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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI.

OA.No.2818/91

Date of Decision 15.01.1993

Shri Jagbir Singh

Applicant

Versus

Delhi Administration through

Chief Secretary, Old Secretariate,

Delhi and others

Respondents

Shri V.P. Sharma

Counsel for the applicant

Shri B.R. Prashar

Counsel for the respondents

CORAM:

The Hon'ble Mr. P.K. KARTHA, Vice Chairman(J)

The Hon'ble Mr. B.N. DHOUNDIYAL, Member(A)

1. Whether Reporters of local papers may be

allowed to see the Judgement? Y

2. To be referred to the Reporter, or not? N

JUDGEMENT

(of the Bench delivered by Hon'ble Member Shri B.N. Dhoundiyal)

This OA has been filed by an ex-constable Shri Jagbir Singh, under Section 19 of the Administrative Tribunal's Act, 1985, challenging the impugned order of termination dated 9.6.88 passed by the Deputy Commissioner of Police, Pritampura, New Delhi.

2. According to the applicant, he was enlisted in the Delhi Police in the year 1982 and served the department till his services were terminated vide impugned order dated 14.5.87 (Annexure A1). He preferred an appeal which was rejected vide order dated 10.8.87 (Annexure A3) by the Commissioner of Police, Delhi. His memorial submitted to the President was withheld vide letter dated 9.6.88 (Annexure A2). On 13.3.90, he received a communication from Delhi Administration that his memorial has been rejected by Ministry of Home Affairs, ⁱⁿ ~~affairs~~. As he was enlisted on 18.9.92 and was due for confirmation in 1984 itself, his services could not be terminated without following the due procedure. He pray^s that the impugned order of termination dated 14.5.87 be set aside and quashed and he be reinstated in service ⁱⁿ ~~in~~

with all consequential benefits.

3. The respondents have stated that the applicant was enlisted in Delhi Police on 18.9.82 and his services were terminated under Rule 5(1) of Central Civil Services (Temporary Services) Rules, 1965. His quasi permanency was withheld three times w.e.f. 19.9.85 and 19.3.85 for a period of six months each and w.e.f. 19.3.86 for a period of one year, due to his indifferent and unsatisfactory services. During the short spell of about $4\frac{1}{2}$ years of service, he absented himself unauthorisedly on 33 occasions. His representation against the termination order was duly considered and rejected.

4. We have gone through the records of the case and heard the learned counsel for both parties. The learned counsel for the applicant has drawn our attention to Rule 5(e) of the Delhi Police (Appointment and Recruitment) Rules, 1980 as amended vide notification dated 2.5.83, which reads as follows:-

"5(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 services of the employees 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."

5. It is clear that the habitual absence of the applicant is the foundation of the impugned order of termination. Rule 5(e)(1) of the Delhi Police (Appointment and Recruitment) Rules, 1980, as amended stipulates that in no case shall the period of probation extended beyond three years i.e. 17.9.85 in the instant case. *dw*

(8)

6. Following the ratio of the judgement given by the Constitution Bench of the Supreme Court in the State of Punjab Versus Dharam Singh; AIR 1968 (SC) 1210, we hold that the probationary period of the applicant could not be extended beyond three years i.e. the maximum period provided by the Rules and that having been allowed to continue in the post beyond the maximum period of probation, he is to be deemed to have been confirmed in that post by ~~an~~ implication. The learned counsel for the respondents has drawn our attention to the Judgement dated 29.10.1992 in OA 94/87; Tej Ram versus Union of India and others delivered by another Bench of this Tribunal. However, we find that the point relating to deemed confirmation after a maximum permissible period of 3 years as envisaged in the relevant rules, was not involved in that case and it is clearly distinguishable.

7. In the light of the above, we hold that the impugned order of termination of services of the applicant dated 9.6.88 is not legally sustainable and the same is hereby set aside and quashed. The respondents are directed to reinstate the applicant as Constable. In the facts and circumstances, we do not direct payment of any back wages to him. The respondents shall comply with the above directions, expeditiously and preferably, within a period of three months from the date of communication of this order.

8. We make it clear that after reinstating the applicant, the respondents will be at liberty to take appropriate action for any alleged misconduct in accordance with law, if so advised.

9. There will be no order as to costs.

B.N. Dhoundiyal
(B.N. DHOUNDIYAL) 15/11/93
MEMBER(A)

B.N. Dhoundiyal 15/11/93
(P.K. KARTHA)
VICE CHAIRMAN(J)