

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A. NO. 48/1989

DATE OF DECISION 17.01.1992

SHRI MUKARRAM ALI

...APPLICANT

VS.

DELHI ADMINISTRATION & OTHERS

...RESPONDENTS

CORAM

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

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

...SHRI ASHOK AGGARWAL

FOR THE RESPONDENTS

...SHRI T.S. KAPOOR

1. Whether Reporters of local papers may be allowed to see the Judgement? *JK*
2. To be referred to the Reporter or not? *JK*

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985, aggrieved by the order dt. 19.4.1988 passed by the Deputy Commissioner of Police, IVth Battalion, New Delhi by which the services of the applicant have been terminated forthwith by the impugned order under Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965.

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2. The applicant has prayed for the relief that the impugned order of termination dt. 19.4.1988 be set aside and the respondents be directed to reinstate the applicant in service with full back wages and continuity of service with all consequential benefits thereof.

3. The facts of the case are that the respondents took recruitment to the post of Constable from the persons domiciled in U.P. and for this besides other qualifications, the eligibility condition was that the candidates should be registered with the Employment Exchange on or before 15.4.1987, i.e., one month before the actual date of recruitment held at Saharanpur and Rampur in U.P. respectively. The applicant appeared in the recruitment and he came out successful. He has filed the Employment Exchange registration card which showed his registration No. M/21/87 dt. 16.12.1986. On scrutiny of the Employment Exchange card of all the candidates, it was found that some of them have erased or altered the date of registration, so verification was called from the respective Employment Exchange for verifying the genuineness/correctness of their registration number. In the case of the applicant, the verification was done from the district Employment Officer, Muzaffarnagar and after

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verifying the same, it was found that Serial No.21/87, the name of one Shri Devender Kumar, S/o Shri Shyam Singh stands registered and the name of the present applicant does not stand registered against the said registration number. Though the applicant had joined in view of the appointment letter dt. 4.9.1987 (Annexure-D) on 15.9.1987 and was serving as Constable in Delhi Police Force, his services were terminated by the order dt.19.4.1988 (Annexure A), which is impugned by the applicant in the present case. The applicant made a representation on 19.5.1988 against his termination order. He asserted that he was duly registered with the Employment Exchange, Muzaffarnagar on 16.12.1986. The Employment Officer also sent the letter dt. 21.7.1988 (Annexure F) where it is mentioned that the registration number of the applicant is M/21/86 and it was wrongly shown earlier as M/21/87. The duplicate registration card issued by the District Employment Officer indicating registration No.M/21/86 dt. 16.12.1986 was again got verified by the respondents. So a Sub-Inspector was deputed to enquire into the matter personally by checking the relevant record from the Officer of the Employment Exchange, Muzaffarnagar. During the course of enquiry, it was found that the pages of the relevant register of the Employment Exchange, Muzaffarnagar have been torn out and the X-1 card of the applicant was not found on record of

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the Employment Exchange, Muzaffarnagar. The Employment Exchange Officer also gave in writing that his earlier letter dt. 23.7.1988 (Annexure-F) be treated as cancelled. The respondents, therefore, have taken the case that the applicant has managed to seek employment in Delhi Police as Constable producing false/bogus/fabricated employment registration card and adopted deceitful means, his services were rightly terminated under Rule 5 of CCS (TS) Rules, 1965.

4. We have heard the learned counsel for the parties at length and have gone through the record of the case and also summoned the original record of the file of the applicant pertaining to his termination of service. In fact, the order passed under Rule 5 of CCS(TS) Rules, 1965 should be an innocuous order and should not attach any stigma to the applicant. On the face of it, the order of termination dt. 19.4.1988 (Annexure A) appears to be innocuous order and is reproduced below :-

"In pursuance of the proviso of Sub-rule (I, of the rule 5 of the Central Civil Services (Temporary Services of rules, 1965, I hereby terminate forthwith the services of Recruit Constable Mukarram Ali S/o Sh.Bundu Khan, No.8808/DAP and direct that he shall be paid a sum equivalent to the amount of pay and allowance for a period of one month (in lieu of the period of notice) calculated at the same rate at which he was drawing them immediately before the date on which this order is issued."

5. It is not disputed by the respondents that the appointment of the applicant was made under Delhi Police (Appointment and Recruitment) Rules. As per provisions of Rule 5(e)(i) of Delhi Police (Appointment and Recruitment) Rules, 1980, all direct appointments of Constables are made purely on temporary basis and, therefore, all such appointments are governed by the CCS(TS) Rules, 1965.

