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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

O.A. Nos 1870/87 and
1867/87

Decided on: 13.9.1993.

O.A. No. 1870/87

Rajinder Singh Applicant.
vs.

Delhi Administration & Ors Respondents.

O.A. No. 1867/87

Jaiveer Singh Applicant
vs.

Delhi Administration & Ors Respondents.

CORAM:

The Hon'ble Mr. Justice S.K.Dhaon, V.C.(J)

The Hon'ble Mr. B.N.Dhoundiyal, Member(A)

Shri Vivekanand, counsel for the petitioner.
(in both the O.As)

Shri V.K.Rao, counsel for the respondents in
O.A.No.1870/87

Shri B.S.Oberio, proxy counsel for the respondents
in O.A.No.1867/87.

JUDGMENT (ORAL)

(By Hon'ble Mr. Justice S.K.Dhaon)

These applications involve the
same controversy. They have been heard together.
Therefore, they are being decided by a common
judgment.

2. The petitioners, in these Original
Applications, were employed on daily wage basis in
the auxiliary force of the Central Reserve Police
Force(C.R.P.F.). Obviously, their appointments
were absolutely temporary. According to the

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respondents, the petitioners on 31.7.1986, were treated as open market candidates. They were employed in the Delhi Police as Constables. By separate but similar orders, passed in the purported exercise of powers under the proviso to sub-rule(1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, their services were terminated on 17.6.1989. The said orders are being impugned in the present applications.

3. In the counter affidavit filed, it is averred that the services of the petitioners were terminated as they were found medically unfit.

It is the respondents' own case that the petitioners were not subjected to any medical examination when they were allowed to be appointed as constables in the Delhi Police, however, they were medically examined after a lapse of about eight months.

4. Rule 5(e)(i) of the Delhi Police (appointment and recruitment) Rules, 1980, (hereinafter referred to as the 'Rules') states that all direct appointments of the employees shall be made initially on purely temporary basis. Indeed, it is the respondents' own case that the petitioners had been appointed on temporary basis.

5. It appears to be an admitted position that the impugned orders were passed without affording any opportunity of hearing to the petitioners and without giving any opportunity to make a representation against the report given by the Medical Officer that they had been found medically unfit.

6. Section 5 of the Delhi Police Act, inter alia, provides that subject to the

provisions of the Act, the recruitment to, and all other conditions of the members of the Delhi Police shall be such as may be prescribed.

"Prescribed" means prescribed by rules (Section 2(n))

7. By a notification dated 17th December,

1980, in exercise of the powers under Section

5 of the said Act, the Administrator prescribed

certain rules and orders, as amended or revised

from time to time. Amongst others, the Rules

contained in the said notification are the Fundamental

Rules and Supplementary Rules and the C.C.S. (Temporary

Service) Rules, 1965. Thus, the said rules form

part of the conditions of the service of the members

of the Delhi Police force, including the petitioners.

8. To supplement Rule 4 of the Supplementary

Rules, the Government of India have issued orders

from time to time. The O.M. dated 23.6.1953, as

published in paragraph (g) at page 302 of

Swami's compilation of F.R. S.R. Part-I General

Rules, inter alia states:

"(g) ... What should be done in the case of a temporary Government servant declared medically unfit:

(a) Whether he should be discharged from service (i) immediately on receipt of the adverse report, or (ii) after one month from the date of communication to him of the findings of the Civil Surgeon etc., or

(b) Whether he should be allowed to continue in service until either his request for an appeal is rejected or until the appeal board, if agreed to, has been constituted and has given its verdict."

It is recited that after a detailed examination of the above question, it has now been decided that the contents of paragraphs 3 to 5 below should be observed in future to deal with such cases.

9. Paragraph 3 is relevant. It states that normally an officer should be medically examined before his appointment. In certain cases, however, when an officer is required to join immediately for work or for training, the appointment may be made without first obtaining the medical certificate, though the appointment should be subject to the officer being declared medically fit. In all such cases, if an officer is declared unfit on medical examination and he prefers an appeal on the basis of Order(2) above he should be retained in service till the case is finally decided.

10. The contents of paragraph 3 aforementioned were, at the relevant time, attracted to the cases of the petitioners. Admittedly, they were not given any opportunity of filing an appeal. Therefore, there is no escape from the conclusion that the impugned orders were passed without complying with the afore-mentioned instructions of the Government of India.

11. We now come to the question of the reliefs to be granted to the petitioners. The normal rule is that whenever an order of dismissal or termination is quashed, an order of re-instatement should be passed. We see no reason as to why we should depart from that rule in these cases. However, we make it clear that it will be open to the respondents to subject the petitioners to a fresh medical examination. If, the Medical Officer concerned,

gives a report adverse to the petitioners, the respondents shall act strictly in accordance with the aforementioned instructions of the Government of India before terminating the services of the petitioners as temporary employees.

The petition succeeds and is allowed. The impugned orders are quashed. The petitioners shall be re-instated in their services and paid the back wages.

There shall be no order as to costs.

(B.N.Dhondiyal)

(S.K.Dhaon)

Member(A)

Vice Chairman

13th Sept., 1993.

Attested, this copy
of the order is given to
the petitioner
C.A.T., New Delhi