

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2190/2004

New Delhi, this the 7th day of January, 2005

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.Singh, Member (A)**

Paramjeet Singh
Constable (Ex.) of Delhi Police
PIS No.28030436
R/o B-9/212, Brij puri
Delhi – 94.

... Applicant

(By Advocate: Sh. Anil Singhal)

Versus

1. Govt. of NCT of Delhi
Through its Chief Secretary
Delhi Secretariat
I.P.Estate
New Delhi.
2. Commissioner of Police
Police Head Quarters
IP Estate
New Delhi.
3. Dy. Commissioner of Police
HDQES. (Establishment), PHQ
IP Estate
New Delhi.
4. Dy. Commissioner of Police
2nd Bn. DAP, New Police Lines
Kingsway Camp
Delhi.
5. Dy. Commissiner of Police
3rd Bn. DAP, Vikas Puri
New Delhi. ... Respondents

(By Advocate: Sh. George Paracken)

O R D E R

By Mr. Justice V.S.Aggarwal:

The applicant joined the Delhi Police as Constable on 20.1.2003. On 5.11.2003, a notice was issued to him to show-

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cause for cancellation of his candidature on the ground of concealment of fact about his involvement in criminal case at the time of his joining duty. The applicant had submitted the reply. On 4.8.2004, the impugned order has been issued terminating his services which reads:

"In pursuance of the proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I. A.K.Ojha, Dy. Commissioner of Police/IIInd Bn. DAP, Delhi hereby terminate forthwith the services of Const. Paramjeet Singh, No.2556/DAP (Now 1977 DAP in Roll No.443647), S/o Sh. Parbhati Lal Yadav and direct that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice of one month at the same rates at which he was drawing them immediately before the termination of his services.

(A.K.OJHA)
DY. COMMISSIONER OF POLICE
II nd. Bn. DAP : DELHI"

2. By virtue of the present application, the applicant seeks to assail the order of 20.8.2004 contending that it is illegal and that it could not have been passed.

3. Some of the other facts would precipitate the question in controversy and, therefore, they must be delineated. Admittedly, the applicant was involved in a case No.85/2000 (complaint case) with respect to offences punishable under Section 323/354/341/308/506 IPC besides Section 3 of Prevention of Atrocities to Scheduled Casts and Scheduled Tribes Act. Respondents had served a notice on the fact that he had not disclosed these facts when he submitted the application. After considering the reply, the Deputy Commissioner of Police on 6.4.2004 had vacated the said notice recording:

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“Thereafter, considering all relevant aspects of the matter that R/Ct. Paramjeet Singh No.2556/DAP submitted the application form attestation form on 24.4.02 and 12.12.02 respectively. His bail bond was prepared on 16.12.02 after submission of the application/attestation form. He joined the department on 20.1.03. Technically he is involved in a criminal case once he has furnished a bail bond and he is supposed to know about his involvement and any contrary information/undertaking furnished by him, subsequent to 16.12.02 may amount to concealment of facts which may entail action against him for using deceitful means in getting employment but he was a layman and was under bonafied belief that criminal case can only be registered by the police and not otherwise and the moment he discovered that even complaint case can also be treated as criminal case he intimated to the department. He has also informed about this to the department on 2.8.03 which shows that he was not having any tendency of hiding the facts. An enquiry has also been conducted by ACP/P.G./NE Distt. which absolve him of the fault mentioning that it is just a police record of P.S.Gokul Puri. Keeping in view the above facts I am inclined to give him benefit of doubt and accept his representation and as a result thereof the Show Cause Notice issued to R/Ct. Paramjeet Singh No.2556/DAP is hereby vacated.”

4. Thereafter, the matter seems to have been examined by the Commissioner of Police and keeping in view the concealment of fact, it was directed that services of the applicant should be terminated immediately. These are admitted facts.

5. It is not one of those cases where the fact has been concealed and keeping in view the same, the disciplinary/appointing authority deemed it necessary to terminate the services. The position herein is different. The notice had been issued by the disciplinary/appointing authority and on consideration of the facts, he had withdrawn the said notice.

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6. Learned counsel for the applicant contended that the Commissioner of Police had no power to pass such an order because the law does not permit it. According to him, Sub-Rule(2) to Rule 5 of CCS (Temporary Service) Rules, 1965 even does not apply in the facts of the case. While according to the respondents, under the said provisions, such a power could be so exercised.

7. Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 under which the said orders have been passed reads as under:

"5. Termination of Temporary Service..

(1)(a) The services of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant;

(b) the period of such notice shall be one month:

Provided that the service of any such Government servant may be terminated forthwith and on such termination, the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services or, as the case may be, for the period by which such notice falls short of one month.

Note.- The following procedure shall be adopted by the appointing authority while serving notice on such Government servant under Clause (a):-

- (i) The notice shall be delivered or tendered to the Government servant in person;
- (ii) where personal service is not practicable, the notice shall be served on such Government servant by registered post acknowledgment due at the address of the

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Government servant available with the appointing authority;

(iii) If the notice sent by registered post is returned unserved, it shall be published in the Official Gazette and upon such publication, it shall be deemed to have been personally served on such Government servant on the date it was published in the Official Gazette.

