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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A.No.66 of 1989

Date of decision: 8-10-1993.

Vinod Kumar.....Petitioner.

vs.

Delhi Administration & another.....Respondents.

Coram:

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

For the petitioner: Mr J.P.Vergheze, Advocate.

For the respondents: Mr B.R.Prashar, Advocate.

JUDGMENT (CRAL)
(by Hon'ble Mr Justice S.K.Dhaon)

In the purported exercise of powers under proviso to sub-rule(1) of Rule 5 of the Central Civil Services(temporary services) Rules, 1965(the rules), the Deputy Commissioner of Police on 17th May, 1988, terminated the services of the petitioner. This order is being impugned in the present application.

2. On the face of it, the impugned order is in conformity with the aforesaid sub rule(1) of Rule 5. It is an innoxious order. The petitioner has averred that, in fact, the foundation of the order is alleged misconduct of the petitioner.

3. A counter-affidavit has been filed on behalf of the respondents by Shri Rajesh Kumar, Deputy Commissioner of Police, IV Bn.DAP, Delhi. In it, the material averments are these.

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During the recruitment held in the year, 1987 at Saharanpur, the petitioner appeared for the post of Constable in the Delhi Police. He was selected. He was appointed as a temporary constable w.e.f. 15th September, 1987. On 15th April, 1988, a complaint was received from District Meerut that the petitioner was involved in a criminal case in Meerut and he did not disclose his involvement in that case at the time of enlistment. On receipt of the complaint, enquiries were made from the concerned police station and it was found that the petitioner was involved in case FIR 35 dated 18th September, 1985 under Section 452/323 Indian Penal Code. However, he did not mention about his involvement in the said criminal case in column No.11 of the application form as well as the attestation form. He, therefore, concealed facts. As per instructions on the subject, circulated vide PHQ's No.14565-615 SIP PHQ dated 12th September, 1983, his services were terminated w.e.f. 17th May, 1988. He submitted a representation, which too was rejected. He was not given any punishment but his services were terminated under Rule 5 as he concealed the facts at the time of seeking appointment to the Delhi Police. No opportunity or show-cause notice was required to be given/issued to a temporary government servant for terminating his services as he had concealed material facts. His services were rightly terminated.

4. We have considered the counter-affidavit carefully and in our opinion, there can be no escape from the conclusion that the foundation of the order of termination really is the misconduct attributed to the petitioner in the counter-affidavit.

Sd/-

The petitioner has given some sort of explanation in the O.A., which we do not consider necessary to discuss at this stage. If an opportunity had been given to him, he would have given some explanation, which may or may not have found favour with the authority concerned. The fact remains that inspite of imputation of misconduct, the order was passed behind his back and without giving him any opportunity to explain his position. In these circumstances, the impugned order is not sustainable.

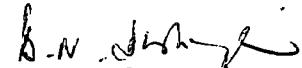
5. There appears to be yet another reason for not sustaining the impugned order. Under Rule 5, the power of terminating the services of the temporary government servant has to be exercised by the authority concerned. The provision clearly implies the application of mind by the officer passing the order. If the authority concerned had applied its mind, it is possible, it may have come to a different conclusion. As stated in the counter-affidavit, the impugned order was passed as per instructions of the Headquarter dated 12.9.1983.

6. The petition succeeds and is allowed. The impugned order is quashed. The order passed by the authority concerned on 30th November, 1988, rejecting the representation of the petitioner is also quashed. The petitioner shall be re-instated in service and paid his back wages. The order of re-instatement shall be passed within a period of one month from the date of presentation of a certified copy of the order by the petitioner to the concerned authority. The necessary payment shall be made to the petitioner within two months after re-instatement. However, it will be open to the

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respondents to pass a fresh order on merits
and in accordance with law.

8. There shall be no order as to costs.


(B.N.Dhoundiyal)
Member(A).


(S.K.Dhaon)
Vice Chairman

October 8, 1993.
(SDS)