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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

DATE OF DECISION: 20th January, 92.

1. OA 215/89

JEEVAN KUMAR TAMANG

... APPLICANT.

VS.

UNION OF INDIA THROUGH
THE CHIEF SECRETARY,
DELHI ADMINISTRATION
& OTHERS

... RESPONDENTS.

2. OA 216/89

VISHNU BHADUR & OTHERS

... APPLICANTS.

VS.

UNION OF INDIA THROUGH
THE CHIEF SECRETARY,
DELHI ADMINISTRATION
& OTHERS

... RESPONDENTS.

For the applicants... Shri Brijendra Chahar,
Counsel.

For the respondents.. Ms.. Kumkum Jain, Counsel.

CORAM :

THE HON'BLE MR. P.K. KARTHA... VICE CHAIRMAN.

THE HON'BLE MR. D.K. CHAKRAVORTY... MEMBER(A).

1. Whether reporters of the local papers may be allowed to see the judgement ? *Yes*
2. To be referred to the reporters or not ? *Yes*

JUDGEMENT (ORAL)

(Judgement of the Bench delivered by Hon'ble
Mr.P.K. Kartha, Vice Chairman).

Common questions of law have been raised in these
two applications and it is proposed to deal with them in a

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common judgement.

2. The facts of the case in brief are :-

The applicants were appointed as temporary Cooks in P.T.S. Jharoda Kalan, New Delhi by order dated 17.9.87. It is stated in the said order that the appointment was temporary and that their services could be terminated under the CCS (Temporary Service) Rules, 1965, at any time. After they have served as Cooks for about one year and a half, their services were terminated by separate orders dated 19.1.89 in exercise of powers conferred under Rule 5(i) of the CCS (Temporary Service) Rules, 1965.

The impugned orders stated that the applicants would be paid a sum equivalent to the amount of one month's pay and allowances in lieu of the period of notice.

3. Applicants have challenged the impugned orders of termination on the ground that they are not orders of termination simplicitor but are punitive in nature. They have also alleged that already in DAP 1st to 10th Battalions stationed at Kingsway Camp, Model Town, Malviya Nagar and Pritam Pura, ^{Nepalese} ~~Cooks~~ have been employed.

4. The respondents have contended in their counter-affidavit that the appointment of the applicants was subject to pending verification of their character, antecedents and medical fitness. There was a stipulation that in the event of being declared medically unfit or their antecedents were adversely reported, their services could be terminated straightway. The respondents have stated that at the time of the verification of the character and antecedents of the applicants, nothing was found adverse against them.

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It was after their appointment that they showed their permanent addresses in the attestation forms as that of Nepal. They have relied upon the provision of Rule 6(2) of the Delhi Police (Appointment and Recruitment) Rules, 1980, according to which, no person who is not a citizen of India, is eligible for appointment in Delhi Police. A person of Nepalese origin who has migrated/come over to India before 1.1.62 with a view to permanently settle down in India, may be considered for Government Job in India provided the necessary eligibility certificate has been issued to him by the authorities concerned. It was revealed that the present applicants were born after 1.1.62 in Nepal and had come over to India during, or after 1.9.79. In view of these documents and for these reasons mentioned above, the services of the applicants were terminated by the Rule 5(1) of the CCS (Temporary Service) Rules, 1965.

5. We have heard the learned counsel for both the parties and have perused the records of the case carefully. We have no doubt in our minds that the impugned orders of termination are not orders simpliciter. The fact that the place of origin of the applicants is Nepal, ~~which according to the respondents~~ constituted very foundation of the impugned orders of termination. In such a case, it will not be legally permissible to invoke the provisions of Rule 5 of the CCS (Temporary Service) Rules, 1965, as it ^{amount} would ^{amount} to violation of the principles of natural justice.


6. Apart from the above, there is also another aspect of the matter. Applicants have specifically alleged in the application in para 4(xiii) that Cooks of Nepal^{ese} origin have

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been retained in the Delhi Police in DAP 1st to 10th Battalions stationed at Kingsway Camp, Model Town, Malviya Nagar and Pritam Pura. These statements made by them have not been controverted in the counter-affidavit, filed by the respondents. The appointment of some persons of Nepalese origin as Cooks in some places while terminating the services of the applicants at other places, would amount to discrimination and is not legally teneble.

7. In the ~~light~~ facts and circumstances of the case, we are of the opinion that the impugned orders of termination dated 19.1.89 are not legally sustainable. We, therefore, set aside and quash these impugned orders of termination and direct the respondents to re-instate the applicants as temporary Cooks in P.T.S. Jharoda Kalan, New Delhi, or in any other establishment under Delhi Police. In the facts and circumstances of the case, we do not direct payment of any back-wages to the applicants. The respondents shall comply with the above directions within a period of one month from the date of receipt of this order.

There will be no order as to costs.


(D.K. CHAKRAVERTY)
MEMBER (A)


(P.K. KARTHA)
VICE CHAIRMAN