

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 2626/90.

Date of decision: 16.12.1994

Hon'ble Shri N.V. Krishnan, Vice-Chairman (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Makisuddin,
s/o Shri Mughal,
r/o 44, V&PD Haus Khas,
New Delhi
(Ex-constable Driver Belt No. 505/SW, Delhi
Police).

Applicant

(By Advocate Miss Summat Kaur, proxy counsel
for Shri J.P.Verghese)

versus:

1. The Commissioner of Police,
M.S.O. Building,
I.T.O., New Delhi.

2. The Additional D.C.P.,
South West District,
New Delhi.

Respondents.

(By Advocate Shri B.R. Oberoi, proxy counsel
for Shri Anoop Bagai)

ORDER (ORAL)

[Hon'ble Shri N.V. Krishnan, Vice-Chairman (A)]

The applicant was a Police Constable in the Delhi Police. He is aggrieved by the Order dated 14.3.1990 issued by the A-dditional Deputy Commissioner of Police, South District, respondent No. 2 terminating his services under Rule 5 of the Central Civil Service (Temporary Service) Rules, 1965 with immediate effect with a direction that he shall be entitled to claim a sum equivalent to the amount of his pay and allowances for the period of notice

at the same rates at which he was drawing them immediately before the termination of his service, ^a as the case may be,, for the period by which such notice falls short of one month. After such termination, the applicant sent a Lawyer's notice dated 30.3.1990 (Annexure 2). The respondents were requested for the reinstatement of the applicant in service. As this was not accept^{ed}~~able~~, this O.A. has been filed to quash the Annexure A-1 orders and to reinstate the applicant in service with full back wages and consequential benefits.

2. The facts of the case are that the applicant was taken as a constable in Delhi Police on 13.6.1988. He states that he fell ill on 12.4.1989 and he remained on leave from 12.4.89 to 11.8.89. He sent an application for this purpose through some one, stating that he would furnish medical certificate later on. He again fell sick from 5.10.89 to 22.1.90. On this occasion also he sent application through friend and rejoined after submitting a medical certificate. It is stated that on 13.12.1989 the applicant received a letter asking him to rejoin duty immediately. He did so since he was medically fit from 22.1.1990. It is in this circumstances that the order of termination was issued to him.

3. The respondents state that the applicant has, during the period of 1½ years of service, remained absent from 6.4.89 to 7.8.89 in one spell and from

4.10.89 to 21.1.1990, without information/intimation.

It is stated that neither prior intimation was received nor was any medical leave claimed in accordance with the standing order No. 111 which regulates such a case. The applicant's termination of service is justified on the ground that the applicant was unsuitable for further retention in service because of his overall conduct.

4. In the course of arguments, the learned counsel for the applicant submitted that the order of termination is a colourable exercise of power. It is intended to be a punishment ^{and is} inflicted by violating the procedure in Article 311. She contended that the applicant had a right to hold the post and he could not be terminated in this fashion.

5. The learned counsel for the ^{dependent} applicant pointed out that the applicant is only appointed on temporary basis in accordance with the provisions in this regard in the recruitment rules. It is because of his service record, such course of action was taken.

6. We have carefully considered the case. We find that the applicant has undergone treatment on one occasion in the ^{patient} out-door department of the Safdar-jang Hospital as per the out-patient ticket at Annexure A-6 dated 12.4.1989. This is with regard to the first spell of leave from 12.4.89 to 11.8.89. The out-door ticket mentions about some acute injury at the back and inability to walk and also states that he was

advised rest for 4 months. The applicant has no excuse for not promptly informing the authorities about this illness. He should have got a medical certificate simultaneously and gone to his office and informed the authorities concerned about his illness and applied for medical leave in proper form. That would have given an opportunity to the authorities to seek a second opinion, if ^{he} ~~they~~ wanted, as provided in the standing order. Instead, ^{he} ~~the~~ submitted the ex-post-facto Annexure-A-4 certificate of the Safdarjang Hospital dated 5-8-89 which states that leave of absence from duty for 4 months w.e.f. 12.4.1989 was absolutely necessary for the restoration of the applicant's health. For the second spell of illness, no record has been produced to show whether he had undergone any treatment inside the hospital or he had undergone treatment in the out-door ward. What is produced is only Ann-A-7 certificate, again from the Safdarjang Hospital dated 22.1.90, which is a ^{he} ~~he~~ wanted to avail of this medical certificate for 16 weeks from 5.10.1989. If he ^{he} ~~he~~

medical leave such a certificate ought to have been obtained before he proceeded on leave and the same should have been submitted to the authorities concerned and the leave got sanctioned.

7. It is in these circumstances that the respondents have considered that the applicant has been absent without taking proper sanction and that it is not desirable to allow him to continue in disciplined force like Delhi Police.

8. In the rejoinder, it is pointed out that for such a lapse the leave period could be treated either as unauthorised leave or 'dies non' under the CCS (Tempy. Service) Rules.

9. The learned counsel for the respondents submits that this does not mean that this is the only manner in which such absence can be treated.

10. Having heard the parties, we are satisfied that there were reasonable grounds for the respondents to deal with the applicant in the manner they did. The applicant

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had shown total disregard to the standing orders
in regard to sanction of leave on medical ground. The
action taken cannot be treated to ^{be} a penalty. The
impugned order does not cast any stigma. Therefore,
we do not find any merit in the application and the
same is dismissed. There will be no order as to costs.

Lakshmi Swaminathan

(Lakshmi Swaminathan)
Member (J)

N.V. Krishnan
16/12/84

(N.V. Krishnan)
Vice Chairman (A)