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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1746/89. DATE OF DECISION: 26-11-1991.

Bhanwar Singh Applicant.

V/s.

Delhi Administration
and Others Respondents.

CORAM: Hon'ble Mr. Justice Amitav Banerji, Chairman.
 Hon'ble Mr. P.C. Jain, Member (A).

Shri Shyam Babu, counsel for the applicant.
Shri T.S. Kapoor, counsel for the respondents.

P.C. JAIN, MEMBER (A): JUDGMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who joined the Delhi Police on 1.8.86, has assailed order dated 7.6.89 (Annexure 'E') by which respondent No.3, viz., Deputy Commissioner of Police, 8th Battalion, D.A.P., Delhi, terminated his services under sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 and Memo dated 14.8.89 (Annexure 'G') by which his representation dated 12.6.89 against the order of termination of his services was rejected by the Commissioner of Police. He has prayed for quashing and setting aside the above two impugned orders and for his reinstatement in service with effect from 7.6.89 with all consequential benefits, including seniority, monetary and otherwise. Respondents have contested the application by filing a return, to which the applicant has filed a rejoinder. We have carefully perused the material on record and also heard the learned counsel for the parties.

2. The applicant has challenged the action of the respondents mainly on two grounds:

- (i) that the applicant should be deemed to have been confirmed on 1.8.88 after expiry of initial period of two years of probation under Rule 5(e) of the Delhi Police (Appointment & Recruitment) Rules,

1980 and that his probation was never extended; and
(ii) that the impugned order of termination of his services, though is an order simpliciter, yet it is based on alleged misconduct and, as such, punitive and thus violative of the provisions of Article 311(2) of the Constitution of India.

3. Rule 5(e) of the Delhi Police (Appointment & Recruitment) Rules, 1980 as substituted vide Notification No. F.5/15/82-H(P) Estt., dated 2-5-83, is reproduced below: -

"(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:

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.

(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. "

From a perusal of the above rule, it is apparent that the competent authority has the power to extend the probation period of two years subject to the condition that in no case, the total period of probation shall be more than three years. It is also clear that the services of the employee appointed on probation are liable to be terminated without assigning any reason. The applicant has specifically stated in para 4(vi) of his O.A. that the competent authority did not make any order in writing for extension of further one year of probationary period and, as such, the applicant is deemed to have been confirmed on 1-8-88 after expiry of initial period of two years of probation. In the counter-affidavit on this point

the respondents have stated that the contents of para 4(vi) are not admitted and that according to the provisions of Rule 5(1) of the C.C.S. (Temporary Service) Rules, 1965, he was supposed to be temporary for a period of three years and after completion of three years of his service record satisfactorily, his case was to be considered for quasi-permanency. Thus, the respondents, in the reply, have denied that the probation of the applicant was extended beyond two years. In fact, it was confirmed to us by the respondents in their communication dated 12.11.91 that his probation period was not extended from two years to three years, in which it is also stated that he was neither declared confirmed in the rank of Constable. In the absence of any order by the competent authority for extending the probation of the applicant beyond the initial period of probation of two years, the applicant will be deemed to have completed his probation on 31.7.1988. In that view of the matter, we are of the considered view that the services of the applicant could not have been terminated under sub-rule (i) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, irrespective of the fact that he may not have been declared by the competent authority as confirmed or he may not be deemed by us to have been confirmed on the expiry of the probation period of two years, particularly in view of the provision of sub-clause (ii) of Rule 5(e) of the Rules *ibid*, according to which, it is the services of an employee who is on probation which can be terminated without assigning any reason. Since the applicant was no more on probation from 1.8.88, his services could not have been terminated without assigning any reason. It is well settled that even a temporary Government servant has the protection of Articles 14 and 16 as well as Article 311 of the Constitution.

Admittedly, no disciplinary proceedings were held against the applicant before his services were terminated.

4. In view of our findings on the first point, we do not consider it necessary to go into the rival contentions of the parties on the point of the impugned order being punitive in substance.

5. In the light of the foregoing discussion, the impugned order dated 7.6.1989, by which the services of the applicant were terminated and the impugned order by which his representation against the above order was rejected, are hereby quashed and set aside. The respondents are directed to reinstate the applicant into service. The applicant shall also be entitled to arrears of pay and allowances for the period from 7.6.89 till his date of reinstatement. This direction shall be complied with by the respondents within six weeks of the receipt of a copy of this order. In the facts and circumstances of the case, we leave the parties to bear their own costs.

P.C. Jain
(P.C. JAIN)
MEMBER(A)

AS
(AMITAV BANERJI)
CHAIRMAN