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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
NEW DELHI.

O.A.No. 1946/91

New Delhi Dated: this the 3rd day of ^{June} ~~May~~, 1997.

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

HON'BLE DR. A. VEDAVALI MEMBER (J).

Shri Dalip Kumar,
R/o Village & P.O. Kasani,
Distt. Jhunjhunu (Rajasthan) Applicant.
(By Advocate: Shri Shankar Raju).

Versus

Commissioner of Police,
Police Headquarters,
MSO, Building, I.P. Estate,
New Delhi Respondents.
(By Advocate: Shri Vijay Pandita).

JUDGMENT

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

Applicant Shri Dalip Kumar impugns respondents' order dated 28.8.90 (Annexure-A) terminating his services under Rule 5(1) CCS(Temporary Services) Rules, 1965 and the order dated 18.3.91 (Annexure-C) rejecting his representation.

2. This OA along with OA No. 1945/91 Babu Lal Vs. Commissioner of Police Delhi and others had been heard together as both OAs involved common question of law and fact and were dismissed by common judgment 21.7.95, upholding respondents' action in disengaging present applicant Shri Dalip Kumar as well as applicant in OA No. 1945/91 Shri Babu Lal Vs. Commissioner of Police & Ors. under Rule 5(1) CCS(Temporary Service) Rules.

3. Thereupon applicant Shri Dalip Kumar filed R.A. No. 242/ 95 praying for review of judgment dated 21.7.95.

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One of the grounds taken in the RA was that applicant Shri Dalip Kumar was under medical treatment during the relevant period but medical certificates were not filed with the OA or were pressed by applicant's counsel Shri Grewal during hearing because they had been misplaced by him and he had subsequently left the legal profession. It was therefore contended that this was new and important material which could not be produced before the Tribunal at the time of final hearing despite due diligence and it was therefore a fit case for review of the judgment dated 21.7.95 in terms of Section 22(3)(f) A.T.Act read with Order 47 Rule 1 CPC.

4. The RA was accordingly heard. Shri Shankar Raju argued on behalf of the review applicant while Shri Vijay Pandita represented review respondents. After hearing both parties, by order dated 10.10.96 the RA No.242/95 was allowed and this Bench held that the judgment dated 21.7.95 required review. Both parties were directed to appear and be heard on merits. It was made clear in the order dated 10.10.96 that the Tribunal's judgment dated 21.7.95 in OA No.1945/91 would remain unaffected, by the above orders as no review had been sought by applicant Shri Babu Lal in that OA.

5. We have heard Shri Shankar Raju for the applicant and Shri Vijay Pandita for the respondents on the merits of the case.

6. Admittedly applicant was appointed as a temporary Constable in Delhi Police on 1.5.90 and was undergoing training at PTS Jharoga Kalan. He was granted 2 days' leave on 4th and 5th May, 1990 to enable him to visit his village in Jhunjhunu Distt. of Rajasthan, and was due

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back on 6th May, 1990. He states that he was suddenly taken ill with fever at his village home and had to be taken to Govt. Family Welfare Centre, Kidwana, Rajasthan, intimation of which was sent by telegram dated 6.8.90. He states that he remained admitted in Hospital with Pyrexia fever till 20.8.90, and thereafter when he did not recover, was referred to Govt. Unani Hospital, Kuloth, Rajasthan on 22.8.90 where the doctor after examining him, advised 10 days complete rest. After this he was further advised medical rest for 23 days more till 23.9.90, and as soon as he was declared fit, he reported for duty on 25.9.90, but was not allowed to join the Training, and was informed by the authorities in PTS, Jharoda Kalan that his services had been terminated by the Principal, PTS Jharoda Kalan on 28.8.90. Applicant states that while he was under treatment in Govt. Hospital an absentee notice dated 17.8.90 was received only on 28.8.90 in which it was desired that if he was sick, he should send medical certificate, prescription slips of medicines etc., in response to which he sent original medical certificates about his illness to Principal PTS Jharoda Kalan on 29.8.90 by registered post vide receipt 29.8.90. Applicant states that another absentee notice dated 23.8.90 was received from the Principal on 30.8.90, but meanwhile necessary intimation of illness had already been sent.

