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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A . 1495/1987. DATE OF DECISION: 23-11-1990.

Shri Rajinder Singh Applicant.

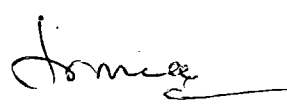
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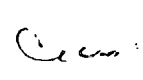
Senior Manager, Units of
P&T Motor Service, New
Delhi and Another Respondents.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
 Hon'ble Mr. J.P. Sharma, Member (J).

Shri Sant Lal, Counsel for the Applicant.
Shri P.P. Khurana, Counsel for the Respondents.

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? *No.*
4. To be circulated to all Benches of the Tribunal? *No.*


(J.P. Sharma)
Member(J)


(P.C. Jain)
Member(A)

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CORAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

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

JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who was working as a Time Scale Clerk in the office of the Senior Manager, P&T Motor Service, New Delhi, has assailed order dated 7.3.1986 whereby his services were terminated in pursuance of the proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, and has prayed for his reinstatement with back wages.

2. The facts of the case, in brief, are as under: -

The applicant was appointed as a temporary Time Scale Clerk in the P&T Motor Service, New Delhi, in the pay scale of Rs.260 - 480 plus usual allowances, as an outside Scheduled Tribe candidate, vide order dated 16.11.198 (Annexure R-5). He was appointed on the basis of an attested copy of the Caste Certificate dated 5.4.77 (R-I) purported to have been issued by Tehsildar Laxman Garh (Alwar), wherein he was shown as belonging to Aheriya (Sahariya) Tribe, which was recognised as a Scheduled Tribe. On his joining the post of Time Scale Clerk, when he was required to produce the original S/T Certificate, he vide his letter dated 16.5.81 (Annexure R-2), submitted

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that he was not able to trace the S/T Certificate and he had applied for issue of a fresh certificate. Later he produced a copy of another Caste Certificate dated 7.9.77 purported to have been issued by Assistant Magistrate, Laxman Garh, Alwar (Annexure R-3) wherein also he was shown to be belonging to Aheriya (Sahariya) Tribe. The case of the applicant was referred to the District Magistrate, Alwar (Rajasthan) for verification of the genuineness of ^{the} S/T certificate, vide letter dated 8.9.1981 (Annexure R-4). In the meanwhile, the applicant was imparted the required job training from 24.8.81 to 15.11.81, and was given temporary appointment as Time Scale Clerk with effect from 16.11.81 (Annexure A-5). The District Magistrate, Alwar, vide his letter dated 18.11.81 (Annexure R-6) wrote back to the Senior Manager, P&T Motor Service, New Delhi, that the Assistant Magistrate, Laxman Garh, who was purported to have issued the S/T Certificate dated 7.9.77 had been transferred. He stated that the applicant might be advised to obtain the caste certificate afresh. He also clarified in the said letter that Aheriya caste had not been declared as S/T. Accordingly, the applicant was directed to obtain a fresh certificate from the District Magistrate, Alwar, which he produced as at Annexure R-7, on 3.12.81. In this certificate, it was mentioned that the applicant belongs to the 'Sahariya' caste/Tribe. A further reference was made to District & Session Judge, Alwar only on 6.4.85 (Annexure R-8) to verify the caste certificate produced by the applicant. Finally, the Sub District Magistrate, Rajgarh, vide his letter dated 23.9.86 (Annexure R-10) cancelled the caste certificate dated 2.12.81 as the same was found to have been issued in an irregular manner and no person of the name of the applicant belonging to Sahariya caste was living in Kherli Village. As a result, the services of the applicant were terminated vide order dated 7.8.86. The applicant preferred an appeal dated

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6.9.86 against the orders of termination of his services, which was rejected vide communication dated 28.4.87 (Annexure R-11).

3. We have gone through the record of the case and have heard the learned counsel for the parties.

4. The case of the applicant is that ^{since} in accordance with the Recruitment Rules, ^{he} had passed the confirmation examination within the permissible period of four years, he has to be deemed as a permanent/quasi-permanent employee from the date he was declared successful in the said examination. He was not conveyed any decision on his appeal and that the copy of the order dated 28.4.87 (supra) shows that it was a non-speaking order violative of the principles of natural justice. According to him, the order of termination is shown to be innocuous in form but it is punitive in character. It is bad in law being violative of Article 311 (2) of the Constitution as it is founded on the alleged misconduct of submission of false caste certificate. He was not afforded any opportunity to controvert the allegations against him and, as such, it amounts to departure from the rules of natural justice.

