

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA.No.1132 of 1989

New Delhi dated this the 19th April, 1994

Shri C.J. Roy, Hon. Member(J)

Shri B.N. Dhoundiyal, Hon. Member(A)

Shri Anil Kumar,
S/o Shri Ramesh Chander Tyagi,
R/o Quarter No.G-6, Police Station Kalkaji,
New Delhi. (Ex-Constable No.743/DAP).
By Advocate : None.

...Applicant

versus

1. Commissioner of Police,
Police Headquarters,
I.P.Estate, New Delhi 110 002.

2. Deputy Commissioner of Police,
4th Battalion,
Delhi Armed Police,
Delhi.

3. Delhi Administration,
through the Secretary (Home),
Old Secretariat, Delhi.

4. Union of India,
Through the Administrator/Lt.Governor,
Raj Niwas, Delhi.
By Advocate : Ms. Ashoka Jain.

...Respondents

JUDGEMENT(Oral)

By Hon. Member (J) Shri C.J. ROY.

This is an old matter of 1989 peremptorily posted for final hearing today. None appears on behalf of the applicant. It is seen from the record that the applicant has not been appearing even on the last two occasions. In the circumstances, we feel that this case can be disposed of, based on the submissions advanced by the learned counsel for the respondents Ms. Ashoka Jain and the pleadings on record, and accordingly proceed to do so.

2. The applicant was appointed as Constable in the Delhi

(2)

Police on 15.9.87, after fulfilling all the eligibility criteria. He was directed to report in the office of Deputy Commissioner of Police, II Bn DAP Police at 9.00 A.M. on 4.12.1987 i.e. within three months of the appointment order for completion of enlistment papers. The applicant claims that he was injured in a road accident while on duty on 4.1.1988 and his services were terminated in a discriminatory and arbitrary manner. The respondents have invoked temporary service rules to remove him from service. He has impugned the annexure A-1 order issued by the respondents dated 9.5.88 wherein, his services were terminated under proviso of sub-rule(i) of the Rule-5 of the Central Civil Services (Temporary Services) Rules, 1965.

3. The respondents have filed their counter assailing that the case is barred by limitation. However, we see from the docket order dated 15.12.89 that the delay is condoned. Therefore, the point of limitation is hereby overruled.

On merit the respondents claim that the applicant and was suffering from colour blindness/thereby he was rendered unfit to be continued in the services of Police establishment, which is a disciplinary force.

(S)

They further state that the applicant was a patient of colour blindness and on complaint after appointment they found after medical examination by the eye specialist that he is colour blindness to red and green. It is further averred that through the applicant was selected, he was declared medically unfit due to colour blindness. The ^{to the Medical Board} applicant filed an appeal/against the medical certificates issued by the LNJP Hospital, but he was again declared unfit.

4. The main thrust of the case of the respondents is that the applicant was appointed as a temporary constable in Delhi Police w.e.f. 15.9.77. The applicant alleges that he was involved in the accident which is accepted at para 4(d) as follows:-

"...It is admitted to the extent that the petitioner was injured in a road accident on 31.12.87 while on duty and he was got admitted in R.M.L. Hospital."

However, the respondents maintain the invocation of CCS sub rule 5(i) of (Temporary Services Rules), 1965 as legal.

The applicant's appeal to the appellate Board against the termination was rejected after consideration. The rest of the averments made in the counter by the respondents appears to be extraneous to the case for our interference. The short point now for us for consideration is whether the termination order is ^{valid} ~~valid~~ in law, or not. It is no doubt true that the applicant was appointed as Constable in the Delhi Police establishment and his services were terminated before

completion of eight months. We see rule 5 of the Delhi Police (Appointment and Recruitment) Rules, 1980. Under Rule-5, we see Rule 5(e) which states that all directly appointed employees shall/made initially on purely temporary basis. All employees appointed to the Delhi Police shall be on probation for a period of two years. Though the appointment order has neither been filed by the applicant nor by the respondents, by way of averments we infer that it is a temporary appointment in view of the legal position cited supra. The Hon. Supreme Court in the case of State of U.P. and Anr. Vs. Kaushal Kishore Shukla (JT 1991 (1) SC 108), has stated that:

"The principle of 'last come first go' is applicable to a case where on account of reduction of work or shrinkage of cadre retrenchment takes place and the services of employees are terminated on account of retrenchment. In the event of retrenchment the principle the principle of 'last come first go' is applicable under which senior in service is retained while the junior's services are terminated. But this principle is not applicable to a case where the services of a temporary employee are terminated on the assessment of his work and suitability in accordance with terms and conditions of his service. If out of a several temporary employees working in a department a senior is found unsuitable on account of his work and conduct, it is open to the competent authority to terminate his services and retain the services of juniors who may be found suitable for the service.

Under the service jurisprudence a temporary employee has no right to hold the post and his services are liable to be terminated in accordance with the relevant service rules and the terms of contract of service. If on the perusal of the character roll entries or on the basis of preliminary inquiry on the allegations made against an employee, the competent authority is satisfied that the employee is not suitable for the service whereupon the services of the temporary employee are terminated, no exception can be taken to such an order of termination.

(N)

A temporary Govt. servant can, however, be dismissed from service by way of punishment. Whenever, the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or this his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary Government servant. If it decides to take punitive action it may hold a formal inquiry by framing charges and giving opportunity to the protection of Article 311(2) in the same manner as a permanent Govt. Servant, very often, the question arises whether an order of termination is in accordance with the contract of service and relevant rules regulating the temporary employment or it is by way of punishment.

It is now well settled that the form of the order is not conclusive and it is open to the Court to determine the true nature of the order.

It is erroneous to hold that where a preliminary enquiry into allegations against a temporary govt. servant is held or where a disciplinary enquiry is held but dropped or abandoned before the issue of order of termination, such order is necessarily punitive in nature.

5. Following the ratio of the above Hon. Supreme Court Judgement, we feel it is not a fit case for our interference. In view of the injuries suffered by the applicant, which is admitted by the respondents, the applicant may choose his forum to get his compensation or make a representation to the respondents, who may consider his case on humanitarian grounds. We fondly hope that the respondents will take appropriate action on humanitarian grounds.

With this observation, this case is disposed of.

No costs.

B.N. Dhundiyal
(B.N. DHUNDIYAL)
MEMBER(A)
19.4.94

C.J. Roy
(C.J. ROY)
MEMBER(J)
19.4.94

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