

(5)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 2058/90
T.A. No.

199

DATE OF DECISION 25.10.1991

<u>Shri Vinod Kumar</u>	Petitioner
<u>Shri N. Safaya</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India & Ors.</u>	Respondent
<u>Shri Dinesh Kumar</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN (J).

The Hon'ble Mr. B.N. DHOUNDIYAL, MEMBER (A).

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? *NO*

JUDGEMENT

(of the Bench delivered by
Hon'ble Member Shri B.N.Dhondiyal)

This OA has been filed by Shri Vinod Kumar, who has worked as Constable in Delhi Police under Section 19 of the Administrative Tribunal's Act, 1985 challenging the order of his termination vide impugned order dated 20.8.90 issued by the Deputy Commissioner of Police, Delhi.

2. The applicant was appointed in Delhi Police as Constable on 03.02.1989 and successfully completed his training. The order of termination of his services issued on 20.8.90 reads as under:-

"In pursuance of the proviso to sub-rule(1) of the Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965,
Bv

(6)

I B.S. Bola, Deputy Commissioner of Police, 10th Bn.DAP, Delhi hereby terminate forthwith the services of Const. Vinod Kumar No.11878/DAP and direct that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances in lieu of one month's notice at the same rates which he was drawing immediately before the termination of his services.

He is not in occupation of any Govt. quarter."

3. The applicant challenges the above order on the ground that (a) his services are governed by the Delhi Police (Appointment and Recruitment) Rules, 1980, which provides for a probation period of two years extendable by one year.

(b) the termination order is punitive and thus violative of Article 311 of the Constitution. According to the applicant, the foundation of the impugned order of termination is a charge of theft levelled against him by one Naresh, who was Munshi of Battalion Head Muharir. On 16.8.90, on being slated for V.I.P. duty, the applicant went to collect his bedding and box kept in the barracks of 10th battalion, Pitam pura Lines. On being told by the Sentry on duty that boxes belonging to constables sent on VIP duty have been shifted to Barsati Room from the ground floor, he went there. While he was trying to locate his box, the Munshi Naresh told the battalion Head Muharir that the applicant was stealing the boxes. The impugned order dated 20.8.90 was the direct result of the accusation of theft made against the applicant. A number of judgements have been cited by both parties in support of their respective contentions. ** We have duly considered them.

4. The respondents have stated that the applicant was appointed as a temporary constable under section 12 of the Delhi Police Act, 1978, and his services were terminated

BN
** Cases relied on by the applicant:-OA.1143/86; OA.1249/87; T-740/86.

Cases relied on by the respondents:-

- (1) Shamsher Singh Vs. State of Punjab-1975(1) SCR 814.
- (2) Anoop Jaiswal Vs. U.O.I.- 1984(2) SCC 369
- (3) Jarnail Singh Vs. State of Punjab-1983(3) SCC 277
- (4) Harpal Singh Vs. State of U.P.- ATR 1988(1) SC.77
- (5) Magha Singh Vs. U.O.I.- ATR 1989 (1) C.A.T. 228.

(7)

under Rule 5(i) of Central Services(Temporary Service) Rules, 1965, on the grounds of unsuitability. They have referred to the instances when he remained absent without permission and his being caught redhanded stealing an iron box belonging to Constable, Gurvinder Singh. The C.C.S. (Temporary Service) Rules, 1965 are applicable to Delhi Police Personnel vide D.A.D.'s notification No.F.10/5/79-Home (P) Estt. dated 17.12.80. The applicant had served for less than 3 years and as a probationer his services could be terminated at any time without assigning any reasons.

5. We have gone through the records of the case and heard the learned counsel for both the parties. It is now well settled that where the relevant rules prescribe a maximum period of probation, the employer is at liberty to terminate the services of a probationer during the period of his probation if he is not satisfied as to the fitness of the probationer. After the completion of the period of probation, the services of an employee cannot be terminated without following the provisions of Article 311(2), (1968(3) SCR 1; State of Punjab Vs. Dharam Singh). It is also well settled that when the impugned order of termination has evil consequences on the applicant or is passed by way of punishment, the Court/Tribunal can lift the veil and look into the attendant circumstances to see the basis or foundation of the order complained of (vide Jarnail Singh Vs. State of Punjab, 1986(3) SCC 277; Harpal Singh Vs. State of UP, 1988(1)ATR 77; Anoop Jaiswal Vs. Government of India, 1984(2) 369; Hardeep Singh Vs. State of Haryana, 1988 (1) SLJ 207).

6. In the instant case, the impugned order of termination was issued on the same day on which the allegation of theft of the boxes belonging to a colleague of his, was made against him. In our opinion, the termination in essence, is due to the alleged misconduct on the part of the applicant. In such a case,

Qu

8

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 enquiry by invoking the power under Rule 5(i) of the CCS (Temporary) Service Rules, 1965. During an enquiry under the CCS (CCA) Rules, 1965, or corresponding rules, applicable to the instant case, the applicant will be entitled to a reasonable opportunity to defend^{&w} himself against the charge of misconduct. The applicant in the instant case, has been deprived of such an 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. We, therefore, set aside and quash the impugned order of termination dated 20.08.1990. The respondents are directed to reinstate the applicant as Constable. He will also be entitled to the arrears of pay and allowances from 20.08.1990 to the date of his reinstatement and other consequential benefits. The respondents shall comply with the above directions within a period of three months from the date of communication of this order.

7. We, however, make it clear that after reinstating the applicant in service, the respondents will be at liberty to take any appropriate action in accordance with law against the applicant for any act of misconduct.

8. There will be no order as to costs.

B.N. Dhondiyal
(B.N. DHONDIYAL)
MEMBER(A) 25/10/91

Arund
25/10/91
(P.K. KARTHA)
VICE CHAIRMAN(J)