

5

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

DATE OF DECISION: 9.12.1991

1. OA NO. 754/89
PROMOD KUMAR

APPLICANT

VERSUS

DELHI POLICE

RESPONDENTS

2. OA 2287/89

SHRI PUSHPENDER RANA

APPLICANT

VERSUS

DELHI POLICE

RESPONDENTS

3. OA 2289/88

SHRI JAGAT SINGH

APPLICANT

VERSUS

UNION OF INDIA, MHA

RESPONDENTS

CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN

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

FOR THE APPLICANTS

Sh.K.N.Pai with

SHRI A.P. SINGH, COUNSEL

FOR THE RESPONDENTS

MRS. MEERA CHHIBER AND

SHRI T.K. GANJOO, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY

HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN)

The petitioners in these three cases were appointed as Temporary Police Constables, ^{Mr}Invoking Rule 5 of the Central Civil Service (Temporary Service) Rules, 1965 (the Rules for short), [✓]their services have been terminated by the impugned order in these cases without assigning any reasons and in terms of sub rule 1 of Rule 5 of the Rules. The petitioners have assailed the orders of termination on the ground that though the orders of termination have a very innocuous language in terms of Rule 5 of the Rules, their termination is really on the ground that they are guilty of having secured appointment either by suppressing [✓]true facts or by placing untrue facts in regard to their

eligibility. Therefore, they contend that the principles of natural justice were required to be followed and that they were required to be given an opportunity to show cause before their services are terminated.

2. The appointing authority decided to restrict its attention to only those who are registered with the Employment Exchange on or before a specific date. It, therefore, called for applications from those who had such registration in their favour. The petitioner claimed right to consideration of their candidature by producing materials in the form of Employment Exchange records to establish that they were registered with the Employment Exchange on or before the specific date. Accepting the said records produced by the petitioners, the appointing authority selected and appointed them as Police Constables on a temporary basis. On a further scrutiny the appointing authority found that as far as the petitioners in these cases were concerned, they did not have valid registration of their names with the Employment Exchange before the specified date. They came to the conclusion on verification that the petitioners have secured appointment by producing false/bogus or fabricated employment registration certificates. The authorities being satisfied that the petitioners' cases could not have been considered, decided to terminate their services invoking Rule 5 of the Rules without assigning any reasons.


3. In their counters, the respondents have submitted that the petitioners are temporary government servants and are governed by Rule 5 of the Rules and according to that Rule, their services could be terminated without assigning any reasons, at any time. Though ^{such is} ~~this should be~~ the language of the Rule, the said provision has been judicially interpreted by the Hon'ble Supreme Court as well as by this Tribunal holding that when the termination made under Rule 5 is

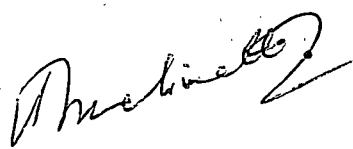
is challenged, it is open to the Court or the Tribunal to lift the veil to find out as to whether any blameworthy conduct on the part of the employee is the real foundation or basis for termination of the employee. The learned counsel for the petitioner relied upon the decision reported in 1987 (1) SLR 33 and the decision of this Tribunal in Vinod Kumar Vs. Delhi Admn. & Ors. OA No. 2113/88 dated 26.4.1991 which support his contention. But it was contended on behalf of the respondents that the principle that should govern the present case is the one laid down by the Calcutta Bench of this Tribunal in Union of India & Ors. Vs. Ashit Sengupta & ors. ATC 1987 (4) 109. That was a case in which it was held that the original appointment itself being void ab initio, the question of issuing a show cause notice to the employee did not arise. In that case the appointment was made on the basis of a fake letter from the Employment Exchange. The foundation in the order of termination was not any blameworthy conduct of the employee but the fake employment exchange letter of the authority concerned. It was held that the question of complying with the natural justice did not arise as there was nothing which the employee could have explained. In the present case the basis or the foundation of the order of termination is not the conduct of any other authority or person but the conduct of the employees themselves. Therefore, the principle laid down by this Tribunal in the case of Union of India Vs. Ashit Sengupta (supra) is not attracted to the facts of the present case.

On facts there is not much difficulty so far as the petitioners in these cases are concerned as their cases stand established by the stand taken by the respondents in the counter affidavit. In the counter affidavit, there is clear statement to the effect that the services of the petitioners were terminated because they found on enquiry that they had produced fake/bogus or fabricated registration certificate to prove that they were within the area of consideration for appointment. As it is ^{the} conduct of the petitioners, that was the basis or the foundation for termination, the authorities were bound to abide ^{by} ~~the~~ principles of natural justice before exercising their power to terminate their temporary service under Rule 5 of the Rules. As that has not been done, these applications are entitled to succeed.

It is obvious that if the petitioners have been guilty of securing appointment by producing false/fabricated documents, they should not be permitted to escape the consequences of their action. It is, therefore, proper that while quashing the orders of termination, we should reserve ~~the~~ liberty to the respondents to take appropriate action after complying with the principles of natural justice. In the event of the authorities coming to the conclusion, after such enquiry as may be necessary, that the services of the petitioners are liable to be terminated they may proceed to pass such orders. In such an event the petitioners will not be entitled to claim any backwages. But in the event of the authorities coming to the conclusion that the services of the petitioners are not liable to be terminated, the petitioners will be entitled to backwages from ~~the~~ the date of termination till their reinstatement in service.

For the reasons stated above, all these applications are allowed and the impugned orders of termination are quashed reserving liberty to take further action in favour of the respondents in the light of the observations made. There shall be no order as to costs.


(I.K. Rasgotra)
Member (A)


(V.S. Malimath)
Chairman

/SSM/