IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.203/93 Date of order: 19.8.1996

Bheron Singh : Applicant

Vs.

Union of India & Ors. : Respondents

Mr.N.K.Bhat : Counsel for the applicant.

Mr.U.D.Sharma : Counsel for the respondents.

CORAM:

Hon'ble Mr.Gopal Krishna, Vice Chairman

Hon'ble Mr.O.P.Sharma, Administrative Member.

PER HON'BLE MR.O.P.SHARMA, ADMINISTRATIVE MEMBER.

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Bheron Singh has prayed that order Annx.A1 dated 1.1.1993 by which the services of the applicant were terminated may be quashed and the respondents may be directed to reinstate the applicant in service with full back wages, continuity of service and other consequential benefits.

2. The facts of the case as stated by the applicant are as follows. The applicant was initially appointed on a temporary post of Security Assistant (MT) in scale Rs.825-1200 in the Intelligence Bureau vide memorandum dated 22.4.87 (Annx.A2) and was posted under the DCIO (Deputy Central Intelligence Officer) Barmer. Consequent upon the upgradation of the post as JIO-II (MT), the applicant was appointed to the said post w.e.f. 24.2.1988 in scale Rs.975-1660 vide office order dated 20.6.88 (Annx.A3). The applicant's services were quite satisfactory, these were often appreciated by his superiors and he was also give Cash Rewards (Annxs.A4 to A8). However, a memorandum (charge sheet) dated 9.9.91 (Annx.A9) was served on the applicant whereby two charges were framed against the applicant and it was proposed to hold an enquiry against him under Rule 14 of the CCS(CCA) Rules. The charges pertained to irresponsible behaviour, indisciplined attitude and lacking the

basic knowledge about the maintenance and mechanism of the vehicle of which he was functioning as a driver while holding the aforesaid post. The applicant replied to the charge sheet vide Annx.A10. It is the applicant's grievance that although the Inquiry Officer and the Presenting Officer were appointed the proceedings were not properly conducted and he was also not given opportunity to appoint his Defence Assistant. He was given an assurance by the Inquiry Officer as well as the Presenting Officer that if he admits his guilt no action would be taken against him. The applicant accordingly gave an application dated 10.9.92, admitting his guilt. This application was not given by the applicant of his own free will. On 1.1.93, an order Annx.A1 was issued terminating the services of the applicant under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965. The said order has been passed in colourable exercise of power and the intention behind passing the said order was to punish the applicant by terminating his services. The order passed is punitive in nature, is in violation of the principles of natural justice and is in total disregard of the provisions of Article 311(2) of the Constitution. His services were terminated only for the reason that disciplinary proceedings were continued against him and the department was not in a position to prove the charges against him. The applicant has rendered more than 3 years service and as per Rule 3 of the CCS(Temporary Service) Rules the applicant has obtained the status of a quasi-permanent employee and therefore, his services cannot be terminated under Rule 5 of the aforesaid Rules. After completion of 3 years of service, the applicant was never informed that he was considered unfit for quasi-permanancy. He was never informed that he was found wanting in any respect so that he could make special efforts to improve his work and conduct. The applicant was appointed to the post of JIO-II(MT) by the Deputy Director,

whereas his services have been terminated by the Assistant Director, who being an authority subordinate to the appointing authority, is not competent to terminate the applicant's services.

3. The respondents in their reply have stated that the applicant vide his application dated 10.9.92 had admitted his guilt about the charges framed against him. They have denied that the Inquiry Officer or the Presenting Officer had misguided him and had induced him to admit his guilt. The said application had been given by the applicant of his own free will. In pursuance of the disciplinary proceedings initiated by issue of the memorandum of charges, as aforesaid, a penalty of stoppage of 3 increments for a period of 3 years and also recovery of loss to the tune of Rs.695/-, was imposed on him vide order dated 24.9.92 (Annx.R1). The order dated 1.1.93 (Annx.A1) terminating the services of the applicant have been passed by the competent authority. It was an order of simpliciter and did not cast any stigma on the applicant nor did it impose any punishment on him. The provisions of Article 311(2) or of the CCS(CCA) Rules were not applicable with regard to passing of the aforesaid order of termination. The order of termination of services has no connection with the disciplinary proceedings initiated against the applicant. The order of termination have been passed on the ground of unsuitability of the applicant. The applicant had not acquired the status of a quasi-permanent employee as no declaration by the appointing authority had been issued in this regard under the provisions of Rule 3 of the CCS(Temporary Service) Rules. There is no requirement of informing the applicant about his being found wanting in any respect and giving him an opportunity to make special efforts to improve his work and conduct, before terminating his services under Rule 5 of the Temporary Service

Rules. Although the applicant had been appointed as JIO-II(MT) by the Deputy Director, his services had been properly and legally terminated under Rule 5 of the CCS (Temporary Service) Rules by the Assistant Director. They have added that the Asstt.Director had been declared as the appointing authority in respect of the post of JIO-II(MT) and he was, therefore, competent to terminate the services of the applicant. The statutory remedy of challenging the order of termination before the competent authority was available to the applicant under Rule 5(2)(a) of the CCS(Temporary Service) Rules and since the applicant had not availed himself of the said statutory remedy, the application is hit by the provisions of Sec.20 of the Administrative Tribunals Act, 1985.

