

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. 2038/88

Date of decision: 4.5.92

Tara Singh

.. Applicant.

Versus

Delhi Admn. & others .. Respondents.

Sh.J.P.Vergheze .. Counsel for the applicant.

Sh.S.M.Garg .. Counsel for the respondents.

CORAM:

The Hon'ble Sh.Justice Ram Pal Singh, Vice Chairman(J).

The Hon'ble Sh.I.P.Gupta, Member(A).

JUDGEMENT

(Delivered by Hon'ble Sh.I.P.Gupta, Member(A))

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant was enrolled as a temporary Constable w.e.f. 2.5.1986 and posted to 6th Bn DAP. He was issued a termination order dated 20.1.88 under Rule 5 of the Central Civil Service (Temporary Services) Rule, 1965. This termination order is an order simplicitor and no stigma has been attached to the applicant. However, the learned counsel for the applicant contended that on 29.12.87 he was given a show cause notice for having violated the C.C.S. Leave Rules, 1972 and standing orders which shows a grave misconduct, carelessness, negligence and dereliction of duty which rendered him liable for disciplinary action. He was given fifteen days' time to reply to the show cause notice. The applicant has contended that the show cause notice was received by him only on 17.1.88 but without waiting for a reply within fifteen days the respondents terminated his services on 20.1.88 without assigning any reasons and the termination is ~~purposive~~ in nature and has been ordered without disciplinary proceedings.

2. In the counter and during the course of the arguments the learned counsel for the respondents brought

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out that ^{from} on the date of the arrival of the applicant in the Battalion some thefts were reported. A Constable was detailed to keep a watch during night to catch hold of the person and the applicant was seen by one of the Constables, opening the box of the other Constable. The respondents have contended that the applicant was found unsuitable to be retained in a disciplined force.

3. The short point involved in this case is whether termination order dated 20.1.88, which is a termination simplicitor, is legal or not. The law on this point is well settled. While the termination can be done for unsuitability where the order unambiguously indicates that the said termination is the result of a punishment sought to be imposed, the applicant can invoke the provisions of Article 311. In this connection the case of **Hukum Chand Versus Chandigarh Administration (1986 (3) S.L.R. 383) and S.K. Aggarwal and others Versus Union of India & others (1987(3) A.I.S.L.J. C.A.T. 369)** would refer. Though the order in this case does not indicate that the termination is by way of punishment, yet the following case would be relevant:-

4. In the case of **Raj Singh Versus Union of India (S.L.R. 1979(1) 465 S.C.)** it was observed:-

It is well settled that when seemingly innocent order of termination is assailed as being punitive in character on the ground that it was found on charges of misconduct, judicial scrutiny need not be confined to the terms of the order itself and it would be open to the court as indeed obligatory on it, to go behind the order and to determine from circumstances antecedent to the order to see for itself if the charge of misconduct was the foundation of the order ~~or~~ its mere motivation".

5. In this case only about 21 days before the issue of the termination order a show cause notice for a grave misconduct was issued. Further, as pointed out in the

counter, the incidents of thefts and the involvement of the applicant therein were also at the back of the mind of the respondents. The link between the termination and the show cause notice issued on 29.12.87 and the alleged involvement of the applicant in the thefts is not far to seek.

6. In the conspectus of the aforesaid facts, the termination of the applicant's services by an order simplicitor cannot be justified. In view of the above, the termination order dated 20.1.88 and the rejection of the appeal dated 22.9.88 are quashed and the applicant shall be deemed to be reinstated in service from the date his services were terminated. As regards back wages, he will be entitled to them only if the respondents are satisfied that during this period he was not gainfully employed elsewhere. The respondents are not precluded from taking action against the applicant disciplinarily for his misconduct or for violation of rules. The applicant may be reinstated in service as early as possible preferably within three months from the date of receipt of a copy of this order.

7. With the above directions and order, the case is disposed of with no order as to costs.

I.P. Gupta
(I.P. GUPTA) *4/3/88*
MEMBER (A)

Ram Pal Singh
(RAM PAL SINGH)
VICE-CHAIRMAN (J)