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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

New Delhi

O.A.Nos.241 and 2228 of 1989

T.A. No.

Date of Decision 08.06.1995.

Ram Kumar Singh & Satya Prakash ..... Applicant

S/Shri Shanker Raju & A.S. Grewal ..... Advocate for the Applicant

Versus

U.O.I. & Others ..... Respondent

Mrs. Avnish Ahlawat and Shri Anoop Bagai ..... Advocate for the Respondent(s)

1. Whether Reporters of local papers may be allowed to see the judgement? No

2. To be referred to the Reporter or not? yes

3. Whether their Lordships wish to see the fair copy of the Judgement? yes

4. Whether it needs to be circulated to other Benches of the Tribunal? No

(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 241 of 1989

with

O.A. No. 2228 of 1989

New Delhi this the 8th day of June, 1995

Mrs. Lakshmi Swaminathan, Member (J)
Mr. K. Muthukumar, Member(A)

OA No. 241 of 1989

Shri Ram Kumar Singh
R/o Village Akhaipur,
Post Akhaipur,
District Aligarh (U.P). ..Applicant

By Advocate Shri Shanker Raju

Versus

1. Delhi Administration,
Delhi.

2. Commissioner of Police,
Police Head Quarters,
M.S.O. Building,
I.T.O.,
New Delhi. ..Respondents

Ms. Shaily Bhilotra, proxy counsel for Mrs. Avnish Ahalawat, Counsel for the respondents.

O.A. No. 2228 of 1989

Shri Satya Prakash
R/o Village & P.O. Tikri Kalan,
New Delhi. ...Applicant

By Advocate Shri A.S. Grewal

Versus

1. Lt. Governor of Delhi through
Chief Secretary,
Delhi Administration,
Delhi.

2. Commissioner of Police,
Delhi Police Headquarters,
M.S.O. Building,
I.P. Estate,
New Delhi.

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3. Principal,
P.T.S. Jharoda Kalan,
New Delhi. ..Respondents

Shri B.S. Oberoi, proxy counsel for Shri Anoop Bagai, Counsel for the respondents

ORDER

Mr. K. Muthukumar, Member (A)

The applicants in these two OAs were constables in the Delhi Police. They have filed this application assailing the order of termination of their service under Rule 5 of the CCS (Temporary Service) Rules, 1965. Since the facts are similar and the points of law involved are the same, these cases ~~were~~ Rowleen heard together and we propose to dispose of these two OAs by this common order.

2. The applicant in OA No.241 of 1989 was recruited as Constable and joined Delhi Police on 20.10.1982. He alleges that the respondents have illegally terminated his service under Rule 5 of the CCS (Temporary Service) Rules, 1965. It is stated that he was on casual leave for 8 days' from 3.11.1986 but could not resume duty and fell sick. He suffered a serious attack of 'servicophoracis spondallites' and was unable to report back for duty. He remained under the treatment in Government Hospital. Although he had telegraphically intimated the respondents about his illness and resumed duty on 10.05.87 on being declared medically fit, it is alleged that the respondents had arbitrarily terminated his services with effect from 4.8.1987 and his representation against such termination was also rejected by the higher authorities. The applicant contends that by virtue of his service of more than three years, he had acquired a quasipermanent status and was entitled to be declared as quasipermanent and,

therefore, his services could not be terminated under CCS (Temporary Service) Rules, 1965 without respondents following the normal procedure of taking action under the Discipline and Appeal Rules. In view of this, the applicant has prayed for quashing of the order of termination of his service.

3. The applicant in OA No.2228/ 1989 is stated to have been appointed in the Delhi Police on 11.02.1988 and after completion of 3 years service, his case for quasi-permanency was not considered at all and he was kept temporary by the Principal, Police Training School, Jharoda Kalan, New Delhi. The applicant alleges that the third respondent, namely, the Principal, PTS, Jharoda Kalan, New Delhi was particularly biased against him as the earlier action of the third respondent in removing him from service in 1983 when in the departmental enquiry, a penalty of withholding of increment was proposed and, therefore, the applicant's representation was accepted and he was reinstated, which had caused sufficient annoyance to the third respondent. The applicant also similarly challenges the order of his present termination of his service by the respondents by the order dated 9.10.1987 as an order which is punitive in character because the order of termination is merely camaflouged for a punitive order for his alleged misconduct. It is stated that the applicant's services were terminated because of the fact that he was reinstated earlier which annoyed the third respondent who had reopened his case for second time and terminated his services and his subsequent representation against such termination was also rejected by the Commissioner of Police without proper application of mind.

