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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.982/91

NEW DELHI THIS THE 21st DAY OF FEBRUARY, 1994

HON'BLE MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN(J)
HON'BLE MR.B.N.DHOUNDIYAL, MEMBER(A)

Shri Rama Kant,
S/o Shri Mani Ram
R/o Village & PO Manheru
Distt.Bhiwani
Haryana

Applicant

...
BY ADVOCATE SHRI P.P.KHURANA

Vs.

1.The Commissioner of Police
Police Headquarters,
I.P.Estate
New Delhi-110 002.

2.The Principal Bench
Police Training School
Jharoda Kalan
New Delhi

... Respondents

BY ADVOCATE SHRI O.N.TRISHAL

ORDER

JUSTICE S.K.DHAON:

The order dated 19.4.1990 passed by the Principal, Police Training School terminating the services of the applicant as Sub Inspector in the purported exercise of powers under sub-rule(1) of Rule 5 of the Central Civil Services(Temporary Services) Rules, 1965(the Rules) is being impugned in the present OA.

2. On 5.7.1989, the applicant was appointed as a temporary Sub Inspector(Ex.) in Delhi Police with effect from the said date. The letter of appointment inter-alia provides that apart from the provisions of the Delhi Police Act, 1978 and the rules made thereunder, the appointment of the applicant will also be governed by the Rules. It is not disputed by the applicant that on the relevant date, the Rules were not applicable to him.

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-2-

3. The impugned order, on the face of it, fully conforms to the requirements of sub-rule(1) of Rule 5 of the Rules. Therefore, the applicant admittedly being a temporary hand, his services were prima facie terminated in accordance with law.

4. In the OA, it is averred that the foundation of the impugned order was really to punish the applicant for his failure to attend to the duty assigned to him on a particular day.

5. In the counter-affidavit, it is asserted that irrespective of the said fact, the applicant on an overall consideration was not found fit to be retained in service. In support of this assertion two instances have been given. Those instances have been strongly refuted in the rejoinder-affidavit. Therefore, we directed the learned counsel for the respondents to produce for our perusal the relevant record. That has been done.

6. The record discloses this. On 5.4.1990, Head Constable Rameshwar reported to some higher authority that on 5.4.1990 at 5.30 A.M. the DAP Control Room had to make arrangements for the law and order duty about which a previous announcement had been made. When the Day Officer Inspector Partap Chand issued orders to various members of the Police force directing them to take up positions at their respective places as allotted to them, the applicant declined to go on duty in spite of repeated requests of the Day Officer.

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-3-

This fact has been recorded by the Day Officer in Report No.83 of 5.4.1990. The writer of the said note requested the authority concerned to take appropriate action. On the same day, some higher authority passed the order:

" Call the explanation of PSI, Rama Kant No.D-2812 and put up."

On 6.4.1990, the officer concerned put the note:

"Sir, Explanation is attached herewith. (P.T.O)."

Then the order is:

"He may be called in OR."

7. There is a noting dated 6.4.1990 addressed to the F.O.C. In it, it is inter-alia recited that the applicant was called and his written statement was taken and he (the applicant) had submitted that he was feeling pain in his stomach since 2.4.90 for which he had gone to PHC Najaf Garh and got medicine for three days. On 4.4.1990, he was sent for law and order duties and returned from there at 9.00 P.M. and he was asked to give his name in the parade statement as outdoor patient. In the P.T.time, he appeared before the C.D.I who allowed him to go outdoor. He further added that the Day Officer did not allow him to go outdoor and wrote a report in the daily diary. On verbal verification from the C.D.I, it transpired that the applicant was actually sick for which he was allowed to go to the dispensary as an outdoor patient.

8. There is a note of another officer dated 12.4.1990, in which it is recited that the applicant, the C.D.I, the R.I, the Day Officer and the C.L.I were personally before

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him .It transpires from the version of the applicant,the C.D.I and the Platoon,that the applicant had approached the C.D.I for going outdoor as he was suffering from stomach pain. The C.D.I allowed him to go to outdoor. However,it is a fact that the applicant did not approach the Day Officer to go to outdoor. As per the verbal statement of the Day Officer, the applicant's name figured in the list of the arrangement list and as such he asked him to go on the arrangement duty. But the applicant told the Day Officer about his problem and expressed his inability to perform the arrangement duty. On that the Day Officer recorded an entry of refusal by the applicant to perform the arrangement duty in the daily diary. It seems from the inquiry that the plea taken by the applicant for not performing Govt.duty is not tenable and sound. It was not a serious ailment which incapacitated him to proceed on the arrangement duty. Also, he could have apprised about his illness to the Day Officer at an early stage. However, as verified from the records maintained by the C.D.I ,C.L.I and the R.I, the applicant is not a malinger. But he has refused to perform the Govt.duty on a flimsy pretext, therefore, a stringent action is recommended against him.

