

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA No 2059/92

New Delhi this the 6 th day of January, 1998.

Hon'ble Shri S.R. Adige, Vice Chairman (A)
Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Shri Surender Kumar S/O Sh.Om Parkash,
resident of Village Bahala,
P.O Naya Gaon, District Rewari,
Haryana.

..Applicant

(By Advocate Shri Shankar Raju)

Vs

1. Commissioner of Delhi Police,
Delhi Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi
2. Deputy Commissioner of Police,
North- West District, Ashok Vihar,
Delhi

.Respondents

(By Advocate Shri Arun Bhardwaj)

O R D E R

(Hon'ble Smt. Lakshmi Swaminathan, Member (J))

The applicant has impugned the order passed by the respondents dated 5.7.91 terminating his services, and order dated 15.5.1992 rejecting his representation dated 26.7.1991.

2. The brief facts of the case are that the applicant had applied for appointment to the post of Constable in Delhi Police on 29.12.1989. He submits that after undergoing Physical test on 29.1.1990 and further tests on 8.4.90, he was appointed as Constable w.e.f 19.11.1990. When he was undergoing the training, his services were terminated by order dated 5.7.91 which was passed under Rule 5 of the CCS(Temporary Service) Rules, 1965. Against this order he had submitted representation dated 26.7.1991. In this

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representation, he has stated that after the process of selection, he had filled up the attestation forms in July, 1990. (A) He states that prior to ^{the} selection, a Kalandra U/s 107/151 Cr. P.C. was registered against him in which he was subsequently discharged by the Court of SDM at Kosli. He further states that subsequently without his knowledge, the same Kalandra was substituted in a FIR bearing No. 165 dated 13.6.90 under Section 325 IPC which was registered against him at Police Station, Jatusana. According to him, the case is pending in the Court of Judicial Magistrate Ist Class, Rewari but he claims that he has every chance of being honourably discharged in the case. In the representation, he has also stated that on verification, the respondents were apprised of the case and as a result of which his services were terminated by the impugned order dated 5.7.1991. Shri Shankar Raju, learned counsel for the applicant has submitted that though the impugned order of termination is an order simpliciter, it is based on the misconduct of the applicant, that he was involved in a criminal case at the time he had filled up the attestation and verification form and, therefore, this was by way of punishment. Hence he has contended that the respondents ought to have held an enquiry as per the rules before taking any action to terminate the applicant's services. On this ground, therefore, he has urged that the impugned order should be quashed and set aside as it is violative of the principles of natural justice. He has relied on the following judgments:-

- (i) **Vinod Kumar V. Delhi Administration and another**
(OA 66/89) decided on 18.10.93 (copy placed on record)
- (ii) **Yogendra Singh V. UOI** (1996) 3 SLJ(CAT) 226 ; and
- (iii) **Anoop Jaiswal V. Government of India and another**.
(1984(2) SCC 369)

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3. The respondents have filed their reply controverting the above averments. We have also heard Shri Arun Bhardwaj, learned counsel for the respondents. The respondents have taken a preliminary objection that the application is not maintainable for non-joinder of necessary parties as Govt. of NCT Delhi through Secretary, Ministry of Home Affairs has not been impled, as required under the rules. They have also submitted that on merits the action taken by them is justified and they have, therefore, prayed that the application may be dismissed. They have ~~further~~ submitted that the applicant had joined as Constable with the Respondent on 19.11.90 after completing the usual formalities. Later on, a complaint was received by them from one Shri Zile Singh that the applicant was involved in a criminal case in FIR No. 164 dated 13.6.90 under section 325/34, IPC P.S. Jatusana, District Rewari, Haryana. Therefore, they had sought further information from the concerned Senior Superintendent of Police. The Senior Superintendent of Police had sent a report confirming that the applicant was involved in the aforesaid criminal case. They have further stated that from the records, they found that the applicant had filled up the Attestation and Verification forms on 24.8.90 after his arrest in the above said case but he had not disclosed his involvement in this case, which was required while filling up those forms. According to them, therefore, he had concealed the facts of his involvement in the criminal case and got himself employed through deceitful means. Therefore, his services were terminated by the impugned

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order dated 5.7.91. They have stated that since his services were liable for termination at any time without assigning any reasons under the provisions of the CCS(Temporary Service) Rules, 1965, their action is justified in the facts and circumstances of the case. They have further submitted that the applicant is not entitled for any relief. The respondents have submitted Fauzi Missal No. 2058/NW pertaining to the applicant for our perusal. Shri Arun Bhardwaj, learned counsel, has submitted that the applicant had filled up the Attestation and Verification forms on 24.8.90 and 29.8.90 that he was not involved in any criminal case. Shri Shankar Raju, learned counsel for the applicant, had on the other hand urged that the applicant had obtained anticipatory bail in the aforementioned criminal case and he was never arrested in the case. Therefore he submits that it cannot be said that in the Attestation and Verification form he had concealed any fact of his being confined or arrested, as he was not arrested.

