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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 200 of 1986 198
T.A. No.

DATE OF DECISION 13.2.87

Shri Virender Singh Petitioner

Shri S.N. Bhardwaj Advocate for the Petitioner(s)

Versus

Union of India & Others Respondent

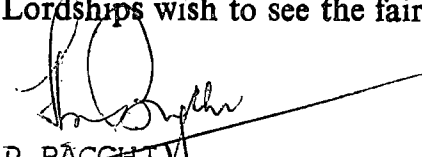
Shri M.L. Verma Advocate for the Respondent(s)

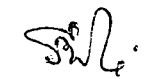
CORAM :

• The Hon'ble Mr. S.P.MUKERJI, ADMINISTRATIVE MEMBER

The Hon'ble Mr. H.P.BAGCHI, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? No


(H.P.BAGCHI)
JUDICIAL MEMBER


(S.P.MUKERJI)
ADMINISTRATIVE MEMBER

(2)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

Regn.No.OA No.200/86

Date of Decision: 13.2.87

Shri Virender Singh ...Petitioner

Versus

Union of India and others ...Respondents

For Petitioner: Shri S.N. Bhardwaj, Advocate

For Respondents: Shri M.L. Verma, Advocate

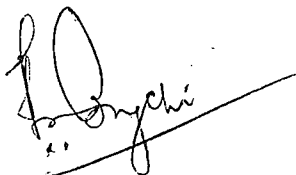
CORAM: HON'BLE MR. S.P.MUKERJI, ADMINISTRATIVE MEMBER
HON'BLE MR. H.P.BAGCHI, JUDICIAL MEMBER

JUDGMENT:

The petitioner, an ex-Lift Operator in the Overseas Communication Service has moved the Tribunal with an application under Section 19 of the Administrative Tribunals Act praying that the impugned order dated 31st July 1985 terminating his services as Temporary Lift Operator with one month's notice under Rule 5(1) of the Central Civil Service (Temporary Service) Rules, 1965 may be quashed with all consequential benefits.

2. The brief facts may be recounted as follows. The petitioner, who was an ex-Army Officer was appointed as a Temporary Lift Operator by the respondents w.e.f. 2.9.77. His case was duly considered thrice by the Departmental Promotion Committee, but he was not found suitable for quasi permanent status and decisions were communicated to him in January, 1982, October, 1982 and November, 1982 after the DPC considered his case on each occasion. He was told by the Memo of 5th November, 1982 that having been found unsuitable for

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- 2 -

earning quasi permanent status at the third and final occasion on 2.9.82, he was ineligible for further consideration for quasi permanent status. He was severely warned in May 1980 for dereliction of duty as a Liftman. He was again found absent from duty in December, 1980 and after his explanation was obtained he was advised to improve his behaviour. In October, 1982, he was advised to improve his behaviour towards his seniors. In August, 1982 he was called upon to explain why the disciplinary action should not be taken against him for remaining absent from duty as a Lift Operator. Earlier in February 1981 also, he was warned to improve his conduct otherwise disciplinary action would be taken. On 11th March, 1983, he was advised that there were complaints of misbehaviour and misconduct on his part and that his reaction for imposing discipline upon him had been quite arrogant and belligerent. It was in the memo that a very compassionate view has been taken in his case and another final opportunity is given to him so that he could take advantage and improve his conduct. The impugned order dated 31.7.85 terminating his services was issued under Rule 5(1) of Temporary Service Rules, in public interest.

3. The contention of the petitioner is that he should be deemed to have been quasi permanent automatically after putting in three years of service and that the respondents have terminated his services in a malafide manner without holding any inquiry. He has also adverted to the delay in the disposal of his appeal by the Director General, Overseas Communication Services as a proof of the alleged vindictive approach of the respondents. The respondents have categorically denied any intention of vindictiveness or harassment on the part

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of the respondents and have stated that the work and conduct of the petitioner was quite unsatisfactory. He was very irregular in attendance and was ~~not~~^{not} found incompetent to hold the post. Therefore, his services were terminated bona fide ~~for~~ⁱⁿ public interest.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents very carefully. In order to satisfy ourselves that the petitioner was not a victim of vindictive or arbitrary action we examined his character roll~~s~~ and found that during 1984-85, he had been on leave for 50 days in 18 spells and was found to be in the habit of deserting his point of duty and very irregular. In 1983-84, his devotion for duty was found to be poor. During 1982-83, it was recorded that ^{his} amenability to discipline was poor and he was warned twice for indiscipline. During the part of 1982, he was found to be unre~~li~~able indisciplined. It was also recorded that his conduct outside the office is objectionable ~~and that~~^{it was} ~~it is~~^{it was} learnt that he has been reprimanded by police on the charge of eve-teasing. During 1981-82, he was on leave for 111 days in two spells. During 1980-81, it was recorded that he had been warned in the past, but was yet to show improvement. From the above, it is clear that the petitioner who was engaged as a Liftman in the building occupied by Overseas Communication Services Peronnel was found to be irregular in his attendance, going on leave habitually, deserting his point of duty and not amenable to discipline. No organisation can afford to engage a Liftman of the petitioner's habit and character. It is surprising

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- 4 -

that he was continued in service for such a considerable period. Warnings after warnings were given to him without effect and without any improvement on his part. His case was considered thrice for quasi permanency and naturally he was found inadequate.

5. We do not find any evidence of vindictive or arbitrary approach on the part of the respondents. On the other hand a compassionate view of the petitioner's reprehensible conduct was always taken because of his youth and he was given opportunity to improve himself which he spurned. We, therefore, dismiss his allegation of malafide or vindictive approach of the respondents without any difficulty and hesitation. In so far as the delay in disposal of his appeal is concerned, it has been specifically explained by the respondents that the Director General being busy in the conversion of the department of Overseas Communication Services into a public sector undertaking, the disposal of his appeal took sometime.

