

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

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Regn. No. OA 2543/1990

Date of decision: 12.05.1993

Shri Ravinder Kumar & Others

... Petitioners

Versus

Delhi Administration & Another

... Respondents

For the Petitioners

.. Shri J. P. Verghese,
Counsel

For the Respondents

.. Shri D. N. Goburdhan,
Counsel

CORAM:

THE HON'BLE MR. JUSTICE S. K. DHAON, VICE CHAIRMAN
THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

1. To be referred to the Reporters or not?

JUDGMENT

(of the Bench delivered by Hon'ble Mr.
Justice S. K. Dhaon, Vice-Chairman)

The 9 petitioners before us are Police Constables.

They challenge the legality of similar but different orders
dated 22.06.1990 passed by the Deputy Commissioner of Police
terminating their services in the purported exercise of
powers under the proviso to sub-rule (1) of Rule 5 of the
Central Civil Services (Temporary Service) Rules, 1965.

2. The material averments in the application are these.

The petitioners were enlisted in the Delhi Police as
Constables and they duly underwent the prescribed training.
They appeared in the written test on 12.06.1990. During the

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test, checking officer checked the ground sheet of the petitioners and some papers containing notes were found which were not in the knowledge of the petitioners. The petitioners did not solve any question from the notes nor were the notes compared with their answer books. They qualified in the physical test on 16.06.1990. None-the-less their services were terminated by the impugned orders.

3. A counter-affidavit has been filed on behalf of the respondents by the Deputy Commissioner of Police. In it, the material averments are these. The petitioners were appointed as temporary Constables in the Delhi Police and they commenced their basic Recruits Training. During the final examination in 1990, they were found copying in the examination and some copying material was seized from them by the ACP/Incharge of the examination. They had acted in a manner unbecoming of a police officer to pass the final examination of Recruits. Therefore, they were found completely unfit for the police force.

4. A perusal of the Delhi Police Act and the rules framed thereunder indicate that the scheme is that even a Constable is considered to be a police officer and every police officer is appointed on a minimum period of probation of 2 years which is extendable by another year. In addition,

the appointment of such a police officer is purely temporary and he continues to hold a temporary status till he is confirmed against a permanent vacant post. It is thus clear that the petitioners were probationers when the impugned orders were passed and they had also temporary status.

5. The Central Civil Services (Temporary Service) Rules, 1965, had been made applicable to all subordinates, civilian and class-IV employees of the Delhi Police in addition to the rules and regulations made under the Delhi Police Act, 1978. This is so, as the Administrator of the Union Territory of Delhi issued a notification dated 17.12.1990 in exercise of the powers of Section 5 of the Delhi Police Act, 1978.

6. It is now well settled law that the form of the order is not conclusive. Courts and Tribunal are entitled to tear the veil to find out as to what is the foundation of the order, even though it is camouflaged as an order of termination simpliciter. Normally, when an order of termination simpliciter is passed under Rule 5 of the aforesaid rules, such an order cannot be impugned on the ground that no opportunity etc. was given to a Government servant. In the instant case, admittedly no show cause notice was given to the petitioners nor any Enquiry Officer was appointed. In other words, the detailed procedure as prescribed in the Delhi Police

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not
(Punishment & Appeal) Rules 1980, was followed. However, in paragraph 4.8 of the counter-affidavit, the averments as material, are these: "there is no need to make enquiry where the disciplinary authority is satisfied that sufficient material is available on record to prove the allegation/guilt of the defaulter and in such cases the disciplinary authority can terminate the services of a temporary Government servant forthwith without holding any enquiry. In the instant case, the applicant was found copying in the final examination and some copying material was seized by the ACP....."

7. In paragraph 4.11 of the counter-affidavit it is averred: "..... all the applicants were heard by the disciplinary authority in his O.R. but they did not give any satisfactory explanation. Delhi Police (Punishment & Appeal) Rules, 1980, are not attracted in this case. As already stated in this case there was no need to make any enquiry as sufficient material was available on record for the satisfaction of the disciplinary authority to prove the guilt of the applicants....."

8. In the rejoinder-affidavit filed on behalf of the petitioners, the averments made in paragraph 4.11 of the counter-affidavit that the petitioners were heard by the disciplinary authority are not denied. On the contrary, it is asserted that the respondents ought to have conducted a formal enquiry before terminating the services of the petitioners.

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9. We are satisfied that the petitioners were given an opportunity of hearing even though a formal enquiry was not held. It appears to us that the petitioners were in no way prejudiced by the mere fact that a formal enquiry had not been held. As asserted in the counter-affidavit filed on behalf of the respondents, it is apparent that the petitioners had resorted to unfair means in the written examination and the relevant copying material had been discovered during the course of the examination itself.

10. Merit apart, we do not consider it a fit case for interference. The application is dismissed but without any order as to costs.

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(S. R. ADIGE)
MEMBER (A)
12.05.1993

SKD
(S. K. DHAON)
VICE CHAIRMAN
12.05.1993

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