

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI.

O.A. No. 2502/90
T.A. No.

DATE OF DECISION 2/1/1996

Ravinder Pratap

Applicant(s)

Mrs Avnish Ahlawat, Counsel for Applicant

Versus

Union of India

Respondent(s)

Mr Rajinder Pandita, Counsel for Respondent

(For Instructions)

1. Whether it be referred to the Reporter or not? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No


(Dr. A. Vadavalli)
Member (J)

Central Administrative Tribunal
Principal Bench, New Delhi

O.A.No.2502/90

New Delhi this the 2nd Day of January, 1990.

Hon'ble Shri N.V. Krishnan, Acting Chairman.
Hon'ble Dr. A. Vedavalli, Member(J).

Ravinder Pratap,
Ex-Constable No.1519 DAP,
S/o Shri Pali Ram,
R/o Village Sajawat Gargh,
P.S. Pishawah,
Distt. Aligarh (U.P.) ...Applicant

(By Advocate: Mrs. Avnish Ahlawat)

versus

1. Commissioner of Police,
Delhi Police,
Indraprashta Estate,
New Delhi.
2. Dy. Commissioner of Police,
2nd Bn DAP, Delhi. ...Respondents

(By Advocate: Shri Rajinder Pandita)

O R D E R

(By Dr.A. Vedavalli, Member (J))

The Applicant seeks quashing of the Order of termination dated 22.5.90 (Annexure A-1) issued by Respondent No.2 (Deputy Commissioner of Police) under Rule 5 (i) proviso of the CCS (Temporary Service) Rules 1965 and the subsequent Order of rejection of his representation against such termination by the Commissioner of Police (Respondent No.1) communicated on 27.8.1990 (Annexure A-2).

2. The applicant was appointed as a temporary constable in the Delhi Police on 6.9.1988. After completing recruit training on 30.6.1990 he was posted to the 2Bn of the Delhi Armed Police at Kingsway Camp.

3. Between the period 20.2.1990 and 12.5.1990 he was absent on several occasions without obtaining leave.

4. On 12.5.1990 the Deputy Commissioner of Police considered the applicants conduct and by his order, decided to take a lenient view of the absence during the indicated days but warned him that his services will be terminated "if he is absent again". The period of his absence were treated as earned leave.

5. Ten days later by his Order dated 22.5.1990 the Deputy Commissioner of Police purported to terminate the services of the applicant under the aforesaid Rule 5 (i) proviso of the CCS (Temporary Service) Rules 1965 with the necessary notices etc. A representation to the Commissioner having failed, the applicant has approached this Tribunal.

While no reason for such termination appears on the face of the termination order, the case of the respondent as set out in the counter, in substance, is that the applicant was a habitual absentee and in view of his incorregibility his services were terminated. It is further averred that the applicant "was given sufficient time to mend himself but he failed." The reason given for such termination it is stated, is the unauthorised absence on several occasions. It is found that in addition to the

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nine periods of absence for which he was given a warning on 12.5.1990 two other periods of absence namely 27.4.1990 to 1.5.1990 and on 9.5.1990 were also taken into consideration. The said two periods of absence, it is relevant to notice, occurred prior to 12.5.1990 (when the warning was administered). There is no denial of the applicant's assertion that after 12.5.1990 he was regular in attendance till his services were terminated on 22.5.1990.

6. Several contentions have been raised by the applicant in his application but at the hearing all the grounds were not pressed but the only ground pressed before us was that having given a warning on 12.5.90 as stated above, the order of termination could not have been passed which considers the absence for a period ~~Prior~~ to the one regularised on 12.5.1990 but not after 12.5.1990.

7. The short question that arises therefore is that whether having given a warning on 12.5.1990 and stating that applicant is liable to be terminated "if he is absent again" the Dy Commissioner of Police could terminate the applicant's services on 22.5.1990 taking into account the applicant's other periods of absence prior to 12.5.1990. ~~DY~~

8. The respondents have refuted the various allegations in their counter and have also raised certain preliminary objections.

