

(2) (15)
Central Administrative Tribunal, Principal Bench

Original Application No.1335 of 2003

New Delhi, this the 29th day of June, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. R.K. Upadhyaya, Member (A)

Arvind Kumar Meena,
S/o Shri Misri Lal,
R/o Zafar Nagar Begamabad,
P.O. Sardhana (Meerut) U.P.

....Applicant

(By Advocate: Shri S.K. Sinha)

Versus

1. Commissioner of Police,
Police Headquarters, New Delhi

2. Dy. Commissioner of Police,
Police Headquarters, New Delhi

....Respondents

(By Advocate: Shri Harvir Singh)

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Justice V.S. Aggarwal, Chairman

Applicant Arvind Kumar Meena joined the Delhi Police to the post of Head Constable on 2.8.2001. By virtue of the present application, he seeks to assail the order of 20.1.2003 terminating his services. The said order reads:

"Notice of termination of service issued under Rule-5(1) of the Central Civil Services (Temporary Service) Rules, 1965.

In pursuance of sub-rule(1) of Rule-5 of the Central Civil Services (Temporary Service) Rules, 1965, I, T.N. MOHAN, DEPUTY COMMISSIONER OF POLICE: HEADQUARTERS, DELHI hereby give notice to Shri Arvind Kumar, Head-Constable (Min.), No.125/PHQ that his services shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice is served on or, as the case may be, tendered to him."

2. To keep the record straight, we may refer to some

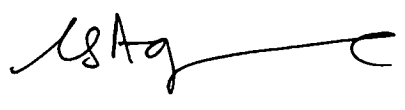
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of the other facts. The appointment letter dated 3.8.2001 had been issued to the applicant specifically mentioning that it is purely a temporary appointment. He will be governed by Central Civil Service (Temporary Services) Rules, 1965 and C.C.S. (Conduct) Rules. It was made clear that his appointment will liable to be terminated if the facts given by him were found to be incorrect. The conditions of appointment in this regard read:

"His appointment has been made under the Delhi Police Act, 1978 and the rules framed thereunder. He will also be governed by the Central Civil Services (Temporary Service) Rules, 1965 and CCS (Conduct) Rules, 1964.

1. He will be deemed to be on probation for a period of 2 years from the date of his appointment.
2. His appointment is purely temporary and liable for termination without assigning any reasons thereof.
3. His appointment will be liable for termination if the facts given by him are found incorrect in any material respect and will be further liable to refund the money spent on his training or given to him from the State Exchequer.
4. The order of appointment has been made on execution of an agreement bond with regard to the refund of salary, cost of uniform articles, capitation charges etc., in case he leaves the department without completing 5 years of service from the date of his appointment.
5. His joining duty earlier than others will not confer any benefit in the matter of seniority in the rank of Head Constable (Ministerial) and his inter-se-seniority as determined by the merit list will be maintained irrespective of his date of joining.
6. No increment will be given if he does not successfully complete the initial training.
7. His appointment is provisional subject to verification of his caste certificate in case of ST/OBC.

He should report for duty to the Deputy Commissioner of Police/HQ(C&T Br./PHQ), Delhi on



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3.8.01."

3. The applicant had been appointed in the category of Scheduled Tribes. He is 'Meena' by caste and, therefore, there was verification of facts pertaining to him. A report had been received that the certificate produced by him dated 20.11.98 is false/bogus. One month's notice terminating the services of the applicant was issued. He had represented for getting the facts re-verified. Again the matter was re-verified and it was again reported that no such caste certificate had been issued in favour of the applicant. His representation was rejected and the said order dated 16.4.2003 reads:

"The brief facts of the case are that Shri Arvind Kumar Meena s/o Shri Mishri Lal, r/o Village Begmabad, P.O. Sardhana, Distt. Meerut (U.P.) was appointed as temporary HC(Min.) in Delhi Police in the category of S.T. vide PHQ's Order No.7271-75/Rectt. Cell (PHQ) dated 2.8.2001 subject to the verification of S.T. caste certificate No.3241 dated 20.11.1988 produced by him and posted in the C & T, Branch/PHQ.

