

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.2747/2004
MA No.2268/2004

New Delhi this the 23rd day of August, 2005.

HON'BLE MR. SHANKER RAJU, MEMBER(J)

Nabab Singh Malik,
Ex-Constable of Delhi Police,
R/o E-188/9, Khas Khauri,
Delhi-94.

(By Advocate Shri Anil Singhal)

-Versus-

1. Govt. of NCT of Delhi,
through Commissioner of Police,
Police Headquarters,
I.P. Estate, New Delhi.
2. Addl. Deputy Commissioner of Police,
New Delhi Distt. P.S. Parliament,
New Delhi.

(By Advocate Shri S.Q. Kazim)

1. To be referred to the reporters or not? Yes/~~No~~ *yes*
2. To be circulated in the outlying Benches or not? Yes/~~No~~ *yes.*

S. Raju
(Shanker Raju)
Member (J)

9

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Nabab Singh Malik,
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-Applicant

(By Advocate Shri Anil Singhal)

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1. Govt. of NCT of Delhi,
through Commissioner of Police,
Police Headquarters,
I.P. Estate, New Delhi.

2. Addl. Deputy Commissioner of Police,
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-Respondents

(By Advocate Shri S.Q. Kazim)

ORDER (ORAL)

Heard. It is trite law that if a termination of a probationer is founded on a particular act of misconduct, casting stigma on him, without following the due process of law under Article 311 (2) of the Constitution of India, the same would be a nullity.

2. It is equally settled that if the services of a probationer are dispensed with on the ground of his unsatisfactory performance even if it constitutes a motive would not vitiate the order of termination. The aforesaid finding is laid down by the Apex Court in **Dipti Prakash Banerjee V. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta & Anr.**, (1999)

3 SCC 60. It is also held by a Division Bench of the High Court

of Bombay in **Manoj Bhaskarao Kamik v. City of Nagpur Corporation and Anr.**, ATJ 2004 (2) HC (Bombay) 30 that if a termination is founded on an enquiry report, which is not supplied it would amount to an illegality. If misconduct is a motive termination would not suffer from any infirmity. The Apex Court in **Chief Engineer M.S.E.B. & Anr. v. Suresh Raghunath Bhokare**, 2005 (1) SCSLJ 163 ruled that when the allegations are securing appointment on fraud or misrepresentation and there is no material to prove the knowledge of fraud, termination would not be legally tenable. In the above backdrop of the law laid down the brief facts suggest that applicant was issued a show cause notice by the respondents stating that after his selection as a Constable (Executive) during the recruitment held in 2002 he was placed on probation. The aforesaid notice alleges that while seeking age relaxation applicant produced a sport certificate issued to him by the Sports Authority of India (SAI) which was found to be forged as per the enquiry conducted by respondents from SAI and as per their report dated 6.8.2003 it is transpired that applicant was not a member of the Kabaddi Team of Uttar Pradesh, leading to termination of applicant on the allegation of adoption of deceitful means while getting recruited to Delhi Police.

3. It is also not disputed that pertaining to the same incident a criminal case FIR No.348/2003, dated 4.9.2003 under Sections 420/468/471 IPC at Ps Mukherjee Nagar was also lodged, which is sub judiced before the competent court of criminal jurisdiction.

12

Applicant in his reply to the show cause notice stated that he is innocent and he has no knowledge of this certificate being fraud. Relying on the aforesaid explanation respondents terminated the services of applicant with the following decision:

"I have carefully gone through the written reply submitted by Const. Nabab Singh Malik No.1433/ND and all the relevant documents placed on file. He mainly pleaded that his Sport Certificate is not fake & he is facing a criminal proceeding in this regard and requested that till the decision of criminal proceeding, no departmental action be initiated against him. His plea is not found convincing as his certificate was got verified from the Sports Authority of India and the Assistant Director (H&S) Sports Authority of India, clearly mentioned in his report sent vide No.SAI/NIS/AIRST/2003-04/862 dated 6.8.2003 that he was not the member of Kabaddi Team of Uttar Pradesh which participated in XXV All India Rural Sport Tournament Group-I, held at Hissar from Feb 10-13, 1995. Hence the question of genuine Sport Certificate does not arise in any way.

