

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 1733/87
T.A. No.

199

DATE OF DECISION 10 Sep 93

<u>Shri Dharam Bir Singh</u>	<u>Petitioner</u>
<u>Shri Ajit Singh Grewal</u>	<u>Advocate for the Petitioner(s)</u>
Versus	
<u>Union of India & Ors.</u>	<u>Respondent</u>
<u>Mrs. Avinash Ahlawat</u>	<u>Advocate for the Respondent(s)</u>

CORAM

The Hon'ble Mr. N.V.Krishna, Vice Chairman (A)

The Hon'ble Mr. B.S.Hegde, Member (Judicial)

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 ? X

JUDGEMENT

(Hon'ble Shri N.V.Krishnan, Vice Chairman(A))

The applicant was appointed on 2-6-84 as a constable under the 4th respondent, Dy. Commissioner of Police IX Bn., Delhi Armed Police. He completed his training successfully. However, when he fell ill on 20-5-87, he had to absent himself for 5 days upto 31-5-87. He applied for leave with a medical certificate but instead of being granted leave, his service has been terminated by the impugned order dated 8-6-87 (An.A) issued by the 4th respondent under the proviso to sub rule (i) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965- 1965 Rules, for short- with immediate effect, after directing him to be paid the salary for one month in lieu of notice. He submitted an appeal dated 7-7-87 (An.B) to the third respondent, the Commissioner of Police in which he sought orders of reinstatement stating that he had to be on leave on a few occasions due to domestic reasons. In the appeal, he did

not challenge the order of termination on any legal ground though he states in para 6.3 of his OA that "he became due for the grant of quasi permanent certificate after completion of 3 years service but instead of granting him a quasi permanent status he has been removed from service arbitrarily" by the impugned order. He was informed on 18-8-87 (An.C) by the third respondent that his representation had been rejected by the second respondent. The applicant has prayed that these two orders be quashed.

2. The respondents have filed a reply resisting the application. Under the heading 'Brief facts' they have stated as follows:

"Ex-constable Dharambir Singh, No.10292/DAP was enlisted in Delhi Police on 2-6-84(AN) as a temporary constable under section 12 of Delhi Police Act, 1978. His services were terminated vide this office order No.7129-59/ASIP-9th Bn.DAP dated 8-6-87 because of his being a habitual absentee. On the overall consideration of his service record it was found that he being a habitual absentee, is not likely to become a good officer. He was given several opportunities to mend himself but all in vain. He was passed over for quasi-permanency for a period of one year with effect from 2-6-87 due to his indifferent and unsatisfactory service record. To maintain discipline in the force, there was no remedy left except to terminate the services of such an irresponsible police constable."

The reply also gives particulars of the 32 occasions on which the applicant remained absent between 7-3-85 and 18-5-87 and the manner in which the absence was regularised, sometimes by being given the penalty of penalty drill. It is stated that though the applicant earned five commendation certificates, he also was awarded a number of minor punishments. It is in these circumstances, the impugned order was passed.

3. The applicant has filed a rejoinder containing the following averment in respect of the reply under the head 'Brief facts' reproduced above. "The facts so far as this relate to the enlistment of the applicant in Delhi Police on 2-6-84 afternoon as temporary police constable is concerned is admitted." He pleads ignorance about the order by which he was passed over for quasi permanency. Otherwise, the averments made in the OA are reiterated.

4. When the case came for final hearing, the learned counsel for the applicant sought to present arguments on an entirely different ground. He had earlier filed written arguments on 19-10-92. His arguments were as follows:-

i) Rule 5 of the Delhi Police (Appointments & Recruitment) Rules 1980-DPAR Rules- for short- deals with recruitment, which admittedly applies to the applicant's case. Sub rule (e) thereof reads as follows:-

"(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 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."

(ii) As the applicant was appointed on 2-6-84, his period of probation ended on 2-6-86. Therefore, he should be deemed to have been confirmed as a constable on the expiry of two years from the date of his appointment i.e. 2-6-86.

(iii) Even if the permissible period of extension of probation by one more year is taken into account, he should be deemed to have been confirmed from 2-6-87.

(iv) Therefore, it was not open to the 4th respondent to treat him as a temporary employee and terminate his services under Rule 5 of 1965 Rules.

(v) This is the rule laid down by the Supreme Court in State of Punjab Vs. Dharam Singh (AIR 1968 SC 1210). Following this decision, this Bench

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has already held that if a police official governed by Rule 5 of the DPAR Rules completes two years period of probation, he should be deemed to be confirmed and likewise, if his probation is extended by one year, he should be deemed to be confirmed on the expiry of 3 years.

5. We heard the learned counsel on both sides. We wanted the parties to argue the point whether, considering the language of Rule 5 of the DPAR Rules, the judgement of the Supreme Court in Dharam Singh's case (supra) can be used for interpreting this Rule, as we felt that the said judgement was delivered in interpreting a rule which was slightly but substantially and materially different.