4. During the arguments, the learned counsel for the applicant stated that the upgraded post of JIO-II(MT) to which the applicant had been appointed vide order Annx.A3, was a regular and substantive post because the order Annx.A3 does not mention that the post is temporary in nature. The ingredients of Annx.A2 by which the applicant was initially appointed to the post of Security Assistant (MT) also do not show that it was a temporary post. Therefore, actually the applicant's appointment was substantive in nature. Since the post to which the applicant was appointed was a substantive and regular post, the applicant had acquired a lien on the said post. Therefore, while terminating the applicant's services, the provisions of Rule 5(1) of the Temporary Service Rules were not correctly applied. He added that the Court should see what is the foundation of the order of termination of the services. If the records show that the services were terminated on account of the disciplinary proceedings initiated against the applicant, such an order would be bad in law. Also, notice should have been given to the applicant to enable him to improve his

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performance before terminating his services. The applicant had been appointed in April 1987 and his services have been abruptly terminated in January 1993, after a long period of service of about 6 years without his having been informed whether there has been any deficiency in his work. He added that the mere description by the respondents that the applicant's initial appointment or subsequent appointment as JIO-II (MT) were temporary was not enough and it was the duty of the Court to determine the true nature of the appointment of the applicant which was in fact permanent and substantive.

5. The applicant referred to certain instructions issued by the Govt. of India on 11.7.1949 to the effect that after 3 years of continuous service, the services of an employee cannot be terminated abruptly in the manner in which these have been terminated in the case of the applicant, without informing the applicant about any deficiency in his work and performance. He cited the judgment of the Hon'ble Supreme Court in Uma Shankar Sharma Vs. Union of India & Ors, 1980(2) SLR 26 in support of the contention that the termination of services of the applicant in the manner done by the respondents was bad in law. He next cited the judgment of the Hon'ble Supreme Court in State of U.P & Anr. Vs. Dr.M.J.Siddiqui & Ors. etc, (1980) 3 SCC 174 wherein the apex Court held that the mere use of the expression "appointment in a temporary post" by itself would not conclude the matter or lead to the irresistible inference that the appointment was not made in a substantive capacity because even a substantive appointment could be made to a purely temporary vacancy. Therefore the apex Court held that to determine the nature of the appointment, the Court has to look into the heart and substance of the matter, the surrounding circumstances, the mode, the manner and the terms of appointment and other relevant factors. With regard to the

facts of the case before the Hon'ble Supreme Court, it was held that the appointments were not merely on a ad hoc basis but through the Public Service Commission and in a regular way. Therefore, the appointments were made in a substantive capacity, which according to the advertisement, were likely to continue. Therefore, according to the learned counsel for the applicant, in the present case also the attending circumstances show that the appointment was in fact a substantive one to the post to which the applicant was appointed. He then cited the judgment of the Jodhpur Bench of the Tribunal in Daya Shanker Thakur Vs. Union of India & Ors, 1991 (8) SLR 613 wherein the Tribunal found that the applicant after being appointed on ad hoc basis continued on the post for 4 years and therefore his termination in a summary way was invalid, because the applicant acquired the status of a temporary government servant and his appointment was governed by the Temporary Service Rules.

6. The learned counsel for the respondents stated before us that the government had issued a notification 31.7.1989 under the CCS (CCA) Rules designating Assistant Director as the appointing authority in respect of Group-C posts of the Department. The learned counsel for the applicant intervened to say that this notification would have no meaning because it had not been published in the official gazette. On the next date i.e. on 7.8.1996 the learned counsel for the respondents produced a copy of the aforesaid notification as published in the official gazette on 2.9.1989 showing that the Assistant Director had been designated as the appointing authority for Group-C employees of the Department. He added that the disciplinary proceedings initiated against the applicant had been separately concluded earlier by imposition of an appropriate penalty and that the applicant had suppressed this fact while filing the O.A although the O.A was filed on 2.4.93

and the penalty had been imposed on the applicant earlier by order dated 24.9.92. He further stated that the applicant had produced no material to show that his appointment to the post of Security Assistant (MT) or to that of JIO-II(MT) in 1988 was in a substantive capacity, nor was any such inference possible from the documents Annxs.A2 and A3. Since no declaration had in fact been issued by the respondents declaring the applicant to be quasi-permanent, he could not be said to have acquired the status of a quasi-permanent employee simply on completion of 3 years of temporary service. He distinguished the judgments cited by the learned counsel for the applicant stating that these were delivered on different facts.

