

3

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1946/1994

New Delhi, this 7th day of August, 1995

Hon'ble Shri J.P. Sharma, Member(J)
Hon'ble Shri R.K. Ahooja, Member(A)

Tejvir Singh
s/o Shri Dharam Pal
Village & PO Chhara, P.S.Bahadurgarh
Dt. Rohtak, Haryana .. Applicant

By Shri A.S.Grewal, Advocate

versus

1. Chief Secretary
NCT of Delhi
Rajpur Road, Delhi
2. Commissioner of Police
Police Hqrs., New Delhi
3. Dy. Commissioner of Police
7th Bn., DAV Malviya Nagar, Delhi .. Respondents

By Shri Anoop Bagai, Advocate

ORDER(oral)

Shri J.P. Sharma, Member(J)

The applicant was appointed in Delhi Police as Constable ~~on~~ 15.9.82. He is governed by the Delhi Police (Appointment & Recruitment Rules), 1980. All appointments of the rank of Constable are on temporary basis and the appointees are put on probation for a period of two years and during this period without assigning any reason the services of the said appointees can be terminated. In case the probation is completed or if one year extension is granted and is successfully gone through, the said appointee is entitled to be confirmed ⁱⁿ for his appointment on the basis of availability of permanent vacancy (see Rule 5(e) of the Rules).

lc

(2)

2. Vide the impugned order dated 13.6.84, the service of the applicant was terminated in pursuance of sub-rule (i) of Rule 5 of the CCS(Temporary Service) Rules, 1965 and the representation filed by the applicant was also considered by the competent authority and the same was rejected by order dated 3.9.84. Further representation, which was in the form of memorial, was also rejected by the order dated 20.9.84. Another representation filed was also rejected and conveyed by order dated 5.7.89.

3. Besides the OA, the applicant has filed MA 3323/94 praying for condoning the delay in filing the OA. In the MA, we do not find any explanation whatsoever for delaying judicial review of the order of termination dated 13.6.84 as the competent authority has passed on his representation order dated 3.9.84. What is stated in the MA is that the applicant has been filing a number of representations one after the other. However, there is nothing that the applicant was prevented by any personnel or by way of financial hardship or lack of proper advice to get judicial review. The only ground that he was depending upon his representations can not be a reasonable ground to condone the delay of about 9 years. So, the application is not only barred by limitation but also by unexplained delay and laches. The MA therefore on merits has been considered but there is no ground to allow the same.

4. However, we have heard the application on merits. The first contention has been that the present application is against the order which was not passed by the competent authority, and therefore the applicant was

never removed from service. However, the 1d. counsel for the respondents referred to the case of V.K.Dutta Chaudhary Vs. UOI & Ors. reported in 1981(Vol.4)page 507 which is in a bunch of cases. In a recent case decided by the Hon'ble Supreme Court viz. the State of Punjab & Ors. Vs. Gurdev Singh (Jt 1991(3)SC465). In this case the Supreme Court has considered the matter of void order and set aside the decision of the Punjab High Court in the case of State of M.P. Vs. Syed Quammarali, 1967(1)SLR 228 holding that "the party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him, he must approach the Court within the prescribed period of limitation". The Hon'ble Supreme Court further laid down that "if an act is void it is enough for the court to declare it so and it collapses automatically. It need not be set aside. The aggrieved party can simply seek a declaration that it is void and not binding upon them". The Hon'ble Supreme Court has held the above view in the case of Punjab High Court which was also case of dismissal of constable.

5. In the present case the applicant has not exhausted the remedies available to him. The MA for condonation of delay in filing the OA is filed without giving any proper explanation. We have heard the case on merits also. The applicant joined service in September, 1982 and was on probation for two years, i.e. upto

11

September, 1984. The relevant para 5(e) of the Rules referred to earlier states that during probation on unsatisfactory performance he can be removed from service without assigning any reason. The contention of the applicant's counsel that the CCS(CCA) Rules ~~are~~ applicable to him can not be accepted and according to provisions of law which is in operation, the aforesaid provision of Rule 5(e) ^(Subra) is applicable to the applicant.

6. We find no merit in this application. The application is therefore dismissed ~~allowing~~ ^{leaving} the parties to bear their own costs.

Replies -

(R.K. Ahoja)
Member(A)
7.8.1995

Answer
(J.P. Sharma)
Member(J)
7.8.1995

/tvg/