

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A. No. 1985 of 1991

New Delhi: September 29, 1995.

Balwinder Kumar @ Balwant Singh,
s/o Late Sh. Niamat Rai,
r/o House No. 478/79, Guru Ram Dass Nagar,
East District, DelhiApplicant.

By Advocate Shri Shyam Babu

versus

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

By Departmental Representative ASI Kishan Chander.

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).

In this application, Shri Balwinder Kumar, ex-Constable, Delhi Police has impugned the respondents' order dated 14.9.90 (Annexure-page 10) terminating his services under Rule 5(1) CCS (Temporary Service) Rules and the order dated 26.12.90 (Annexure-page 16) rejecting his representation.

2. The applicant was enlisted in the Delhi Police as a Temporary Constable on 29.8.88. According to the reply of the respondents, which has not specifically been rebutted by the applicant in his rejoinder, during his short span of service, he absented

(10)

himself on as many as 12 occasions for which he was warned/awarded punishment drills, but the same did not result in any improvement. The applicant has himself admitted in his O.A. that the respondents issued order dated 2.7.90 mentioning that a close watch should be kept on the applicant. As the applicant was reportedly absenting himself at will, and his performance was found to be unsatisfactory, his services were terminated by the impugned order and his representation was rejected.

3. We have heard Shri Shyam Babu for the applicant. The departmental representative Shri Kishan Chander was present on behalf of the respondents.

4. The main ground advanced by Shri Shyam Babu is that although the impugned order on the face of it appears to be an innocuous order simpliciter, it is actually punitive in character, which was passed on the basis of misconduct and entails civil consequences and attaches stigma, and therefore a reasonable opportunity should have been given to the applicant to show cause before the order was passed. By not following the procedure prescribed under Article 311(2) of the Constitution, the respondents have acted arbitrarily, more particularly as even the 3 months period during which the applicants' services were to be kept under watch by respondents' order dated 2.7.90, was not allowed to elapse before the impugned order was issued.

5. The applicant has also claimed that as the two years probation period after initial appointment had been completed on 29.8.90, he must be deemed to have stood confirmed on that date, and was no longer temporary, the impugned order was bad for that reason also.

6. As far as this claim to have been deemed to have stood confirmed is concerned, Rule 5(c) (1) Delhi Police (Appointment & Recruitment) Rules, lays down that

* all direct appointment of employees shall be made initially on purely temporary basis. All employees appointed to 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 3 years in all. *

The applicant had filed Misc. Petition No. 42/92 seeking to amend the O.A. for a declaration that as the applicant was appointed as a Constable on 29.8.88 and completed the maximum period of probation of two years on 29.8.90 and the period of probation was not extended, he was deemed to have been confirmed and the termination of his service under Rule 5(1) CCS (Temporary Service) Rules was therefore illegal. In this connection in the O.A., the ruling in O.A. No. 1746/89 Bhanwar Singh Vs. Delhi Administration was cited in support. The respondents in their reply to that O.A. had referred to DPAR's O.M. dated 19.5.53, making it clear that confirmation after completion of probation was not automatic but had to be followed by a formal order. In the applicant's case, as no confirmation order was passed, he continued to be purely temporary till the date of the impugned order under Rule 5(1) CCS (Temporary Service) Rules. In his rejoinder to that reply the applicant had contended that the O.M. dated 19.5.83 had since been

superceded by a circular dated 13.3.91 said to have been enclosed with the rejoinder, based on Bhawar Singh's case that if the probation was not extended, the employee is deemed to have been confirmed on the expiry of 2 years. By order dated 29.7.92 these additional pleas contained in the M.P. were ordered to be considered as part of the pleadings at the time of final hearing, but no such circular dated 13.3.91 was produced before us. Accordingly we go by the DPAR's O.M. dated 19.5.83 which has been reinforced by a catena of judicial decisions that confirmation at the end of the probation period is not automatic and has to be followed by a formal order. In the absence of any such formal order, we have to treat the applicant as a purely temporary Constable on probation on the date of the impugned order to whom Rule 5(1) CCS (Temporary Service) Rules would be fully applicable.

7. Coming to the main ground, the applicant has not denied in his rejoinder, the assertion made by the respondents in their reply, that during his short span of service he was found to be a habitual absentee, who absented himself on as many as 12 occasions for which he was warned/awarded punishment drills, inspite of which he did not mend his ways. Finding such conduct wholly unsatisfactory, and the applicant unsuitable for a disciplined, uniformed force such as the police, the respondents dispensed with his services by an order simpliciter, which gave no reason and caste no stigma. It is true that the DCP 1st Battalion, DAP, Delhi had issued internal communication dated 2.7.90 to the Company Commander under whom the applicant was working to keep a close

watch on him regarding his unauthorised absences and to send a weekly report for the next 3 months to take a decision regarding his previous absences, but this communication was purely internal, and a copy of it was not marked to the applicant, and it cannot be said that the respondents were precluded from terminating the applicant's services after making an overall assessment of his work and conduct, merely because the 3 months' period mentioned therein had not expired.

