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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:JAIPUR BENCH:
J A I P U R.

O.A.NO. 349/1997

Date of order: 31-3-98.

Jai Narain Meena S/o Shri Mool Chand Meena, b/c Meena, aged about 27 years, resident of Village Benada, Post Benada, Tehsil Pasei, District Jaipur, now-a-days Sorting Assistant, Railway Mail Service, Jaipur.

: Applicant

Versus

1. Union of India through the Secretary to the Government of India, Department of Posts, New Delhi.
2. The Chief Postmaster General, Rajasthan Circle, Jaipur.
3. Senior Supdt., Railway Mail Service, JP-Division, Jaipur.

: Respondents

Mr. S.K.Jain, counsel for the applicant
Mr. M. Rafiq, counsel for the respondents

CORAM:

HON'BLE SHRI O.P.SHARMA, MEMBER (ADMINISTRATIVE)
HON'BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL)

O R D E R

PER HON'BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL)

The applicant herein Shri Jai Narain Meena has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, praying that the impugned order dated 17.7.1997 (Annex.A/1) terminating the services of the applicant with the respondent department be quashed and he be declared in service with all consequential benefits.

2. Facts which are relevant in brief are that the applicant was given appointment on the post of Sorting

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Assistant with the respondent department after qualifying in the Type/Computer Test and interview. He was given pre-training before being appointed on the post of Sorting Assistant from 1.9.1996 to 5.10.1996 vide Annexure A/5 dated 9.9.1996 and also attended the postal training for 2½ months commencing from 7.10.1996 vide letter dated 23.9.1996 (Annexure A/4). After completion of his training and furnishing of security of Rs. 6,000/- as required by the respondents, he joined as Sorting Assistant at Jaipur Railway Mail Service under respondent No.3, the Senior Superintendent, Railway Mail Service, Jaipur Division, Jaipur.

3. It is the grievance of the applicant that though he continued to work satisfactorily and without any complaint of his superiors but without assigning any reason and any ground respondent No.3 vide the impugned letter dated 17.7.1997 (Annexure A/1) terminated the services of the applicant under Rule 5, Sub-Rule (1) of the Central Civil Services (Temporary Service) Rules, 1965 (hereinafter to be referred as 'Rules of 1965'). It is the case of the applicant that his appointment as Sorting Assistant has been against a clear vacancy of a permanent nature and that his services cannot be terminated by the respondents on the plea that some criminal case is pending against him. His grievance is also that his order of termination is liable to be quashed as it is violative of Article 311 of the Constitution of India being based upon the misconduct.. Aggrieved he has approached this Tribunal to claim the aforesaid reliefs.

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4. The respondents opposed this application by filing a written reply to which a rejoinder has also been filed by the applicant. The stand of the respondents has been that the appointment of the applicant has only been a temporary one against a temporary post of Sorting Assistant in the pay scale of Rs. 975-1660 and that his services have been terminated in accordance with Rule 5 of the C.C.S. (Temporary Service) Rules, 1965. It has also been averred that since according to the verification report received through the District Collector, a criminal case was pending against the applicant his services have been rightly terminated invoking the provisions of Rule 5 of the Rules of 1965 as the applicant has concealed the factum of the pendency of a criminal case against him. It has also been denied that there has been any violation of Articles 14 & 16 of the Constitution of India.

5. With the consent of the parties, arguments in detail were heard on behalf of the applicant as also the respondents for disposal of this application at the stage of admission itself.

6. The only question which has to be determined in this application is "whether the appointment of the applicant as Sorting Assistant with the respondent department has been a temporary one and that his services could be terminated under Rule 5 of the C.C.S. (Temporary Service) Rules, 1965 by serving a notice under Proviso to Sub Rule (1) of Rule 5 of the C.C.S. (Temporary Service) Rules, 1965 ?"

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7. Learned counsel for the applicant has advanced three fold arguments. Firstly, that there being no indication whatsoever in any of the communications relating to the appointment of the applicant to the cadre of Sorting Assistants in the Railway Mail Service (RMS) his appointment has been in a permanent vacancy and not a temporary one and hence his services cannot be terminated by issuance of the notice under Rule 5 of the C.C.S. (Temporary Service) Rules, 1965. The other contention is that the order of termination Annexure A/1 dated 17.7.1997 is innocuous one as it does not disclose the reason or the ground on the basis of which the applicant's services have been terminated; more so when the respondents allege that there has been a concealment of fact by the applicant while submitting application for appointment. Lastly, it has been urged that if the respondents were of the view that there has been a misconduct on part of the applicant in concealing certain facts, termination of his services vide the impugned order dated 17.7.1997 (Annex.A/1) is violative of Article 311 of the Constitution of India as the applicant has not been afforded any opportunity to defend himself. In support of his arguments the learned counsel has cited a number of authorities; the relevant one would be referred hereinafter.

