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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A.No. 344/88
T.A.No. 199

OM PAL SINGH — Applicant(s)

Versus.

UNION OF INDIA THROUGH THE SECRETARY, MINISTRY OF ~~HOME AFFAIRS~~ AND OTHERS — Respondent(s)

DATE OF DECISION 30.8.1993.

(For Instructions)

1. Whether it be referred to the Reporter or not? No
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

(V.S.MALIMATH)
CHAIRMAN.

Two Copies

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 344/88 DECIDED ON : 30.08.1993
MP NO. 2021/93

OM PAL SINGH ... PETITIONER

VS.

UNION OF INDIA THROUGH THE SECRETARY, MINISTRY OF HOME AFFAIRS & OTHERS. ... RESPONDENTS

CORAM :

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

Petitioner through Shri Shyam Babu, Counsel
Shri B. S. Oberoi, Proxy Counsel for Shri Anoop Bagai, Counsel for the Respondents

J U D G M E N T (ORAL)

HON'BLE MR. JUSTICE V. S. MALIMATH :-

The petitioner, Shri Om Pal Singh, was appointed temporarily as a Police Constable on 3.10.1980 under the provisions of and was governed by the Central Civil Services (Temporary Services) Rules, 1965 (hereinafter referred to as the 'Rules'). His services came to be terminated by notice dated 22.12.1986 (Annexure 'A') issued in pursuance of sub-rule (1) of Rule 5 of the Rules. The petitioner made a representation on 7.1.1987 against the said notice of termination which was rejected by order dated 2.3.1987. It is in this background that the petitioner filed the present application on 2.3.1988 seeking the following prayers :-

"1. The order/Notice No.21303-60/ASIP-N dated 22.12.86, terminating the services of the applicant, be quashed and he be declared to be in service with consequential benefits.

2. The order of Commissioner of Police, Delhi rejecting his representation as communicated vide memo No. 3791/ASIP-N dated 2.3.87, be also quashed.

3. Any other or further relief(s) which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case be also awarded."

2. The respondents filed a reply on 22.7.1988 contesting the application. The petitioner filed a rejoinder to the same on 25.11.1988. The petitioner has filed M.P. No. 2021/93 on 23.7.1993 for amendment of the application. The petitioner seeks to add by amendment the following prayer :-

"(I) The order/notice No. 21303-60/ASIP-N, dated 22.12.86 terminating the services of the applicant be quashed/set aside and the applicant be declared to be a confirmed consstable in Delhi Police with all consequential benefits."

He has also sought prayer for adding certain paragraphs to the original application wherein he has sought to incorporate the averments to the effect that he must be deemed to have been appointed on probation and that he must be deemed to have satisfactorily completed the probation after the expiry of a period of three years from the date of appointment and, therefore, entitled to confirmation. He pleads that as he has become a confirmed Police Constable, his services could not be terminated by invoking Rule 5 (1) of the Rules. This application was taken up for consideration today when the original application itself came up for hearing. The question for consideration is as to whether the present application for amendment should be allowed.

3. On the face of it, it is clear that it is a highly belated application. The O.A. was filed on 2.3.1988 and the application for amendment is filed

nearly five years after the respondents had filed their counter and the petitioner had filed his rejoinder. There is really no satisfactory explanation for this inordinate delay in filing the application for amendment. It is also clear that the case which is now sought to be made out by way of amendment is clearly inconsistent with the case as pleaded in the original application. In the original application the case pleaded by the petitioner is that he was appointed temporarily as a Police Constable and that having continued as a temporary Constable he was, under the rules, entitled to quasi-permanency status. He has pleaded that without any justification quasi-permanency status has been denied to him so that the respondents can invoke Rule 5(1) of the Rules to terminate the services of the petitioner. It is on that basis that the counter affidavit has been filed in which they have averred that the case of the petitioner for grant of temporary status was considered on his completing three years of service and he was found unsuitable for such status. They have pleaded that for three continuous years after he became eligible, his case was considered and on all those three occasions having regard to his performance and service records, he was not found fit and suitable for conferment of temporary status. In the rejoinder filed by the petitioner also he proceeds on the basis that his appointment was temporary and that he has not been granted quasi-permanency though he was entitled to such status. As regards the averment of the respondents that his case was considered for quasi-permanency on three occasions, the petitioner has averred that he cannot

