



2025:DHC:10553-DB



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 13.10.2025

Pronounced on: 28.11.2025

+ **W.P.(C) 9803/2023 & CM APPL. 37699/2023**

GOVT. OF NCTD & ORS.

.....Petitioners

Through: Mr. Vinay Yadav, CGSC with
Mr. Ansh Kalra, Ms. Kamna
Behrani & Mr. Neeraj Raj
Paulose, Advs.

versus

DEVENDER SINGH

... Respondent

Through: Mr. Sachin Chauhan, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE MADHU JAIN

J U D G M E N T

MADHU JAIN, J.

1. This petition has been filed by the petitioners, challenging the Order dated 23.05.2023 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the 'Tribunal') in O.A. No.660/2017, titled ***Const. Devender Singh v. Govt. of NCTD& Ors.***, whereby the learned Tribunal allowed the O.A. filed by the respondent herein.

BRIEF FACTS OF THE PRESENT CASE:

2. The respondent, Devender Singh, was provisionally selected for appointment to the post of Constable (Executive) (Male) in the Delhi Police pursuant to the recruitment process conducted for the years 2011–2012, and he joined the force on 04.10.2012.



3. He was deputed for basic training at the Police Training School, Wazirabad, Delhi, with Batch No. 96.

4. During the course of training, the respondent was found to be frequently absent without permission on several occasions. As per the records, he absented himself on five occasions between October 2012 and January 2013, for which minor punishments were imposed, and adverse entries were recorded by the training authorities as under:

S. No.	Date of Absence	Period of Absence	Action Taken
1.	11/12.10.2012	00 Days 05 Hours 00 Minutes	Filed and awarded 05 days' punishment drill
2.	25/26.10.2012	00 Days 16 Hours 00 Minutes	One day casual leave and awarded 15 days' punishment drill
3.	12/13.11.2012 to 20.11.2012	07 Days 12 Hours 00 Minutes	Period decided as not spent on duty (dies non)
4.	09.12.2012 to 13.12.2012	03 Days 21 Hours 00 Minutes	Period decided as not spent on duty (dies non)
5.	23.12.2012 to 07.01.2013	15 days 03 Hours 00 Minutes	Period decided as not spent on duty (dies non)

5. In view of his repeated unauthorized absences and lack of discipline, the respondent's performance was placed before the Disciplinary Authority, that is, the Deputy Commissioner of Police / Vice Principal, Police Training College, Jharoda Kalan, who, by Order dated 11.01.2013, terminated his services under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965, read with Clause 14(1) of the Standing Order No. 16/2010, which empowers termination of trainees found to be habitually absent or unsuitable for police service.

6. The respondent initially challenged the order of termination by filing O.A. No. 1080/2013 before the learned Tribunal. During the



pendency of the said O.A., the respondent preferred a Statutory Appeal before the Appellate Authority, that is, the Commissioner of Police, which was rejected by the petitioners *vide* Order dated 22.05.2013.

7. On 20.12.2016, the respondent withdrew the said O.A. with liberty to challenge both, the Order dated 11.01.2013 and the Order dated 22.05.2013.

8. Thereafter, the respondent filed the above O.A., being O.A. No. 660/2017, before the learned Tribunal, impugning both, the termination Order dated 11.01.2013 and the Order dated 22.05.2013 passed by the Appellate Authority.

9. The learned Tribunal, *vide* Order dated 23.05.2023, allowed the said O.A., holding as under:

“16. In view of the aforesaid facts and discussion, the impugned orders dated 11.01.2013 (Annexure A-1) and 22.05.2013 (Annexure A-2) are set aside. The applicant shall be reinstated in service subject to his medical fitness as expeditiously as possible and in any case, not later than six weeks from the date of receipt of a copy of this order. The applicant shall be entitled for consequential benefits, i.e., seniority, fixation of pay, however, only on notional basis and the respondents shall pass necessary order(s) in this regard and release the benefits, if any, as expeditiously as possible and preferably within eight weeks. However, the respondents shall be at liberty to initiate enquiry proceedings and conclude the same in accordance with the relevant rules and instructions, if they so decide.

17. The present O.A. is allowed in the aforesaid terms. However, in the facts and circumstances, there shall be no order as to



costs.”