In view of the above mentioned facts & reports submitted by the Asstt. Director (H&S), Sports Authority of India, I am of the considered view that Ct. Nabab Singh Malik No.1433/ND has succeeded in joining the Department as Constable (Exe.) in Delhi Police after availing benefit in upper age, on the basis of fake/bogus Sports Certificate by adopting deceitful means. Hence, I do not find it desirable to continue his service as Const. (Exe.) in Delhi Police. This I hereby confirmed the Show Cause Notice and accordingly terminate his service from Delhi Police under the provision of Rule 5 (I) of the C.C.S. (Temporary Service) Rules, 1965."

4. Learned counsel of applicant states that on the face of the order it is suggestive that the order is neither simple nor innocuous in terms but is a stigmatic order, where applicant is alleged to have committed a fraud and adopted deceitful means to get age relaxation with a view to get appointed in Delhi Police. It is also stated that a report has been called from SAI after applicant in his reply to the show cause notice has categorically

13

denied knowledge of the aforesaid certificate being fraud or fake, which was not supplied to applicant clearly vitiates the order of termination, as it is infraction to the doctrine of audi alteram partem enshrined as a principle of natural justice. Relying upon the decision in identical situation based on common facts of the High Court of Delhi in **Commissioner of Police & Ors. v. Regional Secretary, Board of Secondary Education, Regional Office, Meerut, U.P. and Ors.**, 2005 III AD (Delhi)

92, where the following observations have been made:

"This petition can be disposed of at this stage itself as we have perused the order passed by the Central Administrative Tribunal (for short, 'the C.A.T.'). The C.A.T. relying upon **Deepti Prakash Banerjee V. S.N. Bose National Centre for Basic Sciences** 1999 (3) SCC 60 has held that the principles of natural justice were violated if the service of the respondent was terminated on the ground that he had submitted forged certificate and no opportunity was given to him to explain as to whether the report which had been received by the petitioner regarding the forgery was correct or not. The case of the respondent was that he was not at fault as he had lost the original certificate and had been denied the copy of the certificate which was lying with the petitioners. Learned counsel appearing for the petitioners has contended that there was no question of giving any show cause notice to the respondent as the service was terminated simplicitor under proviso of Rule 5 (1) of CCS (Temporary Services) Rules, 1965. Learned counsel for the petitioners has also argued that in the termination order the reason for terminating the services of the respondent was nowhere mentioned, therefore no notice was required to be given. We are afraid we cannot accept the reasoning of the petitioners that the service of an individual on probation and training can be dispensed with in terms of Rule 5 of the CCS (Temporary Services) Rules even if the basis for termination is the allegation of committing a forgery with regard to his certificate of educational qualification. We are of the considered view that it was incumbent upon the petitioners to give an opportunity to the respondent to explain his case as the termination order was, in fact, punitive in

14

nature. Therefore, we do not find any merit in the writ petition. Interim order is vacated.

2. However, we give liberty to the petitioners to initiate an enquiry if they so desire so as to ascertain the truth regarding certificates of respondent and take action in accordance with law.

3. With these observations, the petition stands disposed of."

5. In the above backdrop it is stated that on all fours the applicant is covered by the above ratio and the orders passed by the respondents have to fail.

6. On the other hand, referring to the reply filed by the respondents, learned counsel for respondents vehemently opposed the contentions of applicant. It is stated that on a fraud committed which is established by the report of SAI, on show cause notice services of applicant have been dispensed with and there is no punitive-ness in the order and as per the conditions of service his services have been dispensed with.

7. Learned counsel would contend that Rules 11 and 12 of the Delhi Police (Punishment & Appeal) Rules, 1980 are not attracted in the case of applicant as the applicant was substantively appointed on probation.

8. Lastly, it is contended that when the very basis of his recruitment in Delhi Police, i.e., permissibility of upper age limit, has been proved to be based on a forged certificate applicant was ineligible to be appointed at the time of his selection.