4. The respondents in the OA No.241 of 1989 have resisted the contention of the applicant. It has been averred in the reply that the applicant's claim for

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quasipermanaency was not considered and he was passed over due to his unsatisfactory record both in 1985 and also in 1987. He absented from duty from 15.11.1986 and for 184 days he remained on unauthorised absence. Again when he reported on 9.5.87, he was asked to report back to 6th Batallion, DAP but instead of reporting his arrival at the Batallion Headquarters, he again absented for 36 days without any further intimation. His services were terminated under the CCS (Temporary Service) Rules, 1965, due to his unsatisfactory record of service and the order of termination is only an order simpliciter and it does not suffer from any stigma and as such, the application has no merit. In the other OA also, the respondents have resisted the contention of the applicant and have stated that the applicant was passed over for quasipermanency as his work and conduct was not found to be satisfactory and thereafter, his services were terminated by an order simpliciter under Rule 5 of the CCS (Temporary Service) Rules, 1965 which was quite justified and the order was not punitive in character. The applicant was also given sufficient opportunity to improve his conduct and record of service.

5. The learned counsel for the applicant in OA No. 241 of 1989 argued at length by pointing out that the contable was appointed on probation for 2 years and should be deemed to have been made permanent. He also contended that the question of grant of quasipermanent status is not relevant in view of the fact that after completion of 3 years of probation, the applicant should be treated to have been deemed permanent under the provisions of Rule 5(e) of the Delhi Police (Appointment & Recruitment) Rules, 1980 and, therefore, once he is deemed permanent, his services cannot be terminated under Rule 5 of the CCS (Temporary Service) Rules, 1965. In support of his

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contention, the learned counsel has relied on several decisions, with which we shall deal in due course. The learned counsel for the appplicant in OA No. 2228/1989 also argued on similar lines.

6. We have heard the learned counsel for the parties and have perused the records. It is seen from the application that there is no plea of inapplicability of the CCS (Temporary Service) Rules, 1965 in the case of the applicants. Among the grounds taken in the applications against the order of termination, no ground is taken regarding inapplicability of CCS (Temporary Service) Rules, 1965. In fact, nowhere in the applications it has been mentioned that the applicants were appointed on probation under the Delhi Police (Appointment & Recruitment) Rules, 1980. If that was so, the applicants could have set up their case on the basis of this fact. It is stated in the application in OA No. 241 of 1989 that the applicant was recruited as a contable and he joined his duty on 20.10.1982. In the counterreply, the respondents have stated that the applicant was enlisted in Delhi Police on 20.10.1982. This has not been denied in the rejoinder nor has the plea been taken that the applicant was appointed under the Delhi Police (Appointment & Recruitment) Rules, 1980. Similarly in OA No. 2228/1989 it is averred that the applicant was appointed in the Delhi Police as constable on 11.02.1982. The respondents have stated in the counterreply that the contents of para 4 of the application were admitted to the extent that the applicant was appointed as a Constable in the Delhi Police on 11.02.1982 (AfterNoon). This has not been specifically contradicted or denied in the rejoinder also. Since the impugned orders in the OAs have been passed in pursuance of subrule(i) of Rule 5 of the CCS (Temporary Service) Rules, 1965, it was incumbent on the

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applicants to make the factual position in the application in regard to the terms and conditions of their appointment in the O.A., to show as to how the impugned orders were prima facie under the rules which were not applicable to them. During the course of the argument, the learned counsel for the applicant in OA No. 241 of 1989 admitted that the CCS (Temporary Service) Rules, 1965 were in fact applicable to the Delhi Police constables by virtue of the Notification dated 17.12.1980 issued under Section 5 of the Delhi Police Act, 1978 by which CCS (Temporary Service) Rules, 1965 were made applicable to all subordinates civilians and ClassIV employees of the Delhi Police in addition to the Rules and Regulations made under the aforesaid Act. We find that it is also made clear in the above Notification that in case of conflict between the provisions and the rules framed under the Delhi Police ACt and under the Central Government rules adopted in the above Notification, the provisions of the rules framed under the Delhi Police Act shall prevail. We find that the applicants have not made any amendment to the application in regard to their appointment on probation and, therefore, no inference can be drawn that the CCS (Temporary Service) Rules, 1965 are not applicable to them. In view of this, we have to proceed on the basis that the CCS (Temporary Service) Rules, 1965 are in fact applicable in the cases of the applicants. The plea taken by the learned counsel for the applicant in OA No. 241 of 1989 is entirely on the new ground which is not taken in the OA. His plea was that by virtue of the applicant having completed 3 years of probation, he should be deemed to have been confirmed under Rule 5(e) of the Delhi Police (Appointment & Recruitment) Rules, 1980. For this purpose, the learned counsel for the applicant stated at the Bar that he was not taking the plea of the

