

Central Administrative Tribunal
Principal Bench

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O.A. No. 1190 of 1993

New Delhi, dated this the 18- AUGUST 1999

Hon'ble Mr. S.R. Adige, Vice Chairman (A)
Hon'ble Mr. P.C. Kannan, Member (J)

Shri Rajender Prasad,
S/o Shri Kali Charan,
R/o House No.1/3416,
Ram Nagar Extension,
Mandoli Road, Shahdara,
Delhi-110032. ... Applicant

(By Advocate: Shri Ashok Aggarwal)

Versus

1. Delhi Administration,
through Chief Secretary,
5, Sham Nath Marg,
Delhi-110054.
2. The Commissioner of Police,
Delhi Police, Police Headquarters,
I.P. Estate,
New Delhi. ... Respondents

(By Advocate: Shri Anil Singhal proxy
counsel for Shri Anoop Bagai)

O R D E R

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant impugns respondents' order dated
15.2.91 (Ann. A) terminating his services as a
temporary constable in Delhi Police under Rule 5(1)
CCS (Temporary Service) Rules, 1965.

2. Heard both sides.

3. Applicant's counsel contends that the
foundation of the impugned termination order is his
alleged misconduct of being involved in a theft
case, and hence his services could not have been
legally terminated without framing charges and
conducting a regular departmental enquiry. Reliance
is placed on JT 1999 (1) SC 396.

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4. Respondents in their reply aver that applicant was enlisted as a temporary constable in Delhi Police w.e.f. 15.6.89. Between 6.6.90 and 25.1.91 he absented himself from duty on as many as 16 occasions (Ann. R-1) for which he received warnings, censures, P.D etc. They say that he was thus a habitual absentee right from the start of his service. They further state that while detailed on sentry duty on the night of 7/8.2.91 he was found absent and his absence was noted. Later that night he was found trying to open the box of another constable and when spotted doing so by Head Constable, gave a false name and tried to run away but was later apprehended.

5. In Kidwai Memorial Institute of Oncology Vs. P.Godwalkar (1992) 4 SCC 719 the Hon'ble Supreme Court has held

"If an employee who is on probation or holding an appointment on temporary basis is removed from the service was temporary or his appointment was on probation, there was no requirement of holding any enquiry, affording such an employee an opportunity to show that the charge levelled against him is either not true or it is without any basis. But whenever the service of an employee is terminated during the period probation or while appointment is on temporary basis, by an order of termination simpliciter after some preliminary enquiry it cannot be held that as some enquiry had been made against him before the issuance of order of termination it really amounted to his

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removal from service on a charge as such penal in nature.....The principle of tearing of the veil for finding out the real nature of the order shall be applicable only in a case where the Court is satisfied that there is a direct nexus between the charge so levelled and the action taken. If the decision is taken, to terminate the service of an employee during the period probation, after taking into consideration the overall performance and some action or inaction on the part of such employee then it cannot be said that it amounts to his removal from service as punishment."

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6. In the present case respondents have pointed out that applicant's overall performance was unsatisfactory in view of his absences from duty on as many as 16 occasions between 6.6.90 and 25.1.91. Added to that came applicant's action in attempting to commit theft from the box of a fellow constable on 7/8.2.91. In this view of the matter, if respondents terminated applicant's services by impugned order dated 15.2.91 which is order simpliciter and which casts no stigma upon him, it cannot be said that they have acted illegally or arbitrarily and JT 1999(1)SC 396 does not avail the applicant, because in this very case the Hon'ble Supreme Court has held

"If findings were arrived at in inquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as 'founded' on the allegations and will be bad. But if the inquiry was not held, no finding were arrived at and the employer was not inclined to conduct an inquiry, but at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case

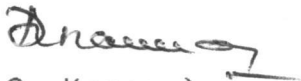
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of motive and the order would not be bad. Similar is the position if the employer did not want to inquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid."

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and in the present case no inquiry was held.

7. The O.A. is dismissed. No costs.


(P.C. Kannan)
Member (J)


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

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