

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 503/1989.
T.A. No.

199

DATE OF DECISION 24.11.1992.

KHAZAN SINGH

Petitioner

Shri G.D. Gupta,

Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS.

Respondent s.

Shri B.R. Prashar,

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. JUSTICE V.S. MALIMATH, CHAIRMAN.

The Hon'ble Mr. I.K. RASGOTRA, MEMBER (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓

V.S. Malimath
(V.S. MALIMATH)
CHAIRMAN
24.11.1992.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
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RESPONDENTS.

CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A).

For the petitioner ...

Shri G.D. Gupta, counsel.

For the respondents ...

Shri B.R. Prashar, counsel.

JUDGMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath, Chairman)

The petitioner, Shri Khazan Singh, was appointed as a Constable (Driver) in the police department of the Delhi Administration on a temporary basis and was governed by Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 (hereinafter referred to as 'the Rules'). The Deputy Commissioner of Police made an order on 10.3.1986 in exercise of the powers conferred on him under sub-rule (1) of Rule 5 of the Rules terminating the services of the petitioner tendering pay and allowances for a period of one month in lieu of notice. It is the said order that is challenged by the petitioner in this petition.

2. Shri G.D. Gupta, learned counsel for the petitioner submitted that though the impugned order is an innocuous one and does not cast any stigma, if we lift the veil, it would become clear that the petitioner

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was terminated on the ground that he had concealed information about his having been prosecuted for a criminal offence and not on the ground of unsuitability. Hence, it was contended that the respondent acted illegally in terminating the services of the petitioner without giving him an opportunity to show cause. This contention cannot be accepted as it is concluded by the latest judgment of the Supreme Court reported in Judgement Today, 1991 (1) S.C. 108 between State of Uttar Pradesh & Another Vs. Kaushal Kishore Shukla which has been followed by the Principal Bench of the Tribunal in O.A. 94/87 between Tej Ram Vs. Union of India & Others. But it was contended by Shri Gupta, firstly, that the judgment of the Supreme Court in Shukla's case is not applicable to the present case and, secondly, on the ground that ^{as} the said decision is in conflict with the earlier judgment of the Supreme Court in the case reported in AIR 1974 S.C. 2192 between Shamsher Singh Vs. State of Punjab and another, we should not follow the judgment in Shukla's case rendered by a bench of three judges. We shall, therefore, carefully examine these decisions.

3. K.K. Shukla's case dealt with the case of a temporary servant governed by the U.P. Temporary Government Servant (Termination of Services) Rules, 1975 which are in pari materia with the C.C.5. (Temporary Services) Rules, 1965.

Hence, ^{the} principles laid down in Shukla's case would govern similar cases arising under the C.C.S. (Temporary Service) Rules. In paragraphs 6 of the judgment, it is observed as follows:

"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 preliminary inquiry 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."

In paragraph 7, the Court has further held as under:

" A temporary Govt. 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

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temporary Govt. 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 (underlining is ours) 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 Govt. servant in accordance with the provisions of Art. 311 of the Constitution. Since, a temporary Govt. servant is also entitled to the protection of Article 311(2) in the same manner as a permanent Govt. 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 the use of such expressions, the Court may determine the true nature of the order to ascertain whether the action taken against the Govt. servant is punitive in nature. The Court further held that

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in determining the true nature of the order the Court should apply two tests, namely, (1) whether the temporary Govt. servant had a right to the post or the rank or (2) 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 Govt. servant is by way of punishment. It must be borne in mind that a temporary Govt. servant has no right to hold the post and termination of such a Government servant does not visit him with any evil consequences. The evil consequences as held in Parshotam Lal Dhingra's case do not include the termination of services of a temporary Govt. servant in accordance with the terms and conditions of service. The view taken by the Constitution Bench in Dhingra's case has been reiterated and affirmed by the Constitution Bench decisions of this Court in The State of Orissa and anr. V. Ram Narayan Das, R.C. Lacy Vs. The State of Bihar & Ors., Champaklal Chimanlal Shah Vs. The Union of India, Jagdish Mitter Vs. The Union of India, A.G. Benjamin Vs. Union of India, Shamsher Singh & Anr. Vs. State of Punjab. These decisions have been discussed and followed by a three judge Bench in State of Punjab and anr. Vs. Shri Sukh Raj Bahadur.

