

Date	Office Report	Orders
	30.5.91.	Present.
		Mr. Jagdish Vats, Counsel for the applicant in M.P. 1541/91.
		To be listed on 31.5.91.
		Bo.
		<u>31.5.1991</u> O.A. 1510/87 co. et Applicant in the OA through Shri Sunil Malhotra, Counsel. Respondents in the OA through Shri Jagdish Vats, Counsel.
		Orders were reserved in the OA on 23.4.91 after hearing the learned counsel for the applicant. Learned counsel for the respondents was not present on that day. However, one Shri Mohinder Singh, Head Constable was present on behalf of the respondents.
		Misc. Petition No. 1544/91 has been filed by the Respondents in the OA for permission to argue the OA on merits and placing the counter on record which is alleged to have been misplaced. No counter is available on record. As a matter of fact, the right of the respondents to file the counter-affidavit was forfeited vide order dated 6.6.1988.
		Shri Jagdish Vats, learned counsel for the respondents in the OA, was permitted to argue the matter on the basis of the pleadings on merits before us. We have heard the learned counsel for both parties. The OA is allowed and the impugned order of termination of the services of the applicant is set aside. The applicant will be reinstated in the Delhi Police and will be entitled to all consequential monetary benefits. This order will be implemented within a period of two months from the date of its receipt. There will be no order as to costs.
		A detailed order will follow.
		<i>(D.K.CHAKRAVORTY)</i> (D.K.CHAKRAVORTY) MEMBER(A)
		<i>(AMITAV BANERJI)</i> CHAIRMAN

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**N E W D E L H I**

O.A. No. 1510/87 with 199  
T.A. No. Misc.Petition 1544/91

**DATE OF DECISION 31.5.91**

<u>Shri Rajbir Singh</u>	<u>Petitioner</u> Applicant
<u>Shri Sunil Malhotra</u>	Advocate for the <u>Petitioner(s)</u> Applicant
Versus	
<u>Union of India &amp; ors.</u>	<u>Respondent(s)</u>
<u>Shri Jagdish Vatsa,</u>	Advocate for the Respondent(s)

**CORAM**

**The Hon'ble Mr. JUSTICE AMITAV BANERJI, CHAIRMAN**

**The Hon'ble Mr. D.K.CHAKRAVORTY, 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? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

**JUDGEMENT**

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE  
 MR. D.K.CHAKRAVORTY, MEMBER(A) )

The applicant, who has worked as a Constable in the Delhi Police, filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying for quashing of the order dated 29.4.1987 terminating his services under Rule 5(1) of the Central Civil Services( Temporary Services) Rules, 1965 and the order dated 31.8.1987 whereby his representation against the termination of services was rejected by the Commissioner of Police, Delhi. He has also prayed that the respondents be directed to reinstate him in service with effect from the date of his termination with full back wages, continuity of service and all the consequential benefits/ reliefs. He has also sought for a direction to the respondents to regularise his services as Constable

in Delhi Police from the date of enrollment with seniority in service from the same date.

2. The Original Application, which was filed on 19.10.1987, was admitted on 26.10.1987. Since despite several opportunities given to the respondents no counter was filed, it was ordered on 6.6.1988 that " If counter is not filed within one month, the right to file the counter shall stand forfeited". Counter not having been filed, the matter was included on 30.8.1988 in the ready list of cases for final hearing. The applicant's Misc.Petition for early hearing was allowed and the case was directed to be listed for final hearing on 23.4.1991. On that date, after hearing the learned counsel for the applicant and perusing the records, orders were reserved.

3. Misc.Petition No.1544/91 filed by the Respondents in the Original Application on 9.5.1991 came up before the Bench on 31.5.1991 and the following orders were passed:-

" Orders were reserved in the OA on 23.4.91 after hearing the learned counsel for the applicant. Learned counsel for the respondents was not present on that day. However, one Shri Mohinder Singh, Head Constable was present on behalf of the respondents.

