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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A 232/88

DATE OF DECISION: 18.9.92

Vijay Pal Singh

.. Applicant

vs.

Union of India, through the Secretary,
Ministry of Home Affairs, Govt. of India,
New Delhi and Others. .. Respondents

For the Applicant

.. Shri A.S.Grewal, Advocate

For the Respondents

.. Shri D.N.Trisal, Advocate

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THE HON'BLE SHRI S.P.MUKERJI, VICE CHAIRMAN

THE HON'BLE SHRI T.S.OBEROI, JUDICIAL MEMBER

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

JUDGMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 5.2.1988 the applicant a dismissed Constable of the Delhi Police has challenged the impugned order dated 12.12.1986 terminating his services with one month's notice under rule 5(1) of the C.C.S. (Temporary Services) Rules, 1965, as also the appellate order dated 28.1.87 at Annexure-C rejecting his representation.

2. The brief facts of the case are that according to the applicant he was appointed in the Delhi Police as a Constable on 30.4.1984 and has been doing excellently when the impugned order terminating his services with effect from 12.12.1986 was passed. He has argued that he became due for quasi-permanency on 30.4.1985 and the impugned order is punitive in nature as it was issued

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because he had absented himself for a couple of hours on 26.3.86 and 24.4.86.

3. In the counter affidavit the respondents have stated that the applicant^{was} enlisted in the Delhi Police on 30.4.1981 and his case was ripe for quasi-permanency on 30.4.84. His case was considered for quasi-permanency twice ^{say} on 14.5.1984 and 7.6.85 and again on 30.5.85 and again on 30.4.86. However, since there were 56 adverse entries in the service records and the ACRs for the period 1982-85 were also found to be adverse and since he was found to be a habitual absentee, his services were terminated by the impugned order. He was awarded 56 minor punishments during the short service of five years, besides earning adverse reports. Because of his continued misconduct and unsuitability for retention in force, his services were terminated and his representation rejected. The respondents have denied that the impugned order was passed for any specific charge but because of his incorrigibility and complete unfitness for retention.

4. In the rejoinder the applicant has alleged malafides against his superiors and argued that he was not provided with the orders rejecting his quasi-permanency. He has challenged the adverse reports also on grounds of prejudice. He insists that his services were terminated because he was absent on two occasions.

5. We have heard the arguments of the learned counsel

for both the parties and gone through the documents carefully. Rule 5(e) of the Delhi Police Appointment and Recruitment Rules, 1980 reads as follows:-

"(a) (i) All direct appointments of employees shall be made initially on purely temporary basis. All employees appointed to the Delhi Police shall be on probation for a period of two years.

Provided that the competent authority may extend the period of probation but in no case shall the period of probation extend beyond three years in all.

(ii) The services of an employee appointed on probation are liable to be terminated without assigning any reason.

(iii) After successful completion of period of probation, the employee shall be confirmed in the Delhi Police by the competent authority, subject to the availability of permanent post."

Since, admittedly, the applicant was appointed in the Delhi Police on 30.4.1981 and no order terminating his probation was issued within a period of three years, he has to be deemed to have completed his probationary period after 1.5.1984. The following observations made by a Constitution Bench of the Hon'ble Supreme Court in State of Punjab vs. Dharam Singh, AIR 1968SC 1210 would be relevant:-

"Where the service rules fix a certain period of time beyond which the probationary period cannot be extended and the employees appointed or promoted to a post of probation is allowed to continue in that post after completion of the period of probation without an express order of confirmation he cannot be deemed to continue on that post as a probationer by implication. In such a case it is permissible to draw the inference that the employee allowed to continue on the post on completion of the maximum period of probation has been confirmed in the post by implication".

Accordingly since the applicant had acquired the status of a confirmed Constable with effect from ^{1.5.84} ~~1.5.84~~, the Temporary Service Rules cannot be applied to him.

5. In the circumstances we allow the application, set aside the impugned order at Annexures A & C and direct that the applicant shall be reinstated with all consequential benefits with effect from the date of his removal. The respondents, however, will be at liberty to take such action as deemed fit against him for any lapses on his part in accordance with law and if so advised. There will be no order as to costs.

T.S. Oberoi 18.9.82
(T.S. OBEROI)
JUDICIAL MEMBER

S.P. Mukerji 18.9.82
(S. P. MUKERJI)
VICE CHAIRMAN

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