For ascertaining the authenticity of the caste certificate No.3241 dated 20.11.1988, Tehsildar, Tehsil Roopwas Distt., Bharatpur (Rajasthan), the issuing authority was requested vide this Hdqrs. letter No.8091/Rectt.Cell(PHQ) dated 3.9.2001 to verify the Schedule Tribe Caste certificate produced by HC (Min.) Arvind Kumar, Tehsildar Roopwas (Bharatpur) vide his report No.129 dated 23.9.2002 intimated that Shri Arvind Kumar S/O Shri Mishri Lal, Caste Meena R/O Village Bhawanpur, Tehsil - Roopwas is not the resident of Village Bhawanpur. On receipt of the report, Tehsildar Roopwas (Bharatpur) Rajasthan was again requested vide this Hdqr's letter No.36271/Rectt. Cell (PHQ) dated 9.10.2002 to intimate whether the S.T. Caste certificate No.3241 dated 20.11.1988 had been issued to Shri Arvind Kumar or otherwise. Tehsildar Roopwas (Bharatpur) vide his report No.161 dated 20.11.2002 intimated that S.T. Caste certificate No.3241 dated 20.11.1988 was not issued to him.

The verification report revealed that Scheduled Tribe Caste certificate No.3241 dated 20.11.1988

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produced by HC (Min.) Shri Arvind Kumar, No.125/PHQ is not genuine and he has secured appointment on the basis of false/bogus certificate.

The matter was examined in this Hdqrs., and it was decided to take necessary action by the disciplinary authority against H.C. Arvind Kumar No.125/PHQ as per instructions issued vide this Hdqrs., Circular No.3747-3900/SIP/PHQ dated 24.2.1998.

Accordingly one month notice of termination of service under rule 5(1) of the Central Civil Services (Temporary Services) Rules, 1965 was issued to him vide this Hdqrs. No.2626/CR-III(PHQ) dated 20.1.2003, mentioning that his services shall stand terminated w.e.f. the date of expiry of notice period one month from the date on which this notice is served upon him. He received the notice on 21.1.2003 and the period of notice expired on 19.2.2003.

On receipt of this notice, HC (Min.) Arvind Kumar Meena, No.125/PHQ submitted a request mentioning that he belongs to Meena Community which is recognised as Schedule Tribes and his ancestral village is Bhawan Pura Tehsil Roopwas, Distt. Bharat Pur, Rajasthan. The village is very vast and divided in Patties/Parts. He took the plea that the verification was done in another part of the village instead of his real part of the village Bhawan Pura Tehsil Roopwas, Distt. Bharat Pur, Rajasthan and that there is rivalry between the villagers and his anti villagers had given wrong information to the authority concerned who came for verification. He further requested that he belongs to Schedule Tribe Caste and his caste certificate may be re-verified from the authority concerned i.e. Tehsil Roopwas, Bharat Pur.

On 10.2.2003 he submitted a request/representation to DCP/Hdqrs., Delhi regarding the re-verification of authenticity of the Schedule Tribe Caste Certificate No.3241, dated 20.11.88 issued by Tehsildar Roopwas. The same was again got verified by deputing an Inspr. of Vigilance Branch/Delhi Police. DCP/Vigilance, Delhi vide its memo No.F.24(75)/Vig./03/6795/HA-AU, dated 20.2.2003 forwarded the report dated 17.2.2003 of Tehsildar Roopwas, Bharat Pur confirming that no such caste certificate was issued in favour of Arvind Kumar Meena s/o Shri Mishri Lal Meena and their earlier reports sent to Delhi Police are correct. Arvind Kumar is not residing in Village Bhawanpur Tehsil Roopwas, Rajasthan. It has also been confirmed that Arvind Kumar Meena is residing in Village Begmabad, Distt. Meerut, U.P. and his ancestors had migrated to U.P. from Rajasthan before 1857."

4. The applicant assails the same primarily on the

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grounds (a) that principles provided under Article 311 of the Constitution have been violated; (b) no show cause notice had been served before passing the impugned order; and (c) the order has been passed by way of penalty and consequently is liable to be set aside.