Misc.Petition No.1544/91 has been filed by the Respondents in the OA for permission to argue the OA on merits and placing the counter on record which is alleged to have been misplaced. No counter is available on record. As a matter of fact, the right of the respondents to file the counter-affidavit was forfeited vide order dated 6.6.1988. Shri Jagdish Vatsa, learned counsel for the respondents in the OA, was

permitted to argue the matter on the basis of the pleadings on merits before us. We have heard the learned counsel for both parties. The OA is allowed and the impugned order of termination of the services of the applicant is set aside. The applicant will be reinstated in the Delhi Police and he will be entitled to all consequential monetary benefits. This order will be implemented within a period of two months from the date of its receipt. There will be no order as to costs.

A detailed order will follow."

4. The facts of the case are as follows. The applicant was enrolled as Constable in the Delhi Police on 23.9.1982. After successfully completing 9 months' Recruit Course, he worked as a Constable in VITH, IXTH & XTH Battalions till 27.4.1987. He had put in more than  $4\frac{1}{2}$  years of service in the Delhi Police and performed his duties efficiently and with devotion. In recognition of good work rendered by him, he was granted commendation certificates and his character during this period had been above board. He had not been awarded any major punishment so as to make him unfit for public service. On 27.4.1987, he was deemed to be in quasi permanent service as his initial probationary period was not extended by the competent authority.

5. The applicant had fallen sick in the month of January, 1987 and obtained medical rest for 15 days from J.P.N.Hospital. Thereafter, he obtained 4 days' casual leave from 24.1.1987 to 27.1.1987 to go to his

native village where his uncle Shri Subh Ram had expired on 22.1.1987. A copy of the death certificate of his uncle is enclosed in the paper-book. The applicant was due to report for duty to his Battalion on 28.1.1987 on the expiry of casual leave. He had fallen sick and sent a telegram to Respondent No.2 seeking extension of leave by 10 days. He did not receive any intimation regarding rejection of his request for extension of leave. He resumed duty on 7.2.1987 and submitted a medical certificate issued by Government dispensary, Samepur Badli in support of his telegraphic application for extension of leave. On or about 18.3.1987, the applicant was informed for the first time that his application for extension of leave had not been granted and that he had been marked absent for the period from 28.1.1987 to 6.2.1987. As directed, the applicant appeared before the Assistant Commissioner of Police, 10th Battalion and explained the circumstances leading to his telegraphic request for extension of leave. Thereafter, he appeared before Respondent No.2 and explained the reasons for his over-staying leave and absence. The applicant feels that Respondent No.2 had made up his mind to terminate his services and instead of adopting the procedure of instituting formal proceedings, he had chosen the shortcut method of terminating the services of the applicant under sub-rule (1) of Rule-5 of the Central Civil Services (Temporary Service) Rules, 1965. Under order dated 18-3-1987, the applicant was given notice that his services shall stand terminated with effect from the date of expiry of a period of one month from the date on which notice was served

on him. Finally the impugned order dated 29-4-1987 terminating his services with effect from 27-4-1987 was issued.

6. The applicant submitted a detailed representation to the Commissioner of Police on 20-5-1987 for setting aside the impugned order but the same was rejected by a non-speaking order which is reproduced below:-

"You are hereby informed that your representation against termination from service has been considered by the Commissioner of Police Delhi and rejected, vide PHOs memo No.19646/CR-III, dated 31-8-1987".

7. The applicant has contended that the termination of his services being on account of absence from duty and amounting to misconduct, the respondents should have held disciplinary proceedings against him and given him reasonable opportunity to defend himself, that the impugned order dated 29-4-1987 was passed by way of punishment as is clear from the circumstances stated earlier and that the order is punitive in nature and in contravention of Article 311(2) of the Constitution of India. He has further contended that there had been no rationale and intelligible differentia for terminating his services while retaining his juniors numbering hundreds in service, that Respondent No.2 exercised his power under sub-rule (1) of Rule 5 of the CCA (TS) Rules,1965 arbitrarily and improperly and that the impugned order of termination is capricious and discriminatory. The impugned order is violative of Articles 14 and 16 of the Constitution inasmuch as the applicant was singled out for discrimination.

