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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgement delivered on: 13.05.2016

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W.P.(C) 5549/2015

UPENDER KUMAR

..... Petitioner

Through: Mr V.K. Tandon, Adv.

versus

THE COMMISSIONER OF POLICE, POLICE
HEADQUARTER & ANR.

..... Respondents

Through: Mr R.A. Iyer, Adv. for Mr Gautam
Narayan, ASC

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (ORAL)

1. This petition impugns the order dated 21.10.2014 passed in OA No. 378/2014 by the Central Administrative Tribunal, Principal Bench (Tribunal for short), which dismissed the petitioner's challenge to the termination order dated 01.03.2013. The petitioner was inducted into the Delhi Police as a Constable on compassionate ground after his father who was working as Head Constable in Police Force, expired on 13.03.2009. During his basic training course, within a short span of between 01.10.2012 to 01.03.2013, the petitioner absented himself on five different occasions without any intimation to the Police Training School. The days on which the petitioners was absent, are as follows:

S. No.	Date of absent	Period of absence	Action taken
1	06/07-11.12	11 hrs.	1 day's C.L. and 7 days extra drill
2	13.11.12 to 17.11.12	4 days	Dies non (Mother's treatment)
3	11.12.12 to 14.12.12	3 days and 8 hrs.	Dies non (Mother's treatment)
4	20.01.13 to 21.01.13	12.15 hrs.	1 day EOL and warned to be careful in future
5	17.02.13 to 18.02.13	16.30 hrs.	Not spent on duty

2. The Vice-Principal summoned all recruits who had absented themselves on two or more occasions for counselling. The petitioner assured the Vice-Principal that he would be careful in future and will pay full attention towards the training. Nevertheless, three days later, on 17/18.02.2013, the petitioner again absented himself from the training school for a period of 16 hrs. 30 minutes.

3. Taking into account the petitioner's regular absenteeism in a disciplined force, which would amount to serious misconduct and would raise doubts about his commitment and reliability of such personnel in times of need, the Delhi Police terminated his services under Sub Rule (1) of Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965 with immediate effect. However, before doing so, the respondent had issued a show cause notice on 16.01.2013 asking the petitioner for an explanation as to why his unauthorized and wilful absence from the training institute should not

be treated as period not spent on duty, keeping in view that such absence during training amounts to gross misconduct, negligence and carelessness on the part of the petitioner. The petitioner submitted a reply on 09.01.2013 in which he stated that his absence was due to the illness of his mother. However, the respondent did not find this explanation convincing because the petitioner had repeatedly absented himself without leave and his conduct was contrary to CCS (Leave) Rules, 1972 and Standing Order No. 16/2010. By the order dated 01.03.2013, the petitioner's services were terminated.

4. The learned Tribunal was of the view that the petitioner had on five different occasions, in a short span of five months during training had absented himself without authorization for about 9 days on the plea that his mother was ailing. The efforts in counselling the petitioner went futile.

5. The termination order does not contain any statement or assertion that would indicate that the termination order was stigmatic.

The learned Tribunal reasoned in paragraph 10 that:

“...10. As regards the judgement cited by the learned counsel for the applicant in the case of Dipti Prakash Banerjee (supra), the Hon'ble Supreme Court has held that whether an order of termination is not a simple order of termination, but attaches 'stigma' would depend on facts and circumstances of each case. Moreover, the Hon'ble Supreme Court also held that termination order is not punitive where employee has been given suitable warnings or has been advised to improve himself or where he has been given a long rope by way of extension of probation. It is true that the Hon'ble Court has also held that stigma may not be contained in the termination order itself but might be contained in any document or proceeding referred to in the termination order or in its annexure. Similar, is the position

explained by the Hon'ble Supreme Court in Mehbub Alam Laskar (supra), Mahavir C. Singhvi (supra) and Krushnakant B. Parmar (supra). Each case is different and the facts of the case would have to be seen in each case separately. In this case, the facts are that on 5 different occasions in a short period of five months of training, the applicant had absented himself in an unauthorized manner for about nine days. His plea of attending to his mother is also not convincing, as he never applied for leave or station leave, either before going on leave or after coming back from leave. The Department tried counselling him it was in vain. The termination order contains no statement or does not rely upon any document, which would indicate that the termination attached any 'stigma'...."

6. The court would note that the order of termination of service reads as under:

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ORDER

In pursuance of the provision of Sub Rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I P.K. Mishra, Dy. Commissioner of Police/ Vice Principal, Police Training College, Jharoda Kalan, New Delhi hereby terminate forthwith the services of Recruit Constable Upender Kumar, No. 300-12/PTC (PIS No. 28122092) and direct that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice of one month at the same rates at which he was drawing them immediately before the termination of his services:-

His particulars are as under:-

Father's name: Late Shjri Ashok Kumar
Address: VPO- Sankhol, Tensil- Bahadur Garh,
District- Jhajjar, Haryana

(P.K. Mishra)

DY. COMMISSIONER OF POLICE
VICE PRINCIPAL (HQ),
POLICE TRG. COLLEGE,

JHARODA KALAN, NEW DELHI.”

7. The aforesaid order does not mention any reason for the termination. It is a termination *simplicitor*. The reasons for the termination would be found in the show cause notice. The termination order cannot be said to be stigmatic as it does not state any reason or the background or circumstances leading to the decision. We see no reason to differ with the conclusion arrived at by the Tribunal. The petition is without merit and is, accordingly, dismissed.

NAJMI WAZIRI, J.

SANJIV KHANNA, J.

MAY 13, 2016

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