

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH:NEW DELHI

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OA NO.1090/87

DATE OF DECISION: 5.9.1991

EX CONSTABLE JAGBIR SINGH

APPLICANT

VERSUS

COMMISSIONER OF POLICE&ORS.

RESPONDENTS

CORAM:

THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SHRI.MUKUL TALWAR,

COUNSEL

FOR THE RESPONDENTS

SH.M.K.SHARMA, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY

HON'BLE MR. I.K. RASGOTRA, MEMBER(A)

Ex-Constable Jagbir Singh has filed this application under Section 19 of the Administrative Tribunals Act, 1985 challenging the termination of his service by Deputy Commissioner of Police and rejection of his appeal by the Commissioner of Police vide orders dated 10th March, 1987 and 22nd April, 1987 respectively.

2. The applicant was appointed as Constable in the Delhi Police on 2nd June, 1984. He was detailed for duty from 10 a.m. to 2 p.m. at the Indira Memorial, Old Prime Minister's House where after performing his duty from 10 a.m. to 2 p.m. the applicant left for his house. On 27th October, 1986, which was his rest day, he fell sick and was admitted to a private nursing home of Shri S.K.C. Aggarwal for abdominal and mental diseases. He was in hospital from 27th October, 1986 to 5th November, 1986 and was thereafter advised rest upto 6th December, 1986. As he was continuing under mental depression he was further

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advised two months rest upto 6.2.1987, which period was subsequently extended upto 20th February, 1987. The applicant sent information about his sickness vide application dated 3rd November, 1986 through his brother-in-law, apparently for personal delivery but the same was despatched by his brother-in-law by post under U.P.C. on 6th November, 1986 from Delhi G.P.O. A copy of the application and postal certificate is annexed at Annexure P-2 and P-3 respectively. The applicant joined duty on 18.2.1987 after Dr. S.K.C. Aggarwal certified him fit vide certificate dated 18.2.1987. The applicant was performing his duties in the normal routine, when suddenly his services were terminated vide order dated 10th March, 1987 under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965 (the Rules for short) (Annexure P-4). He submitted an appeal against the said order to the Commissioner of Police which was rejected by the Appellate Authority on 22nd April, 1987. The applicant contends that the termination order passed by the competent authority under Rule 5(1) of the CCS (TS) Rules, when he maintained good conduct and had not been reported adversely is in clear violation of Articles 14, 16 and 311 of the Constitution. He further contends that termination of his service without giving him reasonable opportunity to explain his conduct also offends the principles of natural justice. He also seeks protection of Article 14 and 16 of the Constitution as he has been discriminated on ground that some of the persons who were similarly situated and who had absented without prior permission of the authorities were initially removed from service but later on reinstated by the competent authority on considering their representations. He has specifically mentioned the following cases in support of his plea of discrimination:-

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1. Nanak Chand 11750/DAP
2. Constable Yash Pal Singh 10607/DAP
3. Constable Om Prakash 3310 DAP
4. Constable Raja Ram

3. In their reply the respondents have submitted that the applicant was enlisted in Delhi Police on 2.6.1984 as a temporary Constable under Section 12 of Delhi Police Act, 1978. His services were terminated vide order dated 10.3.1987 as he was found to be a habitual absentee. At the time of termination of service he was still a temporary Government servant. Several opportunities were given to him to mend his ways but these did not yield any fruit. Ultimately, finding no further alternative and in the interest of maintaining discipline in the force, his services had to be terminated. The respondents have furnished of the details/his wilful absence amounting to a total period of 132 days on 12 different occasions during the short spell of $2\frac{1}{2}$ years' service. They have also indicated the action taken against him on each occasion:

S.No.	From	To	Period of absence			Action taken
			D	H	M	
1.	30.12.84	30.12.84	-	2	15	Filed
2.	05.02.85	06.02.85	-	13	40	Warned in writing
3.	25.05.85	25.05.85	-	1	25	Warned to be careful in future
4.	02.09.85	02.09.85	-	7	55	Advised to be more careful in future.
5.	07.09.85	08.09.85	-	10	30	Awarded 10 days P.D.
6.	26.10.85	26.10.85	-	2	10	Awarded 5 days P.D.
7.	15.02.86	15.02.86	-	3	15	Awarded 10 days P.D.
8.	17.02.86	17.02.86	-	-	45	Awarded 5 days P.D.
9.	20.02.86	23.02.86	4	-	-	Leave without pay

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10.	25.02.86	07.03.86	10 - -	Leave without pay.
11.	26.10.86	18.02.87	116 - -	Leave without pay
12.	19.02.87	19.02.87	1 - -	Leave without pay

