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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.No.1470/89

New Delhi this the 13th Day of December, 1993.

Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman
Hon'ble Mr. B.N. Dhoundiyal, Member(A)

Shri Rajan Kumar
S/o late Shri Vidya Sagar,
R/o B-75, New Govindpura,
Chander Nagar,
Delhi-51.

Petitioner

(By advocate Sh. B.S. Charya)

versus

1. The Commissioner of Police,
Police Headquarters, MSO Building,
New Delhi.
2. Union of India,
through its Secretary,
Ministry of Home Affairs,
Govt. of India,
New Delhi.

(By advocate Mrs. Avnish Ahlawat)

O R D E R (ORAL)
(delivered by Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman)

The petitioner, an ex-Constable in the Delhi police, has challenged the legality of the order dated 13.04.1989 passed by the Deputy Commissioner of Police in the purported exercise of powers under Rule 5(1) of the CCS(Temporary Service) Rules, 1965.

A counter-affidavit has been filed on behalf of the respondents. The averments therein are these. The petitioner was enlisted as temporary Constable (M.T. Helper) w.e.f. 14.8.1987. His appointment was made only on the basis of his self declaration subject to the condition that if the facts given by him are found incorrect, his services would be terminated. The verification of his character and antecedents was got done from SHO Krishna Nagar. SHO Krishna Nagar has reported that he was arrested

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in case FIR No.348 dated 1.7.1986 u/s 61.1.14 Excise Act. and the case was pending trial in the court. The petitioner thus concealed the facts in his application and declaration form. Accordingly his services were terminated vide impugned order dated 13.4.1989. He submitted his representation to the Commissioner of Police against the order of the Deputy Commissioner of Police which was rejected vide order dated 30.06.1989.

To the counter-affidavit, a true copy of the application submitted by the applicant at the time of his recruitment has been filed. Column 12 of this application is relevant. In it the first question put is: "whether he was prosecuted at any stage in any case". The answer given by the applicant is no. Thereafter another querry is like this. Whether at the time of filling of the form any case was pending against him in any court. the answer given by him is in the negative. A true copy of the affidavit filed on behalf of the petitioner at the time of his recruitment has also been filed. Paragraph -1 of this affidavit states that the petitioner applied as M.T. Helper (Constable) in Delhi Police subject to the condition that he was not involved, arrested or convicted in any criminal case and was having good moral character.

We have perused the body of the application presented by the petitioner. The petitioner has come out with the case that the respondents had knowledge of the pendency of the said case and that they considered this case of minor nature. Therefore, no proceedings have been drawn

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up against the petitioner. It is implicit in the said averment that the petitioner too had knowledge of the criminal case under Section 61/1/14 of the Excise Act.

In the rejoinder affidavit filed, no attempt has been made by the petitioner to explain the facts.

The only serious submission advanced by the petitioner is that the impugned order was passed without hearing him.

A precise controversy came before this Tribunal in TA No.983/85 decided on 25.2.92. A Division Bench of this Tribunal presided over by the Hon'ble Chairman took the view that since the charge in that case was that the petitioner therein had entered service after concealing the material facts, it could not be said that he had committed misconduct while in service. The Bench proceeded to take the view that in such a situation, it could not be said that the petitioner therein while in service had committed any act of misconduct. The Bench took the view that in those circumstances, there would be no question of complying with the principles of natural justice. No other reason is mentioned in the judgment of the Bench in repelling the contention advanced before it.

Learned counsel for the respondents urged that the petitioner having furnished a false declaration, his services were liable to be terminated.

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The learned counsel for the petitioner has relied upon a number of cases. They are; (1) (AIR 1986 SC 1008) Jagdish Prasad vs. Sachiv Zila Ganna Committee, Muzaffarnagar & Another. In that case, in the order of termination it was recited that while working in the Roadways, Sh. Jagdish Prasad was caught in corruption and his services were terminated from there. He obtained his appointment in the Society while concealing the above facts. On receiving a complaint, this fact was verified from the Roadways Department. He having been removed on the charge of corruption is not suitable for employment in the Society.

In that case before the impugned order was passed a show cause notice was issued containing the following facts. Having received a complaint against him from Transport Corporation, Muzaffarnagar, it has been learnt that he worked upto 6.6.1967 in that department as a Conductor, and during that period he was caught in a corruption case, and his services were terminated by giving one month's notice. Since he was removed from the Raodways Department on corruption charges, it was not justified to keep him in the department. It seems that he has procured employment in Cane Society, Muzaffarnagar, by concealing the above facts. Therefore, he has to show cause as to why he should not be removed from service. It was contended in that case that the procedure laid down in U.P. Cane Co-operative Service Regulations (1975), has not been followed. The order of termination was bad. The Hon'ble Supreme Court upheld the contention.

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(2) Zabarsingh Bhavansinhzala Vs. Union of India and Another (1990) 13 ATC 17. This was a case where a person had entered into service after furnishing a false information. The main reason for terminating his service was that the police verification showed that he was prosecuted under Section 302 of IPC when he was a child but the Gujarat High Court reversed the decision of conviction. No doubt, the Tribunal took the view that in those circumstances giving of an opportunity was necessary. This case is distinguishable on facts, that apart the view point of the Tribunal in T.A. 983/85 was not focussed upon.

(3) Hori Lal vs. Union of India & Ors. (ATC 1991 (16) 275). This was a case wherein the order of termination misconduct was recited. In the instant case, the order of termination does not contain any allegation whatsoever. The order fully conforms to the requirements of sub-rule (i) of Rule 5. Again, this case does not coincide the view point considered by the Division Bench of this Tribunal in T.A. 983/85.

(4) ATC 1988 272. This was a case where the order of termination was considered as punitive, and, therefore, violative of Article 311 of the Constitution of India. This case too does not examine the question which has been examined in T.A. 983/85.

An unreported judgment of the High Court of Delhi has also been cited (CWP 302/84 - Yash Ram vs. Union of India decided on 6.5.1985). In this case too the view point of the Tribunal as taken in the aforesaid transferred case has not been considered.

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The learned counsel for the petitioner has drawn our attention to paragraph 5(v) of the counter-affidavit. According to the averments made therein Constable Vir Singh & Hari were given fresh appointments after their acquittal in the criminal case pending against them. Of course, the appointment was subject to the rules i.e. eye and medical fitness etc. The learned counsel urges that since the petitioner is facing criminal prosecution under the Excise Act, a direction may be issued that he may be kept at par with Constables Vir Singh and Hari. We direct that if and when the petitioner is acquitted in the criminal case, the respondents shall consider his case for fresh recruitment, if he makes a representation to that effect and if he fulfills the other requirement of recruitment.

We maintain the order of termination of the service of the petitioner. However, in case the petitioner is acquitted in the criminal case, the respondents shall deal with him in the manner indicated above.

With these observations the O.A. is disposed of finally. No costs.

B.N. Dhaon
(B.N. Dhaundiyal)
Member(A)

S.K. Dhaon
(S.K. Dhaon)
Vice-Chairman

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