

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 2710/90

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T.A. No.

DATE OF DECISION 31.5.91

Shri Jagdev Singh~~Petitioner~~ ApplicantShri Shankar RajuAdvocate for the ~~Petitioner(s)~~ Applicant

Versus

Commissioner of Police, Delhi
& Another

Respondent

Ms Kum Kum Jain

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? *Yes*
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)

The applicant, who has worked as Driver in the Delhi Police, filed this application under Section 19 of the Administrative Tribunals Act, 1985, seeking for the following reliefs:-

- (i) To quash the impugned order dated 11.12.1990 whereby his services were sought to be terminated under Rule 5 (1) of the C.C.S. (Temporary Service) Rules, 1965;

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- (ii) to direct the respondents to reinstate him in service as Constable Driver and that he may be allotted lighter duties till his ailment is completely cured;
- (iii) to direct them to count his military service towards the temporary service under the C.C.S. (Temporary Service) Rules, 1965 for the purpose of entitlement of gratuity and pensionary benefits to him and also direct them to pay an amount of Rs.35,000 in view of the welfare scheme; and
- (iv) to direct them to subject him for second/ review medical examination before a Central Government constituted Medical Board for ascertaining his fitness for Government service.

2. On 21.12.1990, when the application came up for admission, an interim order was passed directing the respondents not to give effect to the impugned order of termination. The interim order was continued thereafter till the case was finally heard on 17.5.1991.

3. There is no dispute as regards the facts of the case. The applicant is an ex-Serviceman, having served

the Army as an Operator and Driver from 7.10.1971 to 13.5.1986. After his voluntary retirement from the Army, he was appointed as a temporary Constable in the Delhi Police on 12.10.1988. He was appointed as a Driver and worked as such for more than two years.

4. The applicant had to undergo treatment for 'epilepsy' in Ram Manohar Lohia Hospital and according to the medical advice, he was to be given light duty during the period of treatment and not to drive vehicles. Instead of giving him light duty, his services were terminated by the impugned order.

5. The applicant has called in question the impugned order of termination of his services.

6. The respondents have admitted in their counter-affidavit that the services of the applicant were terminated in view of the medical opinion.

7. We have carefully gone through the records of the case and have considered the matter. The contention of the respondents that this Tribunal cannot sit in judgement over the decision of the respondents is not tenable. The medical opinion on which the respondents have based their decision to terminate the services of

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the applicant does not state that the applicant is unfit or incapacitated to perform Government duty.

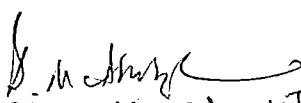
At the time of his entry into the Delhi Police, the applicant had been medically examined and he had been found fit for the job of Driver. He became a victim of 'epilepsy' during the course of his employment. In such a case, the authorities concerned should have considered his case with compassion and given him an alternative job involving lighter duties. The applicant has mentioned the example of Silak Ram. The learned counsel for the applicant also submitted that the respondents could utilise the services of the applicant in the motor workshop as a helper or assistant. There is force in this contention.

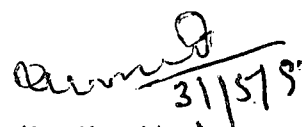
8. The applicant has made an alternative prayer that the respondents be directed to pay him a sum of Rs.35,000/- from the Welfare Fund under the Welfare Scheme at Annexure A-9, page 27 of the paper-book. In our view, he would be entitled to this relief only in the event of physical disability or incapacity, according to the medical opinion. There is no such finding in the case of the applicant.

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9. In the conspectus of the facts and circumstances of the case, the application is disposed of at the admission stage itself with the following orders and directions:-

- (i) We set aside and quash the impugned order of termination dated 11.12.1990 and direct the respondents to continue the applicant as Constable. They will be at liberty to post him in any assignment commensurate with his physical fitness.
- (ii) The applicant will be entitled to all the consequential benefits.
- (iii) The interim order passed on 21.12.1990 and continued thereafter, is hereby made absolute.
- (iv) The parties will bear their respective costs.


(B.N. Dhoundiyal) 21/5/91
Administrative Member


(P.K. Kartha)
Vice-Chairman(Judl.)