Having completed more than 3 years, the services of

the applicant should be deemed to be quasi permanent and under the Rules his services could not be terminated except through the procedure applicable in the case of permanent Government servants. The applicant has also stated that in a case of this nature, the competent authority should pass a speaking order and must assign reasons for rejecting the representation of the applicant which has not been done in his case.

8. The main issue arising for consideration is whether the impugned order of termination is one of simpliciter or partakes of the nature of an order of punishment. It is well settled that the mere form or language of the order is not sufficient to hold that the order of termination is an order simpliciter and that in the process of judicial review, the foundation of the order simpliciter can be gone into. The apparent innocuous order would be linked with the stigma if the link is not far to seek and the respondents have disclosed what actually were the grounds for making the order. If the innocuous order is grounded upon features which cast stigma against the affected officer, he is entitled to defend himself in a proceeding provided under the Rules applicable to him (vide Harpal Singh Vs. State of U.P and another - ATR 1988(1) SC 77; Anoop Jaiswal Vs. Government of India and Another - 1984 (2) SCC 369).

9. In the instant case, it is apparent that the services of the applicant have been terminated on account of his alleged unauthorised absence from duty. Such alleged absence will amount to misconduct and disciplinary proceedings could be initiated against

the applicant under the relevant Rules. During such an inquiry, he will have to be afforded reasonable opportunity to defend himself. The applicant had been deprived of such an opportunity in the instant case. In our opinion, the impugned order of termination is not an order of termination simpliciter and is not legally sustainable.

10. There is also another aspect of the matter. Under the relevant provisions of the Delhi Police Promotion and Confirmation Rules, 1980 and the Delhi Police Appointment and Recruitment Rules, 1980 all employees appointed to the Delhi Police shall be on probation for a period of two years. However, the competent authority may extend the period of probation, but in no case, shall the period of probation extend beyond three years in all. In State of Punjab Vs. Dharam Singh, AIR 1988 SC 1210, a Constitution Bench of the Supreme Court has held as follows:-

"....It is permissible to draw the inference that the employee allowed to continue in the post on completion of the maximum period of probation has been confirmed in the post by implication".

In Om Prakash Vs. U.P. Co-operative Sugar Factories Federation, Lucknow, AIR 1986 SC 1844 and M.K. Agarwal Vs. Gurgaon Grameen Bank, AIR 1988 SC 286 similar observations have been made.

11. In the instant case, the applicant has put in more than  $4\frac{1}{2}$  years service in the Delhi Police and his initial probationary period was not extended by the competent authority. The applicant must, therefore, be deemed to have been confirmed after the expiry of three years from the date of his appointment, which was the maximum period during which he could have been

placed under probation. Accordingly, his services could not have been terminated by invoking the provisions of Rule 5(1) of the CCS (TS) Rules, 1965.

12. There is yet another ground on which the applicant is entitled to succeed. The termination of his services has been made while retaining his juniors vide Annexure-H, page 21 of the paperbook. This militates against the protection of Articles 14 and 16 of the Constitution to which the applicant is entitled (vide: Manager, Government Branch Press & Another Vs. D.B.Belliappa, 1979 SLJ 233(SC); Jarnail Singh & others Vs. State of Punjab & others, 1986 (2) SLJ (SC) 157.

13. In the light of the foregoing discussion, we set aside and quash the impugned orders dated 29-4-1987 and 31-8-1987. The Respondents are directed to reinstate the applicant in service as Constable. He will be entitled to arrears of pay and allowances from 27-4-1987 to the date of his reinstatement and other consequential benefits. The Respondents shall comply with the above directions within a period of two months from the date of receipt of this order.

14. There will be no order as to costs.

*D.K.Chakraborty*  
(D.K.CHAKRAORTY)  
MEMBER(A)

*Amitav Banerji*  
31.5.91  
(AMITAV BANERJI)  
CHAIRMAN