

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 1414/88  
T.A. No.

199

DATE OF DECISION 22.08.1990.

Shri Akhlaq Ahmad

xPetitioner Applicant

Shri A.K. Dixit

Advocate for the xPetitioner(s) Applicant

Versus

Dy. Commr. of Police, Delhi &amp; Ors

Respondent

Shri B.R. Prashar

Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
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? *No*

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

The applicant, who has worked in the Delhi Armed Police as a Constable, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for setting aside and quashing the impugned order of termination dated 28.9.1984 whereby his services were terminated by invoking the power under Rule 5(1) of the C.C.S. (Temporary Service) Rules, 1965 and the order dated 27.6.1986, whereby his representation was rejected by the respondents. He has prayed that he may be reinstated in service with all consequential benefits.

2. The applicant had filed a similar application before the Allahabad Bench of this Tribunal which was disposed of vide judgement dated 28.10.1987. The Allahabad Bench of the Tribunal held that it had no jurisdiction to hear the matter and directed that the application be returned to the applicant for presentation before this Bench.

3. The facts of the case in brief are that the applicant was enlisted in Delhi Armed Force on 4.2.1982. He proceeded on leave on 22.5.1984 and continued to be on leave till 31.5.1984. He was due to report for duty on 1.6.1984. He could not join duty because he fell ill at his home town, Sitapur (U.P.) and remained there under medical treatment. In August, 1984, he received an intimation from the Deputy Commissioner of Police, Delhi, that he must immediately report for duty, failing which departmental inquiry against him would be initiated. As he was continuing to be ill, he could not report for duty. Thereafter, the impugned order dated 28.9.1984 was passed by the respondents. The representation submitted by him did not receive any favourable response.

4. The applicant has alleged that the termination of his services was solely on the ground of his absence from duty, for which no charge-sheet was issued to him, nor any inquiry conducted against him.

5. The respondents have stated in their counter-affidavit that the applicant was a habitual absentee and that he turned out to be a liability on the department. They have admitted that the termination was due to his

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unsatisfactory service record. They have given the following chart indicating his absence from duty from 3.4.1983 to 9.5.1984:-

1. 3.4.1983 For a period of 2 hours & 25 Mts. Awarded 2 days' P.D.
2. 13.6.1983 For a period of 30 minutes. Filed.
3. 24.6.1983 For a period of 25 Minutes. Awarded 5 days' P.D.
4. 26.5.1983 For a period of 11 days, 2 hours and 55 minutes. Period of absence treated as leave without pay.
5. 24.6.1983 For a period of 5 minutes. Awarded 5 days' P.D.
6. 25.12.1983 For a period of 4 days, 20 hours and 15 minutes. Absence period treated as leave of kind due.
7. 16.1.1983 For a period of 23 days. Absence period treated as leave of kind due.
8. 24.2.1983 For a period of 5 days. Ex. absence period treated as leave without pay.
9. 25.8.1983 For a period of 3 months, 28 days and 21 hours. Absence period treated as leave of kind due.
10. 5.3.1984 For a period of 2 days, 22 hours and 25 minutes. Absence period treated as leave of kind due.
11. 20.4.1982 For a period of 1 hour and 15 minutes. Awarded 14 days' P.D.
12. 7/8.3.1984 For a period of 3 hours and 25 minutes. Awarded 10 days' P.D.
13. 22.3.1984 For a period of 25 minutes. Verbally Warned.
14. 1.6.1984 Till the date of termination, i.e., 28.9.1984.
15. 9.5.1984 For a period of 2 days and 2 hours. Sanctioned 3 days' C/Leave.

6. We have gone through the records of the case and have considered the rival contentions. The learned counsel

for the applicant relied upon numerous rulings\* of the Supreme Court and of other Courts in support of his contention that termination of the services of a Government servant on the ground of unauthorised absence from duty amounts to misconduct, and that in such cases, termination can be effected only after holding an inquiry against him.

7. We see considerable force in the aforesaid contention raised by the learned counsel for the applicant. In *Samsher Singh Vs. State of Punjab*, 1974 SCC (L&S) 550 at 569 and 570, the Supreme Court has observed that "if the termination of service is sought to be founded on mistake, negligence, inefficiency or other disqualification, then it is a punishment and violates Article 311 of the Constitution.... If a probationer is discharged on the ground of misconduct or inefficiency or for similar reason without proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge it may in a given case amount to removal from service within the meaning of Article 311(2) of the Constitution."

8. In the recent case of *Dr. (Mrs.) Sumati P. Shere Vs. Union of India & Others*, 1989 (1) SCALE 963 at 964, the Supreme Court observed as follows:-

" We must emphasise that in the relationship of master and servant there is a moral obligation to act fairly. An informal, if not formal; given-and-take, on the assessment of work of the employee should be there. The employee should be made aware of the defect in his work and deficiency in his performance. Defects or deficiencies, indifference or indiscretion may be with the employee by inadvertance and not by incapacity to work. Timely communication of the assessment of work in such cases may put the employee on the right track. Without any such communication, in our opinion, it would be

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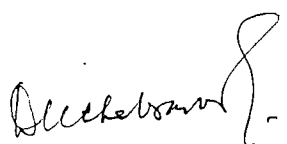
\*Cases cited by the learned counsel for the applicant:

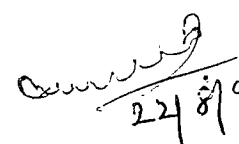
*Francisco Pereira Vs. Administrator of Goa, Daman & Diu & Ors.*, 1978 (SLJ) 614; *Jyotish Chandra Choudhury Vs. Divisional Medical Officer, N.F. Railway, Badarpur*, 1984 Lab. I.C. 102; *Jai Shanker Vs. State of Rajasthan*, A.I.R. 1966 S.C. 492; *B.M. Tripathi Vs. State of U.P. & Ors.*, A.I.R. 1971 Allahabad, 346.

arbitrary to give a movement order to the employee on the ground of unsuitability."

9. In our opinion, termination of the services of the applicant without telling him in advance in writing that his work and performance was not up to the mark, is not legally sustainable. In the result, we allow the application and set aside the impugned order dated 28.9.1984 terminating the services of the applicant. The respondents are directed to reinstate him in service with effect from 28.9.1984. In the facts and circumstances of the case, we direct that he shall be paid arrears to the extent of half of the arrears of pay and allowances due to him. He will also be entitled to all other consequential benefits. The respondents shall comply with the above directions within a period of three months from the date of communication of this order.

There will be no order as to costs.

  
(D.K. Chakravorty)  
Administrative Member  
22/8/90

  
(P.K. Kartha)  
Vice-Chairman(Judl.)  
22/8/90