CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI

O.A. NO.4715 of 2015

Orders reserved on : 21.1.2010

Orders pronounced on : 04.02.2020

Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)
Hon'ble Ms. Aradhana Johri, Member (A)

Sh. Parveen, Age-23 years, (Ex.L.D.C.)
S/o Sh. Wazir Singh,
Village-Lowa Khurd,
PO – Nuna Majra,
Tehsil – Bahadurgarh, Jhajjar.
Haryana.

.... Applicant

(By Advocate : Shri Sachin Chauhan)

VERSUS

1. Union of India,
Through its Secretary,
Ministry of Home Affairs,
Govt. of India,
North Block,
New Delhi-1.

2. The Director,
Intelligence Bureau,
MHA,
North Block,
Central Secretariat,
New Delhi-110 001.

3. The Joint Deputy Director,
Intelligence Bureau,
Ministry of Home Affairs,
Govt. of India,
35, S.P. Marg,
New Delhi-110 021.

4. The Assistant Director/e,
O/o Joint Deputy Director,
Indo-Tibetan Border Force,
C/o 56 APO, Leh.

..... Respondents

(By Advocate : Shri R.K. Jain)

O R D E R

By Hon'ble Mrs. Justice Vijay Lakshmi, Member (J) :

By means of instant OA, the applicant has prayed to quash three orders. The first order is dated 06.07.2015, whereby services of the applicant were terminated, the second order is dated 03.11.2015, whereby the statutory appeal filed by the applicant against the aforesaid termination order was rejected and the third order is the speaking order dated 14.1.2016, passed in the statutory appeal, in compliance of Order dated 30.10.2015 of this Tribunal in OA 3659/2015, filed earlier by the applicant. Prayer has also been made to direct the respondents to reinstate the applicant back in service forthwith with all consequential benefits including seniority, promotion, pay and allowances.

2. We have heard Shri Sachin Chauhan, learned counsel appearing for the applicant and Shri R.K. Jain, learned counsel appearing for the respondents.

3. The brief facts giving rise to the controversy involved in this OA are that the applicant was appointed in Intelligence Bureau (in short 'IB') on the basis of Combined Higher Secondary Examination, conducted by the Staff Selection Commission (in short 'SSC'). The applicant joined IB on 30.12.2014, in a temporary capacity, in the rank of Lower Division Clerk (LDC) at ITB Force, C/o 56 A.P.O., Leh in

pursuance of appointment letter dated 19.12.2014 issued by IB, Ministry of Home Affairs, (Annexure A-7). This letter shows that successful completion of training and probation period were mandatory requirements for the post.

4. On 18.05.2015, when the applicant was under probation, a Memorandum was issued by the office of the respondents, directing the applicant to attend a 2-week Induction training Course scheduled to be held at RTC Kolkata from May 25 to June 5, 2015. The applicant went to Kolkata to attend the induction course, however, on June 04, 2015, he and three other trainees were found to have indulged in serious indiscipline and unruly behaviour, including passing lewd comments at women trainees staying in the same complex and damaging the lift of the complex in intoxicated condition. In this connection, a preliminary inquiry was conducted by SIB Kolkata which revealed that the applicant along with his three colleagues was directly involved in creating nuisance in the building complex by shouting and running from floor to floor in alleged inebriated state. When the Caretaker of the building resisted their unruly behaviour, all of them, including the applicant, started abusing the Caretaker.

5. Earlier too, during his posting at ITBF Leh, the applicant had exhibited indisciplined behaviour and misconduct immediately after five months of his joining on

fresh appointment by indulging in use of unparliamentary language and physical assault in the Mess premises of ITBF Leh. At the Mess premises of Leh, he, in a scuffle with his colleagues, had physically assaulted one of them. He snatched a kitchen knife from the kitchen and tried to stab another colleague, during which he smashed on a mirror and sustained injuries on his right fist. It was also found that the applicant had been asking for loans from Mess members and upon refusal of the same, he used unparliamentary language.

6. After the incident of May 11, 2015 at ITBF Leh, the applicant submitted his written explanation to his seniors on 18.5.2015, in which he admitted the charges, apologized for the same and assured not to repeat such misconduct.

