

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 185/1998

THIS THE TH DAY OF APRIL, 2002

Date of Decision: 30.04.2002

Shri N.T. Goghalia.

Applicant(s)

Shri P.A. Prabhakaran.

Advocate for applicant

Versus

Union of India & others

.. Respondents

Shri V.S. Masurkar.

Advocate for Respondents

CORAM: HON'BLE SHRI S.L. JAIN. MEMBER (J)
HON'BLE SMT. SHANTA SHASTRY. .. MEMBER (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library ✓

Shanta
(SMT. SHANTA SHASTRY)
MEMBER (A)

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CORAM: SHRI S.L. JAIN. ... MEMBER (J)
SMT. SHANTA SHASTRY . MEMBER (A)

Shri Narendra Telu Ghogalia,
resident of 27/A, Richmond
Niwas, S.K. Bole Road,
Near Agar Bazar,
Dadar, Mumbai-400 030.

.. Applicant

By Advocate Shri P.A. Prabhakaran.

Versus

1. Union of India through
The Joint Director,
Central Bureau of Investigation,
Tanna House, 11.A Nathalal Parekh Marg,
Mumbai-400 039.
2. Dy. Inspector General of Police,
CBI ACB Mumbai, Tanna House,
Nathalal Parekh Marg,
Mumbai-400 039.
3. The Superintendent of Police,
CBI ACB Mumbai, Tanna House,
N.A.P. Marg, Mumbai-400 039. .. Respondents

By Advocate Shri V.S. Masurkar.

O R D E R

Hon'ble Smt. Shanta Shastry. Member (A)

The applicant has approached this Tribunal against the impugned order of termination dated 28.5.1996. The applicant belongs to SC community and was appointed as a constable with effect from 05.9.1992 after being nominated by the Employment Exchange and after going through the normal selection process. He was appointed against regular vacancy.

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2. It is the case of the applicant that during the two years from 05.9.94 to 28.8.96 his performance had been appreciated by the superiors and he was rewarded about a score of cash awards and even merit certificates. In July 1996 he was deputed for training at Ghaziabad. During the second month of his training some incident took place whereby because of the action of one trainee, punishment was awarded to all the trainees as none owned responsibility for the misbehaviour. The applicant refused to undergo the punishment as later on the offender owned up the guilt and sought pardon and the same was granted. The applicant also gave in writing that he would not take the punishment.

3. Thereafter, he was given a letter to be delivered to Respondent No.3 and sent back to Mumbai. On the day he delivered the letter at Mumbai he was given one month's pay and the impugned order of termination. He submitted an appeal on 09.9.96. He submitted an identical appeal to DIG, CBI, ACB on the same day, but no reply was received. So he filed a petition on 24.11.97 for review/revision of the impugned order, the pending appeal deemed to have been rejected. The applicant not being hopeful of the review application being decided, approached this Tribunal.

4. According to the applicant, the termination has

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not been a simple termination with full application of mind and on the evaluation of the total performance of the applicant for a period of two years of probation. According to the applicant when the termination is essentially a punishment it has been quashed and cancelled by the highest judicial forum like in the case of Thankappan Vs. Sub-Divisional Officer, Telegraph, Trichur, 1979 KLT 362 (FB). Similarly when there is allegation or imputation of misconduct, termination cannot be resorted to without an enquiry. The applicant is relying on Nityanand Bishwanath Singh Vs. Executive Engineer (E) & anr. ATR 1987 (1) CAT 133 (Ahmedabad). However, the court can go behind the form of the order to ascertain its true nature. He also cites in support Anup Jaiswal Vs. Government of India & another AIR 184 SC 636. Even an order innocuous on the face of it may be shown to be punitive. Judgment in Purushottam Lal Dhingra Vs. Union of India AIR 1958 SC 36 is also relied upon.

5. The respondents submit that the applicant was appointed on 05.9.94 as a constable in CBI ACB Mumbai with effect from 30.8.94 on temporary basis until further orders. The applicant continued to be a temporary employee and hence the action under Rule 5 (2)(a) of the CCS (Temporary Servants) Rules 1965 was taken and accordingly, the applicant's services were terminated. The applicant completed less than two years

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of temporary service and he was not confirmed in the Government service. The respondents state that the statutory remedy of appeal is available to the applicant under the said rule and the appeal lies with the Head of Department of CBI at New Delhi. This has not been availed of by the applicant. It is further stated that the representation¹ made by the applicant are not addressed to the competent authority i.e. Head of Department and therefore, the same cannot be considered inasmuch as they are addressed to the lower authorities compared to the Head of Department. The question of absorbing him in Government service does not arise. The applicant was sent for a training course for a period of nine months from 01.7.96 in the Central Bureau of Investigation Academy, Ghaziabad. During the training period, the instructor (Out door) of the Academy had lodged a complaint on 20.8.96 enlisting a number of allegations regarding misconduct committed by the applicant. The CBI Academy conducted the preliminary inquiry and found the applicant lacking² in integrity, devotion to duty and having acted in a manner which was highly unbecoming on the part of a member of Special Police Establishment as a result of which the applicant was relieved from the CBI Academy on 23.8.96. It has been pointed out that right from the beginning the applicant was found to be negligent in duty inasmuch as he lost postal receipts of important letters despatched by him. This was admitted by him. The applicant had

