BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.192/87.

Shri Silas Samuel Wahab,
R/O. Naya Basti,
Nagpur. ... Applicant.

V/s.

1. Union of India,
through the Secretary,
Ministry of Telecommunication,
New Delhi.

2. The General Manager,
Telecommunications,
Maharashtra Circle,
Bombay-400 001. ... Respondents.

Coram: Hon'ble Member(A), Shri L.H.A.Rego,
Hon'ble Member(J), Shri M.B.Mujumdar.

Oral Judgment:

(Per Shri M.B.Mujumdar, Member(J)) Dated: 11.8.1988

The applicant, Shri Silas Samuel Wahab has filed this application under section 19 of the Administrative Tribunals Act challenging an order passed on 21st October, 1986 under Rule.5(1) of the Central Civil Services (Temporary Service) Rules, 1965 (briefly, the Rules), by which his services are terminated by one months' notice. The relevant facts for the purpose of this judgment are these.

2. By Order dt. 15.9.1981 the applicant was appointed in Group 'D' as a Telegraphsman on probation on compassionate grounds as a special case by relaxing the Recruitment Rules. It was mentioned in the appointment order, that the appointment was purely temporary and that his services were liable to be terminated at any time by the appointing authority after giving him a

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month's notice or one month's pay and allowances in lieu. He was never made quasi-permanent. By notice dt.21.10.1986 his services were terminated on expiry of a period of one month from the date of the notice served on him. This notice was served on him the same day and since then he is not in service.

3. It is the case of the applicant that he was arrested by the police on 16.10.1986 in the Office of the Superintendent in charge, Central Telegraph Office, Nagpur (Suptd. for short) on account of which his services were terminated under Rule 5(1) of the Rules.

4. On the contrary, the respondents contend that the arrest of the applicant had nothing to do with the termination of his services. They state that his work was found unsatisfactory despite repeated caution, on account of which his services had to be terminated by a notice dt.21.10.1986.

5. As stated earlier, the applicant was appointed on compassionate grounds, by relaxing the rules regarding recruitment. By the letter dt. 24.9.1984 the applicant was informed by the Suptd that he was not considered eligible and suitable for quasi-permanancy, owing to that unsatisfactory service record for 1984-85. He was therefore, advised in his own interest to improve his performance in the ensuing year. He was similarly alerted by the Supdt on 8.10.1985.. By his letter dt. 21.5.1986 the Supdt informed the applicant a third time that his performance was yet unsatisfactory, as a result of which he had become a liability to the Department. He was further informed that he was being given a last chance to show improvement failing which his services would be terminated by one month's notice. From these 3 letters, it is clear that the authorities had found the applicant unsuitable to be continued in service.

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6. It is true that the applicant was arrested from the office of the Suptd on 16.10.1986. The Police Inspector, Sadar Police Station, Nagpur intimated to Respondent No.2 on 24.10.1986 that the applicant was arrested in C.R. No.940/86 under sections 376(rape), 448 read with Section 34 of the Indian Penal Code and that he was in police custody from 16.10.1986 to 22.10.1986, and in Magisterial custody from 22.10.1986 onwards. Smt.Sarin, learned advocate for the applicant sedulously argued that the respondents had terminated the services of the applicant by a notice dt. 21.10.1986 solely on account of his arrest on 16.10.1986 in the above episode. We are not persuaded by this argument of Smt.Sarin. It may be that the termination of the services of her client might have got hastened because of his arrest as above, but that could not have been the sole reason for terminating his services under Rule 5(1) of the Rules. As already pointed out, three letters were sent to him by the Suptd alerting him to the fact that his work was not satisfactory and by his last letter the Suptd informed the applicant that he was being given a final chance to make amends and that if he still proved himself incorrigible his services would be terminated by a month's notice. This last letter was sent on 21.5.1986 i.e. about 5 months earlier than his arrest, in the above episode. It is true that by the order passed on 27.10.1986 the applicant was suspended w.e.f. the date of his arrest. But this was just a consequence of his arrest. Under Rule.10(2)(a) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 a government servant is deemed to have been

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placed under suspension by an order of the appointing authority w.e.f. the date of his detention, if his detention in custody whether in a criminal charge or otherwise exceeds 48 hours. Indisputably, the applicant was in police custody from 16.10.1986 to 22.10.1986 and thereafter, in magisterial custody for more than 16 days.