7. We have heard the learned counsel for the parties and have gone through the material on record, the judgments cited before us as also the gazette notification dated 2.9.89 on which reliance has been placed. At this stage, we are not inclined to take any adverse view about the applicant's failure to avail himself of the alternative remedy, when the application has already been admitted.

8. The order Annx.A2 dated 22.4.87, by which the applicant was initially appointed in the department makes it clear that the post offered to him was of a temporary nature, the applicant's appointment was temporary in nature, and it was liable to termination at any time by one month's notice given by either side. It was further stipulated in Annx.A1 that his services could also be terminated forthwith or before the expiry of the stipulated period of notice by making appropriate payment. By order Annx.A3 dated 20.6.88, the post occupied by the applicant was upgraded to that of JIO_II(MT). While the initial order of appointment Annx.A2 was passed by the Central Intelligence Officer, the order Annx.A3 appointing the applicant to the upgraded post of JIO-II(MT) was passed by the

Deputy Director in the Department. While order Annx.A2 makes it clear that the applicant's appointment was temporary in nature, Annx.A3 by which he was appointed on the upgraded post does not in any way state that the said post was regular in nature. It was only an appointment on upgradation of the post to which the applicant was earlier appointed on a temporary basis. We have carefully perused the judgments of the Hon'ble Supreme Court cited before us. The factual position in the present case is different from that in the cases which were before the Hon'ble Supreme Court. In the present case it has been stated in Annx.A2 that the applicant had been offered a temporary post of Security Assistant (MT) and that his appointment was temporary and was liable to termination at any time, etc. The facts of the present case, therefore, show that the applicant's initial appointment was temporary in nature, to a temporary post and there is nothing in the order Annx.A3 to suggest that the applicant's appointment on upgradation of this post was to a substantive or permanent post or that the applicant had been appointed on the said post on a permanent basis. The judgment of the Hon'ble Supreme Court in Uma Shanker case has no applicability whatsoever to the facts of the present case. In that case it was the case of the respondents that the appellant had been initially appointed to the post in question under a mistake inasmuch as the condition of eligibility to the post required actual representation by the appellant of a University in an Inter University Tournament conducted by the Inter University Sports Board whereas the appellant had merely been selected to represent the University in an Inter-University Tournament but he had actully not participated therein. Therefore his services were terminated under Rule 5(1) of the Temporary Service Rules. The Hon'ble Supreme Court held that the respondents had proceeded on a technical view of the matter

wholly unjustified by the intent behind the condition of eligibility. The appellant had in fact been selected for representing a University in the Inter-University Tournament. Unfortunately he fell ill and was unable to participate in the tournament. The Hon'ble Supreme Court held that on a reasonable view of the facts, the appellant should be taken to have fulfilled the condition of the eligibility. In the present case, the factual position is altogether different from that described in the judgment in Uma Shanker case and this judgment has therefore no applicability on the facts of the present case. We hold that the appointment of the applicant to the post of Security Assistant(MT) and on the upgraded post of JIO-II(MT) was temporary in nature. The applicant has placed no material before us to show that he had acquired any lien on this post.

9. The Hon'ble Supreme Court's judgment in Dr.M.J. Siddiqui case has also no applicability to the present case, as can be seen from the brief description in para 5 above.

10. As regards acquiring the status of quasi-permanency under the Temporary Service Rules, it may be stated that Rules 3 & 4 of the Temporary Service Rules regarding conferment of status of quasi-permanency have been deleted vide notification dated 27.2.1989 which was published in the official gazette on 11.3.1989. The applicant had not completed 3 years service when the notification deleting the above mentioned Rules was published in the official gazette and, therefore, he could not possibily have been declared quasi-permanent under the relevant Rules by the date on which the notification deleting the Rules was published. In view of the deletion of the said Rules, we need not go into the controversy whether the applicant was deemed to have acquired the status of a quasi-permanent employee on completion of 3 years of service.