9. The next note to be find out is dated 12.4.1990. The note is: " Verify from Day Officer & HC Rameshwar who recorded D.D.entry. Also call for O.P.D. slips if he had gone for outdoor. Check up record of his departure & arrival in P.T.S. Check

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up record of P.H.C. Najaigarh also. Put up this on Monday (16.4.90)."

10. Then we find the note dated 16.4.1990 to the effect that it has already been verified from the Day Officer, who first informed that the applicant did not approach him for going on outdoor and despite his instructions, the applicant declined to proceed on arrangement duty on the pretext of stomach ache. Verifications have also been done from H.C.Rameshwar, the Reader of R.I/P.T.S who had deposed that he had forwarded a report of refusal to go on the Govt.duty to R.I/P.T.S. based on the entry made by the Day Officer in the daily diary and he was not an eye witness of the incident of the refusal to perform the Govt.duty by the applicant. It has also been verified that on 2.4.1990 and 5.4.1990 the applicant had proceeded on the outdoor by making his departure and arrival entries in the D.D. It has also been verified from the O.P.D and emergency registers of P.H.C.Najaigarh that the applicant had really gone to the P.H.C and the medical slips produced by him are genuine.

11. There is another note date 16.4.1990 putting up two queries. They are:

"(i) What about verifying from the Day Officer & the duty officer on that day on duty?

(ii) Check up medicines issued to him from PHC on these days & why not issued from PHC on 5/4. Obtain statement of doctor also about this and his ailment."

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12. Then there is noted dated 19.4.90 of the A.C.P. Adj. This note states that on verification from the Day Officer on 5.4.1990 the applicant refused to proceed on the arrangement duty despite his repeated instructions. The statement of the Duty Officer who was present in P.T.S stated that he recorded the entry of the statement of the Day Officer in the daily diary on 5.4.1990 and he heard from the P.T.S. staff about refusal of the Govt.duty by the applicant. The medicines issued to the applicant were checked through the concerned Doctors and it has been revealed that these medicines are used for relieving stomach pain. As one drug " spasmoproxyvon" issued the applicant was not available in the P.H.C. Najafgarh, the same was purchased by him through an outside shop in Najafgarh. This has been confirmed through the doctors of the P.H.C. Najafgarh. The statements of both the doctors who examined the applicant on 2.4.90 and 5.4.90 and the statement of the C.M.O P.H.C. Najafgarh prove that the plea taken by the applicant was not so sound and strong for declining to perform the Govt. duty. They also confirm that the ailment of the applicant was not so serious that it incapacitated him to discharge any duty. In view of the foregoing discussions and the above-mentioned report, it has been proved beyond a reasonable doubt that the plea taken by the applicant to decline to go on arrangement duty is flimsy and baseless. Therefore,

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stern action against the applicant is recommended.

13. On 19.4.90, the officer concerned passed the crucial order which may be quoted in extenso:

" I have gone through the report & evidence of PHC doctors & the statements of Day Officer & others. It was a Delhi Bandh Day & entire Delhi Police force including trainees from PTS/R.T.C. was deployed on law & order arrangement duties. In fact it was a trying day for Delhi Police to handle this crisis in the Union Territory of Delhi. The refusal of PSI to go for law & order duty & thereafter when his refusal entry was recorded in the daily diary by the Day Officer he opted to be an outdoor patient & went to PHC Najafgarh to cover up his misconduct, on a flimsy ground of stomach pain. Such a person will highly be unsuitable in a disciplined force in future. His services are terminated with immediate effect."

14. We have already indicated that the applicant was given an opportunity to explain his conduct. It is a different matter that the explanation did not find favour with the authority concerned. Nonetheless, there is a specific finding recorded in the order aforementioned that a person like the applicant will not be suitable in a disciplined force in future. This finding, in our opinion, is enough to bring the case within the four corners of sub-rule(1) of Rule 5 of the Rules.

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Where power is exercised under the said provision courts are not expected to sit as courts of appeal or in the arm-chair of the officer or the authority passing the order. The limited inquiry is and should be whether the power of termination has been arbitrarily exercised.

15. We have already indicated that an opportunity was given to the applicant to explain his case. On the whole, we are satisfied that this is not a fit case for interference.

16. Application is dismissed but without any order as to costs.

B.N.Dhondiyal
(B.N.DHONDIYAL)
MEMBER(A)

S.K.Dhaon
(S.K.DHAON)
VICE-CHAIRMAN(J)

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