also submitted his resignation on 26.7.95 as while performing the driving duty due to his negligence, the Government vehicle had met with an accident. The resignation though accepted, was withdrawn subsequently. He offered a bottle of rum to Shri Dhir Singh CHM on 18.7.96 for showing leniency to him in PT and parade. He submitted fake bills of expenditure. Therefore, keeping these facts in mind and the provisions of para 2 (iii) of Offer of Appointment given to him on 01.6.94 the services of the applicant were terminated forthwith. According to the respondents, the applicant was discharged without casting any stigma and therefore, Article 311 of the Constitution is not attracted.

6. The learned counsel for the applicant referred to some more authorities. According to him the termination during the period of probation was set aside by the Allahabad High Court as the order of termination was as a measure of punishment and admitted facts in State of UP & another Vs. Onkar Yadav & another (195) 29 ATC 516. The learned counsel for the applicant also pointed out that there has to be a special evaluation of the performance during probation and an assessment report has to be given. This has not been done in the present case. According to the applicant what has weighed with the respondents is the incident that took place during the training. The applicant has also relied on the case of Chandra Prakash Shahi Vs. State

of UP & Others 2000 SCC (L&S) 613. In this case, the petitioner, a constable recruited on 01.10.1985 was terminated on 19.7.1989 under the Temporary Service Rules. The termination was based on alleged misconduct, misbehaviour involving hurling blows and using filthy language to the superior officers. In this case, the termination was held as invalid. The High Court had reversed the order and the Apex Court analysed the fact and discussed 32 rulings on the issue and allowed the appeal and set aside the High Court's order. In view of the fact that since the applicant's services were terminated on account of the incidents that took place amounting to misconduct during the course of the training, the learned counsel for the applicant maintains that it is stigmatic order of termination and therefore not sustainable.

7. The learned counsel for the respondents in turn has relied on the judgment of the Supreme Court in the case of H.F. Sampath Vs. Registrar General of High Court of Karnataka AIR 2001 SC 1148 decided on 23.2.2001, in the case of Mahesh Vs. Government of Goa 2000 volume II SLJ Bombay. The respondents have also cited the judgment in the case of DIG of Karnool Range Vs. R.S. Madhu Babu 2002 (1) ATJ 358 in support of the contention that the respondents are within their right to terminate the services of the applicant for unsatisfactory performance during the training period without resorting to any enquiry.

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8. We have heard the parties and have given careful consideration to the submissions made. We have perused the relevant judgment and also have perused the records.

9. We find that when a written complaint was received against the applicant from Shri Jaiswal Singh, SI, Instructor an enquiry was conducted and the complainant was examined along with some other and their statements were recorded separately and the conclusion was drawn with all the three allegations levelled against the complainant have been amply established and it was held that the applicant lacks integrity, devotion to duty and acted in a manner highly unbecoming on the part of a central Government employee, especially a member of the Special Police Establishment. It was suggested to hold an enquiry for major penalty.

10. In the various authorities relied upon by the applicant, no doubt different rulings have been given consideration. In some case, an order of termination of a probationer's service on the ground that the enquiry held prior to the termination was preliminary, yet in others, courts have struck down as illegal, a similarly worded termination order because an inquiry had been held.

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11. Recently in a judgment pronounced on 05.12.2001 in the matter of Pavanendra Narayan Verma Vs. Sanjay Gandhi PGI Medical Services & another, the Supreme Court held that an enquiry held prior to order of termination turned the authorities innocuous order into one of punishment. It was observed that an employer is entitled to satisfy itself as to the competence of a probationer to be confirmed in service and for this purpose satisfy itself fairly as to the truth of any allegation that may have been made about the employee. A charge sheet merely details the allegations so that the employee may deal with them effectively. The enquiry report in this case found nothing more against the appellant than an inability to meet the requirements for the post. None of the three factors catalogued above for holding that the termination was in substance punitive exist here. In this judgment several judgments including some of the well know judgments relied upon by the applicant as well as by the respondents were discussed at length.

12. In the present case only a preliminary enquiry was held it was not considered necessary to hold a full fledged enquiry for major penalty. Therefore, in the light of the judgment in the case of P.N. Verma (supra) we hold the termination of the applicant valid being a simple termination. The wording of the termination

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order is also innocuous not casting any stigma. The OA therefore, fails and is dismissed accordingly however without any order as to costs.

Shanta

(SMT. SHANTA SHASTRY)
MEMBER (A)

S.L. Jain

(S.L. JAIN)
MEMBER (J)

Gajan

dt 30/4/2
patched
to applicant respondent (s)
on *14/6/2*
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