

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No.2337/1993

Thursday this the 22th day of July, 1999

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. N. SAHU, ADMINISTRATIVE MEMBER

Ex-Constable Nawab Singh,
No.902/W, Delhi Police,
C/o Mrs. Avnish Ahlawat, Advocate,
243, Lawyers Chambers,
Delhi High Court, New Delhi.

...Applicant

(By Advocate Mrs. Avnish Ahlawat)

Vs.

1. Union of India through Secretary,
Ministry of Home Affairs,
Nirman Bhavan, New Delhi.
2. Government of National Capital Territory of
Delhi through Commissioner of Police,
Delhi Police Headquarters,
M.S.O. Building,
I.P.Estate, New Delhi.
3. Shri Ujjawal Mishra,
Additional Deputy Commissioner of Police,
(West District), through DCP HQ
Delhi Police Headquarters,
MSO Building, . IP Estate,
New Delhi.

...Respondents

(By Advocate Mr. Bhaskar Bhardwaj proxy counsel
for Shri Raj Singh)

The application having been heard on 14.7.1999 the
Tribunal on 22.7.1999 delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant Nawab Singh was enlisted in
Delhi Police as a temporary Constable Driver with
effect from 18.7.1990. Vide order dated 18.1.1991 a
departmental enquiry was ordered against him on the
ground that on 5.9.1990 at midnight while driving
Police Jeep No.DL 2-C-4129 he hit one Maruti Car on
the verge near MIG Flat, Rajouri Garden by driving the
vehicle in a rash and negligent manner. He was placed
under suspension by order dated 19.9.91 (Annexure.B).
However, by order dated 1.5.92 he was reinstated
without prejudice to hold the pending enquiry. Yet

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another enquiry was initiated against him on the allegation of wilful unauthorised absence from duty from 15.3.92 onwards. While the said enquiries were in progress his services were terminated by the impugned order dated 30.6.92(Annexure E) under the provisions of Sub Rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules 1965. The representation submitted by the applicant against this order to the Lt. Governor of Delhi was rejected. The applicant has filed this application challenging the legality, propriety and correctness of the impugned order Annexure.E. It is alleged in the application that while the respondents have initiated disciplinary proceedings against the applicant which were pending they could not have validly terminated his services under Sub Rule (1) of Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965, The applicant contents that the order is punitive in nature and imposed as a short cut without holding an enquiry in violation of the provisions of Article 311(2) of the Constitution of India as also that of the Delhi Police (Punishment and Appeal) Rules. It is also contended that as the applicant was appointed by the Deputy Commissioner of Police, the order of termination having been issued by the Additional Commissioner of Police, the order is incompetent. With these allegations, the applicant has sought to have the impugned Order Annexure.E set aside and for a direction to respondents to reinstate the applicant in service with all consequential benefits.

2. The respondents in their reply statement seek to justify the impugned order at Annexure ... They deny the allegation that the termination of the services of the applicant was as a measure of punishment or as a short cut instead of holding

departmental enquiries. It is stated that during the short span of two years, the applicant was awarded punishment of censor twice, that on 21.4.91 and 28.4.91 he drove away Govt. Bus No.DBP-5046 about 40 kms and 9 kms respectively without prior permission of the competent authority, that he did not attend morning Roll Call on 17.10.91 at 10 am and remained absent until 27.10.91, that there were three enquiries pending against him and that considering his performance/service record of the short span of around two years, the competent authority concluded that the record of service was unsatisfactory and that the applicant would not be a fit person to continue in service and therefore, decided to terminate the services of the applicant under Sub Rule (1) of Rule 5 of the CCS (Temporary Service) Rules and terminated his services by the impugned order. It is contended that the pendency^{of} departmental enquiries was not the foundation of the action and the termination of the services of the applicant was because of the unsatisfactory performance. The respondents therefore, contend that the application deserves to be dismissed.

3. When the matter came up for final hearing, the learned counsel for the applicant confined the argument to one point namely that termination of service of the applicant during the pendency of departmental proceedings as a short cut by invoking the provisions of Sub Rule (1) of Rule 5 of the CCS (Temporary Services) Rules as illegal and unjustified.

That there were three departmental enquiries were pending against the applicant when the impugned order was issued is not in dispute. The contention of the respondents is that the misconduct for which disciplinary proceedings were initiated against the

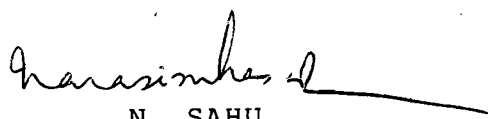
applicant did not form the foundation of the order of termination though that was also one of the factors considered in arriving at the decision as to the applicant had to be retained in service or should be terminated under the provisions of Sub Rule (1) of Rule 5 of CCS (Temporary Service) Rules. Learned counsel argued that there is no embargo in exercising the powers under the Sub Rule (1) of Rule 5 of the CCS (Temporary Service) Rules even when departmental proceedings are pending against the temporary government servant. The learned counsel of the applicant on the other hand invited our attention to two rulings of the Apex Court one reported in AIR 1963 SC 531 and the other reported in 1984 (2) SCC 369 (Anoop Jaiswal Vs. Government of India), wherein it was held that it was open to the court to go behind the order and find out if the report/recommendation of the superior authority was a camouflage and if that was the basis of foundation the order of termination is bad.

4. Giving the facts and circumstances emerging from the pleadings and from the submission of the learned counsel our anxious consideration, we are of the considered view that the order of termination in this case cannot be held illegal. No rule, binding instruction or ruling has been brought to our notice to the effect that just because disciplinary proceedings are pending against a temporary government servant, the competent authority lacks jurisdiction to invoke the provisions of Sub Rule (1) of Rule 5 of the CCS (Temporary Service) Rules. If the services of a temporary Government Servant against whom no

disciplinary proceedings at all is pending can be dispensed with under Sub Rule (1) of Rule 5 of the CCS (Temporary Service) Rules, can it be said that services of a temporary government servant against whom two or three disciplinary proceedings are pending cannot be terminated if the competent authority on an assessment of the record of performance comes to a bonafide conclusion that his retention in service is not desirable in public interest? We are of the considered view that the answer to this question is in the negative. What has been held by the Apex Court in the rulings cited by the learned counsel as also in the plethora of other rulings is that if the foundation of the order of termination is a misconduct then services can be terminated only after holding an enquiry giving the government servant a reasonable opportunity to defend himself. But if the misconduct is not the foundation but is only a motive the order of termination cannot be held invalid. In this case the services of the applicant were terminated by the impugned order not on account of the misconduct for which three enquiries were initiated, but on account of the decision of the competent authority that it was necessary to do so on account of the unsatisfactory performance of service and the record of service which may include the two censures awarded earlier, the pendency of the D.Es among other things, we are of the considered view that in the above backdrop there is no justification for judicial intervention with the impugned order.

5. In the light of what is stated above, we find no merit in this application which is dismissed leaving the parties to bear their costs.

Dated this the 22th day of July, 1999


N. SAHU
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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