8. In contrast, it has been argued by the learned counsel for the respondents that there is no illegality or irregularity in the issuance of the impugned order dated 17.7.1997 (Annex.A/1). The appointment of the applicant has been only as a temporary Sorting Assistant with the



respondent department. It has also been urged by the learned counsel for the respondents that though both the impugned order dated 17.7.1997 (Annex.A/1) and the order of termination dated 17.7.1997 (Annex.E/3) were tendered to the applicant on the same day, but he received only Annexure A/1 and refused to receive Annexure E/3 as is evident from the notings and report by the Incharge at HRO Jaipur as at Annexures AA/1 and AA/2. It has been strenuously argued that the applicant was duly served with the impugned order dated 17.7.1997 (Annex.E/3) as per the requirement of Proviso to sub rule (1) of Rule 5 of the C.C.S. (Temporary Service) Rules, 1965 which unequivocally indicated that the applicant's services having been terminated forthwith, and he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice at the same rates at which he was drawing them immediately before the termination of his services or as the case may be for the period by which such notice was short by one month. To support his argument that the appointment of the applicant has been temporary; the learned counsel for the respondents has also drawn our attention to the appointment order as at Annexure E/4 dated 27.1.1997, which specifies the terms and conditions of the appointment of not only the applicant but also other eight persons given appointment to the temporary posts of Sorting Assistants in the pay scale of Rs. 975-25-115-EB-30-1660. It has, therefore, been urged that in view of the terms and conditions incorporated in this appointment order, the applicant's appointment being temporary without conferring any right for permanent absorption with a clear stipulation that the services can be terminated at any time after one month's notice given by the appointing authority without assigning any reason; the termination of the applicant vide the impugned order as at Annexure A/1 dated

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17.7.1997 and as at Annexure E/3 of the same date cannot be faulted.

9. In reference to the authorities cited by the learned counsel for the applicant viz., 1986(4) SCC 141 Smt. Rajinder Kaur Vs. U.O.I., 1991(3) SCC 291 Om Prakash God Vs. Himachal Pradesh Tourism Development Corporation, 1991(2) SCC 335, Babulal Vs. State of Haryana, 1990(SC) (AIP) 1368 Ram Ekkal Sharma Vs. State of Bihar, 1987 Suppl. SCC 295 Hardeep Singh Vs. State of Haryana and 1971 Lab. & Ind. Case 721, K.H. Phadnis Vs. State of Maharashtra; it has been urged by the learned counsel for the respondents that looking to the nature of appointment of the applicant as a temporary person, most of the authorities relied upon by the learned counsel for the applicant relate to the categories of employees whose nature of appointment has been permanent and hence they are not applicable.

10. As observed earlier, the question which goes at the root of the controversy raised in this OA hovers around the nature of appointment given to the applicant by the respondent department. In other words, it has to be determined whether the appointment of the applicant as Sorting Assistant with the respondent department has been a temporary one and if so whether his services can be terminated under Rule 5 of the C.C.S. (Temporary Service) Rules, 1965 by service of notice as required under the proviso to sub-rule (1) of Rule 5 of the C.C.S. (Temporary Service) Rules, 1965. In this regard, contrary to the contention of the learned counsel for the applicant what is discerned from the pleadings and the documents filed by the parties in this application is that the appointment of the

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applicant as Sorting Assistant has not been on a permanent basis but has been a temporary one terminable by the service of a notice under proviso to sub-rule (1) of Rule 5 of the C.C.S.(Temporary Service) Rules, 1965. In this regard a reference is necessary to the notification issued by the respondent department for direct recruitment to the cadre of Postal/Sorting Assistants for the year 1995 and forwarded to the District Employment Officer, Employment Exchange, Jalebi Chowk, Jaipur as at Annexure AA/3 with the additional affidavit filed by the respondents on 23.3.1998 in pursuance of the query raised by the Tribunal during the hearing of the arguments. From a perusal of this notification it is noted that 19 vacancies of Sorting Assistant in the RMS Jaipur Division, Jaipur for the year 1995 as per the break-up given was forwarded to the District Employment Officer, Jaipur vide their communication dated 7.5.1995 alongwith the requisition form annexed therewith to be used when calling for applications from the Employment Exchange. Column 4 of this requisition form is very material which is reproduced as under:-

"....04. No. of Post to be filled
durationwise.

