

Two

Central Administrative Tribunal
Principal Bench, New Delhi.

(2X)

CP-98/94 in
OA-31/92

New Delhi this the 25th Day of July, 1994.

Hon'ble Mr. Justice S.K. Dhaon, Acting Chairman
Hon'ble Mr. B.N. Dhoundiyal, Member (A)

Shri Dinesh Kumar Parashar,
S/A Head Constable Sis Ram,
R/o. H.No. A-62/1, East Azad Nagar,
Shiv Mandir Gali,
Delhi-110051.

Petitioner

(By advocate Sh. Mukul Talwar)

versus

1. Shri A.S. Toor,
Deputy Commissioner of Police,
D.A.P. IV Bn., Delhi Police,
New Police Lines,
Kingsway Camp,
Delhi.

2. Shri M.B. Kaushal,
Commissioner of Police,
Delhi Police, Police HQ.,
I.P. Estate, New Delhi.

Respondents

(By advocate Sh. S. Adlakha)

ORDER (ORAL)

delivered by Hon'ble Mr. Justice S.K. Dhaon, Acting Chairman

The complaint is that the direction given by this Tribunal in O.A.No.31/92, in the case of the applicant, on 27.4.1993 has been observed in its breach.

The applicant, it appears was desirous to be recruited as Constable in the Delhi Police. The expansion of his chest was not upto the prescribed standard. He claimed a relaxation. That relaxation was not available to the wards of police officers who had been dismissed, removed or compulsorily retired from service. He was denied relaxation. He, therefore, came to this Tribunal by means of O.A.

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This Tribunal while passing a final judgement, relied upon an earlier decision of this very Tribunal in O.A. No. 2140 and other connected O.As. of the year 1991 decided on 10.09.1992. In substance, this Tribunal in O.A. No. 2140/91 and the connected O.As., interpreted the standing order No. 212/89 and held that for the purpose of grant of relaxation, imposition of the punishment of dismissal, removal or compulsory retirement by way of penalty alone will make the record of the police personnel short of being clean and good. The directions were issued in the case of the applicants before the Tribunal that the respondents shall dispose of the cases of the applicants before it (the Tribunal) for the grant of relaxation on the basis of the said interpretation and strictly in accordance with the provisions of Rule 9(vii) of the Recruitment Rules.

On 1.10.1992 in MP-2980/92 in O.A. No. 1769/91

(which formed part of the bunch connected with OA-2140/91) the Tribunal

passed an interim order, even before issuing notice of the miscellaneous application to the respondents, to the effect that the respondents in O.A. No. 1769/91 shall not terminate the services of the applicant therein on the ground that his father was compulsorily retired in public interest. The Tribunal made it clear in paragraph -21 of its earlier judgement that the bar will only be by way of punishment and not retirement in public interest.

M.P. No. 2980/92 was finally disposed of by a two - Member Bench of this Tribunal, of which, one of us (Hon'ble Sh. Justice S.K. Dhaon) was a Member. The Bench, it appears, called for the file and examined the order of compulsory retirement of the father of the applicant in O.A. No. 1769/91. It felt satisfied that in the

purported exercise of power under Fundamental Rule 56(J), an order of compulsory retirement had been passed. Therefore, a final order was passed on the M.P. in terms of the interim order already passed.

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On 28.2.94 Sh. A.S. Toor, Deputy Commissioner of Police passed an order in the purported exercise of power under the provision to sub rule(1) of Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965, terminated the services of the applicant (Constable Sh. Dinesh Kumar Parashar).

The order dated 28.2.94 impelled the applicant to file the present contempt petition. In the petition, Sh. Toor and Sh. M.B. Kaushal are cited as Respondents No.1 & 2 respectively.

On 3.6.1994, we directed Sh. A.S. Toor to either carry out the directions of this Tribunal dated 27.04.93 or to appear in person to answer the charge of contempt. Sh. Toor has presented himself before the Tribunal and is present before us.

In the counter-affidavit filed by Sh. Toor, it is asserted that he passed the order terminating the services of the applicant under the directions of the superior officer. It is stated at the Bar that the superior officer is the Addl. Commissioner of Police, who is not a party in the contempt proceedings.

We have heard the learned counsel for the parties and we are satisfied that having regard to the facts and circumstances of the present case, Sh. Toor is entitled to the benefit of doubt for more than one reason. First, the order dated 27.4.93 of this Tribunal, which is the subject matter of the contempt proceedings, is confined to the order dated 10.9.1992 passed in O.A.No.2140/91. The order does not say that the respondents were ^{to} carry out the order dated 10.9.92 as also the subsequent clarifications made thereto. There may be force in the arguments of the learned counsel for the applicant that in the order dt.27.4.93,



the subsequent modifications are implicit. Be that as it may, contempt proceedings being quasi-criminal proceedings, Sh. Toor can successfully urge that he was merely obliged to carry out the directions dt. 10.9.92 and no more.

Secondly, in the counter-affidavit, as already stated, the defence taken is that he passed the order of termination under the orders of Addl. Commissioner of Police. He was duty bound to carry out the order of the Addl. Commissioner of Police. Of course, before doing so, he could have approached this Tribunal by means of an application and point out his problem. He having failed to do so, he has been rightly called to appear in person.

All told, Sh. Toor is entitled to the benefit of doubt. We, therefore, discharge the notice issued to Sh. Toor. But that will not be end of the matter. We note that the Commissioner of Police is cited as one of the respondents in this petition. We direct Sh. M.B. Kaushal, Commissioner of Police (Respondent No. 2) to act strictly in accordance with the directions given by this Tribunal on 27.4.93 and also in accordance with the directions given by this Tribunal in O.A. No. 2140/91 on 10.09.92 coupled with the clarifications made in O.A. No. 1769/91 on 1.10.1992 and 24.3.1993. To be precise, the Commissioner of Police shall consider the case of the applicant for giving him relaxation in the matter of measurement of his chest, if his father had been compulsory retired not by way of punishment but in the public interest. The Commissioner of Police shall give his decision within a period of six weeks from the date of presentation of a certified copy of this order by the applicant before him.

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The order dated 28.2.94 passed by Sh. Toor
in his capacity as the Deputy Commissioner of Police
terminating the services of the applicant is quashed.

There shall be no order as to costs.

B. N. Dhoondiyal
(B. N. DHOONDIYAL)
MEMBER (A)

S. K. Dhaon
(S. K. DHAON)
ACTING CHAIRMAN

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