6. We have carefully considered the ^{rival} arguments and also perused the records. In short, benefit is claimed for the applicant of the aforesaid decisions on the footing that the applicant is deemed to be confirmed at the end of his probation. Unfortunately for the applicant no such foundation has been laid in the DA in regard to the facts of the case. The applicant has not laid any factual foundation claiming that he was appointed as a probationer. No such averment has been made in the application. The appointment order of the applicant has neither been produced by the applicant nor by the respondent to indicate the terms of his appointment. Nevertheless, the respondent asserted in the opening paragraph of their reply giving 'Brief facts' that the applicant was enlisted in the Delhi Police on 2-6-84 as a "temporary constable" under section 12 of the Delhi Police Act. This assertion has been accepted by the averment in his rejoinder in positive terms as mentioned in the para 3 supra. That apart, in para 6.3 of the application, the applicant has a grievance that though "he became due for the grant of quasi permanent certificate

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after completion of the 3 years service but instead of granting him a quasi permanent status, his service was terminated. This grievance has relevance only, if the applicant was a temporary government servant governed by the 1965 Rules.

7. We are therefore of the view that, by his own admission, the applicant was only a temporary government servant governed by the 1965 Rules. Hence, it is not now open to him to contend otherwise and state that he was a probationer and therefore, liable to be treated as deemed to be confirmed at the end of his probation, in which case, undoubtedly, the impugned An.A order could not have been issued.

8. In the circumstances we find that there is now no occasion to consider the issue posed by us to the counsel as referred to in para 5 supra. That question as well as the issue whether the earlier judgements of the Tribunal declaring that a deemed confirmation should be presumed under Rule 5 of the DPAR Rules at the end of the probation period require reconsideration will be considered in an appropriate case where they arise.

9. The applicant, admittedly, was appointed on a temporary basis. Even so, the learned counsel for the applicant tried to contend vehemently that the applicant is governed only by the DPAR Rules and no other set of rules can be taken into account in considering his right and liabilities as a temporary employee. In particular, he contended that the 1965 Rules did not apply to him. However, in reply to our query, he was unable to point out any provision of law which declared that the 1965 Rule did not apply to the Delhi Police. On the contrary, the learned counsel for the applicant produced for our perusal a copy of the notification No.F.10/5/79-Home(P) Est dated 17-12-80 issued by the administration under section 5 of the Delhi Police Act whereby the Central Civil Services (Temporary Service) Rules 1965, alongwith certain other sets of rules, were made applicable to all subordinates, civilians and class IV employees of the Delhi Police in addition to the rules and regulations made under

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the aforesaid Act.

10. The learned counsel for the applicant made a valiant attempt to persuade us that the judgement of the Full Bench of the Tribunal in Rajpal and another Vs. Delhi Administration & Ors. ATC 1993 (1) ATJ 420 would establish that the 1965 Rules do not apply to the Delhi Police. We have perused that judgement. We are clear in our mind that the ratio of that judgement is totally different and does not apply to the present case. There is a specific statutory notification of the respondents making the 1965 Rules applicable to the Delhi Police, the validity of which has not been successfully shown to have been questioned in any proceedings.

11. The learned counsel for the respondent has produced for our information the order dated 8-6-87 by which quasi permanency was given to 14 constables but was denied to two other persons including the applicant. In the case of the applicant the quasi permanency was held up for a period of one year from 2-6-87. In the circumstances, it is amply clear that the applicant did not have either the status of a permanent employee or a quasi permanent employee on the date of issue of the interim order.


12. The learned counsel for the applicant then pointed out that the impugned order is punitive in nature and is not one of termination ^{simpliciter}. He further points out that this order contravenes the circular issued by the 3rd respondent on 13-3-91- produced for our perusal and kept on record- that action under the 1965 Rules shall not be taken when there is a specific act of misconduct.

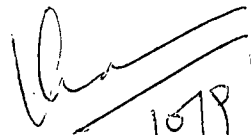
13. We have considered this argument. We find that the applicant's service has been terminated under section 5 of the 1965 Rules without casting any stigma in the An.A order of termination. The termination is not arbitrary because the respondents have indicated the reason why the applicant's service was terminated. That does not refer to any specific

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set of misconduct which is the foundation for this action. On the contrary his record of work has been unsatisfactory inasmuch as he has been absenting himself frequently without authority for which he had to be given minor punishments too. It is because of his unsatisfactory work that the impugned order has been passed. Its validity cannot be questioned in the light of the catena of decisions of the Supreme Court.

14. In the circumstances the application has no merit and is dismissed.


(B.S. HEGDE)
Member (J)


10/8/83
(N.V. KRISHNAN)
Vice Chairman (A)