	<u>Duration</u>	<u>No. of Posts</u>
(a) Permanent		
(b) Temporary:-		
(i) Less than 3 months		
(ii) Between 3 months and one year		
(iii) Likely to be continued beyond one year.		19....."

From a perusal of the particulars given under Col.4 of this requisition form, it is abundantly clear that 19 vacancies of the Sorting Assistants in RMS Jaipur Division for the

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year 1995 which were required to be filled up were not declared as permanent, but were indicated 'Likely to be continued beyond one year' under sub-clause (iii) clause (b) captioned as 'Temporary'. This is not the end of the matter because nature of appointment of the applicant alongwith other eight persons has further been indicated to be temporary post of Sorting Assistant in the scale of pay Rs. 975-25-1150-EB-30-1660 w.e.f. the date noted against the name of each of the appointee; which has been 7.1.1997 in the case of the applicant vide the appointment order dated 27.1.1997 (Annex.R/4). The argument of the learned counsel for the applicant that this appointment order Annexure R/4 was not furnished to the applicant cannot be accepted. The reason is that on the one hand the applicant asserts that after receiving pre-training from 21.9.1996 to 5.10.1996 and thereafter successful completion of training of 2½ months w.e.f. 7.10.1996 he joined as Sorting Assistant at Jaipur RMS under respondent No.3 i.e. Senior Superintendent, Railway Mail Service, Jaipur Division, Jaipur, but for reasons not disclosed the applicant asserts that he got his appointment on a permanent post and not of temporary one. Had the applicant joined his duties on the post of Sorting Assistant with respondent No.3 in pursuance of any appointment order other than the order dated 27.1.1997 (Annex.R/4), there may not have been any reference in his pleadings about his undergoing the pre and practical training and the theoretical training indicated in his letter of appointment dated 27.1.1997 (Annex.R/4). If on the other hand the applicant was sure that his appointment was against a permanent vacancy of Sorting Assistant with the respondent department, he should have approached the

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Tribunal with clean hands by filing the 'appointment order' in pursuance of which he asserts that he joined his duties as Sorting Assistant with the RMS Jaipur Division against a permanent vacancy. In fact, the applicant has unsuccessfully tried to wriggle out of the implications of the terms and conditions incorporated in the appointment order dated 27.1.1997 (Annex.R/4) which in fact is the basis through which the applicant has entered the Government service. Merely by asserting that the applicant was not furnished with the appointment order dated 27.1.1997 (Annex.R/4); he cannot absolve himself of the implications flowing from the contents of this appointment order. This appointment order contains the terms and conditions on which the applicant has been given appointment and posting to the temporary post of Sorting Assistant. Clause 2(a) of this appointment order gives out in unequivocal terms that the appointment is temporary and that it would not confer any right for permanent absorption. It not only further lays down that the appointment is terminable at any time after one month's notice given by the appointing authority without assigning any reason, but further makes it abundantly clear that the appointing authority reserves the right of terminating the services of the appointee forthwith or before the expiry of stipulated period of notice by making payment to him of a sum equal to the pay and allowances for the period of notice or the unexpired portion thereof. On the basis of above analysis and the documents filed by the respondents, there is no doubt whatsoever that the appointment of the applicant has been a temporary one which was likely to be continued beyond one year and not against a permanent vacancy.



11. It now remains to be seen whether the termination of the applicant's services vide the impugned orders dated 17.7.1997 (Annexure A/1 and Annexure E/3) has been in order. In this regard, it is suffice to mention that since we are of the considered opinion that the applicant's appointment has been a temporary one with the respondent department his services could be rightfully terminated in accordance with the terms and conditions of his appointment by issuance of a notice under proviso to sub rule (1) of Rule 5 of the Rules of 1965 forthwith with a direction to the applicant to receive a sum equivalent to the amount of his pay plus allowances for the period of notice at the same rates at which he was drawing them immediately before the termination of his services or as the case may be for the period by which such notice falls short of one month. Though the learned counsel for the applicant has ~~strenuously~~ argued that the notice dated 17.7.1997 (Annexure E/3) was not served on him and that only notice as at Annexure A/1 dated 17.7.1997 was received by him; yet the facts which have emerged from the pleadings of the parties and documents filed by the respondents are to the contrary. The respondents have on an additional affidavit filed a report Annexure AA/1 dated 23.7.1997 and the acknowledgement as at Annexure AA/2 dated 22.7.1997 endorsed by as many as seven departmental persons affirming that though the applicant received one memo i.e. Annexure A/1 dated 17.7.1997 on 19.7.1997, but refused to accept the other memo dated 17.7.1997 Annexure E/3 when it was tendered to the applicant on 22.7.1997 also. It, therefore, appears that the applicant did not accept the memo dated 17.7.1997 (Annexure E/3) terminating his services forthwith, though it was actually tendered to him before seven departmental persons.