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entitlement of the applicant to the quasipermanent status. This, however, is not tenable as in the interim relief sought in the application, he has taken this plea that he had acquired the status of quasipermanency after completing 3 years of continuous service. Similar ground has been taken by the applicant in the other OA 2228 of 1989. The learned counsel for the applicant referred to the decision in **Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (CoEducation) Higher Secondar School and Others, 1993 SCC (L&S) page 1106** to substantiate the point that when the plea is sought to be raised before the High Court for the first time and it goes to the root of the question and is based on admission and uncontroverted facts and does not require further investigation on the question of facts, the High Court is fully justified in entertaining the plea. This is presumably relied upon by the learned counsel for the applicant in view of the fact that the question of deemed confirmation has been raised during the course of his arguments and not in the Original Application. We find that the decision relied upon is not really relevant in this case. The facts mentioned in the applications and uncontroverted by the replies of the respondents are different in that case from the facts raised for the first time in the arguments of the learned counsel at the Bar that the applicants were appointed on probation. Such a fact would certainly require investigation and proper averment by the respondents. We find that there is nothing on record to show that the applicants were appointed on probation. In view of the averments made in the application and the replies filed by the respondents, the conclusion that the applicants are governed by the CCS (Temporary Service) Rules, 1965 is inescapable. For this reason, the reliance of the learned

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counsel for the applicant on the following cases, namely,(i) ATR 1991 Volume 2 CAT page 247 Surinder Singh Gandhi Vs. Delhi Administration (ii) 1986 SCC(L&S) page 421 Om Prakash Maurya VS. U.P. Cooperative Sugar Factories Federation, Lucknow & Others (iii) AIR 1968 SC 1210 State of Punjab Vs. Dharam Singh, is not of much assistance as these cases related to cases of appointments on probation and dealt with the question of deemed confirmation on the completion of the maximum period of probation of 3 years and an inference of deemed confirmation was drawn thereon.

7.. The learned counsel for the applicant further contended that absence without leave would constitute a misconduct and termination of service on such ground without complying with the principles of natural justice would not be justified. He relies on the decision in **L. Robert D'Souza Vs. Executive Engineer, Southern Railway and Another, 1982 SCC (L&S) 124.** The facts in this case are that the services of a daily rated worker in the Railway Establishment was terminated under the relevant provisions of the Railway Establishment Manual. It was held that the expression 'termination of service for any reason whatsoever' in the definition or expression 'retrenchment' in Section 2(oo) of the Industrial Disputes Act, 1947 covers every kind of termination of service except those not expressly included in Section 25F or not expressly provided for by other provisions of the ACt such as Sections 25FF and 25FFF. Once the case does not fall in any of the excepted categories, the termination of service if it be according to automatic discharge from service under agreement would nonetheless be retrenchment within the meaning of expression in Section 2(oo), So that if the name of the workmen is struck off the rolls that itself would constitute retrenchment. Therefore, the

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termination of service for unauthorised absence from duty in this case would be 'retrenchment' within the meaning of Section 2(oo) and so the preconditions to a valid retrenchment set out in Section 25F must be satisfied. It was held that the Railway Manual rules has to be read subject to Section 25F of the Industrial Disputes Act where a casual labourer rendering continuous service for a period of one year or more is sought to be retrenched. We find that the facts and law governing this case are not parimateria with the facts, rules and orders governing the conditions of service of a temporary employee under civil appointments as in the case of the applicants in the present OAs.

