

12

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI.

O.A.No.1311/88.

Date of decision: 11.10.1993

Joginder Singh

..Petitioner.

Versus

Delhi Administration,  
through  
Commissioner of Police, Delhi,  
New Delhi.

..Respondent.

CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.  
THE HON'BLE MR. S.R. ADIGE, MEMBER(A).

For the petitioner

Shri Ashok Aggarwal,  
Counsel.

For the respondent

Shri B.N. Gobardhan,  
Counsel.

JUDGEMENT (ORAL)

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

The petitioner, Shri Joginder Singh, was a Constable who was appointed temporarily and governed by the Civil Services (Temporary Service) Rules, 1965 (hereinafter referred to as 'the Rules'). His services came to be terminated by the impugned order, Annexure A, passed in exercise of the powers conferred by sub-rule (1) of Rule 5 of the Rules. It is the said order that is challenged in this case.

2. As admittedly the petitioner was appointed only on temporary basis and governed by the rules, the law laid down by the Supreme Court in JT 1991(1) SC 108 between State of Uttar Pradesh & Anr. Vs. Kaushal

Kishore Shukla fully governs this case. It has been laid down in the said case that a temporary employee has no right on the post and that, therefore, his services are liable to be terminated in accordance with the relevant service rules and terms of contract of service. It has been held that when termination of the government servant is made in accordance with the service rules, the same is not liable to be assailed. That termination of the petitioner is in accordance with Rule 5 of the Rules is clearly evident from the impugned order, Annexure 'A'. It clearly adverts to Rule 5 and to termination of the petitioner by tendering the pay and allowances in view of one month notice contemplated by the rules. No reasons for termination have been stated and there is nothing to indicate that any stigma is attached to the petitioner by the order of termination. It is an order of termination pure and simpliciter without in any manner finding fault with the petitioner. The Supreme Court has pointed out that so far as the temporary government servants are concerned, the concerned authority is entitled to exercise its right under the rules either to terminate the services of the government servant in accordance with the said rules or to take punitive action by following the procedure prescribed for taking such punitive action in due compliance with the principles of natural justice. It is further

held that the competent authority can exercise its powers either to terminate the services of the government servant in accordance with the statutory rules or to hold a disciplinary inquiry and deal with the same accordingly. In this case, the competent authority has chosen to exercise its powers under the rules of terminating the petitioner's services. It cannot, therefore, be faulted.

3. In the reply affidavit filed by the respondents, they have asserted that the services of the petitioner were terminated on the ground of general unsuitability for further retention of the petitioner in police service. In other words, they have stated that termination was not by way of punitive action but was on the ground that he was unsuitable for further retention in police service. It is not as though that they have drawn such inference without applying their mind or in <sup>an</sup> arbitrary manner. They have furnished information in the reply affidavit about the unauthorised and wilful absence on 23 occasions for which he was warned or otherwise dealt with. They have also pointed out that he was also found unsuitable for quasi permanent post. They have also spoken about the fact that when the petitioner was arrested in a criminal case, he concealed that information and did not bring it to the notice of the authorities about his arrest and involvement in a criminal case, as required under the

rules. It is impossible to draw the inference in this background that the respondents were not justified in drawing the inference that the petitioner was unsuitable for further retention in service. We have, therefore, no hesitation in holding that the termination of the services of the petitioner was justified.

4. It is, however, contended by the learned counsel for the petitioner relying upon the judgement of the Supreme Court in 1991(2) SCC 335 between Babu Lal Vs. State of Haryana and Ors, that termination of the petitioner was really by way of penalty which can be seen after lifting the veil. We have already discussed the facts and found that termination was on the ground of general unsuitability. On lifting the veil we are satisfied that the services of the petitioner were not terminated by way of punishment. The question of reinstating the petitioner after he stood acquitted in the criminal case does not arise.

5. Another contention of the learned counsel for the petitioner is that the petitioner has been deprived of his livelihood which could not have been done without following the procedure for such action which is just if fair and reasonable. It is further submitted that/ Rule 5 of the Rules authorises the competent authority to terminate the services of the temporary government servant without complying with the principles of natural justice, it violates Articles 14 and 16 of the Constitution.

Reliance was placed for this contention on the judgement of the Supreme Court reported in JT 1993(3) SC 617 between D.K. Yadav Vs. M/s J.M.A. Industries Ltd.. That was a case in which the challenge was to Standing Order, Cl.13(2)(iv) which provided for automatic loss of lien on the post in the case of expiry of eight days' absence from duty. The Supreme Court held that the procedure prescribed for depriving the means of livelihood must answer the requirement of Article 14. It was held that automatic termination for absence from duty for eight days is not just, fair and reasonable and that, therefore, the said provision offends Articles 14 and 16 of the Constitution. Firstly, it is necessary to point out that the principle laid down in the said case was not in respect of termination of the temporary government employee. We have already pointed out relying upon the judgement in Kaushal Kishore Shukla's case (supra) that a temporary government servant has no right to hold the post. Hence, the question of depriving the right of the post does not arise in this case. Besides, as the Supreme Court has held that termination of a temporary government servant without complying with the principles of natural justice is valid if it is made in accordance with the rules or conditions of service governing such temporary appointment, it is reasonable to infer that the Supreme Court must be understood as holding that such action does not offend Articles 14 and 16 of the Constitution. Even otherwise we are not inclined to take

the view that provisions of Rule 5 of the Rules can be regarded as violative of Articles 14 and 16 of the Constitution on the ground that they are not just, fair and reasonable. As a temporary government servant is employed on a purely temporary basis and subject to the statutory provisions which empower the competent authority to terminate his services, he not having acquired a right to hold the post, the procedure prescribed for terminating the services of such a temporary employee under Rule 5 of the Rules must, in our opinion, be regarded as just, fair and reasonable. We have, therefore, no hesitation in holding that it is not possible to accede to the contention of the learned counsel for the petitioner that Rule 5 of the Rules, in question, is void and offends Articles 14 and 16 of the Constitution.

6. As regards the facts of this case, it is not possible to draw the inference that the petitioner is fit and suitable for further retention in a disciplined force like the police force.

7. For the reasons stated above, we see no good grounds to interfere. This petition fails and is, therefore, dismissed. No costs.



  
(S.R. ADIGE)  
MEMBER (A)

(V.S. MALIMATH)  
CHAIRMAN

'SRD'  
121093