

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH: DELHI

C.A.NO. 745 OF 1987.

DATE OF DECISION: 6-3-1991.

Shri Dharmender Singh.

.. Applicant.

v.

Union of India and others.

.. Respondents.

CORAM:

Hon'ble Mr. G.Sreedharan Nair,

.. Vice-Chairman.

Hon'ble Mr. S.Gurusankaran,

.. Member(A)

Shri A.S.Grewal, counsel for the applicant.

S.GURUSANKARAN, MEMBER(A):

J U D G M E N T

The applicant was appointed as a constable in the Delhi Police with effect from 3-5-1982. The applicant was absenting himself frequently without prior permission and hence when his case came up for consideration for according quasi permanency status on 2-5-1985, he was passed over ^{for one year.} By the order dated 28-6-1985 (Annexure-A) of the Deputy Commissioner of police, his services were terminated forthwith under the proviso to sub-rule (1)(b) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 (hereinafter referred to as the 'TS' Rules). The applicant submitted an appeal dated 8-7-1985 (Annexure-B) to the Additional Commissioner of Police, which was also rejected vide letter dated 9-10-1985 by the Commissioner of Police. The applicant submitted a further representation against the order of the Commissioner of police to the Ministry of Home Affairs and the same was also rejected vide letter dated 24-2-1986. Aggrieved by the same, the applicant has filed this application praying for the quashing the order dated 28-6-1985 of the Deputy Commissioner of Police.

2. The applicant has stated that unfortunately during the end of 1984, the applicant fell sick and was advised medical rest for 30 days by the authorised medical attendant. He produced medical certificate to cover the period. Thereafter his mother fell sick and he had to go away to see her. The applicant contends that the innocuous order of termination was due to the two incidents of absence and if any action was required to be taken against him, he should have been given an opportunity before the termination orders were passed. He has pointed^{out} that his services can be terminated only after conducting a regular departmental inquiry. He filed an application for condonation of delay along with the original application and the application has been admitted on 25-5-1987.

3. In their reply, the respondents have stated that the applicant absented himself on a number of occasions unauthorisedly without any intimation/permission for which he was punished and reprimanded. They have mentioned that particularly after he was posted at PPG lines, 2nd Bn.DAP with effect from 21-10-1984, he absented himself from duty on a number of occasions, particularly for 16 days from 12-12-1984 and for 33 days from 29-12-1984. Hence, it was found that the applicant was a habitual absentee and failed to improve himself despite punishment and warnings. In view of this, his services were terminated under orders dated 28-6-1985 (Annexure-A) under the proviso to sub-rule (i)(b) of Rule 5 of the TS Rules. The respondents have pointed out that since his appeal was rejected by the Commissioner of Police on 9-10-1985, this application is time barred. They have pointed out that even when he availed medical leave he did not obtain permission from the competent authority as required under Rule 19(5) of the Central Civil Services (Leave) Rules. He was due for quasi permanency on 4-5-1985, but was passed over for a period of one year due to unsatisfactory record. Hence, they have maintained that his services could be terminated under the proviso to sub-

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rule (i)(b) of Rule 5 of the TS Rules.

4. The main point stressed by the counsel for the applicant during arguments was that the applicant has been removed from service for the misconduct of absenting himself. This amounts to a punishment under Article 311(2) of the Constitution, he should have been given reasonable opportunity by conducting a departmental enquiry.

5. We have heard the counsel for the applicant and perused the records carefully. We find that the applicant was passed over for grant of quasi-permanent status on 4-5-1985 for a year due to general unsatisfactory record. Hence, he continued to be a temporary servant and his services were terminated under the proviso to sub-rule (i)(b) of Rule 5 of TS Rules applicable to temporary civil servants, applicable equally to the Delhi Police Officers during their temporary status. We find that this position has not been contested by the applicant. Even though in para 5 of his application the applicant had averred that the application could not be filed within the limitation because no decision on his representation dated 8-7-1985 was conveyed; he has not denied in his rejoinder to the counter-affidavit filed by the respondents stating that his representation dated 8-7-1985 was rejected on 9-10-1985. In fact in the rejoinder he has stated that the appellate order was a non-speaking order. Since the appellate order had been passed before the filing of the application and he has prayed for quashing of the order dated 28-6-1985 only and not the appellate order also, it is not possible to grant the relief prayed for.

6. Further he should have filed the application by 9-10-1986 i.e., within one year from 8-7-1985. We observe that while admitting the application, no orders have been passed on the application for condonation of delay. In

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the application filed for condonation of delay, he has only stated that he was sick from 26-12-1986 to 26-4-1987 and there is no whisper even about the period from 9-10-1986 to 26-12-1986. Hence, we are not convinced of the reasons for the delay and the application for condonation of delay is rejected.

7. Since the application for condonation of delay is rejected, the application is dismissed as barred by limitation.

Maankhane
6/8/1991
MEMBER (A)

[Signature]
6-8-91
VICE-CHAIRMAN.