

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
N E W D E L H I

O.A. No. 1312/89
T.A. No.

199

DATE OF DECISION 2nd July, 1991

Shri Parshottam Singh Petitioner

Shri Shanker Raju Advocate for the Petitioner(s)

Versus

Delhi Admn. & Ors. Respondent

Shri T.S. Kapoor Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. T.S. Oberoi, Member(J)

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. Whether it needs to be circulated to other Benches of the Tribunal? *no*

I.K. Rasgotra
 (I.K. Rasgotra)
 Member (A)

T.S. Oberoi
 (T.S. Oberoi)
 Member (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.1312/89

DATE OF DECISION: 2nd July, 1991

SHRI PARSHOTTAM SINGH

...APPLICANT

VERSUS

DELHI ADMINISTRATION & OTHERS

...RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT SHRI SHANKER RAJU, COUNSEL

FOR THE RESPONDENTS SHRI T.S. KAPOOR, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

Shri Parshottam Singh, Ex-Constable in Delhi Police has filed this application under Section 19 of the Administrative Tribunals Act, 1985 challenging the order No.13625-700 SIP (W) dated 15.12.1988, terminating his services w.e.f. 17.12.1988 (A/N), after expiry of one month's notice issued under Rule 5 (i) of CCS (TS) Rules, 1965 vide order dated 10.11.1988.

2. The issue agitated for adjudication is whether the recruit Constable can be discharged from service under CCS (TS) Rule, 1965 for committing misconduct by not disclosing the information of his involvement in a criminal case and subsequent acquittal in the attestation form.

3. The brief facts of the case are that the applicant was appointed as a temporary Constable in Delhi Police on 25.3.1988 and sent for training to Madhuban (Haryana). He was later posted in West Zone and subsequently transferred to VIth Bn. DAP. He was served a notice under Rule 5 (i) of CCS (TS) Rules, 1965 vide order No.12451-500/SIP(W) dated

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10.11.1988 which was received by the applicant on 17.11.1988, intimating him that his services shall stand terminated w.e.f. the date of expiry of the period of one month from the date of receipt of the notice (Annexure A-2). Accordingly the termination of his service took effect from 17.12.1988 vide impugned order dated 15.12.1988 w.e.f. 17.12.1988. The applicant represented against the illegal termination to the Commissioner of Police vide Annexure A-3 which was rejected and intimation conveyed to him vide order dated 8.5.1989 (Annexure A-4). The said order stated that:-

"I am directed to inform you that your request to re-instate you in service, has been considered at this Hdqrs. and rejected because you had concealed the facts of your involvement in a Criminal Case FIR No.6/84 under section 448/506 read with section 34 of the IPC of Police Station, Joginder Nagar, Himachal Pradesh, in your application and attestation forms with a view to get yourself recruited, as Constable in Delhi Police by deceitful manners and foul means."

The services of the applicant were terminated under Rule 5 (i) of CCS (TS) Rules, 1965 for suppression of factual information as was required to be furnished to the respondents initially in the application and later more specifically in the attestation form. The relevant column in the attestation form elicits the following information from the applicant:-

"11 (a) Have you ever been prosecuted, kept under custody or probation bond imposed punishment, found guilty, have you been debarred for appearing in any public service examination."

"11 (b) Was any case pending against you in any court at the time of filling in the attestation form?"

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His answer to both the question was a categorical 'NO'. On receipt of the antecedent verification form from the Police Authority, Kangra, Himachal Pradesh it was found that the applicant was involved in a Criminal Case vide FIR No.6/84 under Section 448, 506 and 34 IPC at Police Station, Joginder Nagar, Himachal Pradesh. It was the suppression of this information which led to the issue of the impugned notice and order.

4. The applicant, however, contends that he had been honourably acquitted from the criminal case and, therefore, after consultation with some of the staff members of the Delhi Police he did not find it necessary to give details of the case where he was already acquitted. He submits that this was done in good faith, acting on the advice of the some of the more experienced Police personnel in Delhi Police.

He submits that his services should not have been terminated under Rule 5 (i) of CCS (TS), Rules, 1965, without giving him an opportunity to explain his conduct. The termination of his services for alleged misconduct without affording him a reasonable opportunity to show cause is violative of Article 311 (2) of the Constitution of India. He relies on the following judicial dicta in support of his contention:-

- i) 1989 (1) ATL T SC 438 Kali Pada Sarkar v. UOI
- ii) AIR 1986 SC 1626 Jarnail Singh v. State of Punjab
- iii) ATR 1988 (1) SC 77 Harpal Singh v. State of UP
- iv) ATR 1988 (1) CAT 464 Satbir Singh vs. UOI
- v) 1987 (1) SLJ CAT 401 Gopa Ram v. UOI

By way of relief the applicant has prayed that the impugned orders dated 15.12.1988 (Annexure A-1) and 8.5.1989 (Annexure A-4) be set aside and that he should be reinstated in service w.e.f. the due date with all consequential benefits.

5. The essential facts of the case are not disputed by the respondents in their written statement. They, however, submit that the applicant was selected provisionally for appointment to the post of Constable in Delhi Police subject to his being found medically fit and verification of his character antecedents. After the medical examination was over he was given a copy of the attestation form for filling up the same. The applicant did not reveal his involvement in the criminal case which was required to be furnished specifically against the relevant columns. Relying on the statement made by him in the attestation form, the applicant was given temporary appointment w.e.f. 25.3.1988, pending verification of his character antecedents. On receipt of the report from Superintendent of Police, Kangra, Himachal Pradesh, revealing his involvement in the criminal case and subsequent acquittal by the court on 23.10.1987 his services were terminated, as he had suppressed the information with a view to seek appointment in the Delhi Police by deceitful means. the question is not whether he was acquitted in the criminal case but one of the furnishing information in the attestation form, known to the applicant in response to specific questions. Since he knowingly concealed the facts, he was not considered a desirable person for continuance in a disciplined force.