In our view, there has been a sufficient service of the memo dated 17.7.1997 (Annex.F/3) upon the applicant and it would be presumed that he has full knowledge of the contents thereof i.e. regarding termination of his services forthwith under Rule 5(1)(a) of the Rules of 1965 as also about his right to claim the pay and allowances for the notice period.

12. The argument, therefore, of the learned counsel for the applicant to the effect that the impugned order as at Annexure A/1 dated 17.7.1997 has been stigmatic as it did not disclose the reason or the ground on the basis of which the applicant's services were terminated has no foundation. This argument of the learned counsel could have been valid if it would have been found that the applicant's appointment has been on a permanent basis which has not been the case herein. Even if for arguments sake it is accepted that the impugned order as at Annex.A/1 and Annex.F/3 did not disclose any reason or ground for terminating the services of the applicant it would not amount to any illegality vitiating the order terminating the services of the applicant. The reason disclosed by the respondents in their counter, is the conduct of the applicant which has forced them to terminate his services. This conduct has been of a period prior to his joining the Government service. According to the respondents, the applicant in his application, submitted seeking appointment to the post of Sorting Assistant, has concealed the fact that there has been a criminal case pending against him which according to them has been the basis for invoking the provisions of Rule 5 of the C.C.S. (Temporary Service) Rules, 1965 to terminate the services of the applicant forthwith. In other words, the conduct of the applicant which has

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compelled the respondents to terminate his services is not after his joining the services with the respondents, but before his joining the Government service. Moreover in the Attestation Form Annexure E/2 annexed with the application form warning No.3 is clear that if any false information is furnished by the applicant or any factual information is suppressed while filling the Attestation Form and it comes to the notice of the Government at any time during service of a person then his services are liable to be terminated. It, therefore, was within the competence of the respondent department to terminate the services of the applicant whose appointment has been a temporary one on the post of Sorting Assistant with the respondent No.3 by invoking the provisions of Rule 5(1)(a) of the Rules of 1965. It may be termed at the most as a motive and not the ground to terminate the services of the applicant. It, therefore, cannot be said that the impugned orders are stigmatic in nature. Similarly, the argument of the learned counsel for the applicant that the impugned order terminating the services of the applicant is violative of Article 311 of the Constitution of India, therefore, has no substance as it has been found that the appointment of the applicant has been a temporary one and provisions of Article 311 of the Constitution do not come into play for appointees of the category of the applicant.

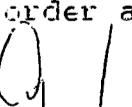
13. In view of our findings as above, the authorities relied upon by the learned counsel for the applicant are of no assistance which mostly deal with stigmatic orders and not orders of the nature of Annexure A/1 and Annexure E/3 issued in the case of the applicant. On the contrary, the decision

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of Hon'ble the Supreme Court in the case of Raj Kumar Vs. Union of India and others, 1996 (1) SLR 378 cited on behalf of the applicant supports the stand taken by the respondents and not the applicant wherein in Para 10 Hon'ble the Supreme Court has observed that "when the service of a temporary Government servant are dispensed with by innocuous order even though the reason for taking such a decision is misconduct or unsatisfactory service profile, it is not necessary to conduct an enquiry before doing so." On facts, however, Hon'ble the Supreme Court affirmed that in the case of Shri Raj Kumar the order terminating the service was not an innocuous one but with stigma and hence it was held that the termination order of the applicant's services being punitive in nature casting a stigma; the non-observance of the principles of natural justice vitiated the order. However, in the case of the applicant as found in the preceding discussion, the orders dated 17.7.1997 (Annex.A/1 & R/3) having been found not to be stigmatic or punitive in nature, there has been no fault on part of the respondents in terminating the services of the applicant by invoking the provisions of Rule 5(1)(a) of the Rules of 1965.

14. For all the aforesaid reasons finding that the appointment of the applicant as Sorting Assistant with the respondent having been a temporary one; his services have been rightly terminated under Rule 5 of the C.C.S. (Temporary Service) Rules, 1965 by serving a notice dated 17.7.1997 (Annex.A/1 & Annex.R/3) under proviso to sub rule (1) of Rule 5 of the C.C.S. (Temporary Service) Rules, 1965. Therefore, there being no merit in this OA, the OA is dismissed at the stage of admission. No order as to costs.


(RATAN PRAKASH)
JUDICIAL MEMBER


(O.P.SHARMA)
ADMINISTRATIVE MEMBER