6. The only point that remains to be resolved is whether it was lawful on the part of the respondents to discharge the petitioner by an order of termination simpliciter under Rule 5(1) of the Temporary Service Rules. If we start from the earliest rulings of the Supreme Court given in Purshottam Lal Dhingra Vs. Union of India: AIR 1958 SC 36 in which it was stated that a temporary government servant and a probationer has no right to the post unless the temporary appointment is for a specific period in which case the rights subsist during that period. [In the present case, the petitioner being in temporary employment and found not fit for being quasi permanent, he cannot claim

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a right to hold the post irrespective of his suitability.)
In Ram Chander Vs. Union of India AIR 1963 SC 1552 also
it was held that a temporary employee has no right
to the post. In Purshottam Lal's case ^{Supra} it was also held
that the form of the order simpliciter is not conclusive.
In Shamsher Singh Vs. State of Punjab: AIR 1974 SC 2192
it was stated that even if an order simpliciter is
found to have been passed by way of punishment the
protection of Article 311 would be available to the
employee. In Nepal Singh Vs. State of U.P. : AIR 1980 SC
145, a similar view was repeated about the effective
nature of even an order of termination simpliciter.
In State of Mysore Vs. V.R. Saboji: AIR 1980 SC 42,
the Supreme Court observed that unless a strong case
of arbitrariness and malafide is made out, the general
rule is to look into the order on the face of it to
find if there is any stigma attached. In Jarnail Singh
Vs. State of Punjab: AIR 1986(2) SC 278 it was held
that it was incumbent on the court to lift the veil
of an innocuously worded order and see the circumstances
and basis of the order. In Anoop Jaiswal Vs. Union of
India : AIR 1984 SC 336, ^{it was laid down that} it was open to the court to
go behind the form of the order and ascertain its
true character. If the alleged act of misconduct was
the cause of the order and but for ^{the} it, order would
not have been passed then Article 311 is attracted.

52

7. We have gone behind the form of the order
and have come to the conclusion that the order is
not founded on any specific misconduct and cannot
be held to be an order of punishment. The order was
passed in the public interest on an overall ^{analysis of petitioner's performance} basis.
The petitioner was not found suitable to be retained

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- 6 -

in service. ^{That} For a temporary employee a general unsuitability and unsatisfactory service can be a valid ground for termination of service without attracting the provisions of Article 311 of the Constitution is borne out by several rulings of the Supreme Court. In ^{Champaklal} Chaman Lal Vs. Union of India 1964, Vol. 5 SCR 190 the constitution bench laid down that the termination of service of a temporary government servant while his juniors are retained is valid if the service was unsatisfactory. In Hari Singh Mann Vs. State of Punjab: AIR 1984 SC 2263 it was observed that the termination for unfitness is not a stigma. In ^{Benjamin} A.G. Veniel Vs. Union of India AIR 1967 SC 185, it was laid down that in a case of a temporary employee even if formal departmental inquiry has been initiated, the appointing authority may drop further proceedings and make an order of discharge simpliciter. A similar view was expressed in Shamsher Singh Vs. State of Punjab (supra) by observing that the authority may opt to discharge a probationer before framing charges or holding regular inquiry and that discharge even during the preliminary inquiry in the case of a probationer or a temporary government servant does not attract Article 311 of the Constitution. In State of U.P. Vs. Ram Chander Tivedi : 1976(4) SCC 48, it was observed that misconduct negligence or other disqualification may be ^{the} motive to take action of discharge under the contract or the rules, ^{but} motive is immaterial if the order ex-facie is an order simpliciter. In State of U.P. Vs. Tilak Singh: AIR 1976 SLR (1) 130 Allahabad

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the Allahabad High Court observed that the termination of service of a temporary employee on an overall assessment of his performance when he was found not suitable for confirmation does not attract Article 311 of the Constitution of India. In more or less similar circumstances in the State of U.P. Vs. Bhoop Singh : 1979(") SCC 111 where a temporary Sub-Inspector of Police who misbehaved with a ^{women} ~~soman~~ was discharged and then reinstated by the order of the High Court and within a month of his reinstatement was discharged by an order simpliciter, the Supreme Court upheld the termination order on the ground that his misconduct was a motive but not the foundation of the order of discharge. In O.N.G.C. Vs. M.S.I.Ali: AIR 1980 SC 1242, a similar view was expressed where the termination was held to be not by way of punishment even though misconduct, inefficiency and negligence on the part of the employee could be the motive of discharge.)

8. We have cited the aforesaid rulings in order to reassure ourselves that the ^{simpliciter} ~~order~~ of termination in the instant case being not by way of punishment much less punishment for a specific act of misconduct on the part of the petitioner, the protection of Article 311 of the Constitution is not attracted. This was a clear case of a temporary employee being discharged who has not been found fit by a departmental promotion committee to be made quasi permanent and who continued to indulge in habitual absenteeism,

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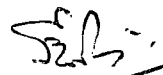
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- 8 -

deserting his point of duty in spite of several warnings and opportunities given. He was discharged on the basis of his general performance which was highly unsatisfactory and the order was validly passed in accordance with the provisions of the Central Civil Service (Temporary Service) Rules. No element of vindictiveness, malafide or discrimination could be even remotely identified in this case.

9. In the facts and circumstances of the case, we find no merit in the petition and reject the same. There will be no order as to costs.


(H.P. BAGCHI) 13.2.87
JUDICIAL MEMBER


(S.P. MUKERJI) 13.2.87
ADMINISTRATIVE MEMBER