

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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O.A. No.2314 of 1991

Dated New Delhi, this 17th day of November, 1995.

Hon'ble Mrs Lakshmi Swaminathan, Member(J)

Hon'ble Mr K. Muthukumar, Member(A)

Ex-Ct. Narender Kumar Sharma
S/o Shri Ram Chander Sharma
r/o Village-Bhuplhuri
P.O. Farukhnagar
Dist. Ghaziabad (U.P.)
By Advocate: Shri V. P. Sharma

... Applicant

versus

1. Delhi Administration
through
Chief Secretary
Old Secretariat
DELHI.

2. The Commissioner of Police
Delhi Police Headquarters
NEW DELHI.

3. The Deputy Commissioner of Police
No.1st Bn. Delhi Armed Police
NEW DELHI.

... Respondents

By Advocate: Shri Jog Singh

O R D E R (Oral)

Mrs Lakshmi Swaminathan, Member(J)

This application has been filed under Section 19 of the Administrative Tribunal Act, 1985 in which the applicant has sought a declaration that the impugned order dated 20.9.85 terminating his services with Delhi Police is illegal, unjust and against the principles of natural justice. He has also prayed for consequential benefits.

2. Shortly stated, the facts are that the applicant was enlisted in the Delhi Police as Constable on 30.9.82. According to him, he served the department

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satisfactorily. It is his case that in 1985 he became sick and because of that he overstayed the leave which had been granted to him. He states that on his return, he had submitted the necessary medical certificates. According to him, without considering these certificates, he was terminated from service by the impugned order dated 20.9.85 which had been passed under rule 5 of CCS (Temporary Service) Rules, 1965. The applicant's representation to the Commissioner of Police had been replied by order dated 4.2.86 (Annexure-4) in which it has been communicated to him that the same has been rejected. He subsequently made certain other representations to the Hon'ble Minister of Home Affairs and the Hon'ble Prime Minister (Annexures-5 and Annexure-6) to which he says he has not received reply and hence this application. The applicant has challenged the order of termination mainly on ^{the} grounds that the order is in the nature of penalty which the respondents could not ^{legally} pass without holding an enquiry as required under Article 311 (2) of the Constitution. He submits that he was absent because he was unwell for which he had submitted the necessary medical certificates. ^{Shri V. P. Sharma, 12} The learned counsel for the applicant relies on the judgements of the Supreme Court in Babu Lal Vs State of Haryana (AIR 1991 SC 1310) and Sukhbir Singh & Ors Vs State of Haryana & Ors. (Civil Appeal Nos. 93, 94 & 95 of 1989 dated April 19, 1990). He submits that ~~the~~ impugned order has been passed ^{on} ~~with~~ the specific misconduct i.e., being

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absent unauthorisedly from work for which the respondents have illegally resorted to a short-cut method by passing the impugned order under rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. He ^{13/}submits that the veil should be lifted which will show that the order allegedly passed under Rule 5 is actually an order of punishment.

3. The respondents have filed a reply in which they have stated that the above claims are not tenable. According to them, the order dated 20.9.85 had been passed correctly under rule 5 of the CCS (Temporary Service) Rules, 1965, as he was found to be absent on as many as 25 occasions without leave or permission. Shri Jog Singh, the learned counsel for the respondents has also submitted that the competent authority had before him the entire service record of the applicant, who admittedly was on temporary service at that time. He has disputed the facts alleged by the applicant that the impugned order had been passed only on the alleged misconduct for being absent from leave on the last occasion. He also submits that the two judgements relied upon by the learned counsel for the applicant are not relevant to the facts in this case, as those cases dealt with specific acts of misconduct for which the resort of rule 5 of the CCS (Temporary Service) Rules, 1965 was correctly held to be not applicable.

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He, however, submits that in the present case, the competent authority had before him the entire service record of the applicant and the relevant file was produced for our perusal. He has specifically drawn our attention to the chart prepared on 19.9.85 which shows the 25 occasions on which the applicant had been absent, punishment awarded and ^{the} remarks. He, therefore, submits that the competent authority had passed the order dated 20.9.85 only after perusing all the relevant records. He further stated that on a number of previous occasions, the applicant had been called in the orderly room when he had been earlier absent, after which the applicant had been given certain punishments as recorded in the file. In the circumstances, he ¹⁸ submits that the application may be dismissed.

4. We have carefully considered the pleadings, arguments of both the learned counsel and records.

5. It is well settled that an order passed under rule 5 of the CCS (Temporary Service) Rules, 1965 is not a punishment which attracts Article 311 (2) of the Constitution in every case. However, it is also settled law that this provision cannot be resorted to as a short-cut method where otherwise disciplinary proceedings should have been held under the Delhi Police (Punishment and Appeal) Rules, 1980. It is also settled that the form of the order is not conclusive and the Court can determine the true nature of the order. The impugned order dated 20.9.85 reads as

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follows:

"In pursuance of proviso to sub rule (1) (b) of rule 5 of the Central Civil Service (Temporary Service) Rules, 1965, I P.V. Sinaria, Deputy Commissioner of Police, 1st Bn., DAP, Delhi, hereby terminate forthwith the services of temporary Constable Narender Singh No. 953/DAP and direct that he shall be paid the sum equivalent to the amount of his pay plus allowances for the period of one month in lieu of notice at the rates at which he was drawing them immediately before the termination of his service."

It is seen that the above order passed is an order simpliciter which does not cast any stigma on the applicant. We have also seen the judgments relied upon by the applicant's counsel. In Sukhbir Singh Vs State of Haryana & Ors (supra) the Supreme Court has held:

It is, therefore, clear from the above facts that the real reason for the discharge of the appellants was the incident of 3rd August 1985. The vague statement that the Superintendent of Police Bhiwani had taken into consideration the overall work and conduct of the appellants in coming to the conclusion that they were unlikely to prove efficient police officers is only a camouflage and the real reason for discharge is the incident of 3rd August 1985."

This case, therefore, is distinguishable from the facts of the instant case where the impugned order has not been passed on any particular incident but on assessment of the entire period of service. Similarly, in Babulal Vs State of Haryana & Ors (supra), the Supreme Court has held that in the interest of justice, the veil should be lifted to find out the real nature of the order and if it is seen that the impugned order is penal in nature even though it is couched as an order of termination in accordance with the terms and conditions of the order of appointment, the order

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should be set aside.

6. We have perused the original service records of the applicant which were submitted by the learned counsel for the respondents. In the table prepared on 19.9.85, 25 instances where the applicant is stated to have been absent, are listed together with the punishment awarded and the reasons. In the column giving reasons it is mentioned, inter-alia, that he had gone home, he was found sleeping in the barracks and he had gone marketing etc. We also note that on several previous occasions when the applicant had been absent, he had been called to the orderly room before punishment was imposed. The impugned ^{order} is dated 20.9.85, i.e., after the aforesaid table had been prepared *which is a summary of his service record.*

7. In the facts and circumstances of the case, we are satisfied that the competent authority had before him the applicant's entire service record before passing the impugned order under rule 5 of the relevant Rules and the same has not been based on any particular incident of misconduct as alleged by the applicant. Therefore, we are of the view that the two judgements of Supreme Court relied upon by the applicant are distinguishable on the facts of the case. The impugned order dated 20.9.85 is an order simpliciter passed under rule 5 of the CCS (Temporary Service) Rules, 1965 and it does not cast any stigma on the applicant.

J.S.

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8. In the result, we find no good ground to interfere in the matter. The application is accordingly dismissed. No order as to costs.



(K. Muthukumar)
Member(A)



(Mrs Lakshmi Swaminathan)
Member(J)

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