

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

O.A. No.137/1989

Date of decision: August 30, 1990.

Shri Raj Singh

....

Applicant.

Vs.

Union of India & Ors. ...

Respondents.

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Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. B.C. Mathur, Vice-Chairman (A).

For the applicant ...

Shri Mukul Talwar, counsel.

For the respondents ...

Shri M.M.Sudan, counsel.

(Judgment of the Bench delivered by Hon'ble
Mr. Justice Amitav Banerji, Chairman)

The point raised in this case is a short one.

Whether the termination of the service of the applicant,
a Constable in the Delhi Police could be ordered under
the provisions of sub-rule (1) of Rule 5 of the Central
Civil Services (Temporary Service) Rules, 1965 (for short,
'CCS(TS) Rules').

The applicant's case is that he was enlisted in
Delhi police, as Constable on 7.9.1982 against a substantive
vacancy. The appointment was made under the provision of
Delhi Police Act, 1976. He was served with a notice of
termination of service under Rule 5(1) of the CCS(TS)
Rules, 1965 by an order dated 8.3.1988 (Annexure A 1 to the
O.A.). The notice indicated to the applicant that his
services shall stand terminated with effect from the date
of expiry of a period of one month from the date on which

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this notice is served on him or, as the case may be, tendered to him. A further order was passed on 18.3.1988 (Annexure A-2 to the OA) and it reads as follows:

"Constable Raj Singh No.702/West was issued one month notice of termination of his services under rule 5(i) C.C.S. (Temporary Service) rules, 1965 vide this office No.2741-90/SIP(W) dated 8.3.1988. The notice was served upon him on 9.3.1988. Thus his service shall stand terminated w.e.f. 9.4.1988 (FN) after expiry of one month.

He is not in possession of Govt. accommodation.

Sd/- (S.S.GREWAL)
ADDL. DEPUTY COMMISSIONER
OF POLICE: WEST DIST: NEW DELHI.

No.3167-210/SIP(W) dated, New Delhi, the 18.3.1988."

The applicant made a representation to the Commissioner of Police, Delhi. But the same was rejected by an order dated 4.8.1988 (Annexure A-13 to the O.A.). The applicant has challenged his termination from service on three grounds; firstly, he had been appointed against a substantive vacancy and as such was not a temporary Government servant; secondly, he has successfully completed three years of probation and was liable to be confirmed in the Delhi Armed Police as per sub-clause (iii) of Rule 5(e) of the Delhi Police (Appointment and Recruitment) Rules, 1980; and, thirdly, it was not a case of termination simpliciter against him on the ground of his being absent without leave, when the notice of termination of his service was served on the applicant.

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Learned counsel for the applicant cited a Division Bench decision of the Tribunal in the case of UDAI SINGH RATHI Vs. DELHI ADMINISTRATION AND ANR. (OA 1249/1987) decided on 4.5.1989 by the Principal Bench. The SLP filed by the Delhi Administration before the Supreme Court had been dismissed in limine on 8.1.1990. Learned counsel cited that the applicant's case is identical to that of Shri RAJENDER SINGH Vs. UNION OF INDIA & ORS (OA 1721/88) decided by this Bench on 16.8.1990 and UDAI SINGH RATHI (supra).

We have also heard Shri M.M.Sudan, learned counsel for the respondents. He contended that the applicant was appointed on a temporary capacity and was never made permanent. There was no provision for automatic confirmation of a constable in the Delhi Police on the completion of the maximum period of probation, namely, three years. An order was necessary to confirm him. Confirmation depended upon two factors, viz., the successful completion of the probation period and availability of a post. If these were there, the applicant would continue to be temporary and would come under the purview of Rule 5 of the CCS(TS) Rules, 1965. He further stated that the applicant's termination was in accordance with law.

We find the facts in the present case are almost the same as in the case of RAJENDER SINGH (supra) and UDAI SINGH RATHI (supra). Consequently, the principles laid down in these cases would be applicable in the present case also.

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In the present case, the initial appointment of the applicant even though against a substantive post, the appointment would be temporary in nature. It would be in the nature of probation. The period of probation of the applicant had expired on 7.9.1985 and he had not been confirmed till 8.3.1988 when he was given the notice of termination under Rule 5 of the CCS(TS)Rules, 1965.

The simple question in the present case is what is the status of the applicant after completion of the period of probation and before his confirmation in the service. Since there is no provision for automatic confirmation, the status of the applicant would remain as that of a temporary employee. But it would not be liable to termination under the provision of Rule 5 of the CCS(TS)Rules, 1965. That termination can only take place so long he is on probation. That period having expired his services can only be terminated after complying with the provisions of CCS(CCA)Rules. We are, therefore, of the view that the impugned notice terminating the services of the applicant dated 8.3.1988 was bad in law and ineffective.

In the case of Udai Singh Rathi(Supra), the Division Bench took the view that although no plea of non-availability of permanent post had been taken by the respondents to deny confirmation on completion of a period of three years of probation, even if such a plea was taken, the applicants would, in any case, have been entitled to a declaration of quasi permanent status after completion of three years of

service. In either case, action could not be taken under the proviso of sub-rule(1) of Rule 5 of CCS (TS) Rules, 1965 for terminating the services of the applicants. We are in respectful agreement with the above view. As indicated earlier, the decision in the above case was sought to be challenged in the Supreme Court, but was repelled.

In the case of RAJENDER SINGH (SUPRA), we had taken the view as in the case of UDAY SINGH RATHI (SUPRA).

We are further of the view that action taken under Rule 5(1) of the C.C.S.(TS) Rules, 1965 for terminating the services of the applicant could not be taken.

In view of the above, the Application is allowed and the notice of termination dated 8.3.1988 and the termination order dated 18.3.1988 are hereby quashed. The applicant shall be reinstated in service with effect from the date of termination of service, within a period of two months, from the date of service of a copy of this order upon the respondents and he will also be entitled to all consequential monetary benefits.

There will be no order as to costs.



(B.C. MATHUR)
VICE CHAIRMAN (A)

30.8.1990.



(AMITAV BANERJI)
CHAIRMAN

30.8.1990.