7. Smt. Safin relied on a catena of decisions to buttress her case. She first referred to A.I.R. 1975 S.C. 1096 (State of Punjab V. Union of India). We have perused this judgment. The Supreme Court held in that case, that an order terminating the services of a temporary servant by way of punishment will attract the provisions of Article 311 of the Constitution and further, that the form of the order was not conclusive, but it was the substance of the matter that was to be looked into. We are of the view that Smt. Sarin has misplaced her reliance of this judgment which does not bear on the case before us, the facts being different. As pointed out by us earlier, the applicant was terminated not because of his arrest in the episode referred to above, but essentially on account of his persistent unsatisfactory service record, despite repeated notice given to him to make amends.

8. Smt.Sarin, next relied on 1984(2) SLR 20 (R.K.Sharma v. Union of India and Ors) wherein the High Court of Judicature, Delhi had set aside the so called innocuous order of termination of service of a temporary employee as it was noticed, that the background to that order was the involvement of the employee in a criminal case in respect of which no inquiry was held against him. The High Court therefore held, that the said order of termination of the employee was hit by Article 311(2)

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of the Constitution. The dicta in this case does not apply on all fours to the application before us, as, as stated earlier, the applicant was terminated from service not because of his arrest in the incident referred to earlier, but primarily because of his persistent unsatisfactory record of service, in spite of notice given to him more than once, to show improvement.

9. Lastly, Smt.Sarin called in aid, the dicta of the Supreme Court in A.I.R. 1986 S.C. 1791 (Rajinder Kaur v. Punjab State) wherein a Lady Constable was discharged from service on the ground of inefficiency. Probing further into the matter, the Supreme Court noticed, that the order of discharge, was really actuated by an inquiry into the misdemeanour of the Lady Constable spending the night with her male counterparts, for which no charge sheet was served on her and an opportunity given to explain the charges. The Supreme Court held, that this was violative of Article. 311(2) of the Constitution. The ratio of the judgment in this case is miles away from the facts of the case before us, for the reasons already mentioned.

11. Shri Ramesh Darda, learned counsel for the respondents strongly relied on the judgment of the Supreme Court in A.I.R. 1958 S.C. 36 (P.L.Dhingra V. Union of India) to strengthen the case of the respondents, particularly on the para 28 therein which is extracted below:

> "Any and every termination of service is not a dismissal, removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not per se dismissal or removal, as has been held by this Court in Satish Chander Anand v. Union of India(Z) (supra). Likewise the termination of service by compulsory retirement in terms of a specific rule regulating the conditions of service is not tantamount to the infliction of a punishment and does not attract Art. 311(2), as has also been held by this Court in Shyam Lal v. State of Uttar Pradesh, 1955-1 SCR 26: (AIR 1954 SC 369)(Z1). In either of the two abovementioned cases the termination of the service did not carry with it the penal

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consequences of loss of pay, or allowances under R.52 of the Fundamental Rules. It is true that the misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service the motive operating on the mind of the Government is, as Chagla, C.J., has said in Shrinivas Ganesh v. Union of India (N) (supra), wholly irrelevant. In short, if the termination of service is founded on the right flowing from contract or the service rules then prima facie, the termination is not a punishment and carries with it no evil consequences and so art.311 is not attracted. But event if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Art.311 must be complied".

11. According to the above dicta of the Supreme Court, an employee in an officiating post, has no right to hold a post and can be terminated by an order simpliciter which does not attract the provisions of Article 311(2) of the Constitution. These dicta are apt to the case before us where the applicant was terminated from service not for any misconduct but by an order which was innocuous and simpliciter in nature.

12. In view of the analysis of the facts and circumstances in the foregoing, we hold that the services of the applicant were not terminated by the impugned notice dt.21.10.1986 by way of punishment but by an order simpliciter and that it does not, therefore, attract the Provisions of Article.311(2) of the Constitution. We therefore, dismiss this application, as bereft of merit, with no order as to costs.

(M.B.MUJUMDAR)
M(J)

11.8.1988
(L.H.A.REGO)
M(A)