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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.2146/2000
M.A.NO.1993/2001

Tuesday, this the 11th day of September, 2001

Hon'ble Shri Shanker Raju, Member (Jud1)

Gautam
S/O Shri Kanhaiya Lal Sah
Aged about 30 1/2 years,
Resident of : 38, Old Campus
Type I, Jawahar Lal Nehru University,
New Delhi-67.

And employed as:
Cook in the Police Training College
Delhi Police
New Delhi

(By Advocate: Shri B.B. Raval)

..Applicant

Versus

1. Union of India
Through the Secretary
Ministry of Home Affairs
Government of India
North Block, New Delhi-1.
2. The Commissioner of Police
Delhi Police
Police Headquarters
Near ITO
New Delhi-2.
3. Dr. Kiran Bedi
Joint Commissioner of Police (Training)
Police Training College
Jharoda Kalan
New Delhi.
4. Shri Sunil Garg
Deputy Commissioner of Police
Police Training College
Jharoda Kalan
New Delhi.

(By Advocate: Mrs. Sumedha Sharma)

...Respondents

O R D E R (ORAL)

Heard the learned counsel for both the parties.

MA-1993/2001 has been filed by the applicant for bringing on record the Deputy Commissioner of Police, Police Training College, Jharoda Kalan, New Delhi as

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respondent No.4. In view of this, the Deputy Commissioner of Police is impleaded as respondent No.4 in this case. Amended memo of parties is taken on record.

2. The applicants an Ex.Cook in the Delhi Police has assailed the order dated 18.11.1998 whereby his services have been terminated under Sub rule (1) of Rule 5 of the CCS (Temporary Service) Rules, 1965 and also an order passed on 15.3.1999 whereby the representation preferred against the order of his termination was rejected.

3. Briefly stated the facts of the case are that the applicant was appointed as a temporary Cook in Delhi Police on 4.6.1998. The applicant before being appointed as a Cook, was working in a travel agency which was dealing in national ^w and international air ticketing and was also arranging tickets for Dr. Kiran Bedi, Joint Commissioner of Police and others. The applicant, who was appointed as a Cook, was posted in the office of Dr. Kiran Bedi to do the class IV work. Thereafter, Dr. Kiran Bedi and her family on several occasions authorized the applicant to collect their passports from the Chief Passport Office, despite the fact that the applicant has been appointed to work as a Cook, however, the work and the conduct of the applicant during the period of his service remained satisfactory and without any adverse material against him. Further, the order dated 18.11.1998 has been passed in the name of Principal, PTS which stood corrected by an order of the even date where the Deputy Commissioner of Police, Police Training School terminated the services of the applicant. The applicant preferred a detailed

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representation which has been rejected, inter alia, observing that on a complaint received personally by Dr. Kiran Bedi, Joint Commissioner of Police, PTS from Passport Officer, Delhi on the allegations that the applicant was having the visiting cards of Joint Commissioner and was referring her name to manage a passport for a black-listed person. Dr. Kiran Bedi in response refused the same and on 13.11.1998, when the applicant visited the residence of Dr. Kiran Bedi, his personal search was taken and having found in possession of the visiting cards and using the name of Delhi Police on his motorcycle, was challenged under the M.V. Act on 13.11.1998. A DD entry to this effect was lodged at Police Station, Mandir Marg, New Delhi by Constable Shri Azad Singh, who was posted at the residence of Dr. Kiran Bedi. It is also stated that the applicant being a mischievous person misused her status as of senior officer for his ulterior motives and was found to be unfit to be a Govt. servant. The respondents have also sent a notice for personal hearing to the applicant and thereafter, a meeting in orderly room was held on 16.11.1998 where the reply of the applicant was not found satisfactory.

4. The learned counsel for the applicant has at the outset stated that the order of termination is not a simple order but is a stigmatic one and is formed on a specific misconduct of the applicant. It is also contended on behalf of the applicant that no reasonable opportunity has been accorded to the applicant to show cause which violates the Article 311 (2) of the Constitution. It is further stated that the Joint Commissioner, on the basis of a