10. Aggrieved by the Impugned Order, the petitioners have filed the present writ petition before this Court.

SUBMISSIONS ON BEHALF OF THE LEARNED COUNSEL FOR THE PETITIONERS:

11. The learned counsel for the petitioners submits that the learned Tribunal erred in holding that the order passed by the Disciplinary Authority cast a stigma upon the respondent. It is submitted that the Appellate Authority had merely addressed and responded to the averments made by the respondent in his representation, and such reasoning cannot, by any stretch of imagination, be considered stigmatic or punitive in nature.

12. The learned counsel for the petitioners further submits that the learned Tribunal failed to appreciate that during the short span of his training, that is, from 04.10.2012 to 11.01.2013, the respondent remained absent on five different occasions without authorization. Such conduct clearly reflected a lack of discipline and devotion to duty, demonstrating that the respondent was not likely to become a good police officer and was, therefore, rightly found ‘unfit’ to be retained in the police force.

13. It is further argued that the competent authority, after considering the overall conduct of the respondent, found him unsuitable for police service as he was a habitual absentee. The learned counsel submits that retention of such an undisciplined trainee would have set a bad precedent among other recruits, undermining the discipline and decorum expected within the force.



14. The learned counsel also points out that the training activities of recruit constables are governed by the Standing Order No. 16/2010, and Clause 14(1) thereof specifically provides that frequent absence from outdoor or indoor training, showing lack of devotion to duty, or being a habitual absentee, constitutes sufficient ground for termination of services at the stage of training itself. It is submitted that, in the present case, the respondent's conduct squarely fell within the ambit of this clause.

15. The learned counsel submits that the competent authority, after due consideration, terminated the services of the respondent in exercise of the powers conferred under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965, which authorizes the termination of temporary employees by giving one month's notice or pay in lieu thereof. A plain reading of the termination Order dated 11.01.2013 demonstrates that it was a simpliciter termination, devoid of any imputation of misconduct or stigma.

16. It is further argued that the learned Tribunal erred in holding that the termination was stigmatic on the basis of the reasoning recorded by the Appellate Authority in the Order dated 22.05.2013. The Appellate Authority, while rejecting the appeal, merely passed a speaking order explaining the rationale for upholding the termination and addressing the respondent's submissions. Such an order, according to the learned counsel, cannot convert a termination simpliciter into a punitive one.

17. The learned counsel emphasizes that the frequent absence of the respondent from training constituted only the motive for the



competent authority to assess his unsuitability, and not the foundation for imposing any punishment. No disciplinary inquiry was held, nor were any findings of misconduct recorded against the respondent. Hence, the action was purely administrative in nature, based on the overall assessment of his suitability during probation.

18. It is submitted that when an order of termination simpliciter is passed without assigning reasons, the respondent termed it unreasoned; however, when brief observations are made to indicate the background, the respondent calls it stigmatic. According to the learned counsel, such inconsistent contentions cannot co-exist, and the Impugned Order, being a termination simpliciter, does not warrant interference.

19. It is also contended that a probationer has no vested right to continue in service, and his services may be terminated at any time during or upon completion of probation if he is found generally unsuitable. Even if the competent authority undertakes a preliminary fact-finding exercise to assess the conduct or suitability of a probationer, such assessment cannot be treated as punitive. Therefore, the protection under Article 311(2) of the Constitution of India is not attracted in the present case.

20. The learned counsel for the petitioners places reliance on ***Mathew P. Thomas v. Kerala State Civil Supply Corpn. Ltd. & Ors.***, (2003) 3 SCC 263; ***Radhey Shyam Gupta v. U.P. State Agro Industries Corpn. Ltd. & Anr.***, (1999) 2 SCC 21; and ***Director, Aryabhata Research Institute of Observational Sciences (Aries) v. Devendra Joshi & Ors.***, (2018) 15 SCC 73.



**SUBMISSIONS ON BEHALF OF THE LEARNED COUNSEL
FOR THE RESPONDENT:**

21. On the other hand, the learned counsel for the respondent contends that the Appellate Authority order itself clearly records that the termination of the respondent was on account of the alleged misconduct of unauthorized absence, thereby demonstrating that the order of termination is punitive in nature. The learned counsel submits that once the authority attributes misconduct to the respondent, such termination cannot be treated as a simpliciter discharge but must necessarily be preceded by a regular departmental inquiry as required under Article 311(2) of the Constitution of India.

22. The learned counsel for the respondent draws attention to the observations in the Appellate Authority Order dated 22.05.2013, which state that the respondent's absence amounted to a 'serious misconduct calling for exemplary punishment'. It is urged that such language leaves no doubt that the termination order was founded on allegations of misconduct and, therefore, the veil must be lifted to reveal its true punitive character.