make any averment in this behalf as copies of those orders have not been produced. Thus, it is clear that the entire case of the petitioner was on the basis that he was appointed as a Police Constable only on a temporary basis and that he continued as such till the date of termination. It is on that basis that the respondents have dealt with the case of the petitioner all along treating him as a temporary Police Constable. The rejoinder of the petitioner also proceeds on the basis that his status was only of a temporary Police Constable. It is, therefore, clear that the application for amendment is not only highly belated but also inconsistent with the case put forward in the original application. Shri Shyam Babu, learned counsel for the petitioner, invited our attention to the judgment of the Supreme Court in M/s Ganesh Trading Co. vs. Moji Ram, AIR 1978 SC 484 and submitted that the principle laid down therein should be followed in the matter of allowing his application for amendment. We consider it convenient to extract the portions of the headnote of the judgment as follows :-

> "Provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations rersulting from amendments, are intended for promoting the ends of justice and not for defeating them. Even if a party or its counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no dobut pay costs for the inconvenience or expense caused to the other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued.

> It is true that if a plaintiff seeks to alter the cause of action itself and to introduce indirectly, through an amendment of his pleadings, an entirely new or inconsistent cause of action, amounting virtually to the substitution of a new plaint or a new cause of action in place of what was originally there, the Court will refuse to permit it if it amounts to depriving the party against which a suit is pending of any right which may have accrued in its favour due to lapse of time. But, mere failure to set out even an essential fact does not, by itself, constitute a new cause of action. A cause of action is constituted by the whole bundle of essential facts which the plaintiff must prove before he can succeed in his suit. It must be antecedent to the institution of the suit. If any essential fact is lacking from averments in the plaint the cause of action will be defective. In that case, an attempt to supply the omission has been and could some time be viewed as equivalent to an introduction of a new cause of action which, cured of its shortcomings, has really become a good cause of action. This, however, is not the only possible interpetation to be put on every defective state of pleadings. Defective pleadings are generally curable if the cause of action sought to be brought out was not ab initio completely absent. Even very defective pledings may be permitted to be cured, so as to constitute a cause of action where there was none, provided necessary conditions such as payment of either any additional court fees, which may be payable, or, costs of the other side are complied with. It is only if lapse of time has barred the remedy on a newly constituted cause of action that the Courts should, ordinarily, refuse prayers for amendment of pleadings."

It is in the light of these principles that we shall examine the contention of the petitioner in support of the application for amendment. The Supreme Court has pointed out that so long as remedial steps to amend the petition do not unjustifiably injure the rights accrued, one may lean in favour of granting amendment. If the relief claimed is barred by lapse of time, it is said that one ought to lean in favour of not granting the prayer for amendment. On our direction, the respondents have placed the relevant

records bearing on the order of termination as also on the question of granting quasi-permanency to the petitioner. On a perusal of the records, we find that the case pleaded in the reply by the respondents that the petitioner's case was considered for grant of quasi-permanency with effect from 3.10.1983, 3.10.1984 and again in the year 1985. The records show that the case of the petitioner was considered on all the three occasions after he became eligible for quasi-permanency after completion of three years and orders were passed not to grant him quasi-permanency on the ground of unsatisfactory service. The orders in express terms direct that they shall be communicated to the petitioner. Though the petitioner had chosen to assert that he was not aware of these orders, it is not possible to believe that statement. When the orders direct communication to the petitioner on all the three occasions there is no good reason to doubt the correctness of the orders. We are, therefore, inclined to hold that the petitioner was duly informed that his case for quasi-permanency was considered and orders were passed against him in the years 1984 and 1985. The petitioner's case now sought to be made out is that he was appointed as a probationer and on completion of three years of probationary period, he automatically became confirmed as the authorities had no power to extend the period of probation beyond a period of three years. But then he was made aware by specific orders passed in the years 1984 and 1985 that he was being dealt with not as a person appointed on probation but as a person appointed purely on a temporary basis.

