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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.1364/88

New Delhi this the 20th day of December, 1993.

CORAM :

THE HON'BLE MR. JUSTICE B. C. SAKSENA, VICE CHAIRMAN
THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

Vijender Pal,
Ex-Constable No.1905/SD,
S/O Shri Asa Ram,
R/O Quarter No. 240,
Katra Jugal Kishore,
Village Azadpur,
Delhi-33. ... Applicant

By Advocate Shri Shankar Raju

Versus

1. Union of India through Secretary, Ministry of Home Affairs, Govt. of India, New Delhi.

2. Lt. Governor through the Chief Secretary, Delhi Administration, Delhi.

3. Commissioner of Police Delhi, Police Head Quarters, M.S.O. Building, I.P. Estate, New Delhi.

4. Addl. Commissioner of Police, South District, P.S. Defence Colony, New Delhi. ... Respondents

By Advocate Shri B. S. Oberoi for Shri Anoop Bagai

O R D E R

Hon'ble Mr. Justice B. C. Saksena —

Through this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant who was a Constable in the Delhi Police, has challenged an order dated 17.2.1987 terminating his services. He has also assailed an order of the Commissioner of Police rejecting his representation against the said order of termination communicated by D.C.P./South District, New Delhi vide letter dated 24.7.1987.

2. The facts, in short, as set-up in the application, are that the applicant was appointed in the Delhi Police as a Constable on 16.10.1980. He came to be posted in South District, New Delhi and was ordered to be proceeded against departmentally and served a summary of allegations dated 11.7.1985. Copy of the said summary of allegations has been annexed as Annexure-A to the O.A. During the pendency of the departmental inquiry, it is alleged, the applicant remained admitted in Hindu Rao Hospital, Delhi from 25.10.1985 to 29.10.1985 and in T.B. Hospital from 30.10.1985 to 30.1.1986. The Additional Dy. Commissioner of Police, South District, passed the impugned order dated 17.2.1987 terminating the petitioner's services forthwith in pursuance of Sub-rule (i) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. The respondents have filed a counter affidavit and a rejoinder affidavit to the same has also been filed by the applicant. The stand of the respondents in their counter affidavit is that the applicant was enlisted in the Delhi Police as a temporary Constable w.e.f. 16.10.1980. His quasi-permanency was due on 17.10.1983, but the same was held up on various occasions on account of unsatisfactory record. It has been averred in the written statement that the applicant remained admitted in the T.B. Hospital only for four days between 25.10.1985 and 29.10.1985 and he had produced medical slip of the CGHS Dispensary, Daryaganj in which he was advised rest for three

weeks and thereafter rest for ten days. It has been indicated that the applicant is a resident of Azadpur, Delhi. He had not attended the CGHS Dispensary nearer to his residence as is provided in the CGHS Card. It is, therefore, pleaded that the applicant managed to get this medical slip to cover-up his absence. His case was considered for grant of quasi permanency status but because of his poor record, work and conduct, he was not found fit for quasi permanency. He was only found unfit to be retained in service and, therefore, the impugned order was passed. In the rejoinder, the applicant has not been able to displace the main averments of facts.

3. We have heard the learned counsel for the parties. The learned counsel for the applicant has made the following two principles of submissions be issues :-

(i) that the impugned order in the surrounding and attending circumstances is an order of punishment and is not an order of termination simpliciter; and

(ii) that the order passed by the authority rejecting his representation against the impugned order is a non-speaking order.

4. The learned counsel for the applicant tried to submit that the applicant is not governed by the C.C.S. (Temporary Service) Rules, 1965. He urged that under Rule 5(i) of the Delhi Police (Appointment & Recruitment) Rules, 1980, all direct

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appointments of employees are required to be made initially on purely temporary basis and all employees appointed to the Delhi Police shall be on probation for a period of two years. In our opinion, this plea is not open to the applicant since no factual foundations for the said plea has been ~~pleaded~~ laid in the application.

5. As noted hereinabove, the impugned order had been passed in pursuance of Sub-rule (i) of Rule 5 of the C.C.S. (Temporary Service) Rules, 1965. It was, therefore, incumbent on the applicant to have set-up the factual position in the application itself. He has not stated that his appointment initially was on probation. The learned counsel for the respondents has invited our attention to a decision rendered on 30.8.1993 by the Tribunal in O.A. No. 344/88 - Om Pal Singh vs. Union of India through the Secretary, Ministry of Home Affairs & Others. In the said case also, at the time of the hearing, an amendment application was preferred to incorporate such a plea. The application was rejected on the ground of being highly belated and inconsistent with the case put forward in the original application. However, the Bench further proceeded to analyse the provisions of Rule 5(e)(i). It was held that the said Rule contemplates a person being appointed on probation and if a person is so appointed on probation, one would expect the order to say so. The expression "probation" has been defined in Rule 215 of the Supplementary Rules and analysing

the said provisions, it was held that since the order of appointment says that he was appointed as a temporary Police Constable, no inference can be drawn that he was appointed on probation. In the instant case also, the respondents in their counter reply have categorically averred that the applicant was enlisted in the Delhi Police as a temporary Constable. In the rejoinder, it has not been denied. The position, therefore, is that we have to proceed on the assumption that the applicant was appointed as a temporary Constable and not on probation. Against the applicant a departmental inquiry was instituted for his earlier absence from duty. During the pendency of the departmental inquiry, from the pleadings on record, it appears that the question of his fitness and suitability to be retained was considered and his services came to be terminated by the impugned order. In the circumstances which was passed two years after the institution of the departmental proceedings, it cannot be said to be an order of punishment. It is an order simpliciter and is not stigmatic.