7. On the other hand respondents contend that when applicant did not report back for duty on 6.8.90 he was marked absent, and 3 absentee notices were sent to him on 10.8.90, 17.8.90 and 23.8.90, and when no response was received from him to any of the three absentee notices, his services were terminated under Rule 5(1) as by his prolonged absence without

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authorisation from the Training Programme at PTS Jharoda Kalan he had rendered himself unsuitable and unfit for continuance in the police force, and his conduct adversely affected the general discipline in the training institution.

8. Admittedly, the impugned order dated 28.8.90 issued under Rule 5(1) CCS (Temporary Service) Rules, is an order simpliciter. In State of U.P. Vs. K.K.Shukla 1991 (1) SCC 691 the Hon'ble Supreme Court has held that when the work and conduct of a temporary Govt. servant is not satisfactory, or where his continuance in service is not in the public interest on account of his unsuitability, misconduct or inefficiency, his services may be terminated in terms and conditions of service by an order simpliciter which will not visit him with any evil consequences. Again in Governing Council of Kidwai Memorial Institute of Oncology, Bangalore Vs. Dr.P.Godwalkar & Anr. 1992 (4) SCC 719, the Hon'ble Supreme Court has held that after taking into consideration, the overall performance and some action or inaction on the part of the employee, his services are terminated by an order simpliciter, it cannot be said that his removal from service amounts to punishment.

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9. Applicant has filed photo copies of medical certificate of his treatment at Sanjay Gandhi Memorial Hospital, Delhi in June, 1990 even while he was under training at PTS, Jharodakalan,, which were not filed when the O.A. was heard earlier, as well as medical certificates and medical prescriptions during his stay at his village home. He has also filed a postal receipt of the telegram dated 6.8.96 said to have been sent by him. Principal, PTS, Jharodakalan informing him of his illness as well as postal receipt of papers said to have been sent by him on 29.9.90 by registered post enclosing medical certificates of his illness, etc. Applicant also referred to this material in his representation dated 26.11.90 addressed to the Commissioner of Police, Delhi but the order dated 18.3.91 rejecting the representation is a bald, and cryptic order which makes no mention of any of the grounds taken by applicant or the materials furnished by him.

10. While it is true that no appeal lies against an order of termination under Rule 5(1) which is an order simpliciter and casts no stigma upon applicant, and respondents were not legally bound to communicate to the applicant reasons for rejection of his representation, the fact remains that the applicant was a young man at the very threshold of his career, and there are materials to suggest that he was keeping ill

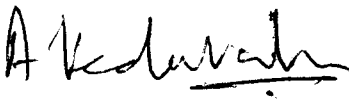
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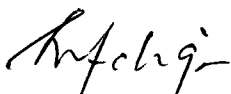
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health even while he was undergoing training at PTS, Jharodakalan, before he proceeded on C.L. on 4.8.90. The question whether he indeed did fall so ill while at his village home, which prevented him from rejoining duty and/or informing the authorities of the same in time, or whether he was only shirking from duty and thus rendered himself unfit for continuance in the police force is basically one of fact which can be established only after proper enquiry.

11. Under the circumstances, we modify our orders dated 21.7.95 in regard to O.A. No. 1946/91 to this extent that we quash the order dated 18.3.91 (Ann. C) said to have been passed by the Commissioner of Police on the applicants representation dated 26.11.90 and communicated by the Principal, PTS, Jharodakalan. We direct respondents to give applicant a reasonable opportunity to produce such materials as are available with him to justify his claim that indeed it was illness that prevented him from rejoining duty at PTS, Jharodaakalan and/or informing the concerned authorities of his illness well in time, and after hearing him in person and conducting an inquiry into the matter pass a detailed, speaking and reasoned order in accordance with law, within four months from the date of receipt of a copy of this judgment.

12. O.A. No. 1946/91 is disposed of in terms of Para 10 above. No costs.


(DR. A. VEDAVALLI)
Member (J)
/GK/


(S.R. ADIGE)
Member (A)