9. The respondents, briefly, have submitted that the applicant, a temporary constable, who was enlisted in the Delhi Police 6.9.1988 developed within a very short period the habit of remaining absent from duty without any cogent reasons and intimation. Particulars as to the date of his absence, the action taken by the department and the occasions on which he was punished and reprimanded have been submitted in their counter *as under* :

"Besides above, he was found absent on the following 9 different occasions, for which he was punished and reprimanded :-

S1 No. vide D.D.No. and date	Marked absent and date	Made arrival Vide D.D.No. and date	Absence Period Days Hrs Mts	Decision		
1	2	3	4	5	6	7
1. 54, 24.7.89	35,dt.4.8.89	12	-	-	L.W.Pay	
2. 78-A,dt.29.9.89	125-A,dt.29.9.89	-	9	55	Censure and L.W. Pay	
3. 90-A,dt.30.9.89	82-A,dt.12.10.89	11	10	05		
4. 61,dt.9.11.89	69,dt.10.11.89	-	24	02	Awarded 10 days P.I.	
5. 31,dt.18.1.90	45,dt.18.01.90	-	1	05	Warned	
6. 21,dt. 3.2.90	31,dt.4.2.90	01	11	-	Warned and 1 day C.L.	
7. 13.3.90	14.3.90	02	-	-	2 days com- muted leave	

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The respondents contended that in view of the above, he was not suitable for retention in service in a disciplined force and hence his services were terminated by the impugned order dated 22.5.1990 (Annexure A-1). The applicant's representation against the said order, they submitted, was considered, rejected, and conveyed by an order dated 27.8.1990 (Annexure A-II).

10. The respondents have further given parawise comments to the O.A. and have contended that the applicant is not entitled for any of the reliefs prayed for.

11. We have heard the learned counsel for both the parties. We have perused the various papers and documents placed on record. We have also gone through the original records submitted by the respondents relating to the proceedings of 11.5.1990 when the written warning was given and the proceedings dated 22.5.1990 when the order of termination was directed to be issued.

12. Taking up the preliminary objections raised by the respondents in their counter we noted that in the preliminary objection No.1 the respondents have submitted that the O.A. is not maintainable as mandatory provisions have not

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been complied with and there is no cause of action in favour of the applicant. In preliminary objection No.2 it was submitted by the respondents that the application is a abuse of the process of the Court of law and is not warranted by the provisions under which it has been sought to be made. In preliminary objection No.3 it was submitted that the applicant had not come with clean hands.

13. We have considered the aforesaid objections. We find that the respondents have not specified in their first objection as to which mandatory provisions of law have not been complied with. Moreover, it is evident that the cause of action arose due to the termination of services of the applicant by the impugned order dt 22.5.90 (vide Annexure A-I) and the applicant is also aggrieved by the second impugned order dt 27.8.90 (Vide Annexure A-II). The second preliminary objection of the respondents also does not disclose as to how the applicant has abused the process of the court, and is unwarranted by the provisions. In the third preliminary objection also the respondents have not made any specific allegation against the applicant.

14. In view of the above we find that all the three preliminary objections are vague and are without any basis. Hence they are unsustainable under the law.

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15. The copy of the order containing the aforesaid warning was not filed by either party. However, on the original records submitted by the respondents for our perusal, we found a copy of the said order dated 12.5.1990 which runs as follows :-

"Constable Ravinder Pratap No.1519/DAP while posted in IIInd Bn. DAP was found absent from his (Arrangement) duty on 6.4.90 and as such he was marked absent vide DD No.11 dated 6.4.90. He resumed his duty vide DD.77 dated 10.4.90 after remaining absent for a period of 4 days, 14 hours & 30 minutes wilfully.

He was again found absent from his duty on 14.4.90 and as such he was marked absent vide DD No.11 dated 14.4.90. He resumed his duty vide DDNo.82 dated 20.4.90 after remaining absent for a period of 6 days, 13 hours & 55 minutes wilfully.

He was heard in O.R. on 11.5.90. In his statement he has stated that due to his illness he could not join his duty in time. I have carefully gone through the record on file. This time I have taken a lenient view and warned him that he will be terminated if he is absent again. His absent period i.e. 12 days w.e.f. 6.4.90 to 10.4.90 (5 days) & 14.4.90 to 20.4.90 (7 days) be treated as Earned. Leave.

Sd/-
SB Deol
By Commissioner of Police
IIInd Bn. DAP:Delhi."

16. The applicant in his application has admitted that he received the above said warning and submitted that he had not absented himself after 12.5.1990. The respondents have replied that he was absent from 27.4.1990 to 1.5.1990 and

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9.5.1990 to 10.5.1990 and that he was also issued a show cause notice for censure and leave without pay for his absence with effect from 20.2.1990 to 28.2.1990. Hence the service of the applicant were terminated keeping in view his incorrigibility and he being a habitual absentee, by an impugned order dated 22.5.1990 (Vide Annexure A-I). The applicant in his rejoinder has reiterated his stand that he was not absent even for a minute after 12.5.1990.

