

(2009) 08 DEL CK 0397

Delhi High Court

Case No: Writ Petition (Civil) No. 2439 of 1997

Union of India (UOI) and Others

APPELLANT

Vs

Ex. Constable Bal Kishan

RESPONDENT

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**Date of Decision:** Aug. 27, 2009**Acts Referred:**

- Central Civil Services (Temporary Service) Rules, 1965 - Rule 5(1)
- Constitution of India, 1950 - Article 311
- Delhi Police (Appointment and Recruitment) Rules, 1980 - Rule 5

**Hon'ble Judges:** Madan B. Lokur, J; A.K. Pathak, J**Bench:** Division Bench**Advocate:** V.K. Tandon, for the Appellant; Sunil Malhotra and Dheeraj Gupta, for the Respondent**Final Decision:** Allowed

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**Judgement**

A.K. Pathak, J.

Respondent was appointed as a Constable by the Petitioners on 15th September, 1982. Later on, Petitioners terminated the Respondent from service vide order dated 3rd March, 1988, which reads as under:

In pursuance of Sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I, Mansoor Ali Seyed, Additional Deputy Commissioner of Police, South Distt., New Delhi hereby terminate forthwith the services of constable Bal Krishan No. 1352/SD and direct that he will be paid a sum equivalent to the amount of pay & allowances for a period of one month (in lieu of notice) calculated at the same rate at which he was drawing then immediately before the date on which this order is issued. He should deposit all Govt. belongings including appointment card, CGHS Card, Identity card and Uniform article as well as other Govt. Store etc. In his possession, before leaving the department and also clear all accounts.

sd./-

(MANSOOR ALI SEYED)

ADD. DY. COMMISSIONER OF POLICE,

SOUTH DISTT. NEW DELHI.

2. Respondent made a representation on 8th May, 1988 against the termination order, which was dismissed by the Petitioners vide order dated 2nd June, 1988. Thereafter, Respondent filed a Memorial before the President of India against the order of rejection of his representation, which was rejected during the pendency of O.A.

3. Respondent challenged the termination order by filing O.A. No. 1328/1992 before the Central Administrative Tribunal, Principal Bench, New Delhi (for short hereinafter referred to as "Tribunal"). It was prayed that the services of the Respondent be regularized from the date of his appointment along with all the consequential benefits.

4. Respondent contended before the Tribunal that under Rule 5(e) of the Delhi Police (Appointment & Recruitment) Rules, 1980 the period of probation was fixed as two years with a further stipulation that it can be further extended for not more than one year. Maximum period of probation provided under the rules was only for a period of three years. Respondent was appointed on 15th September, 1982, thus, was deemed confirmed after expiry of period of three years. As such, Respondent became permanent employee and his services could not have been terminated without holding an enquiry and an order of termination could not have been issued. Thus, the termination order dated 3rd March, 1988 was illegal and violative of Article 311 of the Constitution of India. Though, on the face of it, termination order was innocuous, as it did not contain any imputation and/or allegation of misconduct, but in fact termination order was by way of punishment as its foundation was wilful absence of the Respondent on some occasions.

5. Tribunal allowed the O.A. vide order dated 19th March, 1997 and directed the Petitioners to take back the Respondent in service. However, liberty was granted to the Petitioners to hold an enquiry if it so desired, in accordance with law. It was further held that the Respondent will be entitled to subsistence allowance in accordance with rules from the date of his termination order till the issuance of a charge-sheet and thereafter, the payment of arrears will be governed in accordance with the appropriate orders passed by the Petitioners in due course.

6. Tribunal held that the Respondent did not assume status of a confirmed employee after expiry of three years in view of the judgment of Supreme Court titled as [Jai Kishan Vs. Commissioner of Police and another](#), wherein with regard to Rule 5(e) of the Delhi Police (Appointment & Recruitment) Rules, 1980 it was held that the same did not contain an implied or automatic confirmation. However, it was held

that the unauthorized absence on the part of the Respondent on few occasions was the basis for passing the termination order and thus, Court could have lifted the veil in these circumstances. Respondent was entitled to explain his conduct, thus, enquiry was required.

7. We have heard learned Counsel for the parties. In our view, termination order, which has been reproduced hereinabove, clearly shows that the same does not cast any stigma on the conduct of Respondent. Bare perusal of the order shows that the same is termination order simpliciter having been passed under Sub-rule (1) of Rule 5 of the Central Civil Service (Temporary Service) Rules, 1965 without assigning any reason much less incorporating any of the misconduct of the Respondent.

8. In order to amount a stigma, the order must be in a language which imputes something over and above the unsuitability of the employee for the job. We are of the view that the termination order is innocuous order and the language employed therein shows that no reference has been made regarding unsuitability of the Respondent.

9. Admittedly, Respondent was not confirmed as a Constable and in our view his services can be terminated under Sub-rule (1) of Rule 5 of the Central Civil Service (Temporary Service) Rules, 1965.

10. Judgments on which reliance has been placed by the learned Counsel for the Respondent are in different facts and are of no help. In [Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others](#), there were contradictory reports of two different superior officers with regard to the work and conduct of the probationer. There were also complaints against the probationer with regard to the misbehaviour with women academic staff members. An informal enquiry was also held by a high level enquiry committee wherein attitude of the probationer remained non-cooperative. Consequently, lengthy termination order was passed wherein reference to the misconduct, performance, ability and capacity of the Probationer was made. In these facts, Supreme Court observed that the termination order was punitive and stigmatic in nature. It was held that the misconduct of the Probationer was foundation for passing termination order and that the misconduct was not the motive for issuance of such an order. Similarly, in [Samsher Singh Vs. State of Punjab and Another](#), Rules 7 and 9 of the Punjab Civil Service (Punishment and Appeal) Rules, 1952 were under scrutiny. In this case the language applied in the order clearly shows that the same is termination order simpliciter.

11. Respondent had remained absent on several occasions and he was awarded punishment of Physical Drill from time to time and on some occasions was even given warnings. Respondent did not challenge these orders. This shows that his work was unsatisfactory and he did not improve despite warnings. Accordingly, Petitioners decided to dispense-with the services of the Respondent by taking the

aid of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 and passed the termination order simpliciter. In the facts of this case, at best, it can be said that his past conduct might be motive for issuance of the termination order, but by no stretch of imagination it can be said that it was foundation for issuance of termination order.

12. In [Sarita Sarangi Vs. Union of India \(UOI\) and Another](#) a Division Bench of this Court has held as under:

The impugned order is one of termination simpliciter and not stigmatic. There was therefore no question of any violation of the principles of natural justice. The appellant was a probationer. The facts on record show that she was habitually absent on several occasions and very often without obtaining prior sanction of leave. In the circumstances, the decision not to confirm her services at the close of her probation could not be held to be unreasonable or irrational.

13. In this case also Respondent was not a confirmed permanent employee. He was irregular in attending his duties. The termination order is innocuous and not stigmatic.

14. In the light of the above discussion, we are of the view that Tribunal has taken an erroneous view in quashing the termination order and ordering the reinstatement of Respondent.

15. The writ petition is allowed and impugned order is set aside and the termination order dated 3rd March, 1988 is upheld.