

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.1982/91 Date of Decision 31.8.95

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

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

Surender Singh,
s/o Sh. Chander Singh,
r/o Village & P.O. Prahlaipur Kakroli,
District Sonipat, HaryanaApplicant!

By Shri A.S. Grewal, Advocate

Versus

1. Lt. Governor of Delhi through
Chief Secretary,
Delhi Administration,
Delhi.

2. Commissioner of Police Delhi,
Delhi Police Headquarters, MSO Building,
I.P.Estate, New Delhi.

3. Additional Deputy Commissioner of Police,
North-East District, Shahdara,
Delhi.Respondents

By Shri O.N. Trishal, Advocate.

JUDGMENT

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

The facts of this case lie within narrow compass.

Applicant Surender Singh was enlisted as a Constable Driver in Delhi Police on 10.11.88. Upon a complaint being received that the applicant had secured employment after furnishing wrong information, in as much as he had suppressed the fact that he was facing criminal trial in a case under secs. 148/452/379/506 IPC, the matter was got enquired into and it was found that the applicant was indeed an accused in case FIR No. 262/83 under sections 148/149/452/427/506/379 IPC P.S. Bahadur Garh.

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District Sonipat, Haryana, in which charges had been framed on 14.7.87 and the applicant along with other accused persons were facing trial. On scrutiny, it was found that both in his application form as well as in the attestation form, he had denied of having faced any criminal case.

3. In accordance with the Govt. instructions contained in Rule 11 CCS(Conduct) Rules, a warning had been attached to the attestation form and the verification form to be filled up by the candidate seeking Govt. service, that concealment of facts would be a disqualification and render a candidate unfit for Govt. service. Inspite of this warning the applicant did not disclose either in the application form nor in the attestation form that he was involved in a criminal case, and when these facts came to the notice of the respondents, they terminated his service by an order simplicitor dated 30.10.90 (Annexure-A) against which the applicant filed a representation (Annexure-B) which was rejected vide order dated 3.1.91 (Annexure-C). It is against those orders that the applicant had filed this O.A.

4. We have heard Shri A.S.Grewal for the applicant and Shri O.N.Trishal for the respondents. We have also perused the materials on record and considered the matter carefully.

5. No rejoinder has been filed by the applicant denying the respondents' contention that he suppressed the fact that he was involved in a criminal case, both in the application form as well as in the attestation form, while seeking employment as a Constable. Both

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these forms categorically state that concealment of facts would be a disqualification and render a candidate unfit for Govt. service. The applicant has not given any reason in his defence why he did not mention his involvement in the criminal case in the application form and the attestation form, and under the circumstance it must be held that the concealment was deliberate. The fact that the applicant was subsequently acquitted in that case does not diminish his responsibility in stating the correct facts in the application form and attestation form while seeking employment as Constable. The conclusion is thus irresistible that the applicant deliberately concealed facts to secure his employment as Constable, and the respondents are on record as stating that had they known that the applicant was involved in a criminal case, they may not have selected him for appointment.

6. As the applicant has himself not come with clean hands, he has no enforceable right to claim setting aside of the impugned termination order and his reinstatement. On behalf of the applicant, it has been urged that as the order was passed by way of misconduct and was punitive in character, opportunity should have been given to him to show cause, and the procedure as laid down in Article 311 of the Constitution read with Rule 16 Delhi Police (Punishment & Appeal) Rules should have been followed, more particularly as the applicant had completed his two years probationary period.

7. None of these grounds have merit. The applicant has produced no materials on record to establish that the respondents by any positive application of mind had held that the applicant had successfully

completed his probationary period and was confirmed.
Rule 5(e) Delhi Police (Appointment & Recruitment)
Rules reads as follows:-

"(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.

(ii) The service 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. It is clear from the above that the completion of the probation was not automatic and the employee had to be confirmed by a specific order passed by the competent authority, and no such order has been produced; the applicant continued to be appointed purely on temporary basis on the date his services were terminated. His services were terminable ^{as, by an order simpler} under Rule 5(1) CCS (Temporary Service) Rules without assigning any reason. In the present case, as the applicant had concealed his involvement in the criminal case both in the application form as well as attestation form, and this concealment appears to have been deliberate in order to secure employment, and as in both those forms specifically a warning had been inserted that concealment of facts would be a disqualification and render a candidate unfit for Govt. service, the applicant's

services were terminated by an order simplicitor in the light of the provisions of Rule 5(1) CCS(Temporary Service) Rules. Shri Grewal has relied upon certain rulings in support of his contention that the action of the respondents warrants our interference. One such ruling is S.S.Mann Vs. Commissioner of Police & Anr. 1993(1) 14 ATJ 474. That case is distinguishable from the present case on fact that the applicant had stated that he came to know about the existence of a criminal case against him only after he had filled up the application form as well as the attestation form, but there is no such averment in the present case. Another case relied upon is V.Narender Vs. Superintendent of Post Offices, Mahaboobnagar & Ors. 1993(2)(15)ATJ 408. That case is also distinguishable from the present one because in that case, the respondents having satisfied themselves that the criminal case against the applicant had ended in acquittal, ordered him to take charge of the post of Branch Post Master and hence non-mention by the applicant of his involvement in a criminal case in the application form/attestation form was not held to be a false statement made by him with a fraudulent intention or with an intention to mislead the authorities concerned. In the present case, the respondents were not aware that the applicant was involved in a criminal case when he filled in the application form and the attestation form and he was granted employment and these facts were concealed by the applicant when he was appointed. Hence this case does not help the applicant.

9. Another case cited by Shri Grewal is

O.A.No.223/90 decided on 1.11.90 by the Principal

Bench of CAT where the facts are the similar but that case does not lay down any law or binding precedent that a temporary employee who obtains employment by concealing material facts in his application form as well as attestation form, despite clear warning in both those forms that concealment of such facts would be held as a disqualification and render the candidate unfit for Govt. service, and upon detection whose services are terminated by an order simplicitor without assigning any reason and without casting any stigma, under Rule 5(1) CCS (Temporary Service) Rules, has an enforceable right to be reinstated, although he had not given any cogent reason to explain why he concealed those facts at the time he sought employment.

10. Shri Grewal has also cited the case of one Shri Vijay Singh who has only been censured by the DyCommissioner of Police for concealment of the fact that a criminal case was pending against him when he had submitted the application form and the attestation form for the post of Constable in the Delhi Police. In the light of that case, Shri Grewal has argued that the ~~penishment~~ ^{order in} of termination of the services is highly excessive.

11. As stated above, our interference would be warranted only in a situation where the applicant has an enforceable and legal right to be reinstated although he concealed material facts in his application form and the attestation form at the time he applied for the post of Constable Delhi Police, which after detection resulted in the termination of his service under Rule 5(1) CCS (Temporary Service) Rules. In the present case no such legally enforceable right

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exists, and we therefore decline to interfere.
If, however, upon a fresh representation made by
the applicant to the respondents, they are
inclined to modify their order terminating the
applicant's services in the light of Vijay Singh's
^{case no} ~~case~~, nothing contained in this judgment
would operate as a bar ^{to their} from doing so.

12. This O.A. is disposed of accordingly.
No costs.

A Vedavalli

(DR. A. VEDAVALLI)
MEMBER (J)

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

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