6. In the case of Jagdish Prasad Vs. Sachiv, Jila Ganna Committee, Muzaffarnagar & Anr., reported in 1986(2) SCC 338, the services were terminated in a similar manner as he obtained appointment by concealing the fact in his earlier appointment, he had been caught in a corruption case. The Lordships of the Hon'ble Supreme Court held as follows :-

"This order of termination is not an innocuous order but is an order which on the face of it casts stigma on the service career of the appellant and it is in effect an order of termination on the charges of concealment of the fact that he was removed from his earlier service under the UP Roadways on charges of corruption. This order undoubtedly is penal in nature having civil consequences and it also prejudicially affects his service career...This order is, therefore, per se illegal, arbitrary and in breach of mandatory procedure prescribed by Regulation 68 of the UP Cane Co-operative Regulations, 1975."

Thus it is evident that merely showing that the order of termination is an order of simplicitor will not make such order of termination innocuous. In such cases, the process of judicial review has to go into the foundation of the order

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simplicitor. The appointment innocuous order if linked with the stigma, if the link is not far to seek and the respondents have disclosed what actually were the grounds for making the order, then the said order is grounded upon features which cast stigma against the affected persons. Then such person is entitle to defend himself in a proceeding provided under the rules applicable to him.

7. Again in Rai Singh Vs. Union of India, SLR 1979(1) 465, the Hon'ble Supreme Court observed as follows :-

"It is well settled that when a seemingly innocent order of termination is assailed as being punitive in character on the ground that it was found on charges of misconduct, judicial scrutiny need not be confined to the terms of the order itself and it would be open to the court as indeed obligatory on it, to go behind the order and to determine from circumstances antecedent to the order to see for itself if the charge of misconduct was the foundation of the order of its mere motivation."

It is clear from the counter filed by the respondents in grounds (A) to (H) at p-5 wherein it is stated,

"It was proved th t the applicant had managed to seek employment in Delhi Police as Constable by producing false/bogus/fabricated employment registration card and adopted deceitful means, his services were rightly terminated.

8. The learned counsel for the respondents had shown from the report of the Sub. Inspector, who was deputed to enquire into the matter, that actually/no registration of there is

the applicant in the index register for the year 1986-87 the and portions of the pages from 61 to 63 have been torn out so that what was written in those pages could not be subsequently read out actually to find out whether the applicant was registered in Employment Exchange, Muzaffarnagar as alleged by him on 16.12.1986. In fact, the tearing out of the pages cannot be assigned to the applicant and it can only be an inference that he conspired with some person employed in the Employment Exchange, but the inference cannot be drawn in a case where the employee is to be punished by an order of termination without giving him an opportunity to explain his conduct.

9. The termination order dt. 19.4.1988 cannot be said to be an innocuous order and so long there were vacancies available and the persons who were junior to the applicant have been working, the applicant cannot be sacked unceremoniously without resorting to the rule of law. There is adequate provision in the Delhi Police (Punishment and Appeal) Rules, 1980 and if the applicant has committed fraud or obtained employment by deceitful means, he could have been proceeded under the relevant law, but without resorting to the disciplinary proceedings when the applicant had already worked from 15.9.1987 to 19.4.1988, the termination order cannot be said to be an innocuous and simplicitor order of

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termination. In fact this order when the veil is lifted, goes to show that the ground of termination has been the fraud and forgery practised by applicant in certain records on the respondents in obtaining his employment in Delhi Police.

10. We are, therefore, of the opinion that the impugned order dt. 19.4.1988 should be quashed, but the respondents shall be free to proceed against the applicant, if they so desire under the relevant Delhi Police (Punishment and Appeal) Rules, 1980 after giving him a show cause notice and proper defence.

11. In view of the above discussion, the application is partly allowed. The impugned order dt. 19.4.1988 is quashed and set aside and the applicant shall be reinstated in his appointment within one month from the date of receipt of this order. However, regarding back wages for the period from 19.4.1988 ^{till} the time of his reinstatement ^{he} shall be governed by the final order passed in the disciplinary proceedings, if any, against him. If, however, no disciplinary proceedings are initiated against him, the applicant shall be entitled to full back wages. If disciplinary proceedings are initiated against him,

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then the wages for the period from 19.4.1988 till the date of joining shall be governed by the order passed by the disciplinary authority in that case. In view of the above facts, the parties are left to bear their own costs.

J. P. Sharma
(J.P. SHARMA) 17.1.92
MEMBER (J)

I. K. Rasgotra
(I.K. RASGOTRA)
MEMBER (A) 17/1/92