

(4)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI.

O.A.No.407 of 1988

Date of Decision: 6.7.93.

Jai Narain

.....Petitioner.

Versus

Union of India & others .....Respondents.

For the petitioner: Shri A.S.Grewal, Counsel.

For the respondents: Shri B.S.Oberoi, proxy counsel for Shri Anoop Bagai-Counsel.

CORAM:

Hon'ble Mr.Justice V.S.Malimath, Chairman.

Hon'ble Mr.S.R.Adige, Member(A)

JUDGMENT(ORAL)

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

The petitioner was appointed as a Constable in Delhi Police on 2.5.86 on a temporary basis. By the impugned order (Annexure-A) dated 17.3.87 his services were terminated in exercise of powers conferred by Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965. It is the said order which has been challenged in this application.

2. Shri A.S.Grewal, learned counsel appearing for the applicant, firstly contended that Rule 5(1) of the Central Civil Services Temporary Service Rules, 1965 is not applicable to the petitioner on the ground that the said rule stood superseded on the coming into force of the Delhi Police Act and the rules framed thereunder. It is not possible to accept this contention; firstly for the reason that Rule 5(1) of the Temporary Services Rules, 1965 makes it clear that the police constables are governed by the Delhi Police Rules made thereunder. Section 5(b) of the Delhi Police Act provides that the recruitment to, and the pay, allowances and all other conditions of service of members of, the Delhi Police shall be such as may be prescribed.

In exercise of this rule making power, the Government has prescribed under notification dated 17.12.80 the different statutory provisions which shall be applicable to all subordinates, civilians and Class IV employees of the Delhi Police in addition to the rules and regulations under the Delhi Police Act. Under item No.21 of the said notification the Central Civil Services(Temporary Service) Rule,1965 have been made applicable. It is, therefore, clear that the petitioner is governed by Rule 5 of Central Civil Services(Temporary Service) Rules,1965. Our attention was, however, drawn to the provisions of Rule 5(e)(i) of the Delhi Police Appointment and Recruitment Rules,1980 which say that all direct appointments of employees shall be made initially on purely temporary basis. This provision only provides for making temporary appointment. It is not inconsistent with Rule 5 of the Temporary Service Rules, 1965. Whereas Rule 5(e)(e) of the Delhi Police Appointment and Recruitment Rules,1980 speaks of direct appointment on temporary basis, Rule 5 of the Temporary Service Rules,1965 governs the field of termination of temporary employees. The two provisions operate in two different fields; one in the field of appointment and the other in the field of termination. There is no inconsistency between the two sets of statutory provisions justifying the inference that Rule 5 of the Central Civil Service (Temporary Service) Rules,1965 stood repealed on the coming into force of the Delhi Police Appointment and Recruitment Rules,1980. Hence, it is not possible to accept the contention that the petitioner is not governed by Rule 5(1) of the Temporary Service Rules,1965.

3. It was next contended that the petitioner's services could not have been terminated without giving the petitioner an opportunity and showing cause

particularly having regard to the fact that the reason which motivated the authority to terminate the services is the misconduct of the petitioner in being absent from duties for several days. Support is drawn for this argument from the stand taken by the respondents in the reply wherein they have assigned the reasons which lead them to take action to terminate the services of the petitioner. It is necessary to state at the out set that the impugned order of termination does not speak of any reason for terminating the services of the petitioner much less of any misconduct on the part of the petitioner. No stigma is attached by the impugned order. It is also well settled by the decision of the Supreme Court reported in Judgment Today 1991(1) S.C. 180 between 'State of U.P. & another Vs. Kaushal Kishore Shukla', followed by this Tribunal in O.A.No.94 of 1987 between Tej Ram Vs. Union of India & others. The law laid down on the subject is that when the Temporary Service Rules, 1965 give power to the competent authority to terminate the services of a temporary employee in accordance with the said statutory provisions, it is open to the competent authority either to terminate the service in accordance with the said statutory provisions or to take punitive action by holding a disciplinary enquiry. It is laid down that it is for the competent authority to decide as to whether it should act in accordance with the Temporary Service Rules or hold a disciplinary enquiry for the purpose of imposing a penalty. In this case, the authority has opted in favour of exercising statutory power of terminating services of a temporary Police Constable invoking Rule 5(1) of the Temporary Service Rules, 1965. Thus, the competent authority was duly empowered to do so as ruled by the Supreme Court. The mere fact in the reply filed by the respondents the reason for the action is stated that absence of the

petitioner cannot vitiate the order of termination of the petitioner from service as misconduct has not been adverted to in the order as a ground for terminating the services of the petitioner. There is thus no substance in this contention.

4. The last contention urged by the learned counsel for the petitioner is about grant of leave encashment. The respondents have stated in the reply that the leave encashment was not given to the petitioner as he did not apply for the same. The clear stand taken by them is that if the petitioner applies for the same and if he is entitled to the encashment of the leave if the same is to his credit, he would be entitled to claim the same from the authority. As there is no prayer of the petitioner for a direction to grant him benefit of leave encashment, no positive direction in this behalf is called for. It is, however, made clear that if the petitioner makes a claim in this behalf, the same shall be examined and if he is entitled for the same, the same shall necessarily be granted to him. Subject to the aforesaid observations, the application stands disposed of. No costs.

*S.R. Adige*  
(S.R. ADIGE)  
MEMBER(A)

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