

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH : NEW DELHI

O.A. 884/87

DATE OF DECISION : 13-12-1991

Braham Prakash

... APPLICANT

Vs.

Union of India & Ors.

... RESPONDENTS

Shri N. Safaya, Counsel for the Applicant

Mrs. Avnish Ahlawat, Counsel for the Respondents

CORAM : HON'BLE SHRI P. K. KARTHA, VICE CHAIRMAN (J)

HON'BLE SHRI B. N. DHOUNDIYAL, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement. *Yes*
2. To be referred to the Reporter or not? *Yes*

JUDGEMENT

(By Hon'ble Shri B. N. Dhoundiyal, Member (A) :

This application has been filed under Section 19 of the Administrative Tribunals Act, 1985 by Ex-Constable Braham Prakash challenging the termination of his services by order dated 25.7.1986.

2. The applicant was enlisted as a Constable in Delhi Police on 8.9.1982 after the prescribed written test, interview and physical examination. He has stated that he had not been awarded any major punishment and has even been given a commendation certificate in recognition of his good work. He claims to have completed the probation period of two years on 7.9.1985, i.e., after completing three years continuous service. His services were terminated by the impugned order dated 25.7.1986 under Sub-Rule (i) of Rule 5 of the C.C.S. (Temporary Service) Rules, 1965. His representation against the order of termination was rejected on 8.10.1986 and a memorial for submission to the President had been withheld by the respondents on 20.5.1987.

3. The applicant has challenged the impugned orders on the following grounds :-

- (a) Having completed three years of continuous service on 7.9.1987, he became quasi permanent and could not be removed from service without being given a chance to defend himself.
- (b) Although the impugned order is innocuous on the face of it, it is in the nature of punishment for his remaining absent from duty due to unavoidable family circumstances.
- (c) The services of the applicant are governed by the Delhi Police Act, 1978, and cannot be terminated under Central Civil Services (Temporary Service) Rules, 1965.

4. The respondents have stated in their counter affidavit that in short span of about four years of service, the applicant absented himself on 32 occasions without any permission from his senior officers. He was passed over from quasi-permanency for a period of one year w.e.f. 9.9.1985 due to his indifferent and unsatisfactory service record. He was considered unsuitable for the post of Constable and his services were terminated. The C.C.S. (Temporary Service) Rules, 1965, were specifically made applicable to all the subordinate officers of Delhi Police vide notification No. F-10/5/79-Home(P)Est. dated 17.12.1980, and his termination cannot be challenged on this ground.

5. We have gone through the records of the case and heard the learned counsel of both parties. It is clear that the applicant had completed three years of probationary period on 7.9.1985. The order extending his period of probation was issued on 6.11.1985, i.e., two months thereafter. The crucial question in this case is the status of the applicant

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when his services were terminated on 25.7.1986. The relevant provision of the Delhi Police Appointment and Recruitment Rules, 1980 reads as under :-

- "(i) All direct appointment 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 the period of probation extended 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."

6. The Supreme Court has held in the case of M. K. Aggarwal Vs. Gurgaon Gramin Bank and Others (AIR 1988 SC 286) that after the prescribed maximum probation period is over, the services of a probationer should either be confirmed or discharged. "If the probationer was not discharged on or before the expiry of the maximum period of probation, then there would be an implied confirmation". In the present case, the applicant was enrolled as a Constable on 8.9.1982 and has completed three years service on 7.9.1985. There is no provision for extension of period of probation beyond the maximum period of three years as laid down by the rules. In the facts and circumstances of the case, we are of the opinion that the provisions of Rule 5 of the CCS (Temporary Service) Rules, 1965 cannot be invoked in the instant case.

7. The impugned order of termination is also vitiated on other grounds. It is apparent that the services of the applicant had been terminated on account of his alleged unauthorised absence from duty. Such alleged absence will

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amount to misconduct and disciplinary proceedings could be initiated against the applicant under the relevant rules. During such an enquiry, he will have to be afforded reasonable opportunity to defend himself. The applicant has been deprived of such an opportunity in the instant case.

8. We, therefore, dispose of the application with the following directions :-

- (1) The impugned order of termination dated 25.7.1986, the rejection of representation dated 8.10.1986 and withholding of memorial dated 20.5.1987 are hereby set aside and quashed.
- (2) The applicant shall be reinstated as Constable in Delhi Police and be given his due seniority.
- (3) Arrears of pay and allowances shall be payable to the applicant for the period from 25.7.1986 till reinstatement together with simple interest at the rate of 12% per annum.
- (4) Compliance of these orders shall be effected within two months from the date of communication of this order.

There will be no order as to costs.

*B. N. Dhoundiyal*  
( B. N. DHOUNDIYAL ) (31/12/91)  
MEMBER (A)

*P. K. Kartha*  
( P. K. KARTHA ) 13/12/91  
VICE-CHAIRMAN (J)