6. The applicant has filed the rejoinder in which he covers more or less the same grounds as dicussed earlier.

7. Shri Shanker Raju, the learned counsel for the applicant submitted that the case of the applicant is fully covered by the decision of the Tribunal in **Satbir Singh v. UOI ATR 1988 (1) CAT 464**. He further drew our attention to a catena of judicial pronouncemtns listed in the *margin below. The leaned counsel also referred us to a recent decision of the Principal Bench of the Tribunal in OA-233/90 delivered on 1.11.1990 in **Hari Prashad v. Lt. Governor, Delhi Admn. & Ors.**

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8. Shri T.S. Kapoor, the learned counsel for the respondents submitted that the suppression of the information regarding involvement in a criminal case in the attestation form clearly proves that the applicant is an undesirable person for retention in a disciplined force. The applicant should have given the information asked for in the attestation form regarding his involvement and subsequent acquittal. The learned counsel supported his contention by citing the decision of the Principal Bench in OA-836/86 **Kamod Singh v. UOI & Ors.** decided on 22.1.1987 and OA-962/87 **Vir Pal Singh v. UOI & Ors.** decided on 4.1.1991.

In **Kamod Singh & Vir Pal Singh** (supra) cases although the facts are more or less identical with the case before us, there is a vital difference. The vital difference in the present case from both the cases is that in neither case the appointment letter had been issued and the candidatures were cancelled on the basis of antecedents verification received from the relevant authorities before issue of the appointment letter.

9. We have heard the learned counsel of both the parties and considered the record and the various judicial pronouncements brought to our notice. We are of the view that a decision in such a case, as we are dealing with, has essentially to be related to the facts of the case. The facts in the catena of judicial pronouncements cited by the learned counsel for the applicant are distinguishable from the present case except in OA-223/90 **Hari Parshad v. Lt. Governor** (supra) which is an identical premise. Admittedly, the applicant suppressed the information regarding his involvement in the criminal case and subsequent acquittal. Had he furnished this information possibly he would not have been visited by the termination. Again the final order in this case is not an order simplicitor but is a reasoned order, disclosing clearly the grounds leading to the termination of his service.

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Undoubtedly his services have been terminated for unassailable reasons but the same cannot be said of the procedure followed by the respondents. The respondents should have given the applicant reasonable opportunity to explain his conduct by giving him a **show cause notice/a personal hearing** before terminating his services. In this case we do not have to go behind the form of the order to ascertain the true character of the order, as the order of the Commissioner of Police is amply transparent. It is punitive in nature. Had termination order been passed duly meeting the requirement of fair play and reasonableness in action in accordance with the principles of natural justice - audi alteram partem, we would have no reason to interfere with administrative action. The basic concept of principles of natural justice is that no one should be condemned without hearing hims. This is the essence of justice in both quasi judicial and administrative action. We do not see any thing wrong in taking action against such a person who, as on the threshhold of his career, chooses to use undesirable means for seeking employment in public service, where highest integrity and rectitude are essential requirements. The following observations /in the case of **State of M.P. v. Ramashanker Raghuvanshi AIR 1983 SC 374**, have also been relied upon by the learned counsel of the applicant.

"Should all these youngmen be debarred from public employment? Is Government service such a heaven that only angels should seek entry into it?"

These obseverations were however made by their Lordships in the context of the respondents seeking Police reports about the political faith, belief and association and the past political activity of a candidate for public employment. It was, therefore, held that such an exercise was repugnant to the basic rights guaranteed by the Constitution and entirely misplaced in a democratic republic, dedicated to the ideals set forth in the preample of the Constitiution.

Nevertheless, the fact remains that the applicant herein was not given an opportunity to show cause before his services were terminated under Rule 5 (i) CCS (TS) Rules, 1965 nor given any personal hearing. As such, the impugned orders dated 15.12.1988 (Annexure A-1) and 8.5.1989 (Annexure A-4) are violative of the principles of natural justice. We accordingly set aside and quash the impugned orders and direct that the respondents shall reinstate the applicant in service with all consequential benefits, subject to his certifying that he was not gainfully employed during the period 17.12.1988 till the date of his reinstatement. We, however, make it clear that the respondents shall be at liberty to take appropriate action against the applicant for any misconduct in accordance with the law, if so advised.

The O.A. is disposed of as above, with no order as to costs.

Subhash
(I.K. RASGOTRA)
MEMBER(A) 21/9/

Subhash
(T.S. OBEROI)
MEMBER(J)

- * OA-223/90 Hari Parshad v. Lt. Governor
- * 1990 (1) ATJ CAT 402 H.L. Koche v. Director General Army
- * 1990 (1) SLJ CAT 129 A.S. Jeev Ratnam v. Director
- * 1989 (2) SLJ CAT 618 Sheikh Ansar vs. UOI
- * 1989 (4) SLJ CAT 292 Balbir Singh v. UOI
- * 1990 (1) SLJ CAT 570 N.V. Prasnnan v. UOI
- * 1989 (4) SLJ CAT 945 Girish Bhardwaj v. UOI
- * AIR 1983 SC 374 State of MP vs. Rama Shanker