

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1749/87

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T.A. No.

DATE OF DECISION 10.2.1992

<u>Shri Virender Kumar</u>	Petitioner Applicant
<u>Shri G.D. Bhandari</u>	Advocate for the Petitioner(s) Applicant
Versus	
<u>Inspector General of Prison</u>	Respondent
<u>and Another</u>	
<u>Shri B.R. Prashar</u>	Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member.

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?

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The short point for consideration is whether the termination of services of the applicant by the impugned order dated 19.6.1987 is legally sustainable.

2. The applicant was appointed as Jail Warder in the Central Jail, Tihar, on 22.9.1982. It was in the nature of a regular appointment, though it was temporary and liable to be terminated at any time by one month's notice given by either side. The applicant was to be on trial for a period of two years from the date of his appointment. Failure to complete the period of trial

to the satisfaction of the competent authority, would render him liable to be discharged from service without notice.

3. The applicant has stated that he went on leave on medical grounds on 21.4.1987. He recovered from his illness and submitted his application along with medical certificate for regularisation of his leave on 4.6.1987. His services were, however, terminated on 19.6.1987. The applicant has stated that the services of another Warder, Shri Jai Narayan, whose services had also been terminated similarly, had been reinstated.

4. The respondents have stated in their counter-affidavit that the applicant wilfully absented himself from duty without any prior intimation w.e.f. 21.4.1987. No application was received from him for the grant of leave.

5. We have carefully gone through the records of the case and have considered the rival contentions. The impugned order of termination was issued pursuant to the provisions of sub-rule(1) of Rule 5 of the C.C.S. (Temporary Service) Rules, 1965. The impugned order pertained to six Warders, including the applicant and Shri Jai Narayan. The respondents have not controverted the version of the applicant that Shri Jai Narayan has been taken back in service. It is by now well settled

that the mere form of ~~XXXXX~~ 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, A.T.R. 1988 (1) S.C. 77; and Anoop Jaiswal Vs. Govt. of India & Another, 1984 (2) SCC 369).

6. In a recent case of Dr. (Mrs.) Sumati P. Shere Vs. Union of India & Others, 1989 (1) SCALE 963 at 964, the Supreme Court observed as follows:-

" We must emphasise that in the relationship of master and servant there is a moral obligation to act fairly. An informal, if not formal; given-and-take, on the assessment of work of the employee should be there. The employee should be made aware of the defect in his work and deficiency in his performance. Defects or deficiencies, indifference or indiscretion may be with the employee by inadvertence and not by incapacity to work. Timely communication of the assessment of work in such cases may put the employee on the right track. Without any such communication, in our opinion, it would be arbitrary to give a movement order to the employee on the ground of unsuitability".

7. In the instant case, the termination of the services of the applicant without telling him in advance in writing

that his work and performance was not up to the mark, is not legally sustainable. The termination is in essence due to the alleged misconduct on the part of the applicant in the performance of his duties. In such a case, the more appropriate course for the respondents to adopt was to initiate disciplinary proceedings against the applicant under the relevant rules and not to short-circuit the inquiry by invoking the power under Rule 5(1) of the C.C.S. (Temporary Service) Rules, 1965. During such an inquiry, the applicant will be entitled to have a reasonable opportunity to defend himself against the charge of misconduct. The applicant in the instant case has been deprived of that opportunity. In view of this, the impugned order of termination cannot be construed to be an order of termination simpliciter and on that ground, it is not legally sustainable.

6. The impugned order is not sustainable in law on another ground, namely, that in the case of a similar person whose services were terminated, he was reinstated (Shri Jai Narayan). In the case of the General Manager, Government Branch Press and Another Vs. D.B. Balliappa, 1979 SCC (L&S) 39, the Supreme Court has held that if the services of a temporary Government servant are terminated arbitrarily, and not on the ground of his unsuitability,

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unsatisfactory conduct or the like which would put him in a class apart from his juniors in the same service, a question of unfair discrimination may arise, notwithstanding the fact that in terminating his services, the appointing authority was purporting to act in accordance with the terms of the employment.

7. The learned counsel for the respondents drew our attention to Section 54 of the Prisons Act, 1894, which reads as follows:-

"(1) Every Jailer or officer of a prison subordinate to him who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by competent authority, or who shall withdraw from the duties of his office without permission or without having given previous notice in writing of his intention for the period of two months, or who shall wilfully over-stay any leave granted to him, or who shall engage without authority in any employment other than his prison-duty, or who shall be guilty of cowardice shall be liable, on conviction before a Magistrate, to fine not exceeding two hundred rupees, or to imprisonment for a period not exceeding three months, or to both.

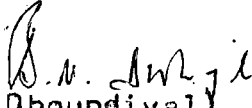
(2) No person shall under this section be punished twice for the same offence."

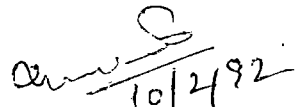
8. In our opinion, the aforesaid provision is not relevant to the facts and circumstances of the instant case.

9. We, therefore, set aside and quash the impugned order of termination dated 19.6.1987 and direct the respondents to reinstate the applicant as Warder. He

will also be entitled to arrears of pay and allowances from 19.6.1987 to the date of his reinstatement. The respondents shall comply with the above directions within a period of three months from the date of communication of this order.

10. We make it clear that after reinstating the applicant, the respondents will be at liberty to take any appropriate action against him for any act of misconduct, in accordance with law, if so advised. The parties will bear their own costs.


(B.N. Dhoundiyal)
Administrative Member


10/4/92
(P.K. Kartha)
Vice-Chairman (Judl.)