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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 503/1986. DATE OF DECISION: 8-11-1990.

Shri Rakesh Kumar	....	Applicant.
Shri J.P. Gupta	....	Counsel for the Applicant.
	V/s.	
The Commissioner of Police	....	Respondent.
Shri B.R. Prashar	....	Counsel for the Respondents.

CORAM: Hon'ble Mr. Justice Amitav Banerji, Chairman.
Hon'ble Mr. P.C. Jain, Member (A).

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. To be circulated to all Benches of the Tribunal? Yes

(P.C. JAIN)
Member(A)

(AMITAV BANERJI)
Chairman.

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 503/1986. DATE OF DECISION: November 8, 1990

Shri Rakesh Kumar	....	Applicant.
Shri J.P. Gupta	....	Counsel for the Applicant.
	V/s.	
The Commissioner of Police	....	Respondent.
Shri B.R. Prashar	....	Counsel for the Respondent.

CORAM: Hon'ble Mr. Justice Amitav Banerji, Chairman.
Hon'ble Mr. P.C. Jain, Member (A).

(Judgment of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A).

JUDGMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who is an Ex-Constable, Delhi Police, has assailed the order dated 16.2.1985 passed by the Deputy Commissioner of Police, V Bn. D.A.P., Delhi, by which his services were terminated under sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965. His representation against the said order was rejected by the Commissioner of Police, Delhi vide letter dated 14.6.1985 (Annexure 'A' to the O.A.). He has prayed for the following reliefs: -

" i) To set aside the order dated 14/6/85 passed by the Commissioner of Police, Delhi.
ii) To order the reinstatement of the applicant in service on such terms and conditions as the learned court deems fit and proper in the circumstances of the case. "

2. The facts of the case, in brief, are that the applicant was enlisted in Delhi Police as a temporary constable on 1.1.1981, and his services were terminated on 16.2.1985 under sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. Admittedly,

the applicant had not been declared quasi-permanent and according to the respondents, "As he proved to be incorrigible and unsuitable for retention in service, his services were terminated vide order No.822-70/CR-5th Bn. DAP, dated 16.2.1985, under the C.C.S. (Temporary Service) Rules, 1965".

3. The case of the applicant is that the order of the termination of his services is an order of punishment and not a simpliciter termination of services, and he could not be removed from service without affording him an opportunity under Article 311 (2) of the Constitution to defend himself. According to him, since the order is punitive in character and is founded on charges of alleged misconduct, it is illegal, arbitrary and liable to be quashed.

4. The applicant had filed this application on 4.7.86 although his representation against the order of termination of his services was rejected by the Commissioner of Police on 14.6.1985. He filed an application under Section 21(3) of the Administrative Tribunals Act, 1985 for condonation of delay in filing the application. The Tribunal, vide its orders dated 15.12.1986 condoned the delay in filing this application.

5. The case of the respondents is that the applicant was a temporary Government servant and since he was found to be a habitual absentee and failed to show any improvement despite repeated advices, warnings and reprimands, he was not given the quasi-permanent status and his services were terminated under the C.C.S. (Temporary Service) Rules, 1965, when he was found unsuitable and incorrigible to be retained in service.

6. We have carefully gone through the record of the case and heard the learned counsel for the parties. We have also carefully perused the relevant departmental file which was made available to us by the respondents.