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complaint, has laid down a trap^h and allegedly caught the applicant in possession of the visiting cards and further observed him to be a mischievous person by misusing the status of the senior officers. It is also stated that the order passed is malafide and has been passed by the Dy. Commissioner at the behest of Dr. Kiran Bedi. The learned counsel for the applicant stated that in fact Dr. Kiran Bedi has been prompted by the travelling agency, which is dealing with her air tickets etc. to terminate the services of the applicant as the applicant had left the travelling agency and thereafter was appointed in Delhi Police. It is also contended that the allegations are absolutely concocted, and ambiguous and there has been no detail of the persons who are black listed for whom the applicant has made reference to the Passport Officer by misusing the visiting cards of Dr. Kiran Bedi. It is also stated that the termination is a colourable exercise of the power and the applicant, who has been basically appointed as a Cook, has never been utilised as such and has been deputed to perform duties at her office for her personal work. The learned counsel for the applicant has also denied that any personal hearing was accorded to the applicant by the Deputy Commissioner of Police before terminating his services and further stated that even show cause notice, which admittedly not given, was not sufficient for compliance of the principles of natural justice and instead a regular departmental enquiry should have been held which could have enabled the applicant to prove his innocence and to defend the charges alleged against him in the order passed on representation. Placing reliance on the decision of the Apex Court in the case of

Dipti Prakash Banerjee Versus Satvendra Nath Bose National Centre for Basic Sciences, Calcutta & Others, reported as (1999) 3 SCC 60, it is contended that stigma need not be contained in the order of termination but the same has been inferred from the documents referred as annexures in the termination order or from the circumstances attained or precedent to the order of termination. It is also stated that a misconduct becomes the foundation of the order of termination if the respondents enquired into misconduct and on the basis of findings makes a definite conclusion as to the misconduct, then without holding the departmental enquiry, the action would be punitive and would certainly indicate that in order to avoid holding of disciplinary proceedings, the termination has been used as a short cut to dispense with the services of the applicant.

5. The learned counsel for the respondents strongly rebutting the contentions of the applicant stated that the order passed by the Deputy Commissioner of Police is a simple order of termination without casting any stigma on the applicant. It is also stated that before terminating the services of the applicant, he has been called by the Deputy Commissioner of Police on 16.11.1998 in the orderly room and was accorded a reasonable opportunity to explain his case to controvert the allegations and as the explanation was not satisfactory, it has been decided to resort to Rule 5 ibid. It is also stated that though the applicant was performing his duties as Cook, but some time in emergency, his services have been utilized for other official works also. It is stated that it is admitted that the authority letters have been handed over to the

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applicant to collect the passports of the family members of Dr. Kiran Bedi but he has never been given any visiting card which he managed otherwise by misusing his position. The respondents have also strongly placed reliance on the incident taken place on 13.11.1998 when the applicant was found in possession of visiting cards and on this basis, it is stated that as the applicant was involved in this misconduct to manage passport for black listed persons, they have dispensed with his services and the order passed on a representation is perfectly legal as all the contentions of the applicant have already been dealt with by the Commissioner of Police.

6. I have carefully considered the rival contentions of both the learned counsel and have perused the material placed on record. From the perusal of the record produced by the learned counsel for the respondents, I find that a draft prepared by the Vice Principal, Police Training School where he refers to the brief facts and it has been stated herein that as per the service rules, neither any show case, nor any memo was required before terminating the services and at the time of termination, the applicant's performance was just 'upto the mark' and the applicant was not fit as per his conduct shown in the brief facts. In the brief facts, it has been stated that as a complaint has been received personally by the Joint Commissioner of Police from the Passport Officer regarding misuse of her official position by the applicant by using the visiting cards of Dr. Kiran Bedi to procure the passport for a person who is black listed on which the Joint Commissioner has refused and on a particular date when the applicant

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visited the residence of Dr. Kiran Bedi, i.e., on 13.11.1998 on a search the visiting cards were found which clearly points out towards his misconduct and misuse of senior officer's visiting cards. On this finding, the proceedings have been carried on further. On a query raised by this Court to the learned counsel for the respondents regarding production of the receipt^h of the complaint from the Passport Officer, the learned counsel after going through the records, shows her inability to the same. I have also in the interest of justice gone through the entire record and have not found any such complaint which has been referred to in the order passed on representation and the brief prepared by the Vice Principal, PTS.

7. Admittedly, the services of the applicant have been terminated only after the incident of 13.11.1998 where he has been found in possession of visiting cards and the applicant has been apprehended on the ~~date~~^{behalf} of Dr. Kiran Bedi who previously having received a complaint from the Passport Officer regarding misuse of her visiting cards by the applicant for procuring a passport to black listed person and thereafter, the termination of the applicant do indicate that the misconduct was the basis of the termination order. Now, it has to be ascertained whether this misconduct forms the motive or the foundation of the order of the termination. In view of the ratio in Dipti Prakash Banerjee's case (supra), the test laid down for motive and foundation is that in cases when a finding has been arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental

enquiry, simple order of termination is to be treated as 'founded' on the allegations and will be bad. If, however, enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be interfered with. Complying with the aforesaid test to the facts and circumstances of the present OA, I am of the confirmed view that on the complaint of Passport Officer, an enquiry has been made by the Joint Commissioner and thereafter, his personal search was taken and the visiting cards were found in possession of the applicant. This incident has been reported at Police Station, Mandir Marg, New Delhi by way of lodging DD entry. The aforesaid finding that a report has come against the applicant of misusing the official position to procure passport for a black listed person, the competent authority has not held any enquiry and this finding has been arrived at the back of the applicant without according him any opportunity to put his version and to deny the same. As the respondents have come to a finding without holding a regular departmental enquiry, the aforesaid incident and the misconduct imputed against the applicant definitely points out the foundation and it is not a mere motive to resort to the termination. This view in mine is also fortified by the fact that the Vice Principal, PTS while procuring the brief facts has already reported that the conduct of the applicant and his service record during the service was just 'upto the mark'. On my askingⁱⁿ the learned counsel for the respondents to show any other indifferent service record or unsatisfactory record

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which could have pointed the insufficiency of the applicant during the service tenure of the applicant, she fairly stated that it does not exist.

8. In this view of the matter, I am of the considered view that the applicant's performance was 'upto the mark' without any complaint. The incident which took place on 13.11.1998 was the only factor which prompted the authorities to resort to termination which cannot be ~~continued~~^{contenanced} and is in violation of Article 311 (2) of the Constitution.

9. As regards the stigma is concerned, it is laid down in Dipti Prakash Banerjee's case (supra) and the conclusion is that the stigma need not be contained in the order of the termination but it is to be inferred from the circumstances preceding or attending to the order of termination and also to be inferred from the order passed in an annexure or documents referred to in the order of termination. The perusal of the official record and the brief facts, it is transpired that the applicant has been observed to be a mischievous person having committed a misconduct by using the official position, which in my confirmed view, is a stigmatic imputation against the applicant casting stigma and such the order would not be legally sustainable.

10. As regards the plea of the respondents that the applicant has been accorded an opportunity in form of an OR accorded to the applicant before the Dy. Commissioner of Police on 16.11.1998, I find that the applicant has been

issued an order for an OR on 12.11.1998 by stating that he is to be present today which has been struck off and 16.12.1998 has been inserted. The OR register which has been produced by the learned counsel for the respondents for my perusal, inter alia, includes at Sl. No.1 the certificate of the officer Incharge and remarks of the authority where it is found that the reply of the applicant was not found satisfactory. The aforesaid OR register and any other documents do not show any acknowledgement of the applicant as to his being accorded OR by the Dy. Commissioner of Police. The contention of the respondents that the usual procedure adopted in case of OR is that after entering the date and the name of the concerned officer, the comments are to be made by the concerned officer and no signature of the person, who has been accorded OR, are taken on record. I have also found from this register that the register pertains to 1996-97 and has been corrected as 1999-2000 but there is no mention of the year 1998. From the remarks of the authority concerned, it appears that the same man has signed the remarks contained for different officers and after the applicant has been accorded OR on 16.11.1998, the other entries are made only on 4.3.1999 and thereafter this register was continued and from 26.5.2000, the register was again started. This shows that for full one year, the entry regarding ORs have not been inserted in this register. Apart from it, having a clear denial by the applicant to the fact that he was accorded personal hearing before termination, the respondents have failed to produce any acknowledgement of the applicant that whether he had received the copy of the order passing according him an OR and thereafter, in the OR

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any signatures have been taken from the applicant. Whatsoever may be, I am of the considered view that this register does not inspire confidence and as such, the contention of the respondents that the applicant was accorded OR before dispensing with his services, is not correct and valid. Furthermore, mere according an opportunity by way of personal hearing would not be the compliance of principal of natural justice. In case of a misconduct of a grave nature, which has been alleged against the applicant, the proper procedure was to hold a departmental enquiry as envisaged under Section 21 of the Delhi Police Act. Having failed to comply with the requirements of natural justice as observed to be a departmental enquiry in Dipti Prakash Banerjee's case (supra), the order suffers from illegality.

11. Having regard to the above facts and circumstances of this case, this OA is allowed. The order of termination as well as the order on representation are hereby quashed and set aside. The respondents are directed to reinstate the applicant in service and grant him all the consequential benefits. However, the respondents are at liberty to take appropriate action accordance with the law and as observed in the case of Dipti Prakash Banerjee (supra). The above directions shall be complied with by the respondents by a period of three months from the date of receipt of a copy of this order.

No costs.

S. Raju
(Shanker Raju)
Member (J)

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