

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

6

O.A. No. 1239/89
T.A. No.

199

DATE OF DECISION 31.12.1990.

Shri Jasvir Singh

Petitioner

Shri Mukul Talwar, Counsel

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri G.S. Chauhan, Sub-Inspector
(Deptt. Official)

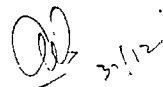
Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. I.K. Rasgotra, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓


 (AMITAV BANERJI)
 CHAIRMAN
 31.12.1990.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. NO. D.A. 1239/88.

DATE OF DECISION: 31.12.1990.

Shri Jasvir Singh.

... Applicant.

Versus

Union of India & Ors.

... Respondents.

CORAM: THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the Applicant.

... Shri Mukul Talwar,
Counsel.

For the Respondents.

... Shri G.S. Chauhan,
Sub-Inspector (Deptt.
Official)

(Judgement of the Bench delivered by
Hon'ble Mr. Justice Amitav Banerji,
Chairman)

The applicant Shri Jasvir Singh, who was a constable in Delhi Police, has filed this Application against termination of the his service vide/order dated 10.11.1987 passed by the Deputy Commissioner of Police, IInd Bn., Armed Police, Delhi and also against the order rejecting the representation by the Commissioner of Police, Delhi dated 22.3.1988 as well as the order passed by the Deputy Commissioner of Police dated 25.11.1987 treating the suspension period from 15.9.1987 to 20.10.1987 as the leave of kind due. The relevant facts are as follows:

The applicant was appointed as Constable on 2.5.1987. He was placed under suspension on 8.8.1987 and an enquiry was initiated. On 15.9.1987, an order was passed putting certain restrictions on the applicant in regard to subsistence allowance, D.A. and other allowances and orders regarding deposit of his uniform, articles etc. and directing the constable

to be present in the new Police Lines, Delhi without obtaining permission from the Deputy Commissioner of Police, IInd Bn. DAP, Delhi. However, on 21.10.1987, he was reinstated in service with immediate effect without prejudice to departmental action contemplated against him and any outcome thereof. It was further ordered that "his suspension period will be decided later on". Thereafter, an order was passed on 10.11.1987 by Shri Purn Chand, Deputy Commissioner of Police, IInd Bn. DAP, Delhi whereby his services were terminated forthwith under the proviso of sub-rule(i) of the Rule 5 of the Central Civil Service (Temporary Services) Rules, 1965. It was also stated that he be paid a sum equivalent to the amount of pay and allowances for a period of one month (in lieu of the period of notice) calculated at the same rate at which he was drawing then immediately before the date on which this order was issued. By a subsequent order dated 25.11.1987, it was indicated that the suspension period from 15.9.1987 to 20.10.1987 will be treated as leave of ^{the} kind due. A representation was made by the applicant to the Commissioner of Police in which the applicant ^{awarded} stated that he was never ED/PD but had earned rewards. His services had been terminated mala fide and arbitrarily without assigning any reasons. He submitted that it appeared to him that his services had been terminated due to a quarrel between him and the Head Constable Dharambir Singh and if it was so, then the termination order was bad in law. He further submitted that the Article 311 also applies to temporary servants as well.

He stated the facts which led to some quarrel with the Head Constable Dharambir Singh. It was further stated that in the order dated 21.10.1987, it was clearly mentioned that he was reinstated without prejudice to departmental action contemplated against him. The above order showed that the departmental enquiry was pending against him due to the certain alleged misconduct but soon thereafter his services were terminated. In fact, the order dated 25.11.1987 treating the period of suspension as leave of kind due was also bad in law. This representation was rejected and a communication was sent to him vide Annexure VI on 22.10.1988 that the representation had been considered and rejected by the Commissioner of Police, Delhi.

A reply was filed on behalf of the respondents which indicated that the applicant was sitting on chair while on VVIP duty. Head Constable Dharambir Singh had asked him to remove the chair. The applicant declined to do so and misbehaved and also assaulted the Head Constable. The latter fell down and the applicant gave him beating. The Head Constable sustained injuries and was medically examined. The applicant was thereafter placed ^{under}/suspension. After considering his representation, he was reinstated without prejudice to departmental action contemplated against him. The misconduct of the applicant was very grave and amounted to insubordination and indiscipline, which was not considered to be permissible in a disciplined force and ^{he was}/totally unfit.

for the uniformed force. It was stated that the applicant is governed by the Central Civil Services (Temporary Service) Rules, 1965 and his services were rightly terminated. He was found totally unfit for retention in a disciplined force. No preliminary enquiry was conducted in this case. His representation was considered by the Commissioner of Police and rejected.

