IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 564/86 198<
~~T.A. No.~~

DATE OF DECISION 24.11.86

Suresh Kumar Petitioner

Shri Shankar Raju Advocate for the Petitioner(s)

Versus

Union of India Respondent

Mrs. Avinash Ahlawat Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. JUSTICE G. RAMANUJAM, VICE-CHAIRMAN (JUDICIAL)

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

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

(S. P. MUKERJI) (G. RAMANUJAM)

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DATE OF DECISION : 24.11.86

Suresh Kumar . . . Petitioner

Vs.

Union of India . . . Respondents

Shri Shanker Raju . . . Counsel for petitioner

Mrs.Avinash Ahlawat . . . Counsel for Respondents.

CORAM :

The Hon'ble Mr. Justice G. Ramanujam, Vice-Chairman

The Hon'ble Mr. S. P. Mukerji, Administrative Member

ORDER :

Heard the learned counsel for the applicant and the learned counsel for the respondents. The applicant herein was recruited as a constable in the Third Battalion, in the Delhi Police on 11.2.1982 on a purely temporary basis. His services were terminated by an order dated 15.2.86 under sub rule (1) of Rule 5 of Central Civil Services (Temporary) Rules, 1985 'hereinafter referred to as the Rules, by giving him one month's salary in lieu of one month's notice. Applicant has challenged the validity of the said order dated 15.2.85 terminating his temporary services as constable on various grounds.

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Firstly, it has been contended that the order of termination is penal in nature and therefore it is violative of Article 311 as no reasonable opportunity was given to the applicant to show cause against termination before the order of termination was passed. Secondly, it is contended that the applicant should be deemed to have completed three years of continuous service on 10.2.85, and as such he should be taken to have become quasi-permanent and that the order terminating the service after the said date 10.2.85 should be taken to be illegal.

We are not in a position to agree with either of these contentions. We cannot agree with the learned counsel for petitioner that the order of termination of service dated 15.2.85 suffers from any illegality. Admittedly the applicant was recruited as a Constable in Delhi Police establishment on 11.2.82 on a temporary basis. In the case of persons like the applicant who are recruited on temporary basis, C.C.S.(Temporary) Rules come into operation. Under rule 5(1) appointing authority can terminate the services of a temporary Government servant at any time by giving one month's notice in writing or by paying one month's salary in lieu of such notice. Normally the power of terminating the services of a temporary government servant can be exercised if the service of the government servant is not found to be satisfactory. When the services of the Government servant is found to be unsatisfactory the appointing authority may terminate the temporary services without giving any reason. In this case the

order dated 15.2.85 does not give any reason and it is a termination simpliciter. It merely terminates the temporary services of the applicant. This is in compliance with the Rule 5(1) of the said Rules. Only in cases where the order of termination attaches some stigma to the applicant, the order may be taken to be penal in character. But where the order terminating the temporary services passed under section 5(1) does not attach any stigma to the party concerned, the order of termination of temporary service cannot be taken to be penal in nature. Hence there is no infringment of article 311 in this case as alleged by the applicant.

Learned counsel for applicant submitted that the later order passed by the same appointing authority dated 21.2.85 would indicate that the earlier order dated 15.2.85 terminating the temporary service is for unauthorised absence from duty without permission for 22 days and that therefore the order of termination should be taken to be for a misconduct on his part, in which case the respondents should have given due opportunity to the applicant to disproove the allegations of misconduct prior to the passing of the order of termination and that as no such opportunity has been given to him, the impugned order of termination should be taken to be bad. However, we find that the subsequent order dated 21.2.85 has nothing to do with the earlier order of 15.2.85. That order deals with the applicant's absence from duty unauthorisedly for about 22 days and says how that period of absence is to be regulated.

By that order the period of absence from duty has been treated by the competent authority as period of leave without pay. It may be true that, in the circumstances of the case, the unauthorised absence from duty might be taken to have formed the motive along with other factors for passing theorder terminating the services of the applicant. Unauthorised absence from duty would have been treated by the appointing authority as indicating the applicant's temporary services not being satisfactory. So long as the order of termination does not attach any stigma on the applicant, it is to be treated as termination simplicitur, coming within the scope of Rule 5 (1) of the Rules. In this view the order of 15.2.85 cannot be taken to fall outside the scope of Rule 5 (1) of the Rules.

The applicant herein was a member of a disciplined force such as the police constabulary and normally it is expected that he rports to duty regularly. The counter affidavit filed by the respondent in thiscase shows that the applicant has abstained from duty without permission on as many as 55 occasions. The appointing authority, in these circumstances, is justified in terminating the services of the applicant under Rule 5 (1) of the Rules. The applicant has no fundamental right to be absent from duty unauthorised by whenever he likes. He would say that his absence from duty was due to his ill-health as will be seen from the various certificates from doctors who treated him. Even then he should have applied for and obtained medical leave. So long as leave has not been sanctioned, the absence from duty should be taken

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to be unauthorised.

Coming to the second contention that the applicant has completed three years of continuous service and as such entitled to claim the benefit of quasi permanancy in which case the power under Rule 5(1) will not be available to the appointing authority, We find from the counter affidavit filed by the respondent that the applicant had not in fact completed three years of continuous service. Further so long as the competent authority has not declared quasi permanancy, he cannot treat himself as one who has acquired quasi permanency authomatically. The applicant cannot, therefore, avoid the application of Rule 5(1) merely on the ground that three years had elapsed since the date of his temporary appointment. This contention also fails.

Thus we are of the view that the application is devoid of merits and is therefore rejected.

24-XI-88

(S.P. MUKERJI)
ADMINISTRATIVE MEMBER

(G. RAMANUJAM)
VICE-CHAIRMAN(J)