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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No.2884/92

Date of decision: 29.10.93

Madan Pal

...Applicant

Versus

Delhi Administration
and Another

...Respondents

CORAM:

THE HON'BLE MR. J.P.SHARMA, MEMBER(J).
THE HON'BLE MR. S.GURUSANKARAN, MEMBER(A).

For the applicant ...Shri R.K.Kaushik, Counsel

For the respondents ...Shri M.K.Giri, Counsel

JUDGMENT

(Delivered by Hon'ble Mr. J.P.Sharma, Member(J) :

The applicant while working as Constable in the Delhi Police was served with an order dated 3-7-91 passed by Dy. Commissioner of Police under sub-rule(1) of Rule 5 of the CCS (Temporary Services) Rules, 1965 (hereinafter called the Rules) terminating his services forthwith and giving him a sum equivalent to the amount of one month's pay plus allowances which he was drawing immediately before termination of his services. The applicant made a representation dated 2-8-91 to the Commissioner of Police. It was rejected by the Order dated 22-1-92.

2. The applicant filed this application for quashing the order dated 3-7-91 terminating his services and with a direction to the respondents to reinstate the applicant as

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Constable in Delhi Police.

3. The respondents contested the application and filed the reply stating that the applicant was enlisted in Delhi Police on 4-8-88. During his posting from 4-1-90 to the date of termination, i.e., 3-7-91, the applicant wilfully absented himself at 12 occasions. He was not confirmed in his appointment. He was also awarded adverse report during the period from 1-4-90 to 2-7-91. The applicant was posted in Rashtrapati Bhawan security and his wilful absence was a serious lapse on his part. Since the applicant was a probationer and he was not confirmed in his appointment, his services have been terminated by innocuous order.

4. We have heard the learned counsel for the parties at length and perused the records. Under the Delhi Police Appointment and Recruitment Rules, 1980, the period of probation is two years and it may be extended by one year more. In this case, the applicant was appointed in August 1988 and his two years probation would have completed in August 1990. But, before that date, the applicant was given certain adverse remarks on account of his absence from duty at 12 occasions and his service records did not justify his confirmation. The learned counsel for the respondents has relied on the case of DHIRAJ GHOSH V/S UNION OF INDIA & ORS. 1991 (SUPP) 2 SCC 203, and referred to the following para :-

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That the appointment of government employee to the temporary post likely to be continued for indefinite period - confirmation in the said post. He cannot be automatically confirmed after non-extension or termination of period of probation. Continuation of temporary period can be extended for indefinite period but that would not give incumbent right to have his services automatically extended.

Thus, there cannot be any automatic confirmation of the applicant. It is, therefore, evident that the applicant was on probation at the time when the impugned order of termination was passed and served upon him.

5. The learned counsel for the respondents has also referred to the authority of STATE OF U.P. VS. RAM CHANDER reported in AIR 1976 SC p.254 to the effect that the services of a probationer can be terminated.

6. The learned counsel for the applicant, however, argued that the order of termination is by way of punishment and without holding a disciplinary enquiry, the applicant should not have been terminated from service. It is further argued that the applicant submitted the medical certificate for the period of his absence from 13-5-91 to 13-11-91. Thus, according to the applicant, the order of termination is by way of punishment and is not sustainable. This termination of service is founded on misconduct, negligence, inefficiency or other disqualifications punitive