9. On careful consideration of the rival contentions of the parties the sine qua non of fairness in administrative action or even by an authority performing quasi judicial functions is observance of principles of natural justice. Applicability of

principles of natural justice depends upon facts and circumstances of each case, as held by the Apex Court in **Kumaon Mandal Vikas Nigam Ltd. v. Girja Shanker Pant**, (2001) 1 SCC 182, in the wake of principles of natural justice there should have been fairness in the procedure adopted when civil consequences ensue upon a government servant and adverse action is taken against him to the detriment of his rights bestowed upon him on having been appointed whether on temporary or substantive basis in the Government. It is equally settled that the circumstances are the determining factor to apply principles of natural justice as held by the Apex Court in **Karnataka State Road Transport Corporation & Anr. v. S.G. Kotturappa & Anr.**, 2005 (2) SLJ SC 208.

10. In a Welfare State when job, particularly in Central or State Governments is hard to be obtained if any misconduct is attributed to the person who is appointed against a substantive post on probation basis before taking any penal action against him, it is to be ensured, as an obligation, that he must not be condemned unheard. Principles of natural justice though may not be printed under the rules but are to be read as part and parcel of the rules and to be implied in the light of the decision of the Apex Court in **J.A. Naiksatam v. Prothonotary and Senior Master, High School of Bombay & Ors.**, 2005 (1) SLJ SC 219.

11. Keeping in light the rights of a party to be defended on Article 311 (2) of the Constitution it has to be ascertained in this case whether the order passed by the respondents on the face of

16

it casts stigma upon applicant and whether it is founded on misconduct of applicant. In so far as stigma is concerned, it is laid down in **Dipti Prakash Banerjee** (supra) is reading the order and Annexures or documents relied upon to substantiate the order. From the reading of the order passed by the respondents it transpires that as the allegations were of submission of forged certificate, enquiry was conducted from SAI and on the basis of their letter dated 6.8.2003 that applicant's certificate is fake and is not genuine the aforesaid view has been taken. Admittedly, the aforesaid record was not made available to applicant before such an action is taken. What to talk of supply of this report, the aforesaid report has not even mentioned in the show cause notice. This shows that applicant has been terminated on the basis of this report, which cannot be countenanced, when the applicant has shown his ignorance and knowledge about the genuineness of the certificate and denial of the sport certificate as being fraud. The aforesaid termination is certainly an illegality in the light of the decision of the Apex Court in **Suresh R. Bhokare** (supra).

12. Moreover, when a criminal investigation is completed and the matter is rested sub judice before the competent court of criminal jurisdiction unless applicant is held guilty of the charge of committing a forgery and finding to this effect is recorded by a judicial authority applying the intricacies of law, including Evidence Act and Cr. PC the conclusion arrived at by the police authorities on the basis of report of SAI would not only amount

17

to infiltration of jurisdiction of the criminal case to a view taken without any basis or without proper adjudication.

13. The decision in **Commissioner of Police** (supra) by the Division Bench of the High Court of Delhi is in the given circumstances clearly establishes that the facts raised were identical and as it is observed that opportunity to explain has been denied the present termination which has preceded a show cause notice but withholding of the report and denial of effective reasonable opportunity is not a valid compliance of Article 311 (2) of the Constitution.

14. Another infirmity which has been pointed out by the learned counsel for applicant is that whereas Rules 5 (1) of CCS (Temporary Service) obligates upon respondents in a case of temporary government servant the notice in writing of one month, failing which to dispense with the notice period by paying salary of a month in lieu thereof in case of forthwith termination. Pointing out to the show cause notice issued to applicant it is contended that only 15 days' time is granted to file reply to the show cause notice and thereafter services had been dispensed with without paying to applicant a month's salary in lieu thereof. This is not well explained by the learned counsel for respondents. In this view of the matter termination also suffers from the vice of being contrary to Rule 5 (1) of the CCS (TS) Rules, 1965 and cannot be sustained in law.

15. In the result, for the foregoing reasons and conclusions arrived at, this OA succeeds. Impugned orders are set aside. Respondents are directed to re-instate applicant in service

forthwith, with all consequential benefits. However, if so advised, respondents are at liberty to take appropriate action in accordance with law. No costs.

S. Raju
(Shanker Raju)
Member (J)

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