23. It is further submitted that the Disciplinary and Appellate Authorities acted with total non-application of mind, as they concluded that the respondent was a 'habitual absentee' and guilty of misconduct without holding any inquiry or affording him an opportunity to defend himself. The absence of a proper inquiry deprived the respondent of his right to a fair hearing, rendering the entire action *void ab initio*.



24. The learned counsel for the respondent argues that the respondent had provided reasonable explanation for his alleged absence, duly supported by medical certificates, the genuineness of which was never disputed by the department. In fact, the department had regularized those periods of absence as per the CCS (Leave) Rules, 1972. Hence, having once accepted the respondent's explanation, the same period could not subsequently form the foundation for punitive termination, amounting to double jeopardy.

25. It is further contended that the total period of absence was only about 25 days on three occasions, which, in any case, was covered by mitigating circumstances and medical illness. The imposition of the extreme penalty of termination was, therefore, grossly disproportionate to the alleged lapses.

26. Reliance is placed on the Judgment of the Supreme Court in ***Ratnesh Kumar Choudhary v. Indira Gandhi Institute of Medical Sciences, Patna, Bihar & Ors.***, (2015) 15 SCC 151, wherein it was held that if the foundation of termination lies in alleged misconduct, the Court may lift the veil and treat it as punitive even if the order appears innocuous on its face. Similar reliance is placed on ***Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta & Ors.***, (1999) 3 SCC 60, wherein the Supreme Court held that even if stigmatic material is contained in a document referred to in the termination order, the termination would be deemed punitive.

27. The learned counsel for the respondent also places reliance on the Judgment of this Court in ***Govt. of NCT of Delhi & Ors. v.***



Virender, 2024 SCC OnLine Del 9598, and on the Order dated 05.03.2024 passed in W.P.(C) 12635/2023, titled ***Govt. of NCT of Delhi & Ors. v. Satyender***.

ANALYSIS AND FINDINGS:

28. We have considered the submissions made by the learned counsels for the parties.

29. The issue that arises for consideration in the present case is whether the termination of the respondent, a probationary Constable, under Rule 5 (1) of the CCS (Temporary Service) Rules, 1965, was a termination simpliciter based on unsuitability, or a punitive and stigmatic order founded on allegations of misconduct, thereby attracting the protection of Article 311(2) of the Constitution of India.

30. Before advertng to the merits of the submissions advanced by the learned counsel for the parties, it is necessary to refer to the settled position of law governing cases where termination is effected under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965, during the period of probation or training.

31. At the outset, it would be appropriate to reproduce Rule 5(1) of the said Rules, which provides for termination of temporary service. The same reads as under:

“5. TERMINATION OF TEMPORARY SERVICE.

(1) (a) The services of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant;



(b) the period of such notice shall be one month.

Provided that the services of any such Government servant may be terminated forthwith and on such termination, the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the 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.”

32. The concept of probation has been elaborately discussed by this Court in **Govt. of NCT of Delhi & Anr. v. Dalbir Singh**, 2023 SCC OnLine Del 5633. The relevant paragraphs are reproduced hereinbelow:

“11. The very concept of keeping an employee on probation is to give an employer an opportunity to observe the work and conduct, integrity, efficiency etc. of an employee in order to judge his suitability to the job, before permanently absorbing him in the services. Rule 5 (1) of CCS(Temporary Services) Rules, 1965 postulates that the services of a temporary Government servant or a probationer, can be terminated by the Appointing Authority forthwith and the Government servant on termination shall be entitled to claim sum for the period of notice.

Apparently, the holding of inquiry has not been mandated though the termination of service may be preceded by an inquiry by the employer, only to ascertain whether the Government servant should be retained in service or not.

12. In order to attract the provisions of Article 311 (2) of the Constitution of India, it needs to be seen whether the ‘misconduct’ or ‘negligence’ was a mere ‘motive’ for the order of reversion or termination or whether it was



the very 'foundation' of the said order. The form of the order may not be conclusive of its true nature and the Court can tear the veil behind a termination order, which is innocuous and discharge simpliciter, to examine the entirety of the circumstances preceding or attended to the order of termination. Termination simpliciter does not attract the provisions of Article 311 of the Constitution of India unless the termination involves 'stigma'.