The frequent absence of the applicant and the action taken on each occasion by the respondents appear to belie the statement of the applicant that he had a satisfactory record of service. The respondents have further brought out that the applicant left his headquarters on 26.10.1986 without seeking prior permission from his seniors and was as such marked absent. He was issued absentee notice four times on 20.11.1986; 12.1.1987; 30.1.1987 and 11.2.1987 but no intimation was received from him regarding his illness nor was any request received for grant of leave till the date he resumed duty. Interestingly, the absentee notice dated 12.1.1987 sent to his native village was received back in the office of the respondents with a written remark on the face of the envelope by one of his family member viz. Shri Ram Chander that the petitioner "is not present at home but on his duty in Delhi." The respondents, therefore aver that the applicant seems to have managed to obtain the medical certificate from a private doctor just to cover up his long and unauthorised absence. They further contend that his service was terminated for his incorrigibility and absenting frequently from duty unauthorisedly. Regarding the discrimination the respondents submit that the case relating to other constables are different and need no comments.

4. The applicant has filed a rejoinder.

5. Shri Mukul Talwar, the learned counsel for the applicant submitted that the applicant was sick and that the entire period of sickness was covered by the medical certificate of 18.2.1987. The applicant was also entitled to 50 days L.A.P. at the time his services were terminated. He was not given any opportunity to explain the circumstances of his absence. The learned counsel urged that the applicant cannot be removed from service without giving him reasonable opportunity to defend himself and without pointing out his deficiencies. The order of termination is not order simplicitor but it has a stigma of habitual absence and therefore it attracts the provisions of Article 311 of the Constitution. The learned counsel for the applicant cited the following judicial pronouncements in support of the case of the applicant which are examined hereunder:-

(i) **OA 338/90 - Shri Rajiv Kumar Vs. Delhi Administration and Others decided on 9.8.1990**
The services of the petitioner herein were terminated under Rule 5(1) of the CCS (TS) Rules, 1965 for habitual absenteeism leading to the conclusion that he was irresponsible, indisciplined and incorrigible type of person. The Tribunal relying on numerous rulings of the Hon'ble Supreme Court and particularly **Shamsher Singh Vs. State of Punjab, 1974 SCC (L&S) 550 at 569 and 570** observed that "In our opinion termination of services of the applicant without telling him in advance in writing that his work and performance was not upto the mark: in not legally sustainable."

The case, however, is distinguishable from the matter before us as besides the

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absenteesim, the applicant herein is also found to be unreliable on account of having made contradictory statements about his absence.

(ii) **AIR 1989 (SC 1431/1432 - Dr. (Mrs.) Sumati P. Shere Vs. UOI and others.**

The facts of this case are that the petitioner was appointed against a permanent post of Assistant Surgeon Grade-I. The said order stipulated that the appointment was on adhoc basis for a period of 6 months or till a regular candidate from Union Public Service Commissioner became available. Her appointment against a permanent post, which was continued on ad hoc basis was not extended beyond 15th February, 1985 as her services were found to be unsatisfactory. The Hon'ble Supreme Court, therefore held that "the employee should have been made aware of the defect in her work and deficiency in her performance." When the service of the applicant was terminated she had no knowledge that, that was being done on account of her unsatisfactory performance. The Hon'ble Supreme Court further observed that there may be no dispute about the proposition that service of a temporary government servant can be terminated on the ground that his work had never been satisfactory and that he was not found suitable for being retained in service. Their Lordships further stated that "this court hold the termination of service in such cases on the ground

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of unsuitability in the post does not attract Articles 311(2) of the Constitution. We are not laying down the rule that there should be a regular enquiry in this case. All that we wish to state is that if she is to be discontinued, it is proper and necessary that she should be told in advance that her work and performance are not upto the mark."

It will be observed from the above that neither the facts of the case nor the law declared by the Supreme Court in Dr. (Mrs. Shere (supra) has any bearing in the matter before us.

(iii) AIR 1982 (SC) 854 - L. Robert D'Souza V. Executive Engineer, Southern Railway.

The learned counsel specifically drew our attention to the observation of their Lordships that "absence without leave constitutes misconduct and it is not open to the employer to terminate service without notice and enquiry or at any rate without complying with the minimum principles of natural justice." The facts of this case are that the petitioner was appointed as a Gangman in the Southern Railway on July 1, 1948 and his services were deemed to have been terminated from 18th September, 1974 when he was last working as Lascar at Ernakulam as he had absented from duty unauthorisedly from that date. The petitioner was a workman within the meaning of expression under Section 2(s) of the Industrial Disputes Act, 1947 and he had further undisputedly rendered continuous services for a period over 20 years. Hon'ble Supreme Court's observations, as reproduced above have to be viewed in the context in which they have been made. In that view of the matter, the case is not of any assistance to the applicant herein.

