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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

M.P. O.A. No. 1644/90 with 199
~~F.A.~~ No. 3171/90

DATE OF DECISION 8.11.1991

Smt. Krishna Devi widow of
late Shri Rambir Singh Petitioner Applicant

Shri D.R. Gupta Advocate for the Petitioner(s) Applicant

Versus

Lt. Governor through Chief Secy Respondent

Delhi Admn. & Others

Smt. Avnish Ahlawat, Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

(Judgement of the Bench delivered by Hon'ble
 Mr. P.K. Kartha, Vice-Chairman)

Shri Rambir Singh, who has worked as a Constable in the Delhi Police, filed this application under Section 19 of the Administrative Tribunal's Act, 1985, challenging the impugned order of termination dated 13.4.1988 and praying for reinstating him with all back wages. The application was filed on 13.8.1990. During the pendency of the proceedings, he passed away on 29.10.1990. Thereafter, Smt. Krishna Devi, the widow of the deceased applicant, filed MP-3171/91 claiming that she is the only surviving member of the deceased Government servant's family and

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that she be substituted as the legal representative of the deceased government servant. The M.P. filed by her was allowed on 11.4.1991.

2. We have gone through the records of the case and have heard the learned counsel for both the parties. Shri Rambir Singh was appointed as a Constable in the Delhi Police on 1.12.1984. He had completed his period of probation. As he fell ill, his elder brother Shri Hardhian Singh is stated to have taken him to his village, Malikpur, P.S. Najafgarh in Delhi, on 25.2.1988. He remained under the treatment of Medical Officer of Health, Primary Health Centre, Najafgarh from 25.2.1988 to 25.4.88. He has annexed copies of the medical certificate and the fitness certificate issued by the Medical Officer (vide Annexures 'A' and 'B' to the application).

3. On 1.3.1988, the respondents issued an absentee notice to Shri Rambir Singh, informing him that the entire period of his absence would be treated as unauthorised absence entailing loss of pay for the period in question under the proviso to FR-17, thereby resulting in break in service and that in addition, the departmental action will be initiated against him. He informed the authorities concerned about his illness, but in spite of that, another absentee notice dated 10.3.1988 was issued to him. The

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services of Shri Rambir Singh were terminated under the proviso to sub-rule (1) of Rule 5 of the C.C.S. (Temporary Service) Rules, 1965, while the applicant was stated to be still bed-ridden.

4. Shri Rambir Singh had stated that the impugned order was passed after he had put in 3 years, 4 months and 12 days' service under the respondents and had completed the period of probation of two years and had acquired the status of quasi-permanency. The appeals preferred by him were rejected by the respondents on 17.5.1990. According to him, the impugned order was made under the camouflage or cloak of an order of termination simpliciter but the attendant circumstances clearly brought out that the order of termination had been made by way of punishment on account of the absence due to his illness. He has also alleged that the services of his juniors had been retained while terminating his services.

5. The version of the respondents is that the deceased government servant had been awarded punishments due to his unsatisfactory performance as under:-

- (i) 14 days' punishment drill for not putting uniform on Friday dated 1.8.1986;
- (ii) 5 days' punishment drill on 14.8.1986 for absence on 22.4.1986;

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- (iii) 5 days' L.W. Pay and Warning on 2.6.1987 for overstay from C.L. w.e.f. 9.3.87 to 15.3.1987;
- (iv) Warned for overstay on C.L. on 23.3.1987;
- (v) Passed over for quasi-permanency for six months w.e.f. 1.12.1987 due to unsatisfactory performance; and
- (vi) 1 day's Leave Without Pay for unauthorised absence on 11.10.1987;
1 day's Leave Without Pay for absence on 9.1.1988;
2 day's Leave Without Pay for absence from 13.1.88 to 14.1.1988; and
49 days' Leave Without Pay for absence from 25.2.1988 to 13.4.1988.

He had also remained absent unauthorisedly on the following occasions which were not counted towards leave, being minor absence:-

- i) 1 hour 15 minutes on 30.10.1987;
- ii) 55 minutes on 16.12.1987;
- iii) 2 hours 35 minutes on 2.1.1988; and
- iv) 2 hours.20 minutes on 20.2.1987.

6. On account of the aforesaid reasons, the respondents thought that the deceased government servant would not prove to be a good Police Officer. They have averred that the medical papers attached with the application were not sent,

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or submitted to the office of the respondents. They have, however, stated in para.4.4 of the counter-affidavit that his services were terminated "due to unsatisfactory performance and indifferent record".

7. ^{respondents} They have not denied the version of the applicant that persons junior to him were retained in service while terminating his services.

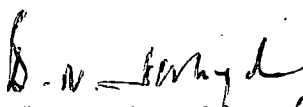
8. In our opinion, the facts and circumstances of the case clearly indicate that the alleged misconduct on the part of the deceased Government servant was the very foundation of the impugned order of termination. On that ground, the impugned order of termination is not legally sustainable. Apart from this, it may be stated that ~~xxxxx~~ Rule 5 (e) (i) of the Delhi Police (Appointment and Recruitment) Rules, 1980, as amended, stipulates that in no case shall the period of probation extend beyond three years in all. That period expired in the case of the deceased government servant on 1.12.1987. In such a case, where the service Rule stipulates the maximum period of probation, if a person is not discharged before the expiry of the said period, it may lead to the inference that he has been confirmed by implication (vide State of Punjab Vs. Dharam Singh, A.I.R. 1968 S.C. 1210, Om Prakash Vs. U.P. Cooperative Sugar Factories Federation, A.I.R. 1986 S.C. 1844; and M.K.

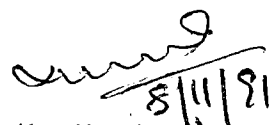
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Agarwal Vs. Gurgaon Gramin Bank, A.I.R. 1988 S.C. 2186).

9. In view of the aforesaid judicial pronouncements of the Supreme Court, we are of the opinion that the impugned order of termination dated 13.4.1988 is not legally sustainable. We, therefore, set aside and quash the same. As Shri Rambir Singh has expired during the pendency of the proceedings, it is not possible to order his reinstatement in service. In the facts and circumstances of the case, we direct that Smt. Krishna Devi, the widow of the deceased government servant, should be given 50 per cent of the pay and allowances which would have been otherwise admissible to the deceased Government servant. In addition, she would also be entitled to ~~xx~~^{or} family pension in accordance with the provisions of Rule 54 of the C.C.S. (Pension) Rules, 1972. The respondents are directed to make the necessary payments to her and release the family pension as admissible to her within a period of three months from the date of communication of this order.

10. There will be no order as to costs.


(B.N. Dhoundiyal) 8/11/91
Administrative Member


8/11/91
(P.K. Kartha)
Vice-Chairman (Judl.)