

2

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

28

OA No. 2270/92

New Delhi, this the 16<sup>th</sup> day of December, 1998

HON'BLE SHRI T.N. BHAT, MEMBER (J)  
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

Shri Sushil Kumar  
S/o Chandulal  
R/o Vill. Mastgarh  
P.O. Mastgarh  
**Dt. Muzaffarnagar - U.P.** .... Applicant  
(By Advocate: Sh. V.K. Sidharthan)

Vs.

Commissioner of Police  
Police Head Qrs.  
I.P. Estate  
New Delhi.

Delhi Administration  
Through its Secretary  
Old Secretariat  
Rajpur Road,  
**New Delhi.** .... Respondents  
(By Advocate: Sh. Vijay Pandita)

O R D E R

**delivered by Hon'ble Shri T.N. Bhat, Member (J)**

The applicant who had been appointed as a Constable in Delhi Police in the year 1987 has filed this OA assailing the order of termination of his services dated 21.4.88, as at Annexure-I to the OA. According to the said order, in exercise of powers vested <sup>under</sup> by sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965 the services of the applicant have been terminated by Deputy Commissioner of Police, IV Battalion DAP, Delhi.

2. The impugned order has been assailed mainly on the ground that the conditions of services of applicant are governed by Delhi Police Act and the Delhi Police

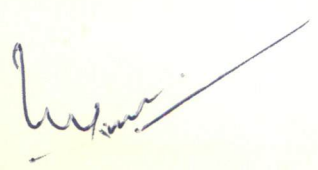
*By order*  
16.12.98

(29)

(Appointment and Recruitment) Rules and that the Central Civil Services (Temporary Services) Rules could not apply to him. In this regard, the applicant has further assailed the notification issued by the Administrator of Delhi Administration by which the Central Civil Services (Temporary Service) Rules, 1965 have been made applicable to all subordinates, civilian employees and class IV employees of Delhi Police in addition to the rules and regulations made under the Delhi Police Act. According to the applicant since Sections 21 & 22 of Delhi Police Act specifically provide that the services of a Police Constable can be terminated only after an enquiry is held, the provisions contained in the Temporary Service Rules are in conflict with the aforesaid provisions in the Act. The respondents have in their counter, apart from levelling some allegations against the applicant, averred that the Temporary Service Rules have rightly been made applicable to the employees of Delhi Police. It is further stated that the applicant was not dismissed as a measure of punishment but his case was that of termination simplicitor.

3. We have heard the learned counsel for the parties at length and have perused the material on record.

4. It is true that there were some allegations against the applicant regarding production of a fake/"bogus" Employment Exchange card at the time of his recruitment to Delhi Police service. But it is equally true that the applicant was admittedly a temporary public servant and he could not as such claim the benefits which were available to a permanent Government servant. The

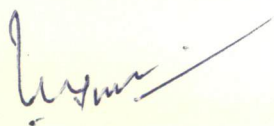


30

Apex Court has in **State of U.P. vs. K.K. Shukla**, reported in 1991 (1) SCC 691, held that a temporary Government servant has no right to hold the post. In these circumstances the respondents acted within their rights to terminate the services of the applicant by giving him one months notice.

5. As regards the notification issued by the Administrator (now, Lt. Governor) we do not find any merit in the contention of the applicant that such a notification could not have been issued, as it would be contradictory to the provisions contained in Sections 21 & 22 of the Delhi Police Act. According to Section 5 of that Act the recruitment to, and the pay, allowances and all other conditions of service of the members of the Delhi police shall be such as may be prescribed. Thus, the conditions of service have to be prescribed by the competent authority and this can be done only by issuing notifications. Applying the provisions contained in the Temporary Service Rules would, therefore, be a valid act on the part of the competent authority. Sections 21 & 22 relate only to exercise of powers to punish. In the instant case the termination of the applicant's services would not come within the ambit of the aforesaid Sections of the Delhi Police Act.

6. Furthermore, we have a judgment of the Principal Bench of this Tribunal, reported in (1989) 11 ATC 18, wherein it has been specifically held that the provisions contained in the Central Civil Services (Temporary Service) Rules, 1965 are applicable to the Delhi police employees.





(31)

7. The learned counsel for the respondents has also, during the course of his arguments, taken the plea of limitation and we find much force in this contention as well. As already mentioned, the impugned order was passed on 21.4.88 while the OA has been filed on 29.7.92, i.e., more than 4 years after the passing of the impugned order. The applicant has, no doubt, filed an application for condonation of delay, but the only ground mentioned therein is that another case on identical facts with the title **Vinod Kumar vs. Delhi Administration & Others** was pending before the Tribunal and the applicant was waiting for the outcome of that OA. A copy of the judgment in that OA, being OA No. 2113/88, decided on 26.4.91 has been annexed by the applicant to his MA. We are convinced that the grounds stated for seeking condonation of delay are not valid. Although the pendency of proceedings on identical facts cannot be a good ground for making delay in filing separate proceedings, even if we assume that it would be a valid ground the applicant ought to have explained the further delay from 26.4.91 to 29.7.92. The applicant's contention that the appeal against the aforesaid judgment was finally disposed of only on 5.2.92 cannot justify the further delay of nearly 6 months after the pronouncement of the judgment by the Hon'ble Supreme Court.

8. That apart, we find that this OA had been dismissed in default on 17.11.97 whereafter the applicant had filed MA for restoration on 23.2.98. Even though the application seeking restoration of the OA was hopelessly barred by time we allowed the MA subject to the condition

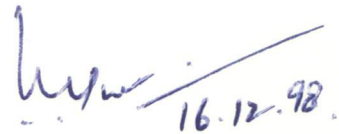
(32)

that the applicant would pay Rs.400/- as costs to the opposite party. Admittedly the costs so imposed have not been paid till date.

9. In view of all that has been held and discussed above, this OA deserves to be dismissed. We, accordingly, dismiss the OA, but without any order as to cost.



( S. P. BISWAS )  
Member (A)

  
16.12.98

( T. N. BHAT )  
Member (J)

sd