It is on that basis that he was informed that his case for quasi-permanency was considered on completion of three years of service and that he was found unsuitable for conferment of quasi-permanency status. The cause of action, therefore, clearly accrued in his favour in the years 1984 in the first instance and again in 1985 when he was expressly told that he was being dealt with not as a probationer but as a temporary Police Constable and that he was not entitled to quasi-permanency as his service record was not satisfactory. If it was the petitioner's case that he was appointed on probation, and when he was told that his case was considered for quasi-permanency considering him as a temporary Police Constable, he ought to have challenged the said decision in appropriate proceedings. He allowed the cause of action that accrued in his favour in 1984 and 1985 to be barred by limitation. By the time the present original application came to be made in the year 1988, his claim for rights on the basis that he was a probationer were barred by limitation. His claim was barred even before the original application came to be presented. It is nearly five years after his claim was barred by limitation that he has come out with such a case in the amendment application. Hence, applying the principle laid down by the Supreme Court to the facts of this case, we ought to lean against granting the amendment in which a prayer has been made for claiming relief which was barred long before the original application came to be filed. The other ground stated by the Supreme Court is also not satisfied in this case. The administration has proceeded on the basis

that the petitioner was only a temporary Police Constable. It is on that basis that other vacancies are filled up. Any confirment of status on the petitioner as a permanent Police Constable could undoubtedly injure not only the interest of the administration but also others who had secured benefits on that basis. Applying both the principles laid down by the Supreme Court, we have no hesitation in holding that the peritioner's application for amendment does not merit being granted. We, therefore, reject the petitioner's application for amendment.

4. As we have dismissed the application of the petitioner for amendment, the question of examining the case of the petitioner on the basis that he was appointed as a probationer does not arise. But as some arguments were advanced in this behalf, we would like to briefly examine the same.

5. Reliance was placed by the petitioner's counsel on Rule 5 (e) of the Delhi Police (Appointment & Recruitment) Rules, 1980, which reads as follows:-

> "(e)(i) All direct appointments of employees shall be made initially on purely temporary basis. All employees appointed to the Delhi Police shall be on probation for a period of two years :
>
> Provided that the competent authority may extend the period of probation but in no case shall the period of probation extend beyond three years in all.
>
> (ii) The services of an employee appointed on probation are liable to be terminated without assigning any reason.
>
> (iii) After successful completion of period of probation, the employee shall be confirmed in the Delhi Police by the competent authority, subject to the availability of permanent post."

Shri Shyam Babu, learned counsel for the petitioner, invited out attention to clause (i) of Rule 5 (e) which says that all direct appointments of employees shall be made initially on purely temporary basis and that all employees appointed to Delhi Police shall be on probation for a period of two years. Reading these two parts of this clause, he wants us to understand the provision as conveying that all direct appointments of employees shall be made initially on purely temporary basis on probation for a period of two years. To us, it would make a very incongruous reading. If there is a substantive vacancy, it can be filled up either by making a regular appointment or by filling up the same on an ad-hoc or temporary basis. But if the vacancy itself is of a temporary nature, no regular appointment to such a post can be made. If no regular appointment to a temporary post can be made, no one can be appointed on probation in such a temporary post. That being the clear position in law, it is impossible to draw the inference that all appointments which are made purely on temporary basis must be regarded as appointments made on probation for a period of two years. It is a question of fact as to whether a particular appointment which is made temporarily is in a temporary post or in a substantive post. Hence, it is not possible to accept the broad proposition canvased by Shri Shyam Babu that so far as the Delhi Police is concerned, every appointment has to be made initially on temporary basis and everyone so appointed must be regarded as appointed

