

Central Administrative Tribunal  
Principal Bench, New Delhi

OA No.2198/91

New Delhi this the 11th day of September 1995.

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)  
Hon'ble Mr R.K.Ahooja, Member (A)

Ashok Kumar  
Ex Constable  
Ist Battalion, DAP  
New Police Lines  
Kingsway Camp  
Delhi. /S-10 Pandav Nagar, Delhi-92. ...Applicant.

(Through Shri Shankar Raju, Advocate)

Versus

1. Commissioner of Police  
Police Headquarters  
M.S.O.Building  
I.P.Estate  
New Delhi

2. Deputy Commissioner of Police  
Ist Battalion, DAP  
New Police Lines  
Kingsway Camp  
Delhi.

...Respondents.

(Through Shri Surat Singh, advocate)

O R D E R (Oral)

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)

The applicant, an Ex-Serviceman who had served in the Army during the period 12.11.1983 to 1.1.1989, on discharge from the Army on compassionate grounds, applied for selection and appointment as a constable in the Delhi Police in response to a notification issued in November 1989. Being successful in the selection process, he was recruited; imparted training and on completion of the training, he joined the post of constable. He is aggrieved by the order of the Deputy Commissioner of Police dated 30.7.1991 by which his services were terminated purporting to be ~~under~~ initially. The applicant has filed this OA ~~impugning the~~ initially order and for a direction to the respondents to reinstate him in service with consequential benefits.

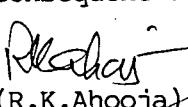
The respondents while admitting in the reply that the applicant had been recruited as constable, treating him as Ex-Serviceman, have contended that as the applicant did not have 5 years of army service from the date of attestation to the date of discharge as required in terms of the para 5 (e) of the Standing Order No.212/89 issued by the Commissioner of Police was not entitled to be recruited as a constable treating him to be an Ex-Serviceman and that therefore, the impugned order was rightly issued.

3. Noting that the respondents have sought to justify the impugned action on the basis of the standing order, the applicant has amended the application seeking additional prayer for quashing the clause 5 (e) of the Standing Order No.212/89 which according to the applicant is ultra-vires and illegal.

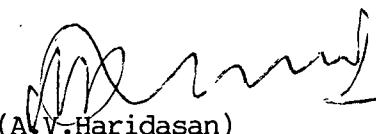
4. We have heard learned counsel for the applicant and have also perused the pleadings in this case. If the impugned order was sought to be justified on the ground that the applicant being a temporary employee ~~he~~ cannot have a legitimate grievance if his temporary service is dispensed with under Rule 5 (I) of the Central Civil Services (Temporary Service) Rules alone, ~~the applicant virtually does not have a cause~~. A reading of the respondents' reply discloses that the impugned order was issued because the applicant did not satisfy the eligibility criteria for an Ex-Serviceman for enlistment as constable in accordance with the provisions contained in para 5 (e) of the Standing Order No. 212/89. Hence it has become necessary for us to go into the validity of the impugned order though it was stated to be under the provisions of Rule 5 (1) of the Central Civil Services (Temporary Service) Rules. It is borne out from the pleadings that the respondents sought information from the Army HQs as to whether the Army Service is to be counted from the date of enrollment or attestation (Annexure A-4) and that the Army HQs has clarified that for the purpose of definition of Ex-servicemen, service is to be counted from the date of enrollment (Annexure A-5 letter dated 1st April 1994 from Govt. of India, Defence Ministry ).

It is not in dispute that the applicant was enrolled in the Army on 12.11.1983 and was discharged on 1.1.1989 which shows that he had rendered 5 years of service from the date of enrolment. Learned counsel of the respondents argued that the service of the applicant was terminated as the applicant did not have five years of army service which is the eligibility criteria for ex-servicemen counting his service from the date of attestation and that as per para 5 (e) of the Standing Order No. 212/89 issued by the Commissioner of Police, the period of 5 years of service is to be counted from the date of attestation to the date of discharge. Rule 9 of the Delhi Police (Appointment & Recruitment) Rules empowers the Commissioner of Police to frame standing orders prescribing for the detailed procedure to be followed for conducting physical efficiency, physical measurement, writtest test and viva voce for regulating recruitment. It does not confer on the Commissioner of Police any authority either to define Ex-serviceman or to specify the length of service required for an Ex-serviceman to be enlisted in Delhi Police. Para 5 (e) of the Standing Orders 212/89 issued by the Commissioner of Police is, therefore, incompetent and without jurisdiction and is liable to be struck down. Since the termination of the applicant's service is merely basing on the para 5 (e) of the Standing Order's 212 which has been held to be invalid and ultra-vires by us, termination of the services of the applicant is also illegal and unsustainable.

5. In the light of what is stated above, we allow the application and strike down para 5 (e) of the Standing Orders No. 212/89 issued by the Commissioner of Police as illegal, ultra-vires and unsustainable. We also set aside the impugned order dated 30.7.91 (Annexure a-1) terminating the services of the applicant. The respondents shall reinstate the applicant in service forthwith and pay to him full back wages within a period of 3 months from the date of receipt of communication of this order with all other consequential benefits to the applicant.

  
(R.K.Ahoja)  
Member (A)

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(A.V.Haridasan)  
Vice chairman (J)