17. Admittedly, after the warning given to the applicant on 12.5.1990, reproduced in Para 15 above, ~~as~~ the applicant did not remain absent. Hence the question of terminating his services in terms of the warning did not arise. Nevertheless, his services were terminated. Therefore, the question is whether in view of the warning given on 12.5.1990 the impugned order of termination could have been issued at all in the above circumstance.

18. After a perusal of the records produced by the respondents we were able to find out the reason why the impugned order was issued. It appears that the case of the applicant regarding ^{his} ~~unauthorised~~ absence ~~was~~ not put up for orders in one lot to the Dy Commissioner. In the first instance, the case regarding the absence for the period from 6.4.1990 to 10.4.1990 and from 14.4.1990 to 20.4.1990 alone was put up to the Dy Commissioner. It is on this basis that the Dy Commissioner called the applicant to the orderly room and warned the applicant on 11.5.1990 that

if he absented again he would be terminated. The unauthorised absence was regularised by the issue of earned leave. A formal order was issued on 22.5.1990.

19. Subsequently, the record shows that another application of the applicant for regularisation of his absence was put up to the DCP. The proceedings were initiated on 17.5.1990. This related to the absence of 2 hours and 35 minutes after 9.5.1990. A note was put up on 17.5.1990 to the higher authorities in which it was mentioned that the applicant was habitual absentee and that he was last warned by the DCP 2nd BN that he will be terminated if he is absent again. It is on this note that the DCP ordered after 21.5.1990 (either on the same day or on 22.5.1990) that an order for termination be put to him. Accordingly the impugned order of termination was issued.

20. The question is whether the DCP should have considered at that time that in terms of warning given on 11.5.1990 the applicant's service could be terminated if he was absent thereafter, and as there was no such absence it should not have passed the termination order.

21. We are of the view that in so far as the record of the applicant is concerned it is undoubtedly bad and it establishes that he was a habitual absentee. He never improved himself despite the various kinds of punishments given to

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him while regularising the unauthorised period of absence. It is while regularising one such unauthorised period of absence that the warning was given on 11.5.1990. This has given the applicant a legitimate cause to contend that the termination is contrary to the terms of this warning.

22. The Dy Commissioner could never have anticipated that the applicant ^{who} ~~was~~ warned on 11.5.1990 in respect of unauthorised leave, the last date of which ended on 28th April, 1990, would have committed default immediately thereafter on 9.5.1990. Therefore, when it was brought to his notice that the applicant had again defaulted on 9.5.1990, perhaps, he decided to terminate his services in sheer disgust.

23. In our view this action would have been justified but for the warning given on 11.5.1990. Admittedly there was no absence after 11.5.1990. In our view, even if ~~he~~ had sufficient cause for annoyance at the applicant's conduct, that was in respect of the absence from duty between 9.5.1990 and 10.5.1990 and not for any period after 11.5.90. As no unauthorised absence has been established after 11.5.1990 the order of termination ought not to have been issued.

24. Under the circumstances, ~~we shall~~ the impugned order of termination dated 22.5.1990 (Annexure A-1) and the Annexure A-2 order dated 22

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27.8.1990 communicating to the applicant the rejection of his representation by the Commissioner of Police against the termination, are both quashed. The applicant shall be reinstated in service within two months from the date of receipt of this Order.

25. The question is whether the applicant is entitled to any further relief in the matter of back-wages. As mentioned above, but for the leniency shown by the 2nd respondent, the services of the applicant would ~~be~~ have been terminated on the ground of his being an incorrigible and habitual absentee. He found that this leniency was misplaced, but we have found it necessary to bind him to his order dated 11.5.90 administering the warning. Under the circumstances we are of the view that this applicant is not entitled to the benefit of any back-wages. The only other direction we give is that after he is reinstated he will continue to be in the position in which he was on that date i.e. either as probationer or as temporary constable and he will be entitled to count the service rendered before his service was terminated for all purposes.

26. We also make it clear that in case any disciplinary proceedings had been initiated against the applicant which was dropped because

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of his termination, it is open to the respondent to resume those disciplinary proceedings, if they so choose.

27. The O.A. is partly allowed with the above directions. No costs.

A.Vedavalli
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(Dr A. Vedavalli)
Member (J)

N.V. Krishnan

(N.V. Krishnan)
Acting Chairman

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