In paragraph B the Court has further said as follows:-

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"As already observed, the respondent being a temporary Govt. servant had no right to hold the post, and the competent authority terminated his services by an innocuous order of termination without casting any stigma on him. The termination order does not indict the respondent for any misconduct. The inquiry which was held against the respondent was preliminary in nature to ascertain the respondent's suitability and continuance in service. There was no element of punitive proceedings as no charges had been framed, no inquiry officer was appointed, no findings were recorded, instead a preliminary inquiry was held and on the report of the preliminary inquiry the competent authority terminated the respondent's services by an innocuous order in accordance with the terms and conditions of his service. Mere fact that prior to the issue of order of termination, an inquiry against the respondent in regard to the allegations of unauthorised audit of Boys Fund, was held does not change the nature of the order of termination into that of punishment as after the preliminary inquiry the competent authority took no steps to punish the respondent instead it exercised its power to terminate the respondent's services in accordance with the contract of service and the Rules".

The following observations in paragraph 11 of the judgement are very pertinent:-

"We have referred to the above decisions in
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position of law. It is erroneous to hold that where a preliminary enquiry into allegations against a temporary govt. servant is held or where a disciplinary enquiry is held but dropped or abandoned before the issue of order of termination, such order is necessarily punitive in nature."

That was a case in which the High Court had quashed the order of termination on the ground that the petitioner in that case was not given an opportunity of being heard. The Supreme Court reversed that decision on the following reasons:-

"In the instant case the respondent was a temporary Government servant and there was adverse report regarding his work which was reflected in the adverse remarks made for the year 1977-78. The competent authority held a preliminary inquiry in carrying out unauthorised audit of Boys Fund of an educational institution, on result of the preliminary enquiry no charges were framed against the respondent, no officer was appointed for holding the departmental inquiry instead the competent authority chose to terminate the respondent's services in exercise of its powers under the terms of contract as well as under the relevant rules applicable to a temporary Govt. servant. It never intended to dismiss the respondent from service. Holding of preliminary inquiry does not affect the nature of the termination order. The allegations made against the respondent contained in the counter affidavit by way of a defence filed on behalf of the appellants also do not change the nature and character of the order of termination. The High Court failed to consider the question in proper

perspective and it interfered with the order of termination in a casual manner."

4. What becomes clear on a careful reading of the judgment is that if the order of termination of a temporary government servant is made in accordance with the rules or conditions of service and does not cast any stigma, the question of giving reasonable opportunity or complying with the principles of natural justice before passing the order of termination does not arise. It has been clearly laid down that it is for the competent authority to decide on the facts and circumstances of the case as to whether it should exercise the power of termination in accordance with the rules governing termination of a temporary employee or to proceed to punish him for misconduct. If it opts to punish the temporary government employee for his misconduct, then it has to give a reasonable opportunity of showing cause. It is open to competent authority not to take punitive action but to proceed to terminate the services of the temporary government servant in accordance with the rules or conditions of service. In such an event, the question of giving an opportunity to show cause does not arise. If the order itself casts a stigma or gives a blameworthy conduct of the delinquent official as the reason for termination, reasonable opportunity has to be given of showing cause in the matter.

