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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA 2838/1991

Date of decision: 12.05.1993

Shri Naresh Kumar

...Petitioner

Versus

Delhi Administration & Others

...Respondents

For the Petitioner

...Shri J.P. Verghese, Counsel

For the Respondents

...Shri Laxmi Narain, Departmental
Official for the respondents
Ms. Paramjit Banipal, proxy counsel for
Shri J.P. Singh, Counsel.

CORAM:

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN

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

1. To be referred to the Reporters or not?

JUDGMENT

(of the Bench delivered by Hon'ble Mr. Justice
S.K. Dhaon, Vice-Chairman)

The order dated 19.04.1988 passed by the Deputy Commissioner of Police terminating the services of the petitioner as a Recruit Constable in the purported exercise of powers under the proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, is being impugned in the present application.

2. The material averments in the application are these. The petitioner was selected for appointment as a Constable. He fulfilled the necessary qualifications and fitness etc. He was issued a call letter on 8.9.1987. The impugned order was passed without holding any opportunity of hearing etc. to the petitioner.
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3. A counter-affidavit has been filed on behalf of the respondents by Shri Rajesh Kumar, Deputy Commissioner of Police. In it, the material averments are these. The petitioner was selected as ^atemporary Constable in the Delhi Police during the special recruitment at Rampur (U.P) on 15.09.1987. His Employment Registration Card was sent to District Employment Officer for verification and it was reported that he did not stand registered against the Registration Number and date. He managed to seek employment in Delhi Police as Constable by furnishing a fake/bogus Employment Registration Card. Therefore, his services were terminated by means of the impugned order.

4. On scrutiny of the Employment Exchange Cards, it was found that the same had been erased and tampered. The petitioner had adopted deceitful method in getting employment by submitting a fake/bogus Employment Registration Card at the time of his appointment. On receipt of the Enquiry report, from the District Employment Officer, it was established that the Employment Exchange Registration Card was bogus. There was no need to hold any enquiry as the disciplinary authority was satisfied that there was sufficient material available to prove the guilt of the defaulter.

5. The scheme of the Delhi Police Act and the relevant rules framed thereunder is that even a Constable is considered to be a police officer. A Constable is appointed on a probation of a minimum period of 2 years. This period

is extendable by one year and the maximum period of probation is 3 years. Even an appointment on a substantive post on probation is temporary. To begin with, an appointee continues to be temporary so long as he is not confirmed against a vacant post. Thus, the impugned order had been passed not only when the status of the petitioner was ^{of a} temporary Constable but he was also on probation.

6. The impugned order is an order of termination simpliciter. The question still is whether the foundation of the order was the allegation of misconduct against the petitioner.

7. Like the petitioner there were other Recruit Constables whose services too have been terminated under the aforesaid Rule 5 of the Temporary Service Rules. One of them, namely, Shri Vinod Kumar who came to this Tribunal by means of OA 2113/1988 which was decided on 26.04.1991. The Tribunal held that the circumstances of the case disclosed that an order of termination simpliciter could not be passed. Therefore, Shri Vinod Kumar should have been proceeded against under the Delhi Police (Punishment & Appeal) Rules, 1980 and should have been provided reasonable opportunity to explain his conduct. The legality of the said order of the Tribunal was questioned by the Department before the Supreme Court by means of a Special Leave Petition (SLP) which was dismissed.

8. In another set of original applications, namely, OA 2220/1988 and OA 496/1989, this Tribunal by its order dated 27.05.92 while following the order passed by it in

Vinod Kumar's case set aside the orders of termination which were similar to the impugned order of termination. Thus, it is apparent that this Tribunal has taken the consistent view that the facts and circumstances of the case of the petitioner and others indicate that the orders of termination were passed really by way of punishment. We see no reason to take a different view.

9. This application succeeds and is allowed. The impugned order of termination is quashed. The petitioner shall be deemed to be reinstated in service from the date his ^{were} services terminated. He shall also be entitled to consequential benefits. However, we make it clear that it will be open to the respondents to take action against the petitioner in accordance with law.
10. There shall be no order as to costs.

S.R. Adige
(S. R. ADIGE)
MEMBER (A)
12.05.1993

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S.K. Dhaon
(S. K. DHAON)
VICE CHAIRMAN
12.05.1993