7. The first ground of attack by the applicant is that he was entitled to be considered for grant of quasi-permanent status on 1st January, 1984 after completing three years service and if he had been considered for the same, he would have been granted quasi-permanent status on that date, and in that event, his services could not have been terminated under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 (hereinafter referred to as the 1965 Rules). The respondents have stated in reply that the applicant's case for quasi-permanency was considered but due to his indifferent service record, he was not declared quasi-permanent and further consideration was deferred for a period of six months. His suitability was again assessed as on 1.7.1984, but he was passed over for another period of one year with effect from 1.7.1984, as he was found to be a habitual absentee and failed to show any improvement despite repeated advices, warnings and reprimands. The departmental file also shows that the case of the applicant for conferring quasi-permanent status was considered in accordance with Rules 3 and 4 of the 1965 Rules, but he was not considered suitable for the same due to unsatisfactory service record. Formal orders in this regard were issued on 28.1.1984. The case of the applicant was again considered after a period of six months and he was again found unsuitable due to unsatisfactory service record and further consideration was deferred for one year with effect from 1.7.1984. Formal orders were issued on 20.9.84. A copy each of these orders is available at page 291 and 399 of the departmental file (Fauji Missal 4681/DAP). Further, in accordance with Rule 3 of the 1965 Rules, a Government servant shall be deemed to be a quasi-permanent servant if he fulfils both the conditions prescribed in the rule, i.e., (i) if he has been in continuous temporary service

for more than three years; and (ii) if the appointing authority, being satisfied, having regard to the quality of his work, conduct and character, as to his suitability for employment in a quasi-permanent capacity under the Government of India, has made a declaration to that effect. In accordance with Rule 4 of the 1965 Rules, a declaration made under Rule 3 is to specify, inter-alia, the date from which it shall take effect. Thus, there is no substance in the first ground of attack.

8. Another ground of attack is that even though the impugned order of termination of service is ex-facie an order of discharge simpliciter, it is punitive inasmuch as it has been passed as a measure of punishment on account of the alleged misconduct reflected in the show cause notice dated 30.1.85 (Annexure 'A'). The show cause notice dated 30.1.85 states that the applicant was found absent from duty on 9.11.84 and he was marked absent vide D.D. No.26 dated 9/10-11-84 5th Bn. DAP, Delhi. He resumed his duty vide D.D. No.17 dated 11/12-11-84 after absenting himself for a period of 2 days 2 hours and 40 minutes unauthorisedly and that he did not submit any suitable explanation in that connection. The above lapse showed his negligence and dereliction in duty which made him liable for disciplinary action. He was called upon to show cause as to why his conduct should not be censured for the above lapse and his reply should be furnished within 15 days from the receipt of notice. The respondents have admitted that such a show cause notice was issued, but have denied that the impugned order of termination of services is based on the above show cause notice. Their contention is that the applicant was found absent not only on 9.11.1984, but he again absented himself from 26.11.1984 to 29.11.1984 and from 8.12.1984 to 12.12.1984. It is further stated that he proved himself to be a habitual absentee and had absented himself as many as forty times during his short tenure of

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service in Delhi Police. It is also stated that when the applicant absented himself from 26.11.1984 to 29.11.1984 and from 8.12.1984 to 12.12.1984, his absences were brought to the notice of the appointing authority, who called for his previous absence record and as he was found unsuitable for police service and incorrigible to be retained in service, his services were terminated under the 1965 Rules. His reply to the show cause notice was received after the order of termination which was found irrelevant and consigned to the record.

9. It was held by the Hon'ble Supreme Court that if the Government has, by contract, express or implied, or, under the rules, the right to terminate the employment at any time, then such termination in the manner provided by contract or the rules, is, prima facie and per se, not a punishment and does not attract the provisions of Art. 311 (Parshottam Lal Dhingra V. Union of India (1958) S.C.R. 828 : A.I.R. 1958 SC 36). The same view was taken by the Supreme Court in State of U.P. V. Ramchandra Trivedi (AIR 1976 SC 2547). Admittedly, the impugned order of termination is ex-facie an order of discharge simpliciter and does not cast any stigma on the applicant. The applicant also had no right to hold the post as his appointment was temporary and he was not declared even quasi-permanent even though he was considered twice for the same.

