Delhi Police.

(ii) Declare that the administrative instructions contained at clause 7 vide Annexure IV is ultra vires to Rule 9 of the Delhi Police (Apptt. and Recruitment) Rules, 1980 and Delhi Police Act, 78

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- (iii) Restrain the respondents from removing the petitioner from service for non-compliance of the instructions as referred to in prayer (ii)

4. We have heard the learned counsel for the applicant after he sought four adjournments in this case. The first contention of the applicant is that though the respondents have been given liberty to proceed with the D.E. in accordance with law(emphasis supplied). The contention of the applicant is that the Departmental Enquiry was not held in accordance with law and was against the statutory rules framed under article 309 of the Constitution. Further he submits that the instructions issued by the Commissioner of Police under Rule 9 sub para (vi) that the Commissioner of Police has been empowered to frame standing orders prescribing application form and detailed procedure to be followed for conducting the examination is totally untenable. The Employment Exchange(Compulsory Notification of vacancies) Act, 1959 is applicable in the whole of India. This act shall not apply to the employment in Agriculture (including horticulture) or farm Machinery operatives ; in any employment the total duration is less than three months ; in any employment connected with the staff of the Parliament. It is, therefore, evident that the applicant was sponsored by the Employment Exchange. The employer have also furnished return statement in prescribe proformas. The latest decision of the Hon'ble Supreme Court in State of Haryana v. Piara Singh ATR 1992) wherein the question of casual labour teacher

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was considered while concluding the judgment of the Supreme Court, observed that those names sponsored by the Employment Exchange can be considered for regularisation and the scheme thereto has been framed by the employer." Thus this contention is also untenable.

5. The next citation of the learned counsel for the applicant is that in case Departmental enquiry may continue to which original application is admitted and certain other procedure before the court act. In fact, when grievance was under Section 19 of the Administrative Tribunals Act, 1985 an application is admitted by the conclusion in relation to the subject matter of such matter. A person shall be deemed to have availed of all the remedies available to him under the relevant service rules as redressal of grievances. Applicant is facing departmental enquiry under the Delhi Police (Punishment and appeal) Rules, 1980 and misconduct alleged against him because of the standing order issued by under sub-clause 7 of rule 9. This will not only be sponsored by the earlier decision of the Tribunal in OA No.2113/88 referred to above, decided on 26-4-1991 but also that the applicant is alleged to have committed mis-conduct and continues to serve. Accordingly, the applicability of the relevant rules by which the applicant is governed is not tenable.

6. We find that this application is totally devoid of any merit. Accordingly, the OA is dismissed.

(B.V. Singh)
Member(A)

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(J.P. Sharma)
Member(J)