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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

OA.64/87

Date of Decision: 30-8-87

Shri Hazari Lal

Applicant

Shri S.C. Sharma

Advocate for the Applicant

Vs.

Commissioner of Police & Ors. Respondent

Shri Baldev Raj Prashar

Advocate for the Respondent(s)

CORAM

Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

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

JUDGEMENT

(of the Bench delivered by
Hon'ble Shri B.N. Dhoundiyal, Member)

This OA has been filed by an Ex-Constable(Driver) Shri Hazari Lal against his removal from service vide office order dated 23.01.1986.

2. The applicant was recruited as Constable (Driver) on 15.04.1977 and was confirmed w.e.f. 30.06.1983.

While posted in Old Police Lines, Delhi, he was medically examined by the Civil Surgeon, Civil Hospital,

Raj Pur Road, Delhi and was declared medically unfit

due to colour blindness. Subsequently he was

medically examined by the Medical Board of Lok Nayak

Jai Parkash Narain Hospital, New Delhi, at his own

request. The Medical Board also declared him medically unfit. Though the applicant suffered from colour blindness, his eye sight was otherwise normal (six by six). Though he could not perform the duties of a driver because of colour blindness, he was fit to perform general duties in the department. According to him, his request for allotment of general duty was not considered and the following order removing him from service was issued on 23.01.1986:-

"On having been declared completely and permanently incapacitated for further service of any kind in the department to which he belongs in consequences of Colour Blindness, w.e.f. 07.05.1985 by the Chairman of Medical Board of Lok Nayak Jai Parkash Narain Hospital, New Delhi vide Medical Certificate dated 18.12.1985 received from F.R.R.O. New Delhi vide Memo No.12779/For(ASIP) dated 13.12.1985, Constable (Driver) Hazari Lal, No.995/Sec. is hereby invalidated out from service with immediate effect under the provisions of Rule 38 of the C.C.S. (Pension) Rules, 1972.

2. He should deposit all the Govt. belongings in his possession including appointment Card, Identity Card and C.G.H.S. Card etc. before he proceeds on invalidation.

3. He is not in possession of any Govt. Quarter.

Deputy Commissioner of Police
Security, New Delhi. Kaushik."

3. The applicant has sought quashing of the impugned order on the ground that:

(a) The Board has only declared him colour blind and they have not declared him unfit for general duties.

(b) Rule 38 of the CCS (Pension) Rules, 1972 does not give authority to the appointing authority to remove an employee from service.

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(c) that no opportunity was given to him to present his case.

(d) In case of eight other similarly situated Constable (Drivers) who were either colour blind or handicapped, general office duties were given to them.

4. The basic facts mentioned by the applicant are admitted by the respondents who have mentioned that the representation received from the applicant dated 26.02.1986 ✓ for placing him in general duty was considered but could not be acceded to. The condition of being free from colour blindness is also applicable to the post of Constable (Ex.) and therefore, it would not be possible to retain him in service.

5. The respondents have admitted that in a number of cases, Constable (Drivers) who were incapacitated due to accidents or illness were retained in service and given general duties. They had offered a Class - IV post to the applicant, to which he was not agreeable.

6. We have gone through the records of the case and heard the learned counsel for both parties. Removal from service is listed as one of the major penalties under section 21 of the Delhi Police Act, 1978. The Delhi Police (Punishment and Appeal) Rules, 1980 clearly provides that such punishment can be awarded by the appointing authority only after the regular departmental enquiry. It is true that

the Delhi Police (Appointment and Recruitment) Rules, 1980, provides that there should be no colour blindness in the recruit but the appendix containing the points to be observed by the Medical Officers shows that this is applicable only for the Drivers and Traffic Staff. It has been admitted by the respondents that in case of similarly situated Constables, general duties have been assigned without converting their posts into those of peons. A reading of Rule 38 of CCS (Pension) Rules, 1978 indicates that Invalid Pension may be granted if a Government servant retires from the service on account of any bodily or mental infirmity and it cannot become a substitute for the departmental enquiry to be conducted before removal from service.

7. In the facts and circumstances of the case, the impugned order No.578-633/Estt.DCP(S) dated 23.01.1986 is not legally sustainable and the same is set aside and quashed. The respondents shall reinstate the applicant in service. They will be at liberty to post the applicant in any assignment for which colour blindness is not a disqualification, including general duties as they have done in case of other similarly situated employees. The applicant will be entitled to all consequential benefits including backwages. The respondents shall comply with the above directions within a period of two months from the date of receipt of this order.

8. There shall be no order as to costs.

B.N. Dhoondiyal
(B.N. DHOUNDIYAL)
MEMBER
30/1/91

P.K. Kartha
(P.K. KARTHA)
VICE CHAIRMAN
30/1/91