

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI.

OA.No.1845/90

New Delhi, dated this the 25th of August, 1994.

Shri N.V. Krishnan, Hon. Vice Chairman(A)

Shri C.J. Roy, Hon. Member(J)

Shri Shammi Kapoor,
S/o Shri Narinder Singh,
R/o V & P.O. Sakhola,
Tehsil - Bahadurgarh,
Distt. ROHTAK (HARYANA).

...Applicant

By Advocate: None.

versus

1. Lt. Governor,
Delhi Administration,
Delhi.

2. Commissioner of Police,
Police Head Quarter,
I.P. Estate, New Delhi.

3. Deputy Commissioner of Police,
10th Bn. D.A.P.
Delhi.

...Respondents

By Advocate: None.

O R D E R (Oral)

By Shri N.V. Krishnan

The applicant is aggrieved by Annexure A-1 order of the Deputy Commissioner of Police, 10th Bn. D.A.P., Delhi, respondent No.3 herein, by which, the services of the applicant, a Constable, was terminated forthwith under proviso to sub-rule(i) of Rule-5 of the CCS(Temporary Services) Rules, 1965, after being paid the salary in lieu of one month notice period. This order is challenged on the ground that this is a disguised punishment, for the applicant was issued a notice on 30.10.89 (Annexure A-2) about his remaining unauthorisedly absent with a direction to report for duty immediately, failing which, he was

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threatened with disciplinary action. Without waiting for a reply, and only two days thereafter, the impugned order was passed. The applicant states that the order is arbitrary and has relied on ^{the} decision of the Madras Bench of the Tribunal in R. Madurai vs. Madras Atomic Power Project, 1988 (8) ATC 361 to contend that merely because he over-stayed his leave, his services cannot be terminated. He also complains of violation of Article-311 of the Constitution and relies on AIR 1968 (SC) 1089 in the case of State of Punjab vs. Sukh Raj Bahadur.

2. The respondents have filed a reply stating that the applicant was enlisted on 3.7.84 as a temporary Constable under Section-12 of the Delhi Police Act. His services were terminated under Rule-5 of the CCS (Temporary Services) Rules, 1965, on the ground of being a habitual absentee. He has been passed over four times and not declared quasi permanent due to his indifferent and unsatisfactory service record.

3. In view of the averments in the reply, it is contended that the applicant is not entitled for any relief.

4. No rejoinder has been filed to contest their averments.

5. Admittedly, the applicant is only a temporary Constable subject to the CCS (Temporary Services) Rules, 1965. The impugned order^s does not cast any stigma on the applicant, and therefore, on the face of it, the order cannot be treated as punishment and the question of protection under Article-311 of the Constitution does not arise. The services of the applicant have been terminated on consideration of

his overall performance. His performance was found unsatisfactory, and therefore, he was not considered fit for quasi permanency also four times. It is in these circumstances that the applicant's services were terminated by the impugned order. His appeal/representation have been considered and rejected by the competent authority.

6. The judgement of the Tribunal in R. Madurai vs. Madras Atomic Power Project, 1988 (8) ATC 361 is of no avail to the applicant. It is not the respondents case that the termination was because of the unauthorised absence in respect of which, the Annexure A-2 notice was issued. He was not only a habitual absentee but his service was indifferent and unsatisfactory. The whole record was taken into account.

7. As far as the decision of the Supreme Court in the case of Sukh Raj (supra) is concerned, we have seen the proposition in para-16 of that judgement. We are satisfied that in this case, the circumstances preceding termination are not such as would suggest that the termination is a disguised punishment.

8. In the circumstances, we do not find any cause to interfere in the matter. OA is dismissed. No costs.

W.M.R.
(C.J. ROY)
MEMBER (J)
25.8.94

N.V. Krishnan
25/8/94
N.V. KRISHNAN
VICE CHAIRMAN (A)
25.8.94

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