CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No.1818/90

New Delhi, this the 5th day of December, 1994

Hon'ble Mr.Justice S.C.Mathur, Chairman.
Hon'ble Shri P.T.Thiruvengadam, Member (A)

Jagdish Singh
s/o Kanwal Singh
r/o Village Tikri Kalan
P.S.Nangloi, Delhi-41. ..Applicant

(By Advocate Mrs.Avnish Ahlawat)

Vs.

1. Lt.Governor of Delhi, through:
Chief Secretary,
Delhi Administration, Delhi.

2. Commissioner of Police Delhi,
Delhi Police Headquarters, MSO Bldg.,
I.P.Estate, New Delhi.

3. Deputy Commissioner of Police,
Ist Bn. D.A.P. New Police Lines,
Kingsway Camp, Delhi. ..Respondents

(By Shri SK Gupta counsel for
Shri BS Gupta, Counsel for respondents)

ORDER

HON'BLE SHRI P.T.THIRUVENGADAM, MEMBER(A)

The applicant joined as constable in Delhi Police on 1-6-1984. His services were terminated by invoking Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965. He was given one month's notice at the end of which his services were terminated with effect from 7-8-1986. His representation against the termination as well as the subsequent memorial submitted to the Lt.Governor have been rejected. This O.A. has been filed challenging the termination.

2. The learned counsel for the applicant argued that termination had been effected because of the alleged misconduct of absence. It was admitted that the notice of termination did not state any reasons. From the reply filed by the respondents it could be surmised that there was no motive other

than the absence of the applicant during his probationary period. It was further argued that no advice memos were given to the applicant at any stage to improve his conduct. There were no written warnings and no adverse remarks and the termination has been received like a bolt from the blue.

3. The learned counsel for the respondents referred to the details of the absence of the applicant during the period of his probation which continued for the third year. The applicant was absent on as many as 19 occasions unauthorisedly and without permission. It was considered that he was a liability on Delhi Police as he was not likely to shape into a disciplined police officer. Apart from the 19 occasions of unauthorised absence there were other instances covered by medical certificate/rest issued by the authorised medical attendant and these instances have not been treated as absence by the competent authority. The applicant had not obtained prior permission on these 19 occasions detailed in the annexure to the reply and such prior permission is required under CCS (Service) Rules, 1972 and the S.O.No.111. The applicant had been warned a number of times to be careful but he did not show any improvement and the competent authority had ultimately resort to the invoking of Rule 5 of the CCS (Temporary Service) Rules, 1965.

4. The learned counsel for the applicant then mentioned that out of the 19 instances of absence, only on four occasions the employee was absent for more than one day. On the remaining 15 occasions the applicant was absent only for part of a day

that is for periods ranging from about an hour to maximum of about 20 hours. Against all these 19 absences on four occasions, no action was taken; on one occasion a verbal warning was given; on 10 occasions physical drill for certain specified number of days was imposed and on only one occasion a warning was given. The applicant who has joined soon after completing his education could never visualise the respondents taking the serious action of denying his livelihood by suddenly terminating his services. He was also undergoing psychiatric treatment which had necessitated his absence off and on. A number of citations were relied upon in support of the case of the applicant.

(1) In civil appeal No.2192 of 1989 decided on 3-4-89 (AIR 1989 SC 1431) it has been held that the employee should be made aware of the defect in his work and deficiency in his performance. Timely communication of the assessment of work in such cases may put the employee on the right track. Without any such communication, it would be arbitrary to give a movement order to the employee on the ground of unsuitability.

We note that the applicant in this case was an Assistant Surgeon who was appointed on ad hoc basis for a period of six months or till the regular candidate from the Union Public Service Commission became available, whichever was earlier. The applicant however was continued in service by being given successive extensions. At some point of time he was served with a termination notice which was quashed by the apex court. The circumstances of this case can be distinguished since the applicant before the apex court was

working on tenure basis and had been continued for more than three years. The termination notice suddenly descended on him with no prior warning. In the case before this Tribunal, we note that the applicant had been warned and had also been imposed physical drill on a number of occasions. He was aware of his frequent unauthorised absence and that the respondents were taking up with him. It was not a case where the termination order has come as a bolt from the blue.

(2)(a)- AIR 1984 SC 636 decided on 20-1-1984 (2 Judges).

