

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,  
NEW DELHI.

O.A.No. 417 of 1991

New Delhi: this the 26<sup>th</sup> February, 1996.

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

HON'BLE MR. D.C.VERMA, MEMBER (J).

Constable Vijender Singh,  
s/o Shri Dharam Singh,  
Village & Post Office Jesrana,  
Distt. Sonepat (Haryana) .....Applicant.

By Advocate Mrs. Avnish Ahlawat.

Versus

Delhi Administration,  
through Commissioner of Police, Delhi,  
I.P.Estate,  
Police Headquarter,  
New Delhi.

2. Shri S.K.Chaudhary,  
Deputy Commissioner of Police,  
8th Battalion, DAP, Delhi.  
Malviya Nagar, New Delhi .....Respondents.

By Advocate Shri Rajinder Pandita.

JUDGMENT

By Hon'ble Mr. S.R.Adige, Member(A).

In this application, Shri Vijender Singh has impugned the order dated 10.8.90 (Annexure-C) terminating the services under Rule 5(I) CCS (Temporary Services) Rules, 1965 and the order dated 7.1.91 (Annexure-F) rejecting his representation.

2. Shortly stated, the applicant was enlisted in Delhi Police on 12.8.88, as a temporary Constable. After obtaining sanction of the competent authority, he proceeded on earned leave for 30 days w.e.f. 15.6.90. While he was on earned leave in the night of 3/4.7.90, his wife with whom he was married on 21.6.89, sustained severe burn injuries, upon which she was rushed to Medical College, Rohtak for treatment

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where she expired. The applicant contends that in the inquest proceedings which were completed on 4.7.90, the applicant's father-in-law gave a statement that he did not suspect foul play and his daughter had expired due to burns when her clothes caught fire while she was cooking food, upon which the applicant and his family members were permitted to cremate the body of the deceased but four days after his wife's death, the applicant's father-in-law lodged a motivated complaint against the applicant and his male family members under sections 498A, 304-B and 201 IPC with an ulterior motive of collecting dowry items from the applicant which were given to the applicant's daughter at the time of marriage.

3. Based upon that complaint, a police case bearing FIR No.119 dated 8.7.90 under sections 498-A, 304-B/201 IPC was registered against the applicant, and other male family members at P.S. Kharkhoda, Distt. Sonepat (Haryana), upon which the applicant and others were arrested. It appears that the applicant remanded under police custody from 20.7.90 to 23.7.90 and thereafter under judicial custody from 23.7.90 to 26.7.90, on which date he was ordered to be released on bail.

4. Meanwhile the applicant sought extension of earned leave till 30.7.90, which was granted, but failed to inform the authorities concerned about his involvement and arrest in the said criminal case, as a result of which his services were terminated by the impugned order dated 10.8.90 and his representation against the same was rejected vide order dated 7.1.91.

5. The applicant has asserted the order terminating his services on the ground that although *ex facie* it appears to be an order *simpliciter*, it is in fact an order of dismissal passed not because the applicant was unsuitable for the job or was found inefficient but directly on account of his involvement in a criminal case. It is contended that the order casts stigma upon the applicant and is punitive in character and could not have been passed without holding a proper inquiry under Article 311(2) of the Constitution.

6. The respondents in their reply have contested the OA. They state that the applicant while on earned leave upto 30.7.90 was arrested in case arising out of FIR No.119 of 1990 dated 8.7.90 registered at Kharkhoda, District Sonepat (Haryana) under section 498-A/304B/201 IPC and remained under police custody from 20.7.90 to 23.7.90 and thereafter under judicial custody from 23.7.90 to 26.7.90 before being ordered to be released on bail on 26.7.90. They state that he however failed to inform the Delhi Police about his involvement and arrest in the abovenoted criminal case and as such his services were terminated vide impugned order dated 10.8.90. It is also contended that while applying for extension of leave, the applicant could have informed the respondents of his involvement in the abovementioned case but his wilful suppression of the material information about his having been involved in a criminal case and subsequent arrest, remand to police custody/judicial custody before being released on bail as required under CCS (Conduct) Rules and the General Service Rules, was viewed very seriously and as such he was not found suitable for further retention in the Delhi Police Force. It is also contended that the applicant being a purely temporary

employee there was no violation of Article 311(2) of the Constitution, nor was it necessary to afford any opportunity to the applicant to show cause before terminating his services. In paragraph 5(d) of their reply it has been categorically stated that the applicant's services were terminated after receiving a detailed report from the SSP Sonepat of the applicant's involvement in the criminal case.

7. We have heard Mrs. A. Ahlawat for the applicant and Shri Rajinder Pandita for the respondents. We have perused the materials on record and have considered the matter carefully. In this connection, applicant's counsel has also invited our attention to the judgment dated 23.8.95 delivered by the Addl. Sessions Judge, Sonepat acquitting the applicant and two other accused persons in the criminal case arising out of FIR No. 119 dated 8.7.90 under sections 498A/304B IPC by giving them the benefit of the doubt. Neither party has stated whether any appeal has been filed against that judgment.