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5. It was contended by Shri Gupta that the judgment in Shukla's case rendered by a bench of three judges is inconsistent with the decision of the constitution bench in Shamsher Singh's case and that, therefore, we should not follow the decision in Shukla's case. Our attention was drawn to paragraphs 63 to 66, 79 and 80 in the judgment of Shamsher Singh's case. The judgment of the Supreme Court in Shukla's case makes it quite clear that it was rendered after reviewing the earlier decisions of the Supreme Court including the judgment of the Constitution Bench in Samsher Singh's case. We do not find any inconsistency either. When the Supreme Court after reviewing the earlier decisions explains as to what those decisions have laid down the interpretation of the earlier judgment is binding on us. The judgment in Shukla's case clearly explained as to what has been laid down in the earlier decisions. That being the position, it would not be open to us to examine and say that the view taken by the Supreme Court in this behalf in Shukla's case is inconsistent with the law laid down by the Constitution Bench in Samsher Singh's case. We are bound under Art. 141 of the Constitution to follow the law as explained in Shukla's case.

6. It was also urged that a different view has been expressed by the Supreme Court in two subsequent decisions reported in JT 1991 (3) S.C. 6 between SHRI OM PRAKASH GOEL Vs. THE HIMACHAL PRADESH TOURISM DEVELOPMENT CORPORATION LTD. SIMILA & ANR. and the decision in

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1991 (1) SLR 756 between BABU LAL Vs. THE STATE OF HARYANA & ORS. Both these decisions are by Division Bench of two Members and cannot be preferred to the decision in Shukla's case rendered by the bench of three judges. We do not also find any inconsistency.

7. It was next submitted by the learned counsel for the petitioner that this is not a case of termination for mis-conduct, the conduct which has been taken into account for terminating the services being one anterior to the appointment of the petitioner. As the petitioner is deprived of his right to continue in service as a temporary government employee, it was urged with considerable emphasis that the principle of audi alteram partem are attracted. Though the impuged order ^{does not} state the reason for termination, if we lift the veil, it becomes clear that the true reason for termination is that he concealed the information about his involvement in a criminal case even though he had a duty to furnish this information in the application and attestation form. The petitioner has stated so and it is not denied in the counter affidavit. On the contrary, this has been stated as the reason for coming to the conclusion that the petitioner does not deserve to continue in service. The question for consideration is whether ^{the} principles of natural justice were in these circumstances required to be followed. In Shamsher Singh's case it has been laid down that opportunity to show cause need not be given before terminating the services of a temporary government servant when action is taken as per rules, if no stigma is attached and termination is not

by way of punishment. Admittedly, no stigma is attached. The petitioner's counsel has taken the stand that the termination is not for misconduct. Termination of service of a temporary Government servant on the ground of unsuitability as held in Shamsheer Singh's case does not call for an opportunity to show cause. As the petitioner had concealed information about his involvement in the criminal case which came to the notice of the competent authority after the appointment of the petitioner, it is stated in the reply that the petitioner was found to be ineligible for the post. The inference drawn is that the petitioner who had concealed material information before appointment is unsuitable for continuance in service. It is, therefore, clear that this is not a case of punitive action for misconduct. As termination of the temporary government servant was on the ground of unsuitability for continuing in service, principles of natural justice are not attracted.

8. Shri Gupta, however, maintained that the Tribunal has taken a contrary view in this behalf. In support of this contention, he relied upon the decision reported in ATC 1990 (Vol.13) 17 between UNION OF INDIA vs. ZABARSING BHAVANSINH ZALA. That was also a case of termination of service for furnishing false information in the attestation form and concealing the facts in regard to his involvement in the criminal case.

On coming to know about the concealment, his services were terminated without giving him an opportunity of making representation in this behalf. This Tribunal held that the Principles of Natural Justice were required to be followed before terminating the services of the government servant. Though it is stated that the petitioner had worked for about five years in that case, there is nothing to indicate that he was a temporary government servant. The next decision relied upon by Shri Gupta is one reported in ATC 1991 (Vol.15) 273 between HIRALAL LALNATH KOCHER Vs. DIRECTOR GENERAL, ORDNANCE SERVICE, ARMY HEADQUARTERS. That was a case of termination of the services of a probationer on the ground that he made a false declaration or suppressed material facts during recruitment. It was held in that case that principles of natural justice were required to be followed before terminating the services of the probationer. It is, however, necessary to note that in that case the order of termination did cast stigma as it expressly stated that it is on account of furnishing false information during recruitment that the services were being terminated. Hence, this judgment does not assist the petitioner.