10. It is well settled that the form of the order of termination is not a conclusive proof and substance may need to be looked into and veil, if any, lifted in the process of judicial review, to see whether the alleged misconduct is merely a motive for issuing the impugned order or it is in fact a foundation of the same (State of Punjab V. Sukhraj Bahadur, A.I.R. 1968 S.C. 1089; Shamsher Singh V. State of Punjab, A.I.R. 1974 S.C. 2192; State of Maharashtra V. Veerappa R. Saboji, A.I.R. 1980 S.C. 42). As the applicant specifically averred that the impugned order had

been passed as a measure of punishment, we carefully went through the relevant departmental file, referred to above, and after perusal thereof and the pleadings of the parties, we are unable to uphold the above contention. The respondents have stated in their reply that the applicant absented himself unauthorisedly on 40 occasions between 31.5.81 to 26.11.84. A summary in this regard has been supplied as Annexure 'A', and this statement is fully substantiated from a perusal of the departmental file, which, if we may say so, mostly contains reports about his unauthorised absence from time to time, his explanations on return to duty for such absence and punishments, including warnings and reprimands awarded to him. At least twice, he himself gave in writing that he would not commit such mistakes in future. It is also clear from the departmental file that the show cause notice dated 30.1.85 is not even a motive, what to say of a foundation for terminating the services of the applicant. The applicant was notfound fit twice for being declared as quasi-permanent because of his unsatisfactory record of service. For a member of Police Force, unauthorised absence from duty almost without any compunction and in many cases even without a prima-facie valid explanation furnished in that connection, cannot be treated lightly. If the entire record of service is full of frequent unauthorised absence from duty by the applicant, that may only be the motive for terminating his services butnot the basis for the same, under Rule 5 of the 1965 Rules. In the light of these facts, the impugned order cannot at all be said to have been passed as a measure of punsihment and, as such, the question of action under Article 311(2) of the Constitution does not arise in this case.

11. In Oil and Natural Gas Commission V. Dr. Md. S. Iskander Ali, A.I.R. 1980 S.C. 1242, the Supreme Court reiterated the following principle: -

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> "Even if misconduct, negligence, inefficiency may be the motive or the inducing factor which influences the authority to terminate the service of the employee on probation, such termination cannot be termed as penalty or punishment."

The ratio of the Supreme Court decision is equally applicable to temporary Government servants, even though they may not be on probation.

12. In Commodore Commanding, Southern Naval Area V. N.N. Rajan (A.I.R. 1981 S.C. 965), the Supreme Court held that where the decision to terminate the services of a temporary Government servant had been taken on the ground of his unsuitability in relation to post held by him, it is not by way of punishment.

13. Another ground which has been urged before us is that persons recruited as temporary constables after the applicant had been recruited as such, have been retained in service and, as such, it is a case of discrimination and the action of the respondents is violative of Articles 14 and 16 of the Constitution. This contention has not been specifically denied by the respondents, but it is stated that the services of the applicant had been terminated in accordance with law and the rules on the basis of his unsatisfactory record of service. In the case of The Manager, Government Branch Press V. D.B. Belliappa (AIR 1979 SC 429), the service of the respondent had been terminated without assigning any reason albeit in accordance with the conditions of his service, while three employees, similarly situated, junior to him in the same temporary cadre had been retained. A plea of discrimination had been taken in that case against the appellant. The Supreme Court observed as below: -

> "The principle that can be deducted from the above analysis is that if the services of a temporary Government servant are terminated in accordance with the conditions of his service on the ground of unsatisfactory conduct or his

unsuitability for the job and/or his work being unsatisfactory orfor a like reason which makes him a class apart from other temporary servants who have been retained there is no question of the applicability of Article 16. ...."

We are, therefore, unable to uphold the plea of discrimination in the facts and circumstances of this case.

14. In the light of the foregoing discussion, the application merits rejection and is accordingly dismissed. We leave the parties to bear their own costs.

8/11/90

(P.C. JAIN)
Member(A)

8.11.90.

(AMITAV BANERJI)
Chairman.