(iv) AIR 1986 SC 492 - Jai Shanker Vs. State of Rajasthan.

The facts of this case are not on all four with the matter before us. In the case of Jai Shankar (supra), the applicant was a permanent government servant. He was removed from service for overstaying sanctioned leave without permission. The case, obviously attracted Article 311 of the Constitution. There was no provision for automatic termination of service.

(v) 1981(3)SLR 629 - Ram Kishore Pande Vs.

UOI

This case is distinguishable as the services of the applicant were terminated under Rule 14 of Appendix 7-A of F.R. & S.R. Vol.II.

6. Shri M.K. Sharma, the learned counsel for the respondents submitted that Delhi Police is a disciplined force and that punctuality, regularity and reliability are essential characteristics of a disciplined force. The applicant has been absenting himself frequently and the opportunities given to him for improving his performance were of no avail. The learned counsel submitted that while in his application dated 20.2.1987 (Annexure P-2), he explained his absence from 26.10.1986 to 18.2.1987 by stating that when he returned to his barrack after duty on 26.10.1986, he found his brother in law there and since 27.10.1986 was his rest day he went to his in-laws house where he suddenly developed temperature and started vomiting. Thereafter his brother-in-law got him admitted in S.K.C. Aggarwal Hospital in Rohtak. He remained in the hospital till 5.11.1986 and in accordance with the Doctor's advice took rest at his in-laws' house till 18.2.1987. On the other hand in his appeal dated 17.3.1987 (Annexure P-5) addressed to the Commissioner of Police, he has stated that "I proceeded on leave 1st w.e.f. 26.10.1986 to my home town where unfortunately I fell ill." The learned counsel further pointed out that the absentee notice dated 12.1.1987, sent to his village was received back in the office with the written remarks on the face of the envelope by one of his family member viz. Shri Ram Cahnder that he (petitioner) "is not present at home but is on duty in Delhi."

It will be obvious from the above that the statements made by the applicant cannot be relied upon and that he has cooked up the story of his illness to cover his absence. The learned counsel cited **1976(1) SLR 129 - State of U.P. Vs. Tilak Singh** to garner support for his case. The petitioner in this case was appointed as a temporary government servant in the office of the Collector, Etah. When his case came up for confirmation by the Collector, Etah, he decided that in view of his service record he was not a fit person to be confirmed in service. Accordingly he deferred his confirmation till his annual report for 1969-70 was available. The petitioner made a representation to the Commissioner, who in his order observed the unsatisfactory nature of his service record, right from the year 1956 to 1966-67 and therefore, confirmed the decision of the Collector, not to confirm the petitioner. After the annual remarks for the year 1969-70 became available the Collector finally decided that the petitioner was not fit for confirmation and as such his services should be terminated. Accordingly the order was passed on 26th November, 1970 under the relevant rules applicable to temporary government servants. This matter came in appeal before the Division Bench of the Allahabad High Court, when the learned judges held:

"Termination of service on an over all assessment of service record, when it is found that the temporary Government servant is not fit to be confirmed in service does not, in our opinion, amount to a punishment. In the case of **State of Sughar Singh 1974 S.C. 423** and **Purushottam Lal Dhingra - AIR 1958 SC 36**, Das C.J had observed:

"It is true that the misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of contract of employment or the specific service rule, nevertheless if a right exists, under the contract or the rules, to terminate the service, the motive operating in the mind of the government is, as Chagla C.J. has said in **Shrinivas Ganesh V. Union of India (AIR 1956 Bom. 455)** wholly irrelevant. In short, if the termination of service is founded on the right following from contract or the service rules, then, *prima facie* the termination of service is not a punishment and carries with it no evil consequences and so Art. 311 is not attracted."

7. On 11.7.1991 when the arguments were being heard on legal and factual aspects, the learned counsel for the applicant produced a confidential circular No. 5320-390/CR-III dated 13.3.1991 issued by Deputy Commissioner of Police (headquarters) Delhi stipulating that "Police personnel entering in service on probation for a period of 2 years is required to be confirmed after the expiry of two years unless their probation period is extended by a period of one year at the maximum. In case the probation period is not extended he is deemed to have been confirmed on the expiry of 2 years. Orders of termination of service of such Police personnel who have completed 2 years of service and whose probation period has not been extended would be illegal and against the rules."

The learned counsel for the respondents therefore prayed that he would need to seek instructions in the matter as a copy of the circular has been given to him only in the court on 11.7.1991. The learned counsel for the respondents was consequently directed to give his comments on the above circular by 15.7.1991, simultaneously serving a copy thereof on the learned counsel for the applicant who was to file reply by 16.7.1991. We have perused the written arguments filed by the learned counsel for both the parties. The respondents have taken the view that the circular of the Police Headquarters dated 13.3.1991 is applicable prospectively and is not retroactive and consequently does not affect the case of the applicant.