8. Admittedly, at the time the impugned order dated 10.8.90 was issued, the applicant was a purely temporary Govt. servant, and was thus governed by the CCS (Temporary Service) Rules, 1965. Rule 5(1) of these rules empowers the respondents to terminate the services of a temporary Govt. servant at any time by one month's notice, with a proviso that the services may be terminated forthwith also, in which case the Govt. servant shall be entitled to the pay and allowances for the period of notice at the same rate as he was drawing immediately before the termination of service. The Hon'ble Supreme Court in Jarnail Singh & others Vs. State of Punjab & others-ATR 1986 (2) 193 has ruled that

while the form of the order of termination of an adhoc appointee may be a termination simpliciter in accordance with the terms of the appointment, which casts no stigma on the person concerned, it is the substance of the order i.e. the attending circumstances as well on the basis of the order that have to be taken into consideration, and when, as in the present case, an employee alleges that the order concluded in innocuous terms is actually based on his alleged misconduct it is incumbent on the Court to lift the veil and see the circumstances as well as the basis and foundation of the order complained of .

9. In the present case, the respondents have themselves admitted in paragraph 5(d) of their reply that they terminated the applicant's services after the receipt of a detailed report of his involvement in the aforesaid criminal case of dowry death from the SSP, Sonepat (Haryana). In other words, it is not because of the applicant's overall unsatisfactory record of service, or because of his general inefficiency that they found him unsuitable to be retained in a disciplined force such as the police and hence terminated his services under Rule 5(1) but directly because of his involvement in criminal case. It is true that in their reply the respondents have stated in paragraph 4(11) of their reply that the applicant was duty bound in compliance with the requirements of the Conduct and Disciplinary Rules to inform the respondents of his involvement in the criminal case, subsequent arrest, remand to police custody/ judicial custody before being released on bail and his failure to do that weighed with them in terminating his services, but that further supports

the applicant's contention that his services were terminated not because of overall unsatisfactory nature of service or general inefficiency based on an assessment of his entire record - there is no averment in respondents' reply that any such assessment based on his overall record was conducted, - but specifically because of his involvement in the criminal case. Even the fact that the applicant is said not to have informed the respondents about his involvement in that case, and his subsequent arrest etc. is relatable to the specific charge of his involvement in the criminal case.

10. In Governing Council of Kidwai Memorial Institute of Oncology, Bangalore Vs. Dr. Pandurang Godwalkar & another-1992 (4) SCC 719, the Hon'ble Supreme Court has held:

"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 the 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 the veil for finding out the 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 the action taken. If the decision is taken to terminate the service of an employee during the period of probation, after taking into considering the 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."

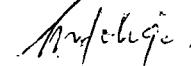
11. In the present case, on the basis of the materials on record we are satisfied that there is a direct nexus between the charge of being involved in the criminal case of dowry death and the action taken of terminating the applicant's services and upon tearing the veil we find that in the guise of an order simpliciter the respondents have terminated the applicant's services for having been involved in the criminal case, in which incidentaly he has been subsequently acquitted after being given the benefit of the doubt. The impugned order is therefore punitive in character, and could not have been passed without holding an inquiry in the light of the provisions of Article 311(2) of the Constitution.

12. Respondents' counsel Shri Pandita has relied upon the CAT rulings in OA No. 737/87 dated 10.9.93; and OA No. 152/89 dated 27.7.93 Dharambir Singh Vs. L.G.Delhi in both of which it has been held that termination of service under Rule 5(1) for unsatisfactory record of work coupled with unauthorised absences from duty attracts no stigma and is hence valid. Reliance has also been placed on the Tribunal's judgment in R.Pal Vs. UOI - OA No. 1865/93 dated 17.9.93. These rulings relate to unsatisfactory record of service assessed over a period of time, rendering the employee unsuitable for continuance in a disciplined force such as the police. In the present case, there is no such averment that the applicant's overall performance was assessed. The respondents themselves admit that the applicant's services were terminated upon receipt of a report of his involvement in criminal case, and his failure to report about his involvement, subsequent arrest etc. to the authorities. Hence those rulings do not help

the respondents.

13. Under the circumstances, this OA succeeds, and is allowed. The impugned orders dated 10.8.90 terminating the applicants' services and dated 7.1.91 rejecting his representation are quashed and set aside. The respondents are directed to reinstate the applicant within 3 months from the date of receipt of a copy of this judgment with liberty to proceed departmentally against the applicant for his failure to inform the authorities about his involvement in the criminal case, his arrest, his remand to police custody/judicial custody and his subsequent release on bail, and also to determine the manner in which the applicant's absence from duty will be treated, in accordance with law. No costs.

  
( D.C.VERMA )  
MEMBER (J)

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

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