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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

REGN. NO. O.A. 1744/87.

Date of decision: 30.3.93.

Sunil Sikka.

.. Petitioner.

Versus

Superintendent of Police,
Delhi & Ors.

.. Respondents.

CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. B.N. DHOUNDIYAL, MEMBER(A).

For the Petitioner.

Mrs. Swarana Mahajan,
Counsel.

For the Respondents.

Shri Harish Rai, Counsel.

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath, Chairman)

The petitioner, Shri Sunil Sikka, was appointed temporarily as a Police Constable in the year 1977. Under Rule 5 of the CCS (Temporary Service) Rules, 1965, the petitioner was given notice that his services shall stand terminated with effect from the date of expiry of one month from the date on which the notice is served on him. After service of the said notice and expiry of the period of notice, an order came to be passed by the Superintendent of Police, Lines, Delhi on 8.6.1977 terminating the services of the petitioner in exercise of the powers conferred by sub-rule(1)(a) of Rule 5 of the CCS(Temporary) Service Rules, 1965. It is the said order that is challenged by the petitioner in this case.

2. Mrs Swarana Mahajan, learned counsel for the petitioner, contended that the services of the petitioner could not have been terminated without giving the petitioner an opportunity of showing cause and holding an appropriate inquiry. She submitted that though the order of termination is innocuous and no stigma is attached by the same on the petitioner, if we carefully read the reply of the respondents it would become clear as to what was the real reason for termination of the petitioner. She submitted that the reply affidavit makes it clear that the services of the petitioner were terminated on the ground that though the petitioner was required to furnish relevant information in regard to the question whether he was prosecuted or convicted, he had suppressed the relevant information in this behalf. Thus, it was submitted that the petitioner should have been afforded an opportunity of showing cause before terminating his services. The petitioner would have been on firm footing to invoke this principle provided he had the right to hold the post. The notice as well as the impugned order in express terms say that the petitioner is a temporary employee which entitles the authorities to terminate his services invoking Rule 5 of the CCS (Temporary Service), Rules, 1965. In paragraph 6.5

a positive assertion has been made that the petitioner's appointment was temporary and was governed by the CCS (Temporary Service) Rules, 1965. Though the petitioner had an opportunity to make his position clear in the rejoinder / he has not taken the stand that he was not so temporarily appointed. The petitioner has not produced any order showing that he was ^a permanent employee. Having regard to the nature of pleadings, we are satisfied that the petitioner's appointment was only on a temporary basis and was governed by the CCS(Temporary Service) Rules. The petitioner being a temporary employee governed by the said rules had not acquired the right to hold the post. The law on the question of termination of services of a temporary government servant is now well settled by the Bench of the three judges reported in JT 1991(1) SC 108 between **State of Uttar Pradesh & Anr.**

Vs. Kaushal Kishore Shukla. The said decision has been consistently followed by the Tribunal in TA-30/88 (CW.1991/85) decided on 20/21.5.1992. In paragraph 8 of the judgement of the Supreme court, this is what has been observed:

"Learned counsel for the respondent urged that the allegations made against the respondent in respect of the audit of Boys Fund of an educational institution were incorrect and he was not given any opportunity of defence

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during the inquiry which was held ex parte. Had he been given the opportunity, he would have placed correct facts before the inquiry officer. His services were terminated on allegation of misconduct founded on the basis of an ex parte enquiry report. He further referred to the allegations made against the respondent in the counter affidavit filed before the High Court and urged that these facts demonstrate that the order of termination was in substance, an order of termination founded on the allegations of misconduct, and the ex parte enquiry report. In order to determine this question, it is necessary to consider the nature of the respondent's right to hold the post and to ascertain the nature and purpose of the inquiry held against him. As already observed, the respondent being a temporary Govt. servant had no right to hold the post, and the competent authority terminated his services by an innocuous order of termination without casting any stigma on him. The termination order does not indict the respondent for any misconduct. The inquiry which was held against the respondent was preliminary in nature to ascertain the respondent's suitability and continuance in service. There was no element of punitive proceedings as no charges had been framed, no inquiry officer was appointed, no findings were recorded, instead a preliminary inquiry was held and on the report of the preliminary inquiry the competent authority terminated the respondent's services by an innocuous order in accordance with the terms and conditions of his service. Mere fact that prior to the issue of order of termination, an inquiry against the respondent in regard to the allegations of unauthorised audit of Boys Fund, was held does not change the nature of the order of termination into that of punishment as after the preliminary inquiry the competent authority took no steps to punish the respondent instead it exercised its power to terminate the respondent's services in accordance with the contract of service and the Rules".

The Supreme Court has proceeded to observe at the end of para 11 of the judgement as follows:

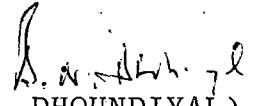
"We have referred to the above decisions in detail to dispel any doubt about the correct position of law. It is erroneous to hold that where a preliminary enquiry into allegations against a temporary govt. servant is held or where a disciplinary enquiry is held but dropped or abandoned before the issue of order of termination, such order is necessarily punitive in nature".

3. The principle laid down is quite clear, namely, that when a person is appointed on a temporary basis and is governed by Rule 5 of the CCS (Temporary Service) Rules, 1965, the competent authority when it is faced with the allegation or material in regard to the misconduct of such a temporary Govt. servant, it is open either to exercise its statutory right of terminating services by innocuous order by issuing the prescribed notice or to hold a disciplinary inquiry and to punish him if he is found guilty. It is for the authority to decide as to which course it should adopt. If it prefers to adopt the course of termination of a temporary Govt. servant by issuing a notice without holding a regular inquiry, such action cannot be faulted. That is precisely the position in this case. The authorities were satisfied that the petitioner concealed the relevant information which justified the view that the petitioner is not suitable for being continued as a police constable.

The competent authority took the decision to terminate by exercising its power by issuing a proper notice.

It is well within the discretion of the competent authority to opt in favour of one or the other action as laid down by the Supreme Court. Hence, the order of termination of the temporary Govt. servant having been passed in exercise of power under Rule 5 of the CCS(Temporary Service) Rules, 1965, is not liable for interference.

4. For the reasons stated above, this petition fails and is dismissed. No costs.


(B.N. DHOUNDIYAL)
MEMBER(A)


(V.S. MALIMATH)
CHAIRMAN

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