5. Needless to state that in the reply filed, the application has been contested.

6. Reverting to the first question if provisions of Article 311 of the Constitution had to be adhered to in cases where a person is stated to have obtained a false certificate. We need not delve further into this controversy because the question is answered by the decision of the Supreme Court in the case of R. Vishwanatha Pillai v. State of Kerala and others, 2004 (2) All India Services Law Journal 1. The two decisions of the Patna High Court were approved and the Supreme Court agreeing with the same had recorded:

"15. In Ishwar Dayal Sah v. State of Bihar, 1987 Lab.I.C. 390, the Division Bench of the Patna High Court examined the point as to whether a person who obtained the appointment on the basis of a false certificate was entitled to the protection of Article 311 of the Constitution. In the said case the employee had obtained appointment by producing a caste certificate that he belonged to a Scheduled Caste Community which later on was found to be false. His appointment was cancelled. It was contended by the employee that the cancellation of his appointment amounted to removal from service within the meaning of Article 311 of the Constitution and therefore void. It was contended that he could not be terminated from service without holding departmental inquiry as provided under the Rules. Dealing with the above contention, the High Court held that if the very appointment to the civil post is vitiated by fraud, forgery or crime or illegality, it would

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necessarily follow that no constitutional rights under Article 311 of the Constitution can possibly flow. It was held:

"If the very appointment to civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under Article 311 can possibly flow from such a tainted force. In such a situation, the question is whether the person concerned is at all a civil servant of the Union or the State and if he is not validly so, then the issue remains outside the purview of Article 311. If the very entry or the crossing of the threshold into the arena of the civil service of the State or the Union is put in issue and door is barred against him, the cloak of protection under Article 311 is not attracted."

16. The point was again examined by a Full Bench of the Patna High Court in Rita Mishra v. Director, Primary Education, Bihar, AIR 1988 Patna 26. The question posed before the Full Bench was whether a public servant was entitled to payment of salary to him for the work done despite the fact that his letter of appointment was forged, fraudulent or illegal. The Full Bench held:

"13. It is manifest from the above that the rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore, these rights including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and is non-est in the eye of law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise. In particular, if the very appointment is rested on forgery, no statutory right can flow it."

17. We agree with the view taken by the Patna High Court in the aforesaid cases."

7. Identical is the position herein and consequently the said argument simply has to be stated to be rejected.

8. As regards the question as to if a notice to show cause should have been served or not, we at the outset, do not dispute the proposition that the principles of audi

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alteram partem have made deep inroads into our jurisprudence. This principle of natural justice that a person should not be condemned unheard is to prevent miscarriage of justice.

9. It is well known that the rules of natural justice are not engrave of tablets of stone. The requirement of natural justice depends on the circumstances of the case, the nature of the matter and the rules under which he was being governed besides the contract. The basic principle remains the same and there is also a situation which Prof. Wade and Forsyth term as "dubious doctrine" that right to a fair hearing stand excluded where the court forms an opinion that a hearing would make no difference. In this regard, utter caution is needed before the last exception comes into play (Administrative Law page 543-544).

10. We have already reproduced above the conditions in the letter of appointment of the applicant. The appointment of the applicant was purely temporary. He was governed by CCS (Temporary Service) Rules, 1965 and it was made clear that if any of the facts given are found to be incorrect, his appointment could be terminated. With these conditions, he had been placed on probation. In such like matter where services are terminated under CCS (Temporary Service) Rules keeping in view that the certificate produced is incorrect, it would be inappropriate to press into service the principles of natural justice that notice to show cause must be given before-hand. It is not

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applicable in this situation. His position cannot be better than a person on probation.

11. In fact, the applicant admits that the certificate which he had used had been obtained by his parents. The report that was received indicated that the ancestors of the applicant had shifted from Rajasthan before 1857. The applicant had only replied that a fresh enquiry may be made in this regard. He never produced another certificate so as to indicate that the certificate which he produced on basis of which he got the certificate that he is a Scheduled Tribe was genuine and issued by the concerned authorities. In fact, the report was emphatic that the certificate was not issued to the applicant by the concerned officer at Roopwas, Bharatpur. In face of these facts, it is obvious that all the due facts have been looked into and the applicant even represented and totality of the circumstances in the present case, therefore, tells us that the said plea of the applicant in any event has no merit.

12. It is the last submission which was pressed vehemently. It was urged that the order so passed is by way of a penalty. The learned counsel relied upon the decision of the Supreme Court in the case of Radhey Shyam Gupta v. U.P. State Agro Industries Corporation Ltd. and anr., JT 1998 (8) SC 585. The Supreme Court scanned through the various precedents and concluded that in certain cases of temporary servants and probationers, it has taken the view that if ex-parte enquiry or report are the motives of termination order, then termination is not

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to be called punitive merely because the principles of natural justice have not been followed but where it is the foundation for termination of services of the temporary servants, it would be punitive. The Supreme Court had held:

"28. In other words, it will be a case of motive if the master, after gathering some prima facie facts, does not really wish to go into their truth but decides merely not to continue a dubious employee. The master does not want to decide or to direct a decision about the truth of the allegations. But if he conducts an inquiry only for purpose proving the misconduct and the employee is not heard, it is a case where the inquiry is the foundation and the termination will be bad."