11. As regards opportunity to be given to an employee before

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terminating the services under the Temporary Service Rules, there is nothing provided in the Rules in this regard. If there are any departmental instructions in this regard, these cannot be said to be mandatory in nature. In several judgments of the Hon'ble Supreme Court it has been held that the services of a temporary employee who is not suitable for the post can be dispensed with by passing a simple order of termination and the termination of services of a temporary government servant in accordance with the terms and conditions of his service does not visit him with any evil consequences. Reference in this regard may be made to the judgment of the Hon'ble Supreme Court in State of U.P Vs. Kaushal Kishore Shukla (1991) 1 SCC 691. In this judgment the Hon'ble Supreme Court have observed that a temporary government servant has no right to hold the post and his services are liable to termination without assigning any reason either under the terms of the contract providing for such termination or under the relevant statutory rules regulating the terms and conditions of temporary government servant. We have perused the record of the service of the applicant which was produced before us to show the reasons for termination of services of the applicant. The disciplinary proceedings initiated against the applicant had ended with an order passed on 24.9.92, imposing a penalty of stoppage of three increments for three consecutive years. There were incidents of misconduct on the part of the applicant even subsequent to the imposition of the above penalty such as indulging in drinking, rash and negligent driving of the vehicle which he was supposed to drive as part of his duties, refusal to perform duties, misbehaviour with higher authorities, etc.etc. No disciplinary proceedings were initiated with regard to these subsequent acts of misconduct after the imposition of penalty on the applicant as aforesaid.

As held by the Hon'ble Supreme Court in Kaushal Kishore Shukla case, in the case of a temporary employee, the respondents can either initiate disciplinary proceedings against a temporary employee or they may terminate his services in accordance with the conditions of his service. The respondents chose to terminate the applicant's services after they found him unsuitable to hold the post to which he had been appointed. We are satisfied that there is enough material on record of the respondents to justify the inference that the applicant was unsuitable for the post held by him. He had been appointed as a driver in an extremely sensitive department concerned with the security of the nation and the type of behaviour indicated on his part prima facie suggested that he was wholly unsuitable for the post held by him. The applicant has in fact been guilty of partially suppressing the facts regarding the penalty imposed on him. He has made a mention about the holding of the disciplinary proceedings against him but has made no mention of the penalty imposed on him on 24.9.92, although the O.A was filed on 7.4.1993. The order imposing the penalty itself shows that the applicant was unsuitable for the post held by him. However, the order terminating the services of the applicant is not on account of the penalty imposed on him, but as stated above there is other material on record to suggest that the applicant continued to indulge in various acts of misconduct subsequently also which prima facie justify the inference drawn by the respondents that the applicant was unsuitable for the post held by him

12. Although the applicant was appointed to the upgraded post by the Deputy Director in the Department, the notification published in the official gazette on 2.9.1989 shows that the Assistant Director, amongst others, had been designated as the appointing authority for the Group-C posts in the Department. A

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copy of the said notification as published in the gazette of India has been taken on record. The applicant was undoubtedly holding a Group-C post in the department. Since the notification designating the Assistant Director as the appointing authority for Group-C employees was issued in 1989 and since the services of the applicant were terminated in 1993, the termination of his services by the Assistant Director was valid in terms of the notification issued on 1989.

13. We may now refer to the judgment of the Jabalpur Bench of the Tribunal in Daya Shanker Thakur case. We have carefully gone through the said judgment and we are of the view that this was decided more or less on its own facts. Therefore, no relief would be admissible to the applicant on the basis of this judgment. We have also considered the judgment of the Hon'ble Supreme Court in Ashok V.David and Shri M.G.Halappanavar Vs. Union of India & Ors, JT 96(6) SC 157 of which a copy was provided to us by the learned counsel for the applicant at the last minute without discussing the merit of this judgment and its applicability to the facts of the present case. In this case, with regard to the two appellants who were direct recruits to the Karnataka Administrative Service, the Govt. of Karnataka had declared that they had successfully completed their period of probation on 14.7.1976 but in spite of this fact their formal confirmation was ordered from 1.1.1986. The Hon'ble Supreme Court held that it did not find any cogent reason for this undue delay and there was no reason to confirm them from 1.1.1986 when they had satisfactorily completed their probationary period as early as 14.7.1976. Therefore, the Hon'ble Supreme Court held that they had become eligible for consideration for promotion to the IAS when the Select Committee met in December 1983. As is evident from a brief description above of the facts of the case, the ratio laid down

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by the Hon'ble Supreme Court in this judgment would not at all be applicable in the case of the applicant as the facts of the two cases are totally different and the issues involved are also different. There had been no declaration at any stage in so far as the applicant is concerned that his services were satisfactory.

12. We have carefully considered the other averments and oral arguments on behalf of the applicant but we find no merit in them either. The application is, therefore, dismissed with no order as to costs.

(O.P.Sharma)
Member(Adm).

(Gopal Krishna)
Vice Chairman.