8. Shri Shyam Babu has cited various rulings in support of his contention that this case warrants interference. The first case cited is Dr. Kulwant Singh Vs. Dr.D.R.Marwaha and another - of Jammu and Kashmir High Court- 1974(1) SLR Volume 10 page 195, in paragraph 10 of which the Hon'ble Supreme Court's judgment in D.C.Dass Vs. UOI &Ors-AIR 1970 SC 77 has been quoted where the order of reversion did not contain any express word of stigma but the Govt. in his affidavit admitted that the order of reversion was made as the performance of the petitioner did not come up to the standard of a Secretary to the Government of India, upon which the Hon'ble Supreme Court held that it was accompanied by a stigma.

9. Another case cited is L.Robert D' Souza Vs. Executive Engineer, Southern Railway and another-AIR 1982 SC 854, wherein the Hon'ble Supreme Court had held that the absence without leave constitutes misconduct and it is not open to the employer to terminate service without notice and inquiry or at any rate without complying with the minimum principle of natural justice.

A

10. The third case cited is Kanhialal Vs. District Judge and others- 1983(1) SIR 621,, wherein the Hon'ble Supreme Court had held that the termination of the services of a temporary employee on the ground that he was prima facie responsible for the loss of some document from the judicial record on account of negligence and carelessness was penal in character to which Article 311(2) of the Constitution was attracted and the termination in violation of Article 311 was void.

11. Yet another case cited by Shri Shyam Babu is Governing Council of Kidwai Memorial Institute of Oncology Vs. Dr. Pandurang Godwalkar & another- AIR 1993 Supreme Court 392 wherein it has been held as follows:

"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 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 veil for finding our 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 action taken. If decision is taken to terminate the service of an employee during period of probation, after taking into consideration overall performance and some action or inaction on the part of such employee then it cannot be said that it amounts to his removal from service as punishment. It need not be said that the appointing authority at stage of confirmation or while examining the question as to whether the service of such employee be terminated during the continuance of the period of probation, is entitled to look

into any complaint made in respect of such employee while discharging his duties for purpose of making assessment of the performance of such employee.

12. Lastly the case of Union of India & others vs. Giriraj Sharma -1994 Supp (3) SCC 755, has been cited by Shri Shyam Babu wherein the Hon'ble Supreme Court had held that where extension of leave was disallowed but the employee, not wilfully but under admittedly compelling circumstances, overstayed the period of leave by a few days (12 days in this case), the order of dismissal was uncalled for but a minor penalty could be imposed.

13. Viewing the evolution in the law on the subject over the period of one decade or so covered by the first four judgments relied upon by Shri Shyam Babu, we note that there is a consistent thread running throughout, which is this that where the applicant is charged with specific acts of misconduct and punitive action is sought to be taken against him, these recourse cannot be had to be the provisions of Rule 5(1) CCS (Temporary) Service Rules, and the provisions of Article 311(2) have to be complied with. In this connection, we note that no charge sheet was ever served upon the applicant. The respondents have stated in their reply, and this has not been controverted by the applicant in his rejoinder, that over a short service period of 2 years, he absented himself unauthorisedly from duty for as many as a dozen times on different occasions, and inspite of warnings and punishment drills, no improvement in his conduct was noticed. In this background, if after watching the applicant's conduct over the relevant period of 2 years and

17

finding he was frequently absenting himself from duty unauthorisedly, and was not even heeding the warnings and punishments drills inflicted upon him, the respondents concluded that he was not amenable to discipline and was therefore not suitable to continue in an organisation such as the police force where great stress was laid on discipline, and accordingly disengaged him by an order simpliciter which gave no reason and casts no stigma, their action cannot legally be faulted.

14. Shri Shyam Babu has argued that the applicant's services were terminated because of specific acts of misconduct viz. absences from duty and not on account of his general performance, and hence the termination is vitiated. We find it difficult to accept this argument. As stated above, after watching the applicant's performance over 2 year period the respondents found, he was not amenable to discipline in as much as he was frequently absenting himself from duty unauthorisedly, and despite warnings and punishment drills, he made no effort to improve himself. Such conduct was sufficient for any reasonable person to conclude the unsuitability of a person such as the applicant for service in a disciplined Organisation such as the police force.

15. Shri Shyam Babu has also argued that for the termination order to be protected by the judgment in Pandurang's case (Supra), it was necessary that the overall performance of the applicant should have been taken into consideration and in addition some action or inaction on his part, and this condition has not been satisfied in the present case. We are unable to accept this argument either. The repeated unauthorised absences of the applicant from duty speak of the applicant's

unsuitability for a post in a disciplined Organisation such as the Police, and his failure to improve his conduct despite several warnings and punishment drills are the additional acts of omission and commission on his part which brings it squarely within the 4 corners of the ratio laid down in Pandurang's case (Supra). Hence this ground fails.

16. In so far as the judgment in Giriraj Sharma's (Supra) is concerned, manifestly the facts of that case are entirely different from the present one. In that case, the applicant overstayed the period of his leave by 12 days ^{on a single occasion} owing to compelling circumstances but in the present case, the applicant in a short span of service has been found by the respondents to have been a habitual absentee, who absented himself unauthorisedly from duties on as many as a dozen occasions and in respect of which, ^{in even repeated} given warnings and punishment drills, effected no improvement. Hence Giriraj Sharma's case does not help the applicant.

17. In the result, we see no good reasons to interfere in this matter. This O.A. fails and is dismissed. No costs.

A. Vedavalli
(DR. A. VEDAVALLI)
MEMBER (J)

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

/ug/