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in nature and attracts Article 311(2) of the Constitution of India. The form of the order is not conclusive and it is the substance of the matter which has to be looked into and in the instant case if the circumstances are looked into, the mind of the terminating authority was towards his absence, misconduct allegedly committed by him and it was the real foundation of the order and the order of termination, therefore, is by way of punishment as held by the Hon'ble Supreme Court in the case of SHAMSHER SINGH VS. STATE OF PUNJAB 1974 2 SCC 831. The learned counsel for the applicant has also referred to the authorities of JARNAIL SINGH VS. STATE OF PUNJAB 1987(3) SCC 277; NEPAL SINGH VS. STATE OF U.P. AIR 1985 SC 84; ANUP JAISWAL VS. GOVT. OF INDIA 1984(2) SCC 369; and STATE OF MAHARASHTRA VS. VEERAPPA R. SBOGI AIR 1980 SC 42. We have considered the law cited by the learned counsel for the applicant and have given a careful consideration of the case. The main issue to be considered is whether the order of termination of the applicant is a case of termination simplicitor or a case of termination of services of a probationer or whether such an order was really a punishment disguised as an order of termination. The respondents have taken a clear stand that the applicant was a probationer on the date of the order of termination. Now, the ground mentioned in the reply by the respondents is that the applicant has unauthorisedly absented himself on 12 occasions from 4-1-90

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to 3-7-91 and in the rejoinder in reply this fact is not denied. It is only stated that the petitioner did not absent himself wilfully and unauthorisedly. It is not stated that the applicant has obtained prior sanction for availing of his absence as leave. Thus, before the date of his expiry of his period of probation, i.e., 4-8-90, the applicant has been adjudged to be unfit to be retained in the Delhi Police. The law cited by the learned counsel for the applicant, referred to above, therefore, does not apply to the facts of the present case.

7. The learned counsel for the respondents has relied on the judgment of the Hon'ble Supreme Court in the case of STATE OF U.P. AND ANOTHER VS. K.K.SHUKLA ATR 1992 VOL.I (SC) p.11. In the case of K.K.SHUKLA, he was a temporary employee. The High Court when approached by the respondent K.K.Shukla set aside the order of termination on the ground that juniors to him have been retained. The Hon'ble Supreme Court held that the principle of last come first go is not applicable to a case where the services of a temporary employee are terminated on the assessment of his work and suitability in accordance with terms and conditions of his services. In this judgment of K.K.SHUKLA, the case of A.G.BENJAMIN VS. UNION OF INDIA Civil Appeal No.1341/66 decided on 13-12-66 reported in 1967 (1) LLJ p.718 and the case of SHAMSHER SINGH AND OTHERS

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VS. STATE OF PUNJAB (Supra) has also been referred to. Thus, the Hon'ble Supreme Court held that in a case where the temporary employee/probationer is not found suitable, there is no element of punitive proceedings against him. Such an enquiry is not undertaken to punish the temporary government servant, but just to decide whether he deserves to be continued service or not. A temporary government servant has no right to hold the post, his services are liable to be terminated by giving one month's notice without assigning any reason either under the terms of the contract providing for such termination or under the relevant statutory rules regulating the terms and conditions of temporary government servant. The Delhi Police Appointment and Recruitment Rules, 1980 clearly lay down that the services of a probationer can be terminated without assigning any reason. Though the period of probation is initially of two years, it can still be extended by one year and unless a formal order of confirmation is issued, he shall be deemed to be on probation as held in held in STATE OF U.P. VS. RAM CHANDER (supra).

8. The learned counsel for the respondents has also referred to the authority of Hon'ble Supreme Court reported in 1992 (4) SCC p.719 (Kidwai Memorial Instt. of Technology Vs.). In Dr. Pandurang Godwalkar & Anr. this case also, the respondent's services were terminated.

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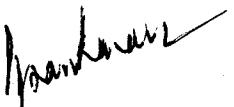
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by an order simplicitor though he was involved in certain misconduct during the course of his employment and was still a probationer.

9. In view of the above facts and circumstances, the decision taken by the respondents that the applicant is not suitable for the Delhi Police force and he was terminated from services while probationer, cannot be faulted with. The action of the respondents cannot be said to be mala fide, arbitrary or illegal. The order has been passed according to the Delhi Police Appointment and Recruitment Rules, 1980.

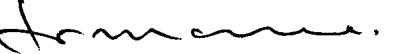
10. Thus, because of the above reasons, we find that the impugned orders do not call for any interference and the application is, therefore, dismissed being devoid of merits. No costs.


(S.GURUSANKARAN)
MEMBER (A)


(J.P.SHARMA)
MEMBER (J)

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Written by me.


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