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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA No. 1016/89

Date of decision: 29.01.93

Sh. Sohan Vir Singh

Applicant

Versus

Union of India & Others

through Commissioner of Police,

Delhi

Respondents

Sh. Shankar Raju

Counsel for the applicant

Sh. D.N. Goburdhan

Counsel for the respondents

CORAM

Hon'ble Sh. P.K. Kartha, Vice Chairman (J)

Hon'ble Sh. B.N. Dhoundiyal, Member (A)

1. Whether Reporters of local papers may be
allowed to see the judgement? *Yes*

2. To be referred to the Reporters or not? *No*

JUDGEMENT

(Of the Bench delivered by Hon'ble Sh. B.N.
Dhoundiyal, Member (A)

This OA has been filed by Shri Sohanvir Singh, ex-Constable against the impugned order dated 8.5.89 issued by the Deputy Commissioner of Police, terminating his service and the impugned order dated 8.5.89 intimating rejection of his representation.

2. According to the applicant, he was appointed as a temporary Constable in Delhi Police on 1.6.86. He had completed nearly 3 years of continuous service and was due to be made quasi-permanent. At the time of his appointment, he had submitted copies of High School Certificate showing his date of birth as 6.4.65, which was accepted by the respondents after verification. A complaint was lodged by one Mr. Bhopal Singh that the applicant had passed his High School Examination twice, once in 1978 and the second time in 1983 showing *b/w*

different dates of birth. A preliminary enquiry was conducted behind the back of the applicant and he only came to know about it when he received a notice for termination. He filed an O.A. (No. 692/89) in the Central Administrative Tribunal and was directed to make a representation to the competent authority. This was done but his representation was rejected without assigning any reason and an order of termination was issued on 8.5.89. He contends that his date of birth is 6.4.65 and he could not have appeared in the High School Examination in 1978 as at that stage he was only 13 years of age and ineligible to appear in the examination. He has prayed that the impugned order dated 8.5.89 may be quashed and set aside and the respondents be directed to reinstate him in service with all the consequential benefits.

3. The respondents have admitted the fact that a complaint was received from Sh. Bhopal Singh that the applicant had appeared twice in the High School Examination, once in 1978 when his date of birth was recorded as 20.6.62 and later in 1983 when his date of birth was recorded as 6.4.65. The matter was referred to the Secretary, Madhyamik Shiksha Parishad, Allahabad, who reported that admission card as well as photo forms had been destroyed. However, the allegations made against him were proved to be true. He was over-age according to the date of birth given in the High School Examination in 1978 and he appeared again in 1983 giving his date of birth as 6.4.65. In this way, he had sought employment in Delhi Police by adopting such deceitful means and was unfit to be retained in service. His representation was considered by the Commissioner of Police and rejected vide letter dated 4.5.89 and his services were terminated vide order dated 8.5.89.

3. We have gone through the facts of the case and heard the learned counsel for both the parties. The learned counsel for the applicant has argued that despite the orders of this Tribunal dated 17.4.89 directing the respondents to pass a speaking order on the representation of the applicant, the order passed on 8.5.89 (Annexure-2) does

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not give any reasons for rejection. He has cited judgements of this Tribunal and the Supreme Court to support his contention that the appellate order must be a speaking one(1), that if the termination is based on the ground of submitting bogus/fictitious record then it casts stigma and amounts to punishment(2), and that though the termination order may be silent as to the reasons, the courts have to lift the Veil and enquire into the circumstances of the case(3) and the age verification for recruitment cannot be done after the enrolment is over(4). The respondents have contended that the fact that the applicant appeared twice in the high school examination was confirmed by the Allahabad Board of Education and that as he was not a confirmed or quasi-permanent employee, termination of his services after giving one months notice was perfectly valid. Our attention has been drawn to the following observations of the Hon'ble Supreme Court in case of State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla (1991) 1 S.C.C. 691):-

" The respondent being a temporary government servant had no right to hold the post, and the competent authority terminated his services by an innocuous order of termination without casting any stigma on him. The termination order does not indict the respondent for any misconduct. The inquiry which was held against the respondent was preliminary in nature to ascertain the respondents suitability and continuance in service. There was no element of punitive proceedings as no charges had been framed, no inquiry officer was appointed no findings were recorded, instead a preliminary inquiry was held on the report of the preliminary enquiry the competent authority terminated the respondent's service by an innocuous order in accordance

1. Ram Singh Vs. U.O.I. - 1988 (6) S.L.R. CAT-218
2. Megha Singh Vs. U.O.I.- ATR 1989 (1) CAT-228
3. State of Maharashtra Vs. VR Saboji- AIR 1980 SC 42.
4. Tej Singh Vs. U.O.I. & Ors.- 1988 (2) SLJ-143.

with the terms and conditions of his service. Mere fact that prior to the issue of order of termination, an inquiry against the respondent in regard to the allegations of unauthorised audit of Boys Fund was held, does not change the nature of the order of termination into that of punishment as after the preliminary inquiry, the competent authority took no steps to punish the respondents instead it exercised its power to terminate the respondent's service in accordance with the contract of service and the Rules. The allegations made against the respondent contained in the counter affidavit by way of a defence filed on behalf of the appellants also do not change the nature and character of the order of termination."

4. Admittedly, the applicant was still temporary when his services were terminated in accordance with the provisions of the C.C.S. (Temporary) Service Rules, 1965. The order of termination does not mention any charges and no stigma is attached to it. The fact that a preliminary inquiry was held does not, in view of the aforementioned observations of the Supreme Court, make it punitive. We, therefore, hold that the application has no merit and dismiss the same.

There will be no order as to costs.

B. N. Dhundiyal
(B.N. Dhundiyal) *29/1/93*

Member (A)

P.K. Kartha
29/1/93
(P.K. Kartha)

Vice Chairman (J)