We have also considered the aspect of confirmation in the context of the Delhi Police (Appointment and Recruitment Rules, 1980). According to Rule 5(e)(i) all direct appointment of employees are initially made on purely temporary basis. The prescribed period of probation is two years which can be extended upto a maximum period of three years in all. The rules further provided that:

"5(e)(ii)The services of an employee appointed on probation are liable to be terminated without assigning any reason.

5(e)(iii) After successful completion of probation the employee shall be confirmed in the Delhi Police by the competent authority subject to the availability of permanent post."

Thus the maximum period of probation can be three years. In case an employee is not confirmed after three years, by passing a specific order, he can be deemed to have been confirmed as has been held by the tribunal in **OA 1510/87 Rajbir Singh Vs. UOI decided on 31.5.1991**. However, in the present case, the applicant was discharged from service well within the period of three years. We also observe that while the respondents in their counter affidavit have specifically averred that the applicant was a temporary government servant when his services were terminated, the applicant has not refuted the pleading of the respondents in his rejoinder. There is, thus, no dispute that the applicant was a temporary Constable on extended probation when he was discharged from service.

8. We have given our deep thought to the rival contentions and perused the material before us carefully. We are of the view that the applicant had been put on notice from time to time in regard to his absence on each occasion. He had been administered warning on three occasions and awarded P.D. for period varying between 5 to 10 days on 4 occasions, while on the remaining 4 occasions his absence had been treated as leave without pay. These actions of the respondents should have put him on reasonable alert to improve his punctuality, regularity and attendance more so as he was a member of the disciplined force. He certainly was not ignorant of the fact that the respondents were taking a dim view of his performance as is apparent from warnings etc. administered to him during the period commencing December, 1984 to February, 1986. Although he fell sick on 26.10.1986, he submitted a medical certificate only on 18.2.1987 from Dr. S.K.C. Aggarwal's clinic, Rohtak. He was admitted in the clinic on 27.10.1986 and discharged on 3.11.1986. Had he acted with circumspection and alacrity, being a member of the disciplined force, he should have sent the medical certificate when he was discharged

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from the clinic, if not earlier, to the relevant authority. He, however, failed to do so. Later when he went for reexamination on 6.12.1986, he again did not make any effort to obtain a medical certificate and send it to the competent authority. These lapses are further compounded by the contradictory statements made by him about his whereabouts during the period of his absence giving the impression that faith cannot be placed in the statements made by him from time to time.

The argument that termination of service under Rule 5(1) is not an order simplicitor but is punitive in nature as it casts a stigma on the employee of being a habitually absentee cannot be made too much of as the order dated 10.3.1987 terminating the service of the employee under Rule 5(1) of the CCS (Temporary Service) Rules, 1965 assigns no reason for such termination. The order as such does not suffer from any infirmity. When the services of a temporary employee are terminated by issue of notice in writing under Rule 5 of the Rules, it is not necessary that reasons for such termination should be indicated. The notice/order may be silent. It cannot be said to be bad for failing to indicate the reasons for termination. But that does not mean that the services have been terminated without reasons. There must necessarily be some reason or the other for termination as otherwise the power to terminate the service would be exercised arbitrarily or capriciously. The employee, therefore, has to be protected only against arbitrary, capricious, malicious or discriminatory exercise of powers vested in the executive authority in terms of Rule 5(1) of the CCS (Temporary Service) Rules, 1965. All that, therefore, the court is required to do is while judicially reviewing such orders of

termination is to see that the reasons for termination of service are relevant and not arbitrary and that there is material to support such reasons. (**Thankappan V. Sub-Divisional Officer, Telegraphs, Trichur, 1979 KLT 362 (F.B.)**).

In the present case it has been well established that the applicant has not only been habitually absenting, for which he was administered warnings etc., the respondents have also not found it possible to rely on the statements made by him regarding his sickness from time to time and his whereabouts declaring his absence without prior permission on the last occasion. These reflect on the nature, character and integrity of the applicant. If, therefore, an opinion is formed that the applicant was not a suitable person to be retained in the service, the same cannot be found fault with. Further no case has been made out that the power exercised by the authority smacks of mala fides. Besides the benefit of the circular dated 13th March, 1991, cited by the learned counsel for the applicant in support of the case of the applicant is not of much help as it does not have retrospective effect and further, it is nobody's case that he had completed his period of probation. We are, therefore of the view that in the circumstances of the case, there is no merit in the argument seeking a judicial review of the order dated 10.3.1987 terminating the service of the applicant. We order accordingly. The application is dismissed with no orders as to costs.


(I.K. Rasgotra)
Member(A) 5/9/91


(Amitav Banerji)
Chairman