(b)- 1991(3)SLJ 221 decided on 10-6-91 by CAT Hyderabad.

(c)- 1989(4) SLJ decided on 8-6-89 by CAT(Principal Bench) New Delhi.

(d)- OA 1748/88 decided on 31-12-1990 by Principal Bench.

In all the above citations the order of termination issued to probationers/temporary employees was found to be unsustainable since the form of the order was held to be merely a camouflage for an order of dismissal for misconduct. The principle followed was that even though the order of discharge may be non-committal it cannot stand alone and though the noting in the file of the Government may be irrelevant the cause for the order cannot be ignored.

As against the above citations the learned counsel for respondents referred to the orders passed by their Lordships of Hon'ble Supreme Court in a three-member Bench judgment in civil appeal (C) No.137 of 1991 decided on 11-1-1991 (SC 1991(1) SC 108). Extracts from para 7 of this order are

reproduced:-

"7. A temporary Govt. servant has no right to hold the post, his services are liable to be terminated by giving him one month's notice without assiging any reason either under the terms of the contract providing for such termination or under the relevant statutory rules regulating the terms and conditions of temporary Govt. servants. A temporary Govt. servant can, however, be dismissed from service by way of punishment. Whenever, the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary Government servant. If it decides to take punitive action it may hold a formal inquiry by framing charges and giving opportunity to the Govt. servant in accordance with the provisions of Art.311 of the Constitution. Since, a temporary Govt. servant is also entitled to the protection of Article 311(2) in the same manner as a permanent Govt. servant, very often, the question arises whether an order of termination is in accordance with the contract of service and relevant rules regulating the temporary employment or it is by way of punishment. It is now well settled that the form of the order is not conclusive and it is open to the Court to determine the true nature of the order. In Parshotam Lal Dhingra v. Union of India, a Constitution Bench of this Court held that the mere use of expressions like terminant and discharge is not conclusive and the Court may determine the true nature of the order to ascertain whether the action taken against the Govt. servant

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is punitive in nature. The Court further held that in determining the true nature of the order the Court should apply two tests namely: (1) whether the temporary Govt. servant had a right to the post or the rank or (2) whether he has been visited with evil consequences; and if either of the tests is satisfied, it must be held that the order of termination of a temporary Govt. servant is by way of punishment. It must be borne in mind that a temporary Govt. servant has no right to hold the post and termination of such a Govt. servant does not visit him with any evil consequences. The evil consequences as held in Parshotam Lal Dhingra's case (supra) do not include the termination of services of a temporary Govt. servant in accordance with the terms and conditions of service. The view taken by the Constitution Bench in Dhingra's case has been reiterated and affirmed by the Constitution Bench decisions of this Court in The State of Orissa and anr. v. Ram Narayan Das; R.C.Lacy v. The State of Bihar & Ors.; Champaklal Chimanlal Shan v. The Union of India; Jagdish Mitter v. The Union of India; A.C.Benjamin v. Union of India; Shamsher Singh & Anr. Vs. State of Punjab. These decisions have been discussed and followed by a three Judge Bench in State of Punjab & anr. v. Shri Sukh Raj Bahadur."

A perusal of the above orders of the apex court indicating the latest legal position on the subject convinces us that if the competent authority is satisfied that the work and conduct of the temporary government servant is not satisfactory or that his continuance is not in public interest on account of his unsuitability, misconduct or inefficiency, termination of his service in accordance with the

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terms and conditions of the service or the relevant rules can be resorted to. We also note that the applicant in this O.A. did not have a right to the post and the orders of termination, as a temporary employee, has not visited him with evil consequences. In this background, we cannot fault the action of the respondents in terminating the service of the applicant after arriving at the conclusion that he was a liability on Delhi Police and was not likely to shape into a good police officer.

(3) The learned counsel for the applicant also referred to the orders passedby the Bangalore Bench of this Tribunal in O.A.No.813/88 decided on 4-11-88, reported vide 1988(4)SLJ 579. This is a case where an appointee under sports quota was terminated from service for not participating in a particular sports meet. The Tribunal found that it could not be established whether the employee was informed of the sports meet. The facts of this case are distinguishable.

6. In the circumstances, the O.A. is dismissed. There shall be no order as to costs.

5/12/94
(P.T.THIRUVENGADAM)
Member(A)

5.12.94
(S.C.MATHUR)
Chairman.

'M'