6. The learned counsel for the applicant cited a decision reported in 1991 (17) ATC 250 - O. P. Goel vs. H.P. Tourism Development Corporation. The Supreme Court in the facts of that case had considered whether the order of termination from service was punitive. The chargesheet had been served and an inquiry was conducted, but before the conclusion of the inquiry, an order of simple termination was passed. In the

facts of the case it was held that the order was made on the ground of misconduct and was in substance punitive, and the order of termination was accordingly quashed. The learned counsel for the respondents, in reply, placed reliance on a decision of the Supreme Court reported in JT 1991 (1) SC 108 - State of U.P. & Anr. vs. Kaushal Kishore Shukla. In the said case, the High Court had held that the termination of the respondent's services on the basis of the adverse entry in the character roll was not in good faith and the punishment imposed on him was disproportionate. The apex court, however, found that the High Court had not recorded any reasons for this conclusion. While indicating law on the question, the apex court was pleased to observe, "Under the service jurisprudence a temporary employee has no right to hold the post and his services are liable to be terminated in accordance with the relevant service rules and the terms of contract of service. If on the perusal of the character roll entries or on the basis of preliminary inquiry on the allegations made against an employee, the competent authority is satisfied that the employee is not suitable for the service whereupon the services of the temporary employee are terminated, no exception can be taken to such an order of termination." Another relevant observation has been made by the Supreme Court in the end of paragraph 11 of the judgment, which reads, "It is erroneous to hold that where a preliminary enquiry into allegations against a temporary govt.

servant is held or where a disciplinary enquiry is held but dropped or abandoned before the issue of order of termination, such order is necessarily punitive in nature." The apex court further proceeded to analyse two of its earlier judgments, namely, Nepal Singh vs. State of U.P. & Ors. - 1985 (1) SCC 56, and Ishwar Chand Jain vs. High Court of Punjab & Haryana & Anr. - 1988 (3) SCC 370. It was held that the said decisions had no relevance to the case before them. In support of the proposition quoted hereinabove, support was drawn from a three Judge Bench decision in R. K. Misra vs. U.P. State Handloom Corporation - 1988 (1) SCR 501. In the said case the apex court also referred to the decision in A. G. Benjamin's ~~case~~ decided on 13.12.1966 in Civil Appeal No. 1341/66. The apex court came to the conclusion that the Constitution Bench in the case of Benjamin held that no temporary Government servant is entitled to an opportunity in the preliminary inquiry as "there is no element of punitive proceedings in such an inquiry; the idea in holding such an inquiry is not to punish the temporary government servant but just to decide whether he deserves to be continued in service or not." The apex court further found that the Constitution Bench in Benjamin's case (supra) had held that even if a formal departmental inquiry is initiated against the temporary Govt. servant, it is open to the competent authority to drop further proceedings in the departmental inquiry against the temporary Govt. servant and to have recourse to Rules applicable to temporary Govt. servant for terminating his services.

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7. In view of the law laid down in State of U.P. vs. Kaushal Kishore Shukla's case and being satisfied that the material on record in the present application discloses enough material for the satisfaction of the competent authority to take recourse to the Temporary Service Rules and pass the orders of termination, the impugned order, in our opinion, does not call for any interference.

8. The learned counsel for the applicant also referred to a decision of the apex court reported in 1974 SCC (L&S) 550 - Shamsher Singh vs. State of Punjab. Reliance was placed on paragraph 64 of the said judgment. It is needless for us to analyse the said decision in details. The said decision was ~~considered~~ noted in the case of State of U.P. vs. Kaushal Kishore Shukla (supra) (see paragraph 7).

9. The other submission which remains to be considered is challenge to the order rejecting the applicant's representations against the order of termination of his services. The learned counsel for the applicant, in support of his submission, placed reliance on a decision reported in 1991 SCC (L&S) 242 - S. N. Mukherji vs. Union of India. In the said case, it was laid down that an authority exercising quasi judicial functions must record reasons for his decision irrespective of whether the decision is subject to appeal, revision or judicial review. It was held that this was one of the embodied rules of natural justice. In the first place, against the impugned order terminating the applicant's services under the Temporary Service Rules, no appeal or

representation was provided. Annexure-D is the copy of a communication to the applicant in respect of his representation dated 8.3.1987. It says that the representation has been considered by the Commissioner of Police, Delhi and rejected. This order cannot be construed in any manner as the order passed by the Commissioner of Police. It was a mere communication of the fact that the representation had been rejected. The applicant has not sought production of the copy of the order passed by the Commissioner. The same is not on record. It is, therefore, difficult for us to hold that the Commissioner of Police passed a non-speaking order.

10. In view of the discussions hereinabove, there is no merit in this application. It is accordingly dismissed. No costs.

(S. R. Adige)
Member (A)

(B. C. Saksena)
Vice-Chairman (J)

/as/