

(14)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

1) O.A.No.1945/91

Babu Lal ,
s/o Ch.Chhotu Ram,
r/o Village & P.O. Baloji,
Tehsil Kothputli, Distt.Jaipur
Rajasthan

.....Applicant.

Versus

1. Commissioner of Police Delhi,
Delhi Police Headquarters,
MSO Building, I.P.Estate,
New Delhi.
2. Deputy Commissioner of Police,
4th Bn.DAP, New Police Lines,
Kingsway Camp, Delhi

.....Respondents.

2) O.A.No.1946/91

Dalip Kumar s/o Sh. Ramji Lal,
r/o Village and Post Office Kasani,
Distt.Jhunjhnu, Rajasthan

.....Applicant.

Versus

1. Commissioner of Police Delhi,
Delhi Police Headquarters,
MSO Building, I.P.Estate,
New Delhi.
2. Principal,
Police Training School,
Jharoda Kalan,
New Delhi

.....Respondents.

Shri A.S.Grewal,, Advocate for the applicants.

Shri Vijay Pandita, Advocate for the respondents.

Date of Decision: July 21st, 1995

HON'BLE MR. S.R.ADIGE, MEMBER(A)

HON'BLE DR. A.VEDAVALLI, MEMBER(J).

JUDGMENT

By Hon'ble Mr. S.R.Adige, Member(A).

As the two O.As involve common questions
of fact and law, they are being disposed of by
this common judgment.

A

2. The services of the two applicants Babu Lal and Dalip Kumar, both of whom were temporary Constables, undergoing basic recruits training, were terminated by the two impugned orders ^{dated 15.6.90 and 28.8.90} passed in pursuance of the proviso of Sub-Rule (1) of Rule 5 of the CCS (Temporary Service) Rules, 1965 by the Deputy Commissioner of Police, with one month's pay and allowances in lieu of the notice period. The appeals filed by the applicants against the impugned orders were rejected leading to the filing of these two O.As.

3. Manifestly the ^{two} impugned orders ^{are} ~~are~~ orders simpliciter. The respondents in their reply state that the services of the two applicants were terminated because while undergoing training they absented themselves unauthorisedly. In the case of Babu Lal, it is stated that he unauthorisedly absented himself on 5.6.90 and resumed duty only on 11.6.90, while in Dalip Kumar's case it is stated that he proceeded on one day's station leave for 5.8.90 and was due back on 6.8.90 but did not turn up in spite of three absentee notices issued on 10.8.90; 17.8.90 and 23.8.90. The respondents have denied the applicants' contention that they had fallen ill, and state that even if they had taken sick, they, should have informed the respondents and taken leave of absence. The applicants were recruits and unauthorised absence on the part of a recruit during training period should not be tolerated. The respondents point out that the police is a disciplined force where there are certain norms of discipline and code of conduct to be observed, and the applicant ^{by} leaving the training centre without permission not only

- 3 -

violated the departmental instructions, but also acted in a manner unbecoming of a police officer.

4. No rejoinder has been filed by the applicants to rebut the averments made in the respondents' reply.

5. We have heard Shri A.S. Grewal for the applicant and Shri Pandita for the respondents.

6. Shri Grewal has argued that although the impugned order, ~~was an~~ order simpliciter and innocuously worded, it was merely a camouflage for an order of dismissal for misconduct and it was open to the Tribunal to lift the veil and ascertain the true character of the order. If the Tribunal held that the order, ~~was~~ in reality a cloak for an order of punishment, then Article 311 (2) of the Constitution could be attracted, and the applicants' services could be terminated only after an enquiry in accordance with the Constitutional provisions. In this connection, Shri Grewal relied on the Hon'ble Supreme Court ruling in Anoop Jaiswal Vs. Govt. of India & another -1984 (1) SLR 426. Shri Grewal also argued that the punishment was excessively severe.

7. On the other hand, Shri Pandita stated that the respondents' action was fully in accordance with law. He relied upon the Supreme Court Ruling in State of U.P. Vs. K.K. Shukla -1991(1) SCC 691, where in their Lordships of the Hon'ble Supreme Court have held :

" A temporary government servant has no right to hold the post. Whenever, the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in

A

accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary government servant. If the services of a temporary Govt. servant is terminated in accordance with the terms and conditions of service, it will not visit him with any evil consequences."

8. Reliance was also placed by Shri Pandita on the Hon'ble Supreme Court's ruling in Governing Council of Kidwai Memorial Institute of Oncology, Bangalore Vs. Dr. Pandurang Godwalkar and Another- 1992 (4) Supreme Court Cases 719 which after noticing the judgment in Anoop Jaiswal's case (Supra) explained the principle of tearing of the veil thus;

" If an employee who is on probation or holding an appointment on temporary basis is removed from the service with stigma because of some specific charge, then a plea cannot be taken that as his service was temporary or his appointment was on probation, there was no requirement of holding any enquiry, affording such an employee an opportunity to show that the charge levelled against him is either not true or it is without any basis. But whenever the service of an employee is terminated during the period of probation or while his appointment is on temporary basis, by an order of termination simpliciter after some preliminary enquiry it cannot be held that as some enquiry had been made against him before the issuance of order of termination it really amounted to his removal from service on a charge as such penal in nature.....

The principle of tearing of the veil for finding out the real nature of the order shall be applicable only in a case where the Court is satisfied that there is a direct nexus between the charge so levelled and the action taken. If the decision is taken, to terminate the service of an employee during the period of probation, after taking into considering the overall performance and some action or inaction on the part of such employee then it cannot be said that its amounts to his removal from service as punishment."

9. Shri Pandita has also referred to the Hon'ble Supreme Court's rulings in 1992(4) SCC 719 and 1995 (1) SCC 638.

10. We have considered the matter carefully. Manifestly the impugned order dated 15.6.90 in the case of Babu Lal and the order dated 28.8.90 in the case of Dalip Kumar are orders simpliciter, issued in pursuance of the proviso of sub-rule (1) of Rule 5 CCS (Temporary Services) Rules, 1965 which are fully applicable to the two applicants. No stigma has been attached in the orders of termination, and hence it cannot be said that the orders were issued by way of punishment. It is not that any enquiry was held against the applicants on specified charge of misconduct, and finding the materials in the enquiry sufficient to impose punishment, the respondents had taken recourse to the proviso to sub-rule (1) of Rule 5 CCS (Temporary Service) Rules to terminate the services of two applicants.

11. In the instant cases, the applicants were temporary Govt. servants, and the competent authority was satisfied that their work and conduct was not satisfactory and that their continuance was not in public interest on account of their unsuitability and misconduct. Instead of taking punitive action against the applicants and holding a preliminary enquiry framing charges and giving them an opportunity to show cause as provided under Article 311(2) of the Constitution, the respondents chose to terminate the services of two applicants. Thus, the rulings of the Hon'ble Supreme Court in K.K.Shukla's case (Supra) and in Dr. P.Godwalkar's case (Supra) are fully applicable to the facts of the present case, and no interference is legally warranted.

12. In so far as the alleged severity of

/h

alleged punishment is concerned, in UOI Vs. Perma Nanda-AIR 1989 SC 1185, the Hon'ble Supreme Court have held ;

" If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter for the Tribunal to concern with."

13. In this case, no malafide regarding the quantum of punishment has been alleged.

14. In the result, the impugned orders do not call for any interference and these two O.As fail and they are accordingly dismissed. No costs.

A. Veda Valli

(DR. A. VEDAVALLI)
MEMBER (J)

S. R. Adige

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

/ug/