8, We shall now proceed to examine whether the impugned orders of termination are orders simpliciter or they are punitive in nature. From the averment made in the counterreply of the respondents we find that the impugned orders were issued in this case after finding the applicants to be unsuitable for further retention in Delhi Police and on an overall review of their service record which was found to be unsatisfactory and, therefore, no direct nexus between the orders of termination and any particular misconduct, as alleged in the application is established. The law on the termination of service of a temporary Government servant is laid down in **State of U.P. Vs. Kaushal Kishore Shukla 1991(1) SCC 691** where their Lordships observed as follows:

> " The High Court held that the termination of respondent's services on the basis of adverse entry in the character roll was not in good faith and the punishment imposed on him was disproportinate. It is unfortunate that the High Court has not recorded any reasons for this conclusion. The respondents had earned an adverse entry and complaints were made against him with regard to the unauthorised audit of Boys Fund in an educational institution, in respect of which a

preliminary inquiry was held and thereupon, the competent authority was satisfied that the respondent was not suitable for the service. The adverse entry as well as the preliminary inquiry report with regard to the complaint of unauthorised audit constituted adequate material to enable the competent authority to form the requisite opinion regarding the respondent's suitability for service. Under the service jurisprudence a temporary employee has no right to hold the post and his services are liable to be terminated in accordance with the relevant service rules and the terms of contract of service. If on the perusal of the character roll entries or on the basis of the preliminary enquiry on the allegations made against an employee, the competent authority is satisfied that the employee is not suitable for the service whereupon the services of the temporary employee are terminated, no exception can be taken to such an order of termination.

7. A temporary government servant has no right to hold the post, his services are liable to be terminated by giving him one month's notice without assigning any reason either under the terms of the contract providing for such termination or under the relevant statutory rules regulating the terms and conditions of temporary government servants. A temporary government servant can, however, be dismissed from service by way of punishment. Whenever, the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary government servant. If it decides to take punitive action it may hold a formal inquiry by framing charges and giving opportunity to the government servant in accordance with the provisions of Article 311 of the Constitution. Since, a temporary government servant is also entitled to the protection of Article 311(2) in the same manner as a permanent government servant, very often, the question arises whether an order of termination is in accordance with the contract of service and relevant rules, regulating the temporary employment or it is by way of punishment. It is now well settled that the form of the order is not conclusive and it is open to the court to determine the true nature of the order. In Parshotam Lal Dhingra Vs. Union of India, a constitution Bench of this Court held that the mere use of expressions like 'terminate' or 'discharge' is not conclusive and in spite of of the use of such expressions, the court may determine the true nature of the order to ascertain whether the action taken against the government servant is punitive in nature. The court further held that in determining the true nature of the order the court should apply two tests namely: (1) whether the temporary government servant had a right to the post or the rank or (2)

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whether he has been visited with evil consequences; and if either of the tests is satisfied, it must be held that the order of termination of a temporary government servant is by way of punishment. It must be borne in mind that a temporary government servant has no right to hold the post and termination of such a government servvant does not visit him with any evil consequences. The evil consequences as held in Parshotam Lal Dhingra case do not include the termination of services of a temporary government servant in accordance with the terms and conditions of service. The view taken by the Constitution Bench in Dhingra case has been reiterated and affirmed by the Constitution Benches decisions of this Court in State of Orissa Vs. Ram Narayan Dass, R.C. Lacy V. State of Bihar, Champaklal Chimanla Shah V. Union of India, Jagdish Mitter V. Union of India, A.G. Benjamin V. Union of India, Shamsher Singh V. State of punjab. These decisions have been discussed and followed by a three Judge bench in State of Punjab V. Sukh Raj Bahadur".

9. In view of the law as declared above, we find that the argument that the order simpliciter passed by the respondents is stigmatic in character and punitive in nature, is not tenable. Their Lordships in K.K. Shukla (Supra) held that"allegations against the respondents contained in the counteraffidavit by way of a defence filed on behalf of the appellants also do not change the nature and character of the order of termination". In the case of the applicants, the orders of terminiation of service were orders simpliciter and were passed without attaching any stigma and, therefore, the impugned orders do not suffer from any infirmity nor can they be treated as arbitrary, illegal or capricious and there is no good ground for judicial intereference.

10. In the conspectus of the above discussions, we find that there is no merit in the applications. The OAs are, therefore, dismissed leaving the parties to bear their own costs.

11. Let a copy of this order be placed in both the case files.

(K. MUTHUKUMAR)
MEMBER (A)

(LAKSHMI SWAMINATHAN)
MEMBER (J)

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