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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

OA 433 of 1989

Date of decision 17th January, 1991

Shri Om Parkash

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Applicant

versus

1. Delhi Administration through
its Chief Secretary, Old Secretariat,
Rajpura Road, Delhi.
2. Commissioner of Police,
Police Headquarters, I.P. Estate,
New Delhi - 2

CORAM: Hon'ble Mr. B.S. Sekhon, Vice Chairman
Hon'ble Mr. I.K. Rasgotra, Administrative Member.

For the applicant - Mr. J.P. Verghese, Advocate.

On behalf of respondents - Shri Satyavir Singh, Head Constable,
departmental representative.

B.S. SEKHON:

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Vide order dated 30-5-88 (Annexure-I), the services of the Applicant, who was a temporary Constable in the Delhi Police were terminated by the Principal, Police Training School, Jharoda Kalan, New Delhi, in pursuance of the proviso to sub-rule(1) of Rule 5 of the CCS(Temporary Service) Rules, 1965 (for short 'the Rules'). Applicant made a detailed representation (Annexure-II) to the Commissioner of Police, Delhi on 14-6-88. The same was rejected vide order dated 27th October, 1988 (Annexure -III). The applicant was advised that his representation had been considered by the Commissioner of Police, Delhi and rejected. Applicant has assailed the aforesaid order, inter-alia, on the grounds that the same is violative of Article 311 of the Constitution; the competent authority could not take recourse to Rule 5 of the Rules; the respondents have exceeded the jurisdiction

by wrongly assuming the rule-making power under Section 5 of the Delhi Police Act by taking away the rights given under Sections 21 and 22 of the said Act; the Rules cannot over-ride the provisions of the Act; the notification issued under Section 5 is without jurisdiction and ultra vires; respondents should not have terminated the applicant under the proviso to sub-rule(1) of Rule 5 of the Rules as the Delhi Police(Punishment and Appeals)Rules, 1980 are applicable to him.

2. Defence of the respondents as set out in the counter is that the applicant was enlisted in Delhi Police on 1st May, 1984. He remained on medical rest for 421 days continuously from 30.7.84 to 23.9.85. His services were terminated by Deputy Commissioner of Police IVth Bn. DAP Delhi vide order dated 24th Sept., 1985 in consideration of applicant's ill-health as well as his own request to that effect. Applicant, however, made a representation and was re-enlisted as a temporary Constable with effect from 24th March, 1987. He was detailed for training in PTS Jharoda Kalan, New Delhi, where training is imparted to inculcate in the police employees habits of physical health, discipline, self-reliance, observation, punctuality, courtesy and straight-forwardness. The applicant did not show aptitude to acquire the requisite professional knowledge and traits expected of the officer of his rank and file. He remained absent from training on the following occasions for one reason or the other as mentioned below:-

1. 4 days medical rest from 17.8.87 to 20.8.87
2. 7 days' medical rest from 24.8.87 to 30.8.87.
3. 22 days medical rest from 14.9.87 to 5.10.87.
4. 2 days unauthorised absence from 6.1.88 to 7.1.88
5. Continuous unauthorised absence from 3.5.88 to date of termination i.e. 30.5.88.

It has been further stated that on thorough screening, it was revealed that the applicant was maintaining feeble health and was unable to stand strain and stress of the training, meaning thereby that he could not be prepared for performance of the duties expected of him in the Police Force. There was no likelihood of his becoming a good police officer and his services were, therefore, terminated vide the impugned order. Respondents have controverted the grounds on which the impugned order has been assailed saying that the notification is valid, intra-vires; applicant was a temporary employee whose services could be terminated under Rule 5(1) of the Rules, application of Article 311 is not attracted in a case like this.

3. Applicant reiterated his case in the rejoinder.

The case was listed on 16th January, 1991 pursuant to order dated 21st August, 1990 passed by the Hon'ble Chairman. Respondents did not, however, make adequate arrangement for their representation by engaging a counsel. We had, therefore, little option but to proceed with the arguments.

4. A perusal of the impugned order reveals that the same has been couched in innocuous terms. It is by now well settled that mere innocuous nature of the impugned order is not conclusive and that it is open to the court/Tribunal to lift the veil and to ascertain the question as to whether the innocuous order is founded on mis-conduct. This has to be ascertained by taking into account the circumstances attendant and preceding and all the other facts & circumstances obtaining in a particular case. After giving our earnest consideration to the facts and circumstances obtaining in this case, we find that the applicant has, in fact, been removed from service for his lapses, including proceeding on leave frequently and for the reasons indicated

hereinabove, which have been set out in the counter.

5. During the course of arguments, the learned counsel for the applicant also invited our attention to the judgment dated 31.12.90 rendered in OA 1748/88 titled 'Shri Satyavir Singh v. Union of India & others' in support of the contention that the instant case is squarely covered by the aforesaid judgment. The ratio of the aforesaid judgment and the reasons for which the Tribunal was pleased to allow the Application in Shri Satyavir Singh (supra), squarely cover the instant case. Minor variations in the factual matrix in the two cases are of little consequence. After careful consideration, we hold that the mis-conduct was the foundation of the impugned order. In view thereof, the impugned order is not sustainable.

6. In the premises, the impugned order dated 30.5.88 (Annexure-I) is hereby quashed. Respondents are directed to reinstate the applicant as a Constable. Applicant shall also be entitled to the arrears of pay and allowances from 31.5.88 to the date of his reinstatement, if he is able to establish within six weeks from today that he was not gainfully employed else where after the impugned order was made. The respondents are directed to comply with this order within a period of three months from the date of receipt of a copy of this judgment. This order will not, however, preclude the respondents from taking ^{appropriate} action against the applicant in accordance with law, if they so choose.

In the circumstances, we make no order as to costs.

I.K. Rasgotra
(I.K. RASGOTRA) 17/11/91
ADMINISTRATIVE MEMBER

B.S. Sekhon
(B.S. SEKHON)
VICE CHAIRMAN.

17-1-91