on probation for a period of two years. Hence, every appointment/temporary appointment in the Delhi Police cannot without anything more be regarded as an appointment made on probation for a period of two years. In the circumstances, it may be reasonable to construe Rule 5 (e) (i) as conveying that all direct appointments are initially to be made purely on temporary basis whether the vacancy is temporary or of a substantive nature. If the vacancy is of a substantive nature, it enables the authorities to appoint a person on probation for a period of two years. One would expect the appointing authority to make an order appointing a person on probation when the circumstances justify such a course of action. What we have said in this behalf, has statutory support from clause (ii) of Rule 5 (e) which says that the services of an employee appointed on probation are liable to be terminated without assigning any reason. The Rule, therefore, contemplates a person being appointed on probation. If a person is appointed on probation, one would expect the order to say so. The expression 'probation' has been defined in Rule 215 of the Supplementary Rules to read "Probationer means a Government servant employed on probation in or against a substantive vacancy in the cadre of a department." It is, therefore, clear that whether a particular person is appointed on probation or not depends on the terms of the order of appointment and the existence of a substantive vacancy. It is, therefore, not ~~also~~ possible to accept the broad proposition canvassed by the learned counsel for the petitioner that every direct appointee in

the Delhi Police, though the order of appointment in express terms says that he has been appointed temporarily, should be regarded as having been appointed on probation for a period of two years. As the order of appointment of the petitioner says that he is appointed as a temporary Police Constable, we cannot draw the inference that he was appointed on probation. That being the position, he would not be entitled to invoke the principles governing persons appointed on probation.

6. It was next contended by Shri Shyam Babu, learned counsel for the petitioner, that the petitioner should have been given an opportunity of showing cause before his services were terminated. He submitted that as the petitioner was being deprived of his right to continue to hold the post of a Police Constable, principles of natural justice were required to be followed. This precise question has been examined by the Supreme Court in State of Uttar Pradesh & Anr. vs. Kaushal Kishore Shukla, JT 1991 (1) SC 108. It is enough to quote the paragraph 7 of the said judgment which is relevant :-

> "7. 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 Govt. servants. A 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

in the 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 inquqiry by framing charges and giving opportunity to the 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 Art.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 v. Union of India 1, (1. 1958 SCR 828), 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 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 Govt. servant does not visit him with any evil consequences. The evil consequences as held in Parshotam Lal Dhingra's case (supra) 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 & Anr. v. Ram Narayan Das 2, (2. 1961 (1) SCR 606); R. C. Lacy v. The State of Bihar & Ors. 3, (3. C.A. No. 590/62 decided on 23.10.1963); Champaklal Chimanlal Shah v. The Union of India 4, (4. 1964 (5) SCR 190); Jagdish Mitter v. The Union of India 5, (5. 1964 AIR SC 449); A. G. Benjamin v. Union of India 6, (6. C.A. No.1341/66 decided on 13.12.1966); Shamsher Singh & Anr. v. State of Punjab 7, (7. 1975 (1) SCR 814). These decisions have been discussed and followed by a three Judge Bench in State of Punjab & Anr. vs. Shri Sukh Raj Bahadur 8, (8. 1968 (3) SCR 234)."

Further, it is observed in paragraph 8 of the judgment that :-

> "8.....As already observed, the respondent being a temporary Govt. servant had no right to hold the post, and the comperent 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 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 facts are identical in this case. The petitioner's appointment was purely on temporary basis. His services were terminated strictly in accordance with Rule 5 of the Temporary Service Rules. The order of termination is innocuous one and it does not cast any stigma on the petitioner. No charges were framed against the petitioner and no regular inquiry was held against him. We have, therefore, no hesitation, in holding, following the decision of the Supreme Court, that the question of providing an opportunity of showing cause to the petitioner while terminating his temporary services did not arise. Shri Shyam Babu sought to draw support from a subsequent

judgment of the Supreme Court reported in JT 1993 (3) SC 617, D. K. Yadav vs. M/s. J.M.A. Industries Ltd. That was a case in which the dispute arising under the Industrial Disputes Act came up for consideration. As we have a direct authority of Rule 5 (e) (i) of the Rules discussed above, it is enough to say that the above case is not relevant to the issue before us.

7. For the reasons stated above, this petition fails and is dismissed. No orders as to costs.

(S. R. Adige)
Member (A)

(V. S. Malimath)
Chairman

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