

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

(4)

O.A. No. 785/90

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T.A. No.

DATE OF DECISION 8.11.91

<u>Ex-Const. Narinder Kumar</u>	Petitioner
<u>Shri Sunil Malhotra</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India & Ors.</u>	Respondent
<u>Mrs. Avnish Ahlawat</u>	Advocate for the Respondent(s)

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

The Hon'ble Mr. B.N. Dhoundiyal, Member(A)

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? */m*
4. Whether it needs to be circulated to other Benches of the Tribunal? */m*

JUDGEMENT

(of the Bench delivered by
Hon'ble Member Shri B.N. Dhoundiyal)

This application has been filed under section 19 of the Administrative Tribunal Act, 1985 by Ex-Constable Narinder Kumar against the impugned orders dated 14.8.86, 28.10.86 and 16.6.87, issued by the Deputy Commissioner of Police, terminating his services, rejecting his representation and with-holding his memorial to the President, respectively.

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2. The applicant was enrolled as a Constable in Delhi Police on 20.9.82 after the prescribed written test, interview and physical examination. He completed nine months Recruitment Training Course successfully and worked as Constable in different units of Delhi Police. He has stated that he had not been awarded any major punishments and has even been given a commendation certificate in recognition of his good work. He claims to have become quasi-permanent on 20.9.85 i.e. after completing three years continuous service. His services were terminated by the impugned order dated 14.8.86 under Sub-Rule(i) of Rule-5 of the C.C.S.(Temporary Services) Rules, 1965. His representation against the order of termination was rejected and a memorial for submission to the President had been with-held by the respondents.

3. The applicant has challenged the impugned order on the following grounds:-

(a) The seemingly innocuous order is founded on specific charges as was clear from the warning for wilful absence issued to him by the Deputy Commissioner of Police on 14.8.86 with-holding his quasi-permanent status for a period of one year w.e.f. 14.11.1985, although he had already become quasi-permanent on completion of three years service on 20.9.85.

(b) The procedure laid down under Rule-7 of the C.C.S.(Temp. Service) Rules, 1965 should have been adopted if the charge of absence from duty had to be proved.

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- (c) The impugned order dated 14.8.86 is punitive in nature and in contravention of Article 311(2) of the Constitution of India, as he was not given an opportunity to defend himself.
- (d) There has been no rational or intelligible differentia for terminating his services while retaining others who had absented themselves from duty.
- (e) The orders intimating rejection of the representation and with-holding of the memorial to the President are non-speaking orders.

The applicant has prayed for:

- (i) setting aside and quashing the impugned order of termination of service dated 14.8.86 and orders dated 28.10.86 and 16.6.87 relating to representation and memorandum;
- (ii) reinstatement in the service w.e.f. 14.8.86;
- (iii) regularisation of his service as a Constable with his original seniority; and
- (iv) all consequential monetary benefits.

4. The respondents have raised a preliminary objection that the with-holding of his memorial was intimated on 16.6.87, and, therefore, the present O.A. is time barred. They have contended that through his omissions and commissions, the applicant had ^{proved} / himself totally unfit for the post of Constable. He absented himself from duty on 38 occasions between June 1983 and June 1986. As per record, no information with regard to his prolonged absence ^{BN}

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in March/April 1986 is available. His quasi-permanency was passed over for a period of one year w.e.f. 21.9.85. Thus at the time of his termination, he was a temporary Government servant and there was no need to follow the procedure laid down in Rule-7 of C.C.S. (Temporary Service) Rules, 1965.

5. We have gone through the records of the case and heard the learned counsel for both parties. The applicant has stated in his rejoinder, that the final rejection of his appeal by Delhi Administration was intimated to him vide letter dated 13.11.90 received by him on 26.11.90. The applicant had also filed MP.No.975/90 for condonation of delay explaining how he had lost his wife, son and cousin brother during this period and had fallen sick. He kept on representing to authorities in the hope of getting success.

6. In the facts and circumstances of the case, we are of the view that natural justice should not be denied on such technical grounds. MP.975/90 is therefore allowed.

7. The crucial question in the case is the status of the applicant when his services were terminated on 14.8.86. The relevant provision of the Delhi Police Appointment and Recruitment Rules, 1980 reads as under:

- 5.(e)(i) All direct appointments of employees shall be made initially on purely temporary basis. All employees appointed to the Delhi Police shall be on probation for a period of two years.

Provided that the competent authority may extend the period of probation but in no case shall the period of probation extend beyond three years in all.

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- (ii) The services of an employee appointed on probation are liable to be terminated without assigning any reason.
- (iii) After successful completion of period of probation, the employee shall be confirmed in the Delhi Police by the competent authority, subject to the availability of permanent post.

8. The Supreme Court has held in the case of M.K. Aggarwal Vs. Gurgaon Gramin Bank and Others (AIR 1988 SC 286) that after the prescribed maximum probation period is over, the services of a probationer should either be confirmed or discharged. "If the probationer was not discharged on or before the expiry of the maximum period of probation, then there would be an implied confirmation". In the present case, the applicant was enrolled as a Constable on 20.9.82 and had completed three years service on 19.9.85. There is no provision for extension of period of probation beyond the maximum period of three years as laid down by the rules. In the facts and circumstances of the case, we are of the opinion that the provisions of Rule-5 of the CCS (Temporary Service) Rules, 1965 cannot be invoked in the instant case.

9. The impugned order of termination is also vitiated on other grounds. It is apparent that the services of the applicant had been terminated on account of his alleged unauthorised absence from duty. Such alleged absence will amount to misconduct and disciplinary proceedings could be initiated against the applicant under the relevant rules. During such an enquiry, he will have to be afforded reasonable opportunity to defend himself. The applicant has been deprived of such an opportunity in the instant case.

10. Another relevant aspect is that the termination of the services of the applicant has been made while retaining his juniors. The averments in this regard made in the application have not been denied by the respondents. This militates

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against the protection of Articles 14 and 16 of the Constitution to which the applicant is entitled (Vide Manager, Government Branch Press and Another Vs. D.B. Belliappa, 1979 SLJ 233 (SC); Jarnail Singh Vs. State of Punjab and Another, 1986 (2) SLJ (SC) 157).

11. We, therefore, dispose of the application with the following directions:-

(1) The impugned order of termination dated 14.8.86, the rejection of representation dated 28.10.86 and with-holding of memorial dated 16.6.87 are hereby set aside and quashed.

(2) The applicant shall be reinstated as Constable in Delhi Police and be given his due seniority.

(3) Arrears of pay and allowances shall be payable to the applicant for the period from 14.8.86 till reinstatement together with simple interest at the rate of 12% per annum.

(4) Compliance of these orders shall be effected within two months from the date of communication of this order.

There will be no order as to costs.

B. N. Dhoundiyal
(B.N. DHOUNDIYAL) 37/17
MEMBER(A)

P. K. Kartha
5/11/87
(P.K. KARTHA)
VICE CHAIRMAN(J)