

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No. 4077/2015

This the 27th day of January, 2016

**Hon'ble Mr. Justice B.P. Katakey, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Amarjeet Singh
PIS No. 16090229
SI (Ex.) in Delhi Police,
Aged about 29 years
S/o Sh. Sunehra Singh
R/o 26-P/45-E, Gali No. 8,
Indira Park Extension-II,
Palam Colony, New Delhi-45

..... Applicant

(By Advocate: Mr. Anil Singal)

VERSUS

1. Govt. of NCT of Delhi
Through Commissioner of Police,
PHQ, IP Estate, New Delhi
2. DCP (West Distt.)
PS Rajouri Garden, New Delhi Respondents

(By Advocate: Mr. N.K. Singh for Mrs. Avnish Ahlawat)

ORDER (ORAL)

By Shri B.P. Katakey, Member (J):

Heard the learned counsel appearing for the parties.

2. The applicant, who was appointed as SI (Ex.) in Delhi Police vide order of appointment dated 29.09.2009, has filed this present OA challenging the show cause notice dated 30.09.2015 issued by

the Deputy Commission of Police, West District, New Delhi, asking the applicant to show cause as to why his services should not be terminated under Rule 5(1) of Central Civil Service (Temporary Service) Rules-1965, (in short 1965 Rules). It has been contended by the learned counsel for the applicant that since the applicant was neither appointed in a temporary post nor was appointed in officiating basis in a permanent post, the provision of 1965 Rules are not applicable and hence the show cause notice was issued on 30.09.2015 needs to be interfere with. It has also been submitted that maximum period of probation being two years, extendable by another one year, the applicant having served for more than three years, the respondents authority cannot terminate the applicant from service.

3. Learned counsel for the respondents producing the order of appointment dated 29.09.2009 has submitted that in the said order it is specifically mentioned that provision of 1965 Rules would be applicable along with the provisions of Delhi Police Act 1978, CCS Rules 1964 and hence there is no illegality in issuing show cause notice dated 30.09.2015 under 1965 Rules. Referring to Rule 5(E) of Delhi Police (Appointment and Recruitment) Rules, it has also been submitted that the services of an employee on probation is liable to be terminated without assigning any reason and the order of confirmation has to be passed even though the period of probation was initially for two years, extendable by another one

year. Learned counsel, therefore, submits that the submission advanced by learned counsel for the applicant needs to be rejected. Learned counsel in support of his contention has placed reliance on the judgement of the Apex Court in **Jai Kishan Vs. Commission of Police**, reported in 1995 Supp(3) SCC 364.

4. "Temporary service" has been defined in the 1965 Rules as the service of a temporary Government servant in a temporary post or officiating service in a permanent post, under Government of India. In the instant case, the applicant was neither appointed against a temporary post nor against the permanent post on officiating basis. Hence the provisions of 1965 Rules would not be applicable to the applicant, despite the stipulation in the offer of appointment that the provisions of the said Rules would be applicable.

5. The impugned show cause notice was issued by the Deputy Commissioner on 30.09.2015 asking the applicant to show cause as to why his services should not be terminated under Rule 5(1) of 1965 Rules. Since the provision of 1965 Rules, for the reasons recorded above, are not applicable to the applicant, the impugned show cause notice cannot stand the scrutiny of law. The judgment passed by Hon'ble Supreme Court in Jai Kishan (supra) is not applicable in the case in hand as in that case the appellant was appointed temporarily against a temporary post for which the

Hon'ble Supreme Court has observed that the provision of 1965 Rules would be applicable.

6. In view of the above, arguments advanced by learned counsel for the parties on question as to whether the Petitioner having served for more than three years could not have been terminated, has not been gone in to the case in hand, as the applicant has challenged the aforesaid show cause notice issued under Rule 5(1) of 1965 Rules.

7. In view of above, the show cause notice dated 30.09.2015 is set aside. It is, however, open to the respondents to take appropriate action against the applicant in accordance with law. The order of appointment dated 29.09.2009 has been kept on record.

8. OA is allowed as indicated above. No costs.

(K.N. Shrivastava)
Member (A)

(Justice B.P. Katakey)
Member (J)

/daya/