9. The next case relied upon by the learned counsel for the petitioner is ATC 1989 (Vol.9) 699 between R. MANOHARAN Vs. SENIOR SUPERINTENDENT OF POST OFFICES, TIRUCHIRAPALLI AND ANOTHER. That was a case in which the

services were terminated on the ground that the Government servant had secured appointment by producing a false Scheduled Tribe certificate. It was held that termination without complying with the principles of natural justice is illegal. It is necessary to point out that there is nothing to indicate from the said judgment that it was a case of termination of a temporary government servant.

10. The next decision relied upon is one reported in A.T.R. 1990 (1) C.A.T. 343 between N.V. PRASNNAN Vs. UNION OF INDIA & ORS. That was a case of termination of an Apprentice Mechanic on the ground that he had withheld in the Attestation Form the fact of pendency of a criminal case against him. The Tribunal after considering the facts and circumstances of the case felt that the petitioner in that case should be given a chance by reinstating him as an apprentice mechanic reserving liberty to take action against the petitioner for any misconduct in accordance with law, if so advised. That decision was rendered having regard to the special facts and circumstances of the case. It cannot be regarded as laying down any principles of law. Another judgment relied upon by Shri Gupta is the one rendered by the Principal Bench of the Tribunal in O.A. No.223/90. That is also similar to the decision reported in A.T.R. 1990 (1) C.A.T. 343. Paragraph 6 of the judgment in O.A. No.223/90 makes it clear that having regard to the facts and circumstances of the case that the Tribunal felt that the applicant in that case should be given chance to prove his worth by

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reinstating him as Constable. The principle to be deduced, according to Shri Gupta, from these cases is that the principles of natural justice should be complied with when the right to continue in service of a temporary government servant is being deprived of. Firstly, we are not satisfied that any such principle has been laid down. Secondly, such a view would be clearly against the law laid down in Shukla's case and cannot be followed.

11. Even though there was no obligation to comply with the principles of natural justice in this case, we find that there was substantial compliance with the same in this case for the reasons to be discussed presently.

12. We have already noticed that the petitioner was a temporary government servant and his services were terminated in accordance with Rule 5 of the Rules. It is also clear that the true reason for termination of the services of the petitioner is that before his appointment, he had concealed the fact of his involvement in a criminal case even though he was under a duty to

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disclose the same in the application form and the attestation form before his appointment. He did so even though there was a warning or caution issued to the effect that failure to disclose information or to suppress true information would render the petitioner ineligible for service in the Delhi Police. It is also clear that in fact the petitioner had been acquitted by the Magistrate. What was taken into account is his conduct in concealing information about prosecution which rendered him unsuitable for further continuance in service. Hence his acquittal was not relevant.

In paragraph (iii) of the petition, the petitioner has himself stated that on 10.3.1986, he was directed to appear before the Deputy Commissioner of Police Lines. He has further stated that in pursuance of the order, he appeared before the Deputy Commissioner of Police Lines and he was told that he has concealed the facts of his involvement in a criminal case under the Arms Act. To this question put by the Deputy Commissioner

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of Police he informed him that he had been acquitted by the Hon'ble Court in that case much prior to his selection and the fact of the acquittal in the criminal case was told by him to the Head Constable whom he had requested to fill up the attestation form and there was, therefore, no concealment on his part. It is further stated that the Deputy Commissioner of Police told him that his services were terminated and delivered the impugned order of termination. This would indicate that before the impugned order came to be passed, an opportunity was given to the petitioner to explain as to why he had concealed the relevant information in regard to his involvement in the criminal case. It is also clear that the explanation in this behalf was also furnished by him to the Deputy Commissioner of Police.