13. The important principles, which are deducible on the concept of 'motive' and 'foundation' which have been repeatedly highlighted also stand reiterated in paragraphs 26 and 27 in Chandra Prakash Shahi v. State of U.P. (supra) and may be beneficially reproduced:

"26. The whole case-law is thus based on the peculiar facts of each individual case and it is wrong to say that decisions have been swinging like a pendulum; right, the order is valid; left, the order is punitive. It was urged before this Court, more than once including in Ram Chandra Trivedi case [(1976) 4 SCC 52 : 1976 SCC (L&S) 542 : AIR 1976 SC 2547 : (1977) 1 SCR 462] that there was a conflict of decisions on the question of an order being a simple termination order or a punitive order, but every time the Court rejected the contention and held that the apparent conflict was on account of different facts of different cases requiring the principles already laid down by this Court in various decisions to be applied to a different situation. But the concept of "motive" and "foundation" was always kept in view.

27. The important principles which are deducible on the concept of "motive" and "foundation", concerning a probationer, are that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post in question. If for the determination of suitability of the probationer for the post in



question or for his further retention in service or for confirmation, an inquiry is held and it is on the basis of that inquiry that a decision is taken to terminate his service, the order will not be punitive in nature. But, if there are allegations of misconduct and an inquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that inquiry, the order would be punitive in nature as the inquiry was held not for assessing the general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against that employee. In this situation, the order would be founded on misconduct and it will not be a mere matter of “motive””

(Emphasis Supplied)

33. Similarly, the Apex Court, in **Ravindra Kumar Misra v. U.P. State Handloom Corpn. Ltd. & Anr.**, 1987 Supp SCC 739, while dealing with the case of termination of a temporary employee, drew a distinction between simpliciter termination and punitive termination, by applying the test of motive and foundation. This Court clarified the said distinction and observed as under:

“6. As we have already observed, though the provisions of Article 311(2) of the Constitution do not apply, the Service Rules which are almost on a par make the decisions of this Court relevant in disposing of the present appeal. In several authoritative pronouncements of this Court, the concept of “motive” and “foundation” has been brought in for finding out the effect of the order of termination. If the delinquency of the officer in temporary service is taken as the operating motive in terminating the service, the order is not considered as punitive while if the order of termination is founded upon it, the termination is considered to be a punitive action. This is so on account of the fact that it is necessary for every employer to assess the service of the



temporary incumbent in order to find out as to whether he should be confirmed in his appointment or his services should be terminated. It may also be necessary to find out whether the officer should be tried for some more time on temporary basis. Since both in regard to a temporary employee or an officiating employee in a higher post such an assessment would be necessary merely because the appropriate authority proceeds to make an assessment and leaves a record of its views the same would not be available to be utilised to make the order of termination following such assessment punitive in character. In a large democracy as ours, administration is bound to be impersonal and in regard to public officers whether in government or public corporations, assessments have got to be in writing for purposes of record. We do not think there is any justification in the contention of the appellant that once such an assessment is recorded, the order of termination made soon thereafter must take the punitive character.”

34. In ***State of Punjab & Ors. v. Sukhwinder Singh***, (2005) 5 SCC 569, the Supreme Court has held as under:

“20. In the present case neither any formal departmental enquiry nor any preliminary fact-finding inquiry had been held and a simple order of discharge had been passed. The High Court has built an edifice on the basis of a statement made in the written statement that the respondent was a habitual absentee during his short period of service and has concluded therefrom that it was his absence from duty that weighed in the mind of the Senior Superintendent of Police as absence from duty is a misconduct. The High Court has further gone on to hold that there is direct nexus between the order of discharge of the respondent from service and his absence from duty and, therefore, the order discharging him



from service will be viewed as punitive in nature calling for a regular inquiry under Rule 16.24 of the Rules. We are of the opinion that the High Court has gone completely wrong in drawing the inference that the order of discharge dated 16-3-1990 was, in fact, based upon misconduct and was, therefore, punitive in nature, which should have been preceded by a regular departmental enquiry. There cannot be any doubt that the respondent was on probation having been appointed about eight months back. As observed in *Ajit Singh v. State of Punjab*⁵ the period of probation gives time and opportunity to the employer to watch the work, ability, efficiency, sincerity and competence of the servant and if he is found not suitable for the post, the master reserves a right to dispense with his service without anything more during or at the end of the prescribed period, which is styled as period of probation. **The mere holding of preliminary inquiry where explanation is called from an employee would not make an otherwise innocuous order of discharge or termination of service punitive in nature. Therefore, the High Court was clearly in error in holding that the respondent's absence from duty was the foundation of the order, which necessitated an inquiry as envisaged under Rule 16.24(ix) of the Rules.**