4. From perusal of the pleadings and records, and taking into account the totality of the facts and circumstances of the case, we are unable to accept the contention of the learned counsel for the applicant that the applicant was not involved in any criminal case or had concealed material facts at the time when he had filled up the Attestation form. It is relevant to note that in the representation made by the applicant against the impugned order dated 26.7.91 he has himself referred to the FIR No. 165 dated 13.6.90

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and about the case pending in the criminal Court of Judicial Magistrate, Ist Class, Rewari. According to the applicant the initial 'Kalandra' U/s 107/151 Cr.P.C. was discharged by the Court of SDM at Kosli. Subsequently, without his knowledge, the same 'Kalandra' was substituted in an FIR bearing No 165 dated 13.6.90. He has also stated, that the case is pending in the Court of Judicial Magistrate, Ist Class, Rewari. If that is so, it cannot be said that he was unaware of the fact of the registration of the FIR on 13.6.90 or the criminal case pending against him at the time when he filled up the Attestation and Verification form in August, 1990. Admittedly, the applicant was appointed as Constable in Delhi Police on 19.11.90 and the facts leading to the termination order, stated both by the applicant and the respondents pertain to events which had occurred prior to that date. In the impugned order, there has been no reference to any of these facts but the order is an order simpliciter terminating his services under Rule 5 of the CCS(Temporary Service), Rules, 1965. It is only the applicant who had himself in his representation dated 26.7.91 brought out the facts regarding the pending criminal case following FIR 165 dated 13.6.90, and submitting that in the circumstances a show cause notice and hearing should have been held. Learned counsel for the applicant has submitted that based on the judgments, he relies upon, referred to in paragraph 2 above, the Court should go behind the formal order of termination to find

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the real cause of action as the order is actually based upon the alleged misconduct of the applicant and not on the ground that he has been found unfit generally for being continued in service. We are unable to agree with this contention, having regard to the facts of the case. In this case the impugned termination order is not based on any commissions or omissions on the part of the applicant, subsequent to his appointment as Constable on 19.11.90 but is based on ~~the~~ events which have taken place prior to his appointment. Although, the respondents have not stated any reason in the impugned termination order, having regard to the facts narrated by both the applicant and the respondents in their reply, it is seen that the relevant events which led to the issuance of the impugned order are prior to his appointment. Therefore, the cases relied upon by the applicant being on different premises will not assist him.

5 Even according to the applicant's own version, as stated in his representation dated 26.7.91, it is clear that an FIR dated 13.6.90 was pending against him. His contention is that the case is based on false and concocted charges and he is likely to be acquitted. That is a matter to be seen when the case is finally decided by the Criminal Court. From these facts, however, it is clear that at the time when he filled up the Attestation and Verification form in August, 1990, he had not disclosed his involvement in the criminal case. The contention of Shri Shankar Raju,

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learned counsel that since the applicant had obtained anticipatory bail and, therefore, he was not arrested, and accordingly he had not concealed this fact in the form is unacceptable and is an after thought. The respondents' contention, on the other hand, that he had not disclosed his involvement in the criminal case and concealed these facts is amply borne out by the applicant's own conduct, submissions and the materials available on record.

6 It will be relevant to see a recent judgment of this Tribunal in **Subodh Singh Vs UOI and Ors** (OA 1667/97) (in which one of us, Smt. Lakshmi Swaminathan was a Member), decided on 5.12.1997, copy placed on record, in which we had followed the decision of the Supreme Court in **Delhi Admn. and Ors. V Sushil Kumar** (Civil appeal No 13231 of 1996). In **Sushil Kumar's case** (supra), the Supreme Court has held as follows:-

" ..It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was physically found fit, passed the written test and interview and was provisionally selected on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant

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is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of consequences. The considertation relevant to the case is of the antecedents of the candidate. Appointing Authority, therefore, has rightly focussed this aspect and found him not desirable to appoint him to the service."

(emphasis added)

Therefore, in the facts and circumstances of the case following the Supreme Court in **Sushil Kumar's** case, it cannot be held that the respondents ought to ignore the antecedents of the candidate when it comes to their knowledge or that the Appointing Authority could not take a decision that it was not desirable to appoint or continue to /the applicant in the Police service. In this case the relevant facts which the competent authority has taken into account while passing the impugned order are with reference to events which have occurred prior to his appointment.

Learned counsel for the applicant has urged that the respondents could not have taken into account these facts without giving him a show cause notice or holding a departmental enquiry, and could not have relied upon Rule 5(i) of the CCS(Temporary Service) Rules, 1965. It is settled law that if the competent authority has power to take any action, the mere reference to an erroneous section or provision of ~~the~~ law shall not render exercise of the power illegal or bad in law. In this case, therefore, if the respondents had become aware of the concealment of facts by the applicant before he was appointed as Contable on 19.11.90, the question of holding a departmental

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enquiry, as contended by the applicant does not arise. From the above facts, there is also no doubt that the applicant has concealed material facts of his being involved in a criminal case when he had filled the Attestation and Verification form before his appointment.

7 In the present case what the competent authority has done is to consider the ^{conduct} and character of the applicant prior to his appointment in service and it has not been disputed that the criminal case filed against the applicant is still pending. Once these facts have come to the knowledge of the respondents in November, 1991, they have taken action ^{simplifies} against him by passing the order of termination. The contention of the learned counsel for the applicant that he should have been given a show cause notice and a departmental enquiry should have been held before passing the impugned order is, ^{therefore}, ~~also~~ without any basis having regard to the facts of the case. The applicant has himself referred to his involvement in the FIR and criminal case in his representation dated 26.7.91, which the respondents have already considered and disposed of. In the circumstances, we find no merit in this application justifying any interference in the matter.

8 It may also be added that this application is also liable to be dismissed on the ground of non-joinder of necessary party, namely, the Government of NCT of Delhi through Secretary, Ministry of Home Affairs, in addition to the Commissioner

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and Deputy Commissioner of Police.

9. For the reasons given above, this application fails and is dismissed. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

S.R. Adige
(S.R. Adige)
Vice Chairman(A)