

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 115/87.

Date of decision 31.10.9

Ravinder Kumar

.....Applicant.

Vs.

1. Union of India through Secretary,
Ministry of Home Affairs,
New Delhi.
2. Chief Secretary,
Delhi Administration,
Delhi.
3. The Commissioner of Police,
Police Headqrs.
New Delhi.

.....Respondents.

CORAM: HON'BLE MR. B.S. SEKHON, VICE CHAIRMAN.
HON'BLE MR. P.C. JAIN, MEMBER (A).

For the Applicant - Mr. Shankar Raju, Advocate.
For the Respondents - Mr. B.R. Parashar, Advocate.

B.S. SEKHON:

The instant Application is directed against the order dated 23.8.1985 passed by the Dy. Commissioner of Police IIIrd Bn. DAP (Annexure/B). The said order was passed in pursuance of the provisions of Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965 ('Rules' for short). The impugned order also directed that Applicant shall 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 immediately before the date on which the order was issued. It is common ground that Applicant

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was recruited as Constable in Delhi Police on 11.2.1982 on temporary basis. He had completed continuous service of 3 years and 6 months prior to the passing of the impugned order. As per the case set up by the Applicant, he was undergoing treatment ^{by the} Civil Surgeon, Police Hospital, Delhi and was on leave as advised rest by the Govt. Doctors. He was absent for the period 16.4.85 to 28.8.85 as he was advised rest by the Doctor and had also submitted medical certificate to the department. Another point made by the Applicant is that he was entitled to a quasi permanency status on completion of continuous service of more than 3 years.

2. The salient grounds on which the impugned order has been challenged are that the same is illegal, arbitrary, malafide, violative of Article 311(2) of the Constitution, the termination order has been passed by misusing provisions of rules, the same is stigmatic, He was neither given any opportunity to show cause nor was any enquiry held and the order is also violative of principles of natural justice. Applicant also submitted a representation to the Commissioner of Police (Annexure-C) against the impugned order. This representation was rejected by the Commissioner of Police vide Annexure-D. With the aforesaid averments, Applicant has prayed that the impugned order be declared illegal and the same be cancelled, he be declared quasi permanent. Applicant has also sought consequential benefits.

3. Respondents' defence as set out in the counter is that Applicant's services were

terminated under Rule 5(i) of the Rules due to his indifferent record. During the short span of his service, Applicant was found absent on as many as 51 occasions. He was also dealt with departmentally for his wilful absence. Applicant promised to improve himself but he did not mend his habit of absenting himself unauthorisedly, wilfully and repeatedly. He was found to be incorrigible and unsuitable for the Police Department. Hence his services were terminated. It is further pleaded by the Respondents that there is no provision for issuing show cause notice or giving an opportunity and that there has been no violation of Article 311(2) of the Constitution.

4. We have heard the arguments addressed by the learned counsel for the parties and have perused the pleadings and the documents on record with due care and attention.

5. During the course of arguments, it was submitted by the learned counsel for the Applicant that the impugned order, though worded innocuously, has been passed with a view to punishing the Applicant for the misconduct of unauthorised absence adding that in such a case the Court/Tribunal should lift the veil and ascertain the true character of the order of termination. It is by now well settled that the innocuous form of an order of termination of services simpliciter is not conclusive and that where the petitioner assails an order on the ground that the same has been passed

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for penalising him, it is competent for the Court/Tribunal to lift the veil and determine the true nature of the impugned order. While doing so, all the circumstances including preCeding and attendant have to be taken into consideration. A bare perusal of the averments made in the return leaves little doubt on the point that the impugned order has been passed for the reason that the Applicant had been absenting himself unauthorisedly, wilfully and repeatedly. He did not mend his ways and was found to be unsuitable for the Police Department. It is evident from the foregoing that the order has been passed with a view to penalising the Applicant for his misconduct. It is equally well settled that such an order can be passed only after complying with the provisions of Article 311(2) of the Constitution.

6. In view of the foregoing, the impugned order cannot be sustained. Relying upon the provisions of Rule 5(e)(i) of the Delhi Police (Appointment and Recruitment) Rules, 1980 (hereinafter called the 'Recruitment Rules'), the learned counsel for the Applicant next urged that as the Applicant had, admittedly, completed a period of more than 3 years of continuous service, he should be deemed to have been confirmed by implication. The learned counsel went on to say that as the Applicant stood confirmed by implication on the expiry of 3 years continuous service, his services could not be terminated by taking recourse to the provisions of Rule 5(1) of the Rules. To appreciate the aforesaid

point, we may usefully reproduce provisions of Rule 5(e)(i) of the Recruitment Rules:-

"Rule 5(e)(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 3 years in all."

The above extracted provision goes to show that maximum period of probation is 3 years. If an employee is allowed to continue in service/ ^{after 3 years} it is permissible to draw the inference that he has been confirmed in the post by implication. This view is sanctified by the dicta of the Supreme Court in the following authorities:-

- * 1. State of Punjab Vs. Dharam Singh.
Maurya
2. Om Prakash/Vs. U.P. Cooperative Sugar Factories Federation, Lucknow & ors.
3. M.K. Aggarwal Vs. Gurgaon Gramin Bank & ors.

The Division Bench of the Principal Bench in Shri Kali Ram V. Union of India & others⁴ has also taken such a view. We would accordingly hold that the Applicant should be taken to have been confirmed by implication on the expiry of 3 years period computed from 11.2.82. That being so, Applicant's services could not be terminated in exercise of the powers conferred by Rule 5(1) by treating him as ^{as has been done} a temporary employee/vide order dated 23.8.85 (Ann.-B).

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- * 1. AIR 1968 SC 1210.
 2. AIR 1986 SC 1844.
 3. AIR 1988 SC 286.
 4. 1991(1) ATJ (CAT) 182.

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The aforesaid point urged by the learned counsel for the Applicant is, thus, well founded and the same is sustained.

7. In view of the foregoing, the impugned order is liable to be quashed and the same is hereby quashed. Respondents are directed to reinstate the Applicant as Constable. Applicant shall also be entitled to the arrears of pay and allowances for the period commencing from the date of termination of his services till the date of his reinstatement provided that he is able to establish within six weeks from today that he was not gainfully employed elsewhere during the aforesaid period. Respondents shall comply with this order within three months from the date of receipt of copy of this judgment. This order will not, however, preclude the Respondents from taking any action in accordance with law against the Applicant for the alleged misconduct.

8. Application is disposed of in the above terms but in the circumstances, we make no order as to costs.

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(P.C. JAIN)
MEMBER (A)

B. S. Sekhon
(B.S. SEKHON)
VICE CHAIRMAN
31-10-91