

Central Administrative Tribunal
Principal Bench
New Delhi
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D.A. No. 1176/91

New Delhi, this the 19th Day of May, 1995

HON'BLE SHRI J.P. SHARMA, MEMBER (J)

HON'BLE SHRI B.K. SINGH, MEMBER (A)

Naresh Pal (Ex. Constable No. 10269/DAP),
son of Ch. Vijay Pal Singh, resident of
village & Post office Khanzarpur,
District Ghaziabad (U.P.)

Applicant

(By Shri M.P. Raju, Advocate)

Versus

1. Delhi Administration, Delhi through
its Chief Secretary, 5, Sham Nath Marg,
Delhi.
2. Commissioner of Police,
Delhi Police Headquarters,
I.P.E state,
New Delhi- 110 002.
3. Dy. Commissioner of Police,
9th Battalion, D.A.P.,
Delhi.

Respondents

(By Shri S.K. Sinha proxy for Sh. Jog Singh,
advocate for the respondents).

Judgement (Oral)

Hon'ble Shri J.P. Sharma, M(J)

The applicant belongs to village Khanzarpur Distt.

Ghaziabad adjoining Delhi was terminated from the service under
the provisions of rule 5(1) of CCS (CCA) Rules, 1965 by
the impugned order dated 26.7.1990. The representation against
this order was also dismissed by the Deputy Commissioner of
Police by the order dated 13th November, 1990.

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The applicant filed this application in May, 1991 praying that the aforesaid order of termination from service be quashed and the applicant be directed to be re-instated in the service with all consequential benefits of seniority and promotion etc.

Respondents contested this application and stated that the applicant was found unsuitable for the police force inasmuch as he absented earlier three occasions and proceeded on sanctioned leave for two days on 12th July, 1990. He has to join duty on 16th July, 1990 but failed to join. The absentee notice was despatched to him on 20/7/1990 and thereafter the applicant joined the duty on 23.7.1990 and submitted a medical certificate of P.H.C., Talhata (Ghaziabad) showing that he was undertreatment because of illness of Asthmatic Bronchitis & diarrhoea w.e.f. 16.7.1990 and was advised to take rest for seven days. The certificate was considered as not genuine as it was not sent earlier alongwith the leave application sent by the applicant by registered post on 16.7.1990. The applicant, therefore, has been issued the impugned order.

The applicant has also filed the rejoinder reiterating the facts already stated in the O.A. It is stated that the impugned order is by way of punishment and that if there was unauthorised absence of the applicant, he should have been departmentally proceeded. The departmental authority totally ignored the provisions of CCA Leave Rules, 1972 and in any case the second medical opinion about the illness of the applicant was not sought for and treated genuine medical certificate as unacceptable.

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We heard Shri M.P.Raju counsel for the applicant and Shri S.K.Sinha proxy counsel for Shri Jog Singh for the respondents. The order passed under rule 5(1) is an order simpliciter and the provision of article 311(2) cannot be made applicable unless and until some stigma is attached in the order in issue. In the present case, there is no stigma on the face of the order. However, in the counter, the respondents have illustrated certain reasons in coming to a conclusion to pass the order invoking their powers vested under the provisions of rule 5(1) of CCS (CCA) Rules, 1965. There cannot be any controversy on the legal issue but at the same time the order of termination though may not legally be said to be an order of punishment but it has its gross roots embodied for the absence of the applicant which was treated as unauthorized and also earlier three occasions have been considered. When we go through the earlier three occasions it was only for hardly 20 hours in January, 1990; only 35 minutes on 8.3.1990 and 7 hours on 30/3/1990. These absence period of duty for few hours or minutes has been taken to come to a conclusion that the applicant is habitual absentee from duty and he also deliberately absented after the expiry of the sanctioned leave on 16.7.90. It is expected that a tested person who has not been adversely commented upon for the service he has put in, in case of the applicant from 20th November, 1988, the respondents could have taken a lenient and more reasonable view against the applicant rather exercising powers under the provision of

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rule 5 (1) of CCS (CCA) Rules, 1965. However, the fact remains the Hon'ble Supreme Court of India in the case of State of U.P. Versus K.K.Sukla reported in J.T. 1991 (1) SC p.108 laid down the law that the interference by the Court in such matters where no stigma is attached on the face of the order, is not justified. This view has also been taken by the Hon'ble Supreme Court in the catena of decisions. Hon'ble Supreme Court of India has also, in the case of Governing Council of Kidwai Memorial Institute of Oncology, Bangalore V/s. Dr. Pandurag Godwalkan and another reported in 1992 (4) SCC p. 719, have held that even though there may be some motive behind the termination, the order of termination by itself is not vitiated. However, in that authority the Court has been given the right to lift the veil and to see the real motive behind the order of termination whether the same is punitive. In the present case it is not so as the services have been dispensed with for not joining the duty after the expiry of the sanctioned leave.

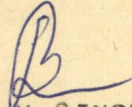
We do not find any ground to interfere in the impugned order but we do observe that as a young man, the respondents should have been more magnanimous and sympathetic as in these hard days, it is difficult to get a service and that too in police. The applicant may prove his worthiness by getting more seasoned in future career and such persons who once suffered a set back may prove better than those who have never erred in their career.

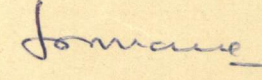
Having synoptic view of the matter though, we do not interfere in the impugned order, but we make observation that the respondents on the representation of applicant which he will be filing within one month from today, re-consider the decision and in

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case the applicant is favoured he may/allowed to join the
service without any back wages from the date of his
termination i.e. from 26th July, 1990 and may be kept on
probation. The application is, therefore disposed of
accordingly with no orders as to cost.


(B.K.SINGH)
MEMBER(A)


(J.P.SHARMA)
MEMBER(J)

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