2(a) Where a notice is given by the appointing authority terminating services of a temporary Government servant, or where the service of any such Government servant is terminated either on the expiry of the period of such notice or forthwith by payment of pay plus allowance, the Central Government or any other authority specified by the Central Government in this behalf or a Head of Department, if the said authority is subordinate to him, may, of its own motion or otherwise, re-open the case, and after making such enquiry as it deems fit,-

- (i) confirm the action taken by the appointing authority;
- (ii) withdraw the notice;
- (iii) reinstate the Government servant in service; or
- (iv) make such other order in the case as it may consider proper:

Provided that except in special circumstances, which should be recorded in writing, no case shall be reopened under this sub-rule after the expiry of three months-

- (i) from the date of notice, in a case where notice is given;
- (ii) from the date of termination of service, in a case where no notice is given.

(b) Where a Government servant is reinstated in service under sub-rule (2), the order of reinstatement shall specify-

- (i) the amount or proportion of pay and allowances, if any, to be paid to the

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Government servant for the period of his absence between the date of termination of his services and the date of his reinstatement; and

(ii) whether the said period shall be treated as a period spent on duty for any specified purpose or purposes."

8. According to the learned counsel for the respondents, under Sub-Rule (2) to Rule 5 once the appointing authority has terminated the services, the Head of the Department could exercise the said powers and revoke the order. He strongly relied upon supplementary rule 2(10) to contend that Commissioner of Police is the Head of the Department for that purpose.

9. We know from the decision of the Supreme Court in the case of **GWALIOR RAYONS SILK MFG.(Wvg.) CO. LTD. v. CUSTODIAN OF VESTED FORESTS, PALGHAT AND ANOTHER,** AIR 1990 SC 1747 that the intention of the framers of the Rules is primarily gathered from the language used. This means that attention should be paid to what has been said and also what has not been said.

10. Similarly, in the case of **P.K.UNNI v. NIRMALA INDUSTRIES AND OTHERS**, AIR 1990 SC 933, the Supreme Court held that where the words of the statute are clear and explicit and unambiguous, there is no scope to have recourse to external aid for their construction. Resultantly, this Tribunal will not aid the framers of the Rules and make up the deficiencies.

11. It is true that under Sub-Rule (2) to Rule 5 of CCS (Temporary Service) Rules, 1965 where reference is made to "Where a notice is given by the appointing authority terminating

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services of a temporary Government servant" but the said notice referred to is the one contemplated under Sub-Rule (1) to Rule 5 which we have reproduced above already. Sub-Rule (1) to Rule 5 contemplates that services of a temporary servant is liable to be terminated at any time by "a notice in writing given either by the Government servant to the appointment authority or by the appointing authority to the Government servant." In other words, if such a notice as contemplated under Sub-Rule (1) to Rule 5 has been issued, the Head of the Department concerned could take action under Sub-Rule (2) to Rule 5. He could also act where services have been terminated already. The difference between the simple letter of resignation and notice has further been explained in the Ministry of Home Affairs' O.M. No.4/1/65/Estt. (C) of 25.5.1966 in the following words:

"Distinction between a simple letter of resignation and notice under Rule 5.- When a temporary Government servant submits a letter of resignation, a distinction should be drawn between a letter of resignation purporting to be a notice of termination of service and one which is not. A notice of termination of service given by a temporary Government servant under Rule 5 (1) of the CCS (TS) Rules, 1965, is something different from a mere letter of resignation submitted by him without any reference direct or indirect to the said rule. While the former is an exercise of the right conferred by statutory rule enabling a temporary Government servant to cease performance of his duties automatically on the expiry of the prescribed period of notice, the latter requires acceptance by the competent authority in order to become effective. Therefore, if a temporary Government servant submits a letter of resignation in which he does not refer to Rule 5(1) of these rules or does not even say that it be treated as a notice of termination of service, the provisions of Rule 5(1) ibid will not be attracted. In such a case he can relinquish his post only when the resignation is accepted and he is relieved of his duties. It will,

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therefore, be possible in such circumstances to retain the temporary officer even beyond one month if it takes time to make alternative arrangements. This will not be repugnant to the provisions of these rules in any way because when a temporary Government servant submits a letter of resignation without invoking the provisions of the said rules, they will not come into the picture, notwithstanding the fact that, being a temporary Government servant, he is governed by these rules.

[G.I., M.H.A., O.M. No.4/1/65-Estt.(C), dated the 25th May, 1966]"

12. It leads support to our view that a notice contemplated is the one mentioned under Sub-Rule (1) to Rule 5. There are two types of notices contemplated under Sub-Rule (1) to Rule 5 – (1) Where employers or employee gives a month's notice, and (2) Where a notice is given terminating the services forthwith but the employee is entitled to claim a sum equivalent to the amount of his pay plus allowances.

13. In the present case, the notice referred to under Sub-Rule (1) to Rule 5 of the CCS (Temporary Service) Rules, 1965 had not at all been given. Only a show-cause notice was given which has since been withdrawn. The same has already been reproduced above. In the absence of any notice contemplated under Sub-Rule (1) to Rule 5, when the law does not permit or does not contemplate for action under such eventualities, necessarily the Commissioner of Police could not make the direction to which we have referred to.

14. In this view of the matter, the impugned order necessarily cannot be sustained.



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15. Keeping in view the aforesaid, we allow the present application and quash the impugned order.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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