13. Then Shri Gupta argued that this can hardly be treated as a reasonable or satisfactory ^{opportunity} opportunity. He submitted that the sequence in which the averments have been made by the petitioner would justify the inference that the opportunity was only a formality and the authority had already kept the order ready and handed over to the petitioner. It is necessary to point out that there is no such specific averment in the petition that the order was kept ready before he was asked as to why he had concealed the information.



The petitioner has himself stated in his representation to the Commissioner of Police, a copy of which he has himself annexed with the petition, in paragraphs 3 and 4 as follows:

"3. That on 10.3.1986 the petitioner ordered to appear before the Deputy Commissioner of Police Lines, and when the petitioner appeared before him, he enquired as to why the petitioner had told a lie at the time of joining the service by not disclosing that the petitioner had earlier been arrested in an Arms Act case of P.S. Kalkaji. The petitioner respectfully stated that when the attestation form was given to him, the same was filled in by a Head Constable of the office and on his enquiry regarding column No. 11, the petitioner had told him that the petitioner was involved in an Arms Act case of P.S. Kalkaji in which case he has already been acquitted honourably on 12.9.83 by Shri V.K. Shali, M.M. New Delhi. The petitioner does not know as to why the Head Constable did not mention it in the said column and there was no concealment of facts on his part."

"4. That worthy D.C.P. Lines after hearing the petitioner immediately ordered the termination of his services under sub rule 1 of the Rule of

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the Central Civil Services (Temporary Service) Rules, 1965. A copy of the order of termination is enclosed herewith".

It is clear from the statement made by the petitioner long before the present application was filed before the Tribunal that he had disclosed to the Commissioner as to what happened before the Deputy Commissioner of Police Lines who had enquired as to why he had told a lie at the time of joining the service by concealing information about his involvement in a criminal case. The petitioner explained to the Deputy Commissioner of Police Lines that he had disclosed the fact of his involvement in a criminal case to the Head Constable whom he had requested to fill up the attestation form and it is he who did not insert such an information. What is important to notice is the statement of the petitioner that the Deputy Commissioner after hearing the petitioner immediately ordered the termination of his services. These facts make it clear that the petitioner was given an opportunity of explaining as to why he had concealed the relevant information in regard to his

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involvement in a criminal case. The petitioner had availed the opportunity and whatever explanation he wished to offer he did offer. The Deputy Commissioner of Police Lines after taking into account his explanation the impugned order of termination came to be passed.


It is necessary to note that he did not state that he was not given an opportunity. That would have been the foremost ground if there was truth in the case. Hence, it is clear that he was given an opportunity.

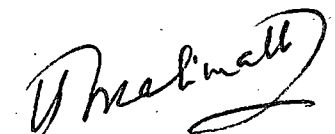
It is, however, to be examined if this was a reasonable opportunity or not. There is no hard and fixed rule in this behalf. The extent and nature of opportunity depends on the facts and circumstances of each case. The facts in this case are admitted, namely that the petitioner had concealed the relevant information which he was required to furnish about his involvement in a criminal case in the application form and the attestation form. The petitioner knew that the true information has not been given. What he has stated before the Deputy Commissioner of Police is that he gave the true information to the Head Constable and it is he who had failed to correctly fill up the form.

There is no other explanation even now. The petitioner

is admittedly a matriculate. He knew what was written in the application which he had signed. Having regard to the facts and circumstances of the case, it is not possible to take the view that the opportunity afforded to the petitioner was not reasonable. We are satisfied that reasonable opportunity was given.

14. For the reasons stated above this petition fails and is accordingly dismissed. No costs.


(I. K. RASGOTRA)
MEMBER (A)



(V. S. MALIMATH)
CHAIRMAN

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