

A

SH. JAI KISHAN

v.

COMMISSIONER OF POLICE AND ANR.

APRIL 10, 1995

B

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

*Central Civil Services Temporary (Service) Rules, 1966: Rule 5(e)(1)(11)(iii)*

C

*Constable—Temporary appointment—Probation—Successful probation and confirmation a condition precedent for continuance in service—Unsatisfactory performance during probation—Termination of probation and removal—Order held valid—Held there was no deemed confirmation after expiry of period of probation.*

D

The appellant was appointed as a temporary constable on September 9, 1982. Under Rule 5(e) of the Central Services Temporary (Service) Rules, 1966 he was required to be on probation for a period of two years which in no case was to extend beyond three years. On successful completion of probation he was to be confirmed in the service. Therefore, confirmation into the service was a condition precedent to continue as a member of Delhi Police Service. The appellant continued in service upto September 14, 1988 and on that date an order was passed under Rule 5(e) terminating his services. He unsuccessfully questioned the termination order before the Central Administrative Tribunal. Against the decision of the Tribunal, an appeal was preferred to this Court.

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F

The respondent's case was that appellant's retention in service was not considered desirable for the discipline of the police force because he was found to be a habitual absentee and incorrigible type of police employee and this could have set a bad example to other employees. In spite of giving repeated opportunities to improve, the appellant failed to improve his performance and consequently his services were terminated.

G

Dismissing the appeal, this Court

H

HELD: Successful completion of probation is a condition precedent for confirmation as envisaged in clause (iii) of Rule 5(e) of the Central

Civil Services Temporary (Service) Rules, 1966. The authorities have power to allow maximum period of 3 years of probation. In this case instead of giving him three years, they have given long period of 5 years so as to see whether the appellant would improve his performance in the service. Since they found that there was no satisfactory improvement, his probation was terminated and he was removed from service as a probationer. Under these circumstances, there is no illegality in the action taken by the respondents warranting interference. [271-B, C]

*State of Punjab v. Dharam Singh*, AIR (1968) SC 1210, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5210 of 1995.

From the Judgment and Order dated 15.12.93 of the Central Administrative Tribunal, New Delhi in O.A. No. 1969 of 1989.

Mukul Gupta for the Appellant.

V.C. Mahajan and S.N. Terdol for the Respondents.

The following Order of the Court was delivered :

Leave granted.

We have heard the counsel on both the sides. The appellant was appointed as a Temporary Constable on September 9, 1982. After his undergoing training, he was posted to 7th Bn. The Central Services Temporary (Service) Rules, 1966 (for short 'the Rules') and other Rules as notified vide Delhi Administration's Notification No. 10/5/79 Home (P) Establishment dated December 17, 1980 are applicable to the service conditions of the appellant. He continued upto September 14, 1988 on which date the respondents issued and served an order under Rule 5(e) of the Rules terminating his services with the expiry of a period of one month from that date. The appellant when questioned the same in the Central Administrative Tribunal in C.A. No. 1969/88, by order dated December 15, 1993 it had dismissed the petition and his review application also was dismissed. Thus, this appeal.

In the counter affidavit it was stated that from the perusal of his service record it was observed that the appellant had absented himself

A willfully in unauthorised manner on 65 occasions from time to time during his entire service of six years and he was not found fit for issue of quasi permanency by various officers and was awarded punishment of censure and period of absence without pay after regular departmental enquiry. That the appellant was found habitual absentee and incorrigible type police employee and this could have set bad example to other employees of uniformed force. The appellant had not shown any capacity or devotion to his duties nor he performed the same efficiently. Therefore, his retention in service for more period was considered not desirable for the discipline of the force.

C Rule 5(e) of the Rules reads as follows:

"(e)(i) All direct appointments of employees shall be made initially on purely temporary basis. All employees appointed to the Delhi Police shall be on probation for a period of two years.

D Provided that the competent authority may extend the period of probation but in no case shall the period of probation extend beyond three years in all.

(ii) The services of an employee appointed on probation are liable to be terminated without assigning any reason.

E (iii) After successful completion of period of probation, the employee shall be confirmed in the Delhi Police by the competent authority, subject to the availability of permanent post."

F A reading thereof clearly indicates that all direct recruits are required to be on probation for a period of two years and in no case the probation would extend beyond the period of three years. During the period of probation the probationer is required to complete successfully the probation complying with the conditions of passing the test etc. Thereafter, they need be confirmed in the Delhi Police service. The confirmation into the service, therefore, is a condition precedent, to continue as a member of Delhi Police Service. In spite of giving repeated opportunities to improve himself he failed to improve his performance. So he was given notice on 14.9.1988 terminating his service by the impugned order.

H It is contended by the learned counsel for the appellant, placing reliance on *State of Punjab v. Dharam Singh*, AIR (1968) SC 1210, that

even if the appellant was not confirmed by passing any order, on expiry of three years he must be deemed to have been confirmed as a member of the Service. Thereafter, the respondents had no jurisdiction to terminate his service. It is difficult to accept the contention. *Dharam Singh's* case bears no relevance, as similar provision was not there in the concerned rule. Successful completion of probation is a condition precedent for confirmation as envisaged in clause (iii) of Rule 5(e) of the Rules. The authorities have power to allow maximum period of 3 years of probation. In this case instead of giving him three years, they have given long 5 years period so as to see whether the appellant would improve his performance in the service. Since they found that there was no satisfactory improvement, his probation was terminated and was removed from service as a probationer. Under these circumstances, we do not find any illegality in the action taken by the respondents warranting interference.

The appeal is accordingly dismissed. No costs.

T.N.A.

Appeal dismissed.