

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.893/2013

Reserved on : 05.02.2019

Pronounced on : 13.02.2019

**HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MS. ARADHANA JOHRI, MEMBER (A)**

R/Const. Yudhveer Singh,
Age 21 years
S/o Late Shri Shamsher
R/o H.No.47/14, Kirpal Nagar,
PS Civil Lines,
District Rohtak, Haryana.Applicant

(By Advocate: Shri Sachin Chauhan)

Versus

1. Govt. of NCTD through
The Commissioner of Police,
Police Headquarters,
I.P. Estate,
New Delhi.
2. The Deputy Commissioner of Police,
Vice Principal (HQ),
Police Training College,
Jharoda Kalan,
New Delhi.Respondents

(By Advocate: Shri G.D. Chawla for Ms. Harvinder Oberoi)

ORDER

By Shri V. Ajay Kumar, Member (J)

The applicant, a Recruit Constable of the respondent-Delhi Police, filed the OA questioning the legality and validity of the Annexure A-I order dated 01.03.2013 of the respondents whereunder his services were terminated under sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965.

2. It is submitted that the applicant was appointed as Recruit Constable on 10.10.2011 on compassionate grounds and sent for basic training at Police Training College for the post of Constable (Executive). While undergoing the said basic training, as the applicant absented from training on various occasions, an enquiry was conducted against him and vide Annexure A-2 order dated 25.02.2013, the respondents while taking a lenient view, awarded a written warning to the applicant. However, the respondents within 4 days from awarding the said written warning, terminated the services of the applicant vide the impugned Annexure A-1 order dated 01.03.2013.

3. Heard Shri Sachin Chauhan, the learned counsel for the applicant and Shri G.D. Chawla for Ms. Harvinder Oberoi, the learned counsel for the respondents and perused the pleadings on record.

4. Shri Sachin Chauhan, the learned counsel appearing for the applicant, in support of the OA averments, inter alia, contended as under:-

(i) For the alleged unauthorised absence from the training, the respondents have already awarded the punishment of written warning to the applicant vide Annexure A-2 order dated 25.02.2013. The impugned Annexure A-1 termination order dated 01.03.2013 passed within 4 days from awarding the punishment of

written warning, was also the punishment imposed by the respondents for the same misconduct of unauthorised absence during the training period. Hence, the termination amounts to double jeopardy and hence liable to be set aside;

(ii) Though the Annexure A-1 termination order dated 01.03.2013 was passed under sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, without mentioning any reason for exercising the said power, however, the events occurred prior to the passing of the said order and also the averments made by the respondents in their counter to the OA clearly establishes that the order was passed in lieu of punishment and hence unsustainable;

(iii) Though the impugned Annexure A-1 termination order dated 01.03.2013, has not given any reason, but in the circumstances, it is to be construed as stigmatic and hence liable to be set aside; and

(iv) The learned counsel also placed reliance on various decisions in support of his submissions.

5. Per contra, the learned counsel appearing for the respondents, in support of the counter averments submits as under:-

(i) The applicant is a habitual unauthorised absentee and during the basic training, he wilfully and unauthorisedly absented himself for long periods and on number of occasions and hence he is unsuitable to be continued in any public service more so, in a disciplined uniformed force, i.e., police; and

(ii) Awarding written warning for the proved unauthorised absence, cannot take away the right of the respondents from passing the impugned orders.

6. It is not in dispute that the applicant, who was appointed as Recruit Constable on 10.10.2011, on compassionate grounds, was sent for undergoing basic training for Constable (Executive), absented himself on number of occasions, unauthorisedly, and as a result, he failed to complete the training which is supposed to be completed in August, 2012 and accordingly, he was re-batched in October for the further training and even thereafter also, he absented unauthorisedly from training, which finally resulted in conducting an enquiry against him and awarding of written warning vide Annexure A-2 order dated 25.02.2013. Further, the respondents also terminated the applicant from service vide impugned Annexure A-1 order dated 01.03.2013 under sub-rule (1) of Rule 5 of the CCS(Temporary Service) Rules, 1965, forthwith by paying one month of pay and allowances in lieu of one month's notice. It is also not in dispute that the respondents passed the impugned order keeping in view the conduct of the applicant, i.e., his habitual unauthorised absence from the training.

7. In **Ratnesh Kumar Choudhary Vs. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and Others JT 2015 (9) 363**, where a probationer Chest Therapist was terminated from his

service, by stating that his appointment on the post of Chest Therapist was illegal in terms of investigation done by the Cabinet (Vigilance) Department and the explanation furnished by the appellant in pursuance of the show cause notice had been found unsatisfactory. The Hon'ble Apex Court while examining the contention of the appellant that his termination order was punitive and in violation of the principles of natural justice, after considering the various judgments of Hon'ble Supreme Court in ***Samsher Singh v. State of Punjab (1974) 2 SCC 831***, ***Radhey Shyam Gupta vs. U.P. State Agro Industries Corporation Ltd. and Another (1999) 2 SCC 21***, ***State of U.P. vs. Kaushal Kishore Shukla (1991) 1 SCC 691***, ***Triveni Shankar Saxena vs. State of U.P.(1992) Supp (1) SCC 524***, ***State of U.P. vs. Prem Lata Misra (1994) 4 SCC 189***, ***Samsher Singh (supra)***, ***Parshotam Lal Dhingra vs. Union of India AIR 1958 SC 36***, ***State of Bihar vs. Gopi Kishore Prasad AIR 1960 SC 689***, ***State of Orissa vs. Ram Narayan Das AIR 1961 SC 177***, ***Gujarat Steel Tubes Ltd. vs. Gujarat Steel Tubes Mazdoor Sabha (1980) 2 SCC 593***, ***Gujarat Steel Tubes Ltd. vs. Gujarat Steel Tubes Mazdoor Sabha (1980) 2 SCC 593***, ***Anoop Jaiswal vs. Govt. of India (1984) 2 SCC 369***, ***Nepal Singh vs. State of U.P. (1980) 3 SCC 288***, ***Commissioner, Food & Civil Supplies vs. Prakash Chandra Saxena (1994) 5 SCC 177***, ***Commissioner, Food & Civil Supplies vs. Prakash***