(Emphasis Supplied)

35. The termination Order dated 11.01.2013, whereby the services of the respondent were dispensed with under Rule 5(1) of the CCS (Temporary Service) Rules, 1965, is reproduced hereinbelow:

“In pursuance of the provision to Sub Rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules 1965. I, P.K.Mishra,Dy. Commissioner of Police / Vice Principal, Police Training college, Jharoda Kalan, New Delhi hereby terminate forthwith



the services of Recruit Constable Devender Singh No. 30593/PTC (PIS No. 28120794) and direct that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice of one month at the same rates at which he was drawing them immediately before the termination of his services.”

36. From the perusal of the termination Order dated 11.01.2013, it is clear that the services of the respondent were terminated under Rule 5(1) of the CCS (Temporary Service) Rules, 1965. The order does not contain any reference to misconduct, indiscipline, or moral blameworthiness. It merely states that his services are terminated forthwith with pay in lieu of notice. Such an order, on its face, is innocuous and simpliciter in nature.

37. Applying the above principle to the facts of the present case, it is evident that the termination Order dated 11.01.2013 was passed in exercise of powers under Rule 5(1) of the CCS (Temporary Service) Rules, 1965, and is simpliciter in nature. The competent authority, upon assessing the overall conduct of the respondent during training, found him to be habitually absent and lacking in discipline, and therefore, unsuitable for police service. No departmental enquiry was initiated, no charge of misconduct was framed, and no findings were recorded establishing guilt. The instances of absence were merely the reason for forming an opinion regarding his unsuitability, not the foundation for imposing punishment.

38. In the present case, the Court finds that the frequent absence of the respondent during his training were merely the motive for assessing his general suitability for retention in service and not the



foundation of any punitive action. The competent authority did not hold any formal inquiry, record any findings of guilt, or attribute any proven misconduct to the respondent. The termination Order dated 11.01.2013 was passed under Rule 5(1) of the CCS (Temporary Service) Rules, 1965, in exercise of administrative discretion based on overall unsuitability, and not as a consequence of disciplinary proceedings.

39. This Court is unable to accept the finding of the learned Tribunal that the Order dated 11.01.2013 stood merged with the Appellate Authority Order dated 22.05.2013 so as to render the termination stigmatic or punitive. The Order dated 11.01.2013 was passed under Rule 5(1) of the CCS (Temporary Service) Rules, 1965, terminating the services of a temporary employee on the grounds of unsuitability. The Appellate Authority, while rejecting the representation, merely reiterated the facts and circumstances that had led to the termination. Merely because certain observations were made in the Appellate Authority order referring to the respondent's absence or lack of discipline does not alter the nature of the original order, nor does it make the termination stigmatic or punitive. Furthermore, the Appellate Authority order does not substitute or supersede the Original order of termination.

40. The argument advanced on behalf of the petitioners that the respondent cannot, on the one hand, assail an order of termination simpliciter as arbitrary for want of reasons, and on the other, term it stigmatic when reasons are furnished, bears force. This Court concurs that the respondent cannot approbate and reprobate in the same breath.

**CONCLUSION;**

41. In view of the foregoing discussion, this Court holds that the Order dated 11.01.2013, terminating the services of the respondent, was a termination simpliciter passed under Rule 5(1) of the CCS (Temporary Service) Rules, 1965, on account of unsuitability during training. The order does not cast any stigma, nor is it founded on any allegation of misconduct so as to attract the protection under Article 311(2) of the Constitution of India.

42. The reasoning recorded by the Appellate Authority in its Order dated 22.05.2013, while rejecting the respondent's representation, was merely explanatory in nature and cannot alter or override the character of the original termination order.

43. Consequently, the Impugned Order dated 23.05.2023 passed by the learned Tribunal in O.A. No. 660/2017 cannot be sustained and is hereby set aside. The order of termination dated 11.01.2013 passed by the Disciplinary Authority shall stand affirmed.

44. The petition, along with the pending application, is disposed of with the above direction.

45. There shall be no order as to costs.

MADHU JAIN, J.

NAVIN CHAWLA, J.

NOVEMBER 28, 2025/RM