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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

O.A.No.2616 of 1992

Date of decision: 7-5-93.

Abhinendra Jain
(Ex. Sub Inspector)

...Applicant

Versus

Union of India & Another

...Respondents

CORAM:

THE HON'BLE MR. JUSTICE S.K.DHAON, VICE-CHAIRMAN.
THE HON'BLE MR. S.R.ADIGE, MEMBER (A).

Counsel:

For the applicant

...Shri Shankar Raju.

For the respondents

...Shri Virender Mehta.

JUDGMENT (ORAL)

(Delivered by Hon'ble Mr. Justice
S.K. Dhaon, Vice-Chairman) :

The order dated 20-12-1991 passed by the Deputy
Commissioner of Police, Central Distt., New Delhi
in the
terminating the services of the petitioner purported
exercise of the powers under the proviso to sub-rule(1) of
Rule 5 of the Central Civil Services ((Temporary Services)
Rules, 1965 is being impugned in the present application.

2. A counter-affidavit has been filed on behalf of the
respondents. In it, the material averments are these. The
petitioner was appointed as a temporary Sub Inspector w.e.f.
26-6-1989. He was deputed for practical training on
18-8-1990 at Police Station Rajinder Nagar. During the
training there, the petitioner along with other police

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personnel misused their powers and assaulted a resident of Rajinder Nagar on the ground that some building material was lying outside the house and arrested his 20 years old wife and put her in the police lock-up in the night. A First Information Report alleging therein that the petitioner committed offences under Sections 308, 353, 332, and 34 of Indian Penal Code was lodged. After perusing the same, the Additional C.P./N.R. Delhi on 9-7-1991 directed that the departmental enquiry under Section 21 of Delhi Police Act, 1978 should be conducted against the petitioner. The enquiry was held. The Additional C.P./N.R. Delhi vide Order dated 1-7-1991 directed that the petitioner shall not be confirmed in service on account of pendency of the departmental enquiry.

3. Annexure A-8 is the order dated 20-12-1991 passed by the Deputy Commissioner of Police. According to this Order, the departmental enquiry in so far as it related to the petitioner was to be kept in abeyance till he joined the department in case of acceptance of appeal/revision petition, if any, filed by him against order of termination issued on 20-12-1991.

4. It is apparent that the impugned order was passed on the same day on which the departmental enquiry had been directed to be kept in abeyance.

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5. The question to be considered is whether, in the circumstances of this case, the impugned order, though camouflaged as an order of termination simpliciter, is founded on a charge of misconduct. We are satisfied that the foundation of the order is the departmental enquiry which has been kept in abeyance. In this view of the matter, we have no alternative but to come to the conclusion that under Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965, the power could not be exercised in the manner it was exercised. The order, therefore, is not sustainable.

6. This application succeeds and is allowed. The impugned order is quashed. There shall be no order as to costs.

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(S.K.DHAON)
VICE-CHAIRMAN.

I would like to add that it will be open to the respondents, if so advised, to revive the departmental enquiry dated 9.7.91 which has been kept in abeyance vide order dated 20.12.91 and proceed further in the matter in accordance with law.

Adige
(S.R.ADIGE)
MEMBER(A)