Chandra Saxena (1994) 5 SCC 177, Chandra Prakash Shahi vs. State of U.P. and Others (2000) 5 SCC 152, Union of India and Others vs. Mahaveer C. Singhvi (2010) 8 SCC 220, Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basic Sciences (1999) 3 SCC 60, Pavanendra Narayan Verma vs. Sanjay Gandhi P.G.I. of Medical Sciences and Another (2002) 1 SCC 520] and State Bank of India and Others vs. Palak Modi and Another (2013) 3 SCC 607, ruled that if the termination order is stigmatic and based or founded upon misconduct, would be a punitive order and court can lift the veil and declare that in the garb of termination simpliciter, the employer has punished an employee, for an act of misconduct. It was also held that if a probationer is discharged on the ground of misconduct or inefficiency or for similar reason, without a proper enquiry and without his getting a reasonable opportunity of showing cause against the termination, it may amount to removal from service within the meaning of Article 311 (2). Hence, a regular departmental enquiry was required to be conducted before passing any adverse order. In the absence of which, the termination order would be inoperative and non-est in the eyes of law. The relevant paragraph of the said judgment reads as under:-

“28. In the case at hand, it is clear as crystal that on the basis of a complaint made by a member of the Legislative Assembly, an enquiry was directed to be held. It has been innocuously stated that the complaint was relating to illegal selection on the ground that the appellant did not possess the requisite

qualification and was appointed to the post of Chest Therapist. The report that was submitted by the Cabinet (Vigilance) Department eloquently states about the conduct and character of the appellant. The stand taken in the counter affidavit indicates about the behaviour of the appellant. It is also noticeable that the authorities after issuing the notice to show cause and obtaining a reply from the delinquent employee did not supply the documents. Be that as it may, no regular enquiry was held and he was visited with the punishment of dismissal. It is well settled in law, if an ex parte enquiry is held behind the back of the delinquent employee and there are stigmatic remarks that would constitute foundation and not the motive. Therefore, when the enquiry commenced and thereafter without framing of charges or without holding an enquiry the delinquent employee was dismissed, definitely, there is clear violation of principles of natural justice. It cannot be equated with a situation of dropping of the disciplinary proceedings and passing an order of termination simpliciter. In that event it would have been motive and could not have travelled to the realm of the foundation. We may hasten to add that had the appellant would have been visited with minor punishment, the matter possibly would have been totally different. That is not the case. It is also not the case that he was terminated solely on the ground of earlier punishment. In fact, he continued in service thereafter. As the report would reflect that there are many an allegation subsequent to the imposition of punishment relating to his conduct, misbehaviour and disobedience. The Vigilance Department, in fact, had conducted an enquiry behind the back of the appellant. The stigma has been cast in view of the report received by the Central Vigilance Commission which was ex parte and when that was put to the delinquent employee, holding of a regular enquiry was imperative. It was not an enquiry only to find out that he did not possess the requisite qualification. Had that been so, the matter would have been altogether different. The allegations in the report of the Vigilance Department pertain to his misbehaviour, conduct and his dealing with the officers and the same also gets accentuated by the stand taken in the counter affidavit. Thus, by no stretch of imagination it can be accepted that it is termination simpliciter. The Division Bench has expressed the view that no departmental enquiry was required to be held as it was only an enquiry to find out the necessary qualification for the post of Chest Therapist. Had the factual score been so, the said analysis would have been treated as correct, but unfortunately the exposition of factual matrix is absolutely different. Under such circumstances, it is extremely difficult to concur with the view expressed by the Division Bench”.

8. In the present case, admittedly the respondents conducted an enquiry against the applicant, in respect of his alleged

unauthorised absence and awarded him a written warning for the said misconduct. Further, though the impugned termination order has not given any reasons, but the facts preceding the termination order and the averments of the respondents in the counter clearly establishes that the misconduct of the applicant indeed constitutes the foundation and not motive of the action taken, the same amount to be in violation of the principles of natural justice and hence liable to be set aside.

9. Further, as the respondents have already awarded the written warning to the applicant for his proved misconduct of unauthorised absence, they cannot impose another punishment for the same misconduct, i.e. termination from service.

10. In the circumstances and for the aforesaid reasons, the OA is allowed and the impugned Annexure A-1 termination order dated 01.03.2013 is quashed and the respondents are directed to send the applicant to the forthcoming batch for basic training for the post of Constable (Executive), afresh. However, in the circumstances, the applicant is not entitled for counting of his past service or any other benefits including seniority, arrears etc. No costs.

(ARADHANA JOHRI)
Member (A)

(V. AJAY KUMAR)
Member (J)

RKS