Thereafter the Supreme Court proceeded and concluded further:

"35. But in cases where the termination is preceded by an inquiry and evidence is received and findings as to misconduct of a definite nature are arrived at behind the back of the Officer and where on the basis of such a report, the termination order is issued, such an order will be violative of principles of natural justice inasmuch as the purpose of the enquiry is to find out the truth of the allegations with a view to punish him and not merely to gather evidence for a future regular departmental inquiry. In such cases, the termination is to be treated as based or founded upon misconduct and will be punitive. These are obviously not cases where the employer feels that there is a mere cloud against the employees' conduct but are cases where the employer has virtually accepted the definitive and clear findings of the Inquiry Officer, which are all arrived at behind the back of the employee - even though such acceptance of findings is not recorded in the order of termination. That is why the misconduct is the foundation and not merely the motive, in such cases.

36. Coming now to the facts of the case before us, the inquiry officer, Sri R.P. Singh examined witnesses and in his report dated 22.1.76 has said: "I conclude that Sri R.P. Gupta took a sum of Rs.2000/- from Sri Jai Chandra Lal, thereafter referring to certain facts said they "go to prove the correctness of the complaint". Not only that, he concluded "I therefore suggest that services of Shri R.S. Gupta may be terminated and one month

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salary may be given to him in lieu of the notice". The very next day, the impugned simple order of termination followed."

It was on the facts of that case that the Supreme Court held that it was a foundation in this regard to terminate the services.

13. The cited decision has little application in the facts of the present case. It does not pertain to the act and conduct after the appointment. Here is a case where the applicant is alleged to have secured the appointment on basis of an incorrect/bogus certificate. Thus it cannot be stated in the peculiar facts that the order so passed is punitive in nature.

14. Reliance was further placed on another decision of the Supreme Court in the case of Chandra Prakash Shahi v. State of U.P. and others, JT 2000 (5) SC 181. In the cited case, the question for consideration was as to if the services of a probationer could be terminated without any disciplinary action. The petitioner was a Constable. His services were terminated on charge of involvement in quarrel. It is obvious from the facts that it has no application in the facts of the present case. The Supreme Court had held:

"28. The important principles which are deducible on the concept of "motive" and "foundation", concerning a probationer, are that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post in question. If for the determination of suitability of the probationer for the post in question or for his further retention in service or for confirmation, an enquiry is held

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and it is on the basis of that enquiry that a decision is taken to terminate his service, the order will not be punitive in nature. But, if there are allegations of misconduct and an enquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that enquiry, the order would be punitive in nature as the enquiry was held not for assessing the general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against that employee. In this situation, the order would be founded on misconduct and it will not be a mere matter of "motive".

15. In the present case before us, there is no such misconduct during the term of his appointment to prompt us to follow the ratio deci dendi of the abovesaid decision. It must be taken, therefore, to be distinguishable.

16. Reliance further was placed on the decision of the Supreme Court in the case of Shesh Narain Awasthy v. State of U.P. and others, 1988 (3) SLR 4. In that case also, the facts were totally different. The entry against the applicant was that he took part in the activities of unrecognised Police Karamchari Parishad and created disaffection in the Police. Here it is not so and, therefore, it is not the conduct during the service which is material which we have referred to above.

17. We may refer with advantage to another decision of the Supreme Court in the case of Anoop Jaiswal v. Government of India and another, AIR 1984 SC 636. A clear distinction was drawn that where there is an order of discharge, it is a camouflage for an order of dismissal. Here it is a matter before us where the applicant is alleged to have obtained appointment on basis of a bogus

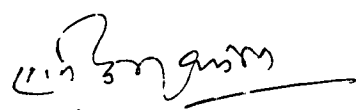
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certificate and, therefore, it is not a camouflage. It must thus be held that the impugned order is not punitive in nature.

18. No other argument had been raised.

19. For these reasons, the O.A. being without merit must fail and is dismissed.


(R.K. Upadhyaya)
Member (A)


(V.S. Aggarwal)
Chairman

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