We have heard Shri Mukul Talwar, who appeared for the applicant. No counsel appeared for the respondents although the name of Shri J.S. Bali appearing in the cause list. Shri G.S. Chauhan, Sub-Inspector, appeared for the respondents.

Learned counsel for the applicant argued that the order terminating the service of the applicant under Rule 5(i) of the CCS(TS) Rules, 1965 was punitive in character and offended the provision of Article 311(2) of the Constitution of India. He urged that the facts narrated above showed that the services of the applicant were terminated on the ground that he assaulted the Head Constable and his offence was such that he was not considered fit enough to be retained in a disciplined force. When a person against whom a disciplinary proceeding is contemplated and is placed under suspension but subsequently the order of suspension is withdrawn and a further order is passed soon thereafter under sub-rule (i) of Rule 5 of the CCS(TS) Rules, 1965, it is not an order simpliciter for terminating the service of the employee. He urged that it is well settled that in such a case the veil has to be lifted to see what was led to the passing of the termination order. If it was punitive in character, it was essential

that a regular disciplinary enquiry should have been held against the applicant, whereas in the present case the above procedure has not been followed but the applicant's services were terminated as he was a temporary constable and as if there was nothing against him earlier.

We have looked into the file and heard Shri G.S. Chauhan, Sub-Inspector as well. We are satisfied that this is a case in which we must interfere. It is not in dispute that there was an altercation between the applicant and the Head Constable Dharambir Singh. It is alleged that the applicant had beaten Shri Dharambir Singh and a disciplinary action was contemplated against the applicant. Subsequently, he was put under suspension but that order was withdrawn after two months and thirteen days. Thereafter, an order under sub-rule(i) of Rule 5 of the CCS(TS) Rules, 1965 terminating the service of the applicant was passed on the twenty first day after he had been reinstated in service. It is clearly stated in the written statement that "his misconduct was found very grave as height of insubordination and indiscipline which was not considered tolerable in a disciplined force. He was totally unfit for the uniformed force". This clearly indicates that the cause of passing the order was misconduct vis-a-vis the Head Constable Dharambir Singh. The view taken by the respondents that he was unfit to remain in Delhi Police arose out of that one incident against Dharambir Singh. If he had assaulted Dharambir Singh, a superior police officer, on duty, this fact should have been established in the

enquiry proceedings and suitable action should have been taken as a consequence thereof. It was, however, not open to the respondents to reinstate him in service only to pass an order under CCS(TS) Rules, 1965 to throw him out of service.

In the case of JARNAIL SINGH V. STATE OF PUNJAB, 1986(3) SCC 277, their Lordships have held that where the termination order is punitive, the Court can go behind an ex facie innocuous order of termination to find real basis of termination. Their Lordships have further held:

"that the mere form of the order is not sufficient to hold that the order of termination was innocuous and the order of termination of the services of a probationer or of an ad hoc appointee is a termination simpliciter in accordance with the terms of the appointment without attaching any stigma to the employee concerned. It is the substance of the order i.e. the attending circumstances as well as the basis of the order that have to be taken into consideration. In other words, when an allegation is made by the employee assailing the order of termination as one based on misconduct, though couched in innocuous terms, it is incumbent on the court to lift the veil and to see the real circumstances as well as the basis and foundation of the order complained of. In other words, the court in such case, will lift the veil and will see whether the order was made on the ground of misconduct, inefficiency, or not".

In view of the above, we are satisfied that in this case the facts itself revealed that the order of termination although in innocuous terms, but the real basis is on the ground of his alleged assault on the Head Constable Shri Dharambir Singh. It is a case where the order ^{appears to have} been made on the ground of misconduct and as such we are of the view that the respondents should have ~~been~~ commenced a disciplinary

proceeding against the applicant and his termination under sub-rule(i) of Rule 5 of the CCS(TS) Rules, 1965 was bad in law. We are, further of the view that the termination order served on the applicant dated 10.11.1987 has to be set aside or quashed and the applicant be reinstated in service.

We, therefore, allow the Application, quash the order of termination of service under Rule 5(i) of the CCS(TS) Rules, 1965, dated 10.11.1987 and direct the reinstatement of the applicant forthwith. He will be entitled to the consequential monetary benefits including increments due to him provided he is able to establish that he was not gainfully employed elsewhere after the date of termination of his service within a period of one month. However, we make it clear that the decision will not preclude the respondents from revising the proceedings and continuing it in accordance with law from the stage of supply of the copy of the Enquiry Report to the applicant in respect of the alleged assault and misconduct against the Head Constable Dharambir Singh.

There will be no order as to costs.


(I.K. RASGOTRA)
MEMBER(A) 31/12/90


(AMITAV BANERJI)
CHAIRMAN

'SRD'