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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.1795/89

DATE OF DECISION:10.9.1991.

SHRI SHIV RAJ SINGH

...APPLICANT

VERSUS

COMMISSIONER OF POLICE & OTHERS

...RESPONDENTS

CORAM:

THE HON'BLE JUSTICE MR. RAM PAL SINGH, VICE-CHAIRMAN (J)

THE HON'BLE MR. R. VENKATESAN, MEMBER (A)

FOR THE APPLICANT

SHRI B.S. CHARYA, COUNSEL

FOR THE RESPONDENTS

SHRI T.S. KAPOOR, COUNSEL

JUDGEMENT (ORAL)

(DELIVERED BY HON'BLE MR. JUSTICE RAM PAL SINGH,
VICE-CHAIRMAN (J))

By this O.A. filed U/s 19 of the Administrative Tribunals Act of 1985, ^{The applicant} challenges ~~the~~ ^{his} dismissal from service.

2. The applicant was appointed as a Constable on 1.6.86 and was posted in the 9th Battalion. Thereafter he was transferred to second Battalion, after undergoing training for ten months. Then he was transferred to East District on 29.11.88. The applicant was posted as a Constable in Police Station, Kalyan Puri, Delhi in February '89. Subsequently, by Impugned order (Annexure A-1) the services of the applicant were directed, by a Dy. Commissioner of Police, East District, Delhi on 9.5.89, to be terminated, ~~the services of the~~ ^{the} applicant under Rule 5 of the C.C.S. (Temporary Service) Rules, 1965. It was further directed that he shall be entitled to receive pay and allowances for the period of notice of one month. The applicant thereafter preferred an appeal before the appellate authority, the Commissioner of Police, Police Headquarter, New Delhi. The appeal of the

applicant was rejected by an order dated 28.7.1989 (Annexure A-2). The applicant is aggrieved by these two orders and prays for quashing the order of termination.

3. The respondents on notice appeared and filed their counter wherein they accepted the fact that the applicant was a temporary employee but supported the impugned order of dismissal and also the appellate order.

4. Learned counsel for the applicant contends that even a temporary employee is entitled to protection of the disciplinary enquiry and also of Articles 14 and 16 of the Constitution of India. He inter-alia contended that the applicant therefore, is entitled to the protection of the departmental enquiry, if a misconduct is alleged by the employers, which creates a stigma on character.

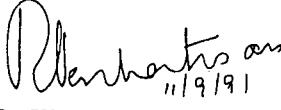
5. The respondents in their return clearly contended that the applicant was alleged to have accepted an illegal gratification of Rs.38,000/- in connivance with two other employees of the Police. Therefore, the applicant was dismissed from service for having committed the misconduct and his dismissal without any departmental enquiry definitely goes against the principles of natural justice. We place our reliance upon Nepal Singh (A.I.R. 1985 Supreme Court, page 84). This case also deals with the dismissal of a temporary employee who was posted as Sub-Inspector of Police. Their Lordship of the Apex Court observed that when a Government servant satisfies the Court *prima-facie* that an order terminating his services violates the article 14 and 16 of the Constitution, the competent authority must discharge the burden of showing that the power to terminate the services was exercised honestly and in good faith, on valid considerations, fairly and without discrimination. In Nepal Singh (supra) it has been held that if a temporary employee

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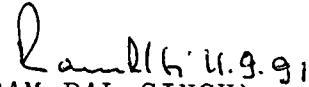
is alleged to have committed a misconduct during discharge of his duty then that temporary employee is entitled to the protection of Articles 14 and 16 of the Constitution and hence, any dismissal ~~or~~ order passed against the delinquent ^{without a departmental enquiry} shall be violative of principles of natural justice.

6. We, therefore allow this O.A. and quash the impugned order of dismissal (Annexure A-2) and also the appellate order passed by appellate authority and set aside the termination order. The applicant is entitled to be treated as continuing in service without interruption. However, it will be open to the respondents to take fresh departmental proceedings against the applicant in accordance with law.

7. The parties shall bear their own costs.


R. VENKATESAN
11/9/91

MEMBER(A)


RAM PAL SINGH
11/9/91

VICE-CHAIRMAN(J)