5. In the counter reply, the respondent No.1 had initially raised a preliminary objection that the application was not maintainable as Union of India had not been made a party in the case. The applicant was, however, allowed to file an Amended Application, which he did, and vide orders dated 6.6.1989, the Union of India, through Secretary, Ministry of Communication, was impleaded as Respondent No.2. The respondents have pleaded that although the applicant had passed the confirmation test held on 20.1.85, the result of which was declared on 30.4.85, he had not been confirmed by the time of termination of his services. His services were terminated only because he had been rendered ineligible for appointment

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against post reserved for S/T candidate.

6. As regards the contention of the applicant that on his passing the confirmation test, the result of which was declared on 30.4.1985, he is to be treated as a permanent / quasi-permanent employee, the same is not tenable inasmuch as he was never declared as such by the competent authority. The declaration of permanency / quasi-permanency is issued on fulfilment of a number of requirements as per the CCS (Temporary Service) Rules, 1965, and as such, merely on passing a test, the applicant cannot assume to have acquired the status of a permanent / quasi-permanent employee.

7. In para 6.3 of the counter-reply of the respondents it is admitted that the service of the applicant was terminated only because he had been rendered ineligible for appointment against post reserved for S/T candidate. The applicant admits that he was appointed as a temporary Time Scale Clerk as outside Scheduled Tribe candidate. The applicant could continue to hold this post only if he could prove of his belonging to a S/T category to the satisfaction of the appointing authority. It is a fact that initially he produced a copy of the caste certificate dated 5.4.77 purported to have been issued by Tehsildar Laxman Garh (Alwar) wherein it was mentioned that he belonged to Aheriya (Sahariya) Tribe, but he failed to produce its original on demand by the authorities. He produced another certificate dated 7.9.77 purported to have been ^{issued} by Assistant Magistrate Laxman Garh, Alwar, wherein also his tribe was mentioned as Aheriya (Sahariya). When it was brought to the notice of the respondents by the District Magistrate, Alwar, that Aheriya was not included in the list of Scheduled Tribes, the applicant produced another certificate of his belonging to Sahariya tribe, which was issued by the Sub District Magistrate, Rajgarh, Alwar, on 2.12.81. It is surprising that the respondents did not take any action thereafter till they

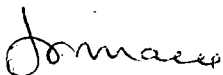
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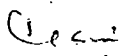
made a reference to the District and Session Judge, Alwar on 6.4.85. If they had any doubt about the genuineness of the certificate, they should have made a reference to the issuing authority soon thereafter. Order of the Sub District Magistrate, Rajgarh dated 23.9.86 by which the caste certificate dated 2.12.81 issued to the applicant as belonging to Sahariya tribe, was cancelled, was based on the report that the applicant was not living in Village Kherli. In his appeal dated 6.9.1986, addressed to the Post Master General, Indian Post & Telegraph Department, New Delhi, the applicant had stated that he lived in village Kherli from 1977 to 1981 when he was appointed in Delhi and thereafter he shifted from Alwar to Delhi. He had also stated that the caste certificates produced by him are genuine and proper. His appeal was, however, rejected vide order dated 28.4.87, which is a non-speaking order.

8. In view of the foregoing facts, it cannot be held that the termination order under Sub-Rule (1) of Rule 5 of the CCS (TS) Rules, 1965, issued on 7.8.1986 is an order simpliciter. The real cause of the termination of the services of the applicant is obviously the fact that the respondents are not fully satisfied with the genuineness of the certificates produced by the applicant from time to time. The applicant has cited a number of cases, including that of Jaipal Singh Vs. U.C.I. (1990 (1) ATJ 366) to say that the impugned order is bad in law being violative of Article 311 (2) of the Constitution. It is well settled that an order of termination of services of a temporary Government servant, even though on the face of it, may be an order of termination simpliciter, but if on the allegation of the concerned Government servant, it is found that it is founded on a misconduct, such an impugned order has to be treated as punitive and in such circumstances, even a temporary Government servant is entitled to the protection

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of Article 311(2) of the Constitution. There is nothing on record to show that the applicant has been given an opportunity to establish the bonafides of his claim of belonging to a Scheduled Tribe. On the other hand, in the inquiry held by the respondents in this matter, the applicant has not been involved. In view of these facts, the impugned orders dated 7.8.1986 and 28.4.1987 cannot be upheld and the same are hereby quashed and set aside. The respondents are directed to reinstate the applicant on the post held by him on the conditions hitherto applicable, within a period of one month from the date of communication of this order. The applicant shall also be entitled to receive pay and allowances admissible to him for the period between the date of removal and the date of reinstatement if he submits a certificate that he has not worked anywhere during the period. The respondents shall, however, be free to initiate the disciplinary proceedings in accordance with law / rules against the applicant in respect of the alleged misconduct on his part. We leave the parties to bear their own costs.


(J.P. SHARMA)
Member (J)


(P.C. JAIN) 23/11/90
Member (A)