7. Due to earlier indisciplined and unruly behaviour and repeated incident during Kolkata training, the services of applicant along with his three other colleagues, were terminated in terms of proviso to sub rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 (CCS (TS) Rules, 1965) vide order dated 6.7.2015.

8. The applicant filed a departmental appeal on 21.7.2015 against the order of termination. When the aforesaid appeal was pending, the applicant approached the Tribunal by way of OA 3659/2015 and this Tribunal, vide Order dated 5.10.2015, disposed of the aforesaid OA, directing the respondents to decide the departmental appeal within a

period of two months, at the same time, giving liberty to the applicant to approach the Tribunal again if the order passed by the respondents is not favourable to him.

9. Meanwhile, the statutory appeal of the applicant was rejected vide order dated 3.11.2015. The order dated 3.11.2015 shows that there is no mention of any ground for termination in it. The order dated 05.10.2015 passed by this Tribunal in earlier OA 3659/2015, mentioned above, was received by the respondents on 01.12.2015, in pursuance of which, a detailed order dated 14.1.2016 was again passed by the respondents in the statutory appeal narrating all the facts in detail. Thereafter, the applicant amended the OA to include the aforesaid order 14.1.2016 of the department as third order in the list of impugned orders.

10. Learned counsel for the applicant has challenged the legality and correctness of all the impugned orders on the ground, that all these orders, specially the third order dated 14.1.2016, clearly specifies in detail the alleged misconducts of the applicant which have formed the basis of his termination. Therefore, as per the applicant, it is punitive in nature and stigmatic and it could have been passed only after subjecting the applicant to a proper departmental inquiry. In this regard reliance has been placed on the judgment of the Hon'ble Apex Court rendered in ***Chandra Prakash Shahi vs. State of U.P. and others***, reported in (2000) 5 SCC 152, and

Ratnesh Kumar Choudhary vs. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and others Civil Appeal No.8662 of 2015, decided on 15.10.2015. It has been further contended that in absence of any such inquiry, it will amount to be violative of Article 311 of the Indian Constitution, and thus it is liable to be quashed.

11. Learned counsel for the applicant has next contended that the applicant has not admitted any such misconduct as alleged in the order dated 14.1.2016, therefore, he needs an opportunity to defend himself against all the allegations levelled against him in the aforesaid order dated 14.1.2016. It is further contended that neither any chargesheet was issued to the applicant nor was he subjected to any medical examination nor he was ever made part of any preliminary inquiry. Therefore, the impugned one sided order of termination being against the principles of natural justice is liable to be set aside.

12. In support of these contentions, learned counsel for the applicant has relied on the judgments of Hon'ble Delhi High Court rendered in the case of ***S.S. Mota Singh, JR. Model School vs. Tanjeet Kaur and another***, reported in 221 (2015) DLT 595, and of Hon'ble Apex Court rendered in the case of ***Dipiti Prakash Banerjee v. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta & others***, 1999 (3) SCC 60.

13. To the contrary, learned counsel for the respondents has vehemently opposed the OA by contending that the applicant herein has not approached this Tribunal with clean hands, as he has suppressed some material facts, therefore, this OA is liable to be dismissed on this ground alone. Learned counsel has further contended that services of the applicant, along with his three other colleagues, were terminated under Rule 5 (1) of the CCS (TS) Rules, 1965 during his probation period, due to gross indiscipline and unruly behaviour while undergoing induction training at Kolkata. In this regard, our attention has been drawn to Rule 5 of CCS (TS) Rules, 1965, which provides as under:-

> "The appointment of a temporary government servant may be terminated at any time by a notice of one month given by either side viz. The appointee/Govt. servant or the appointing authority without assigning any reason 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 or for the period by which such notice falls short of one month."

14. It has been vehemently argued from the side of the respondents that the impugned termination order is a termination simplicitor. In this regard, reliance has been placed on various judgments of the Hon'ble Apex Court. In the case of ***Pavanendra Narayan Verma vs. Sanjay Gandhi PGI of Medical Sciences and another***, reported in (2002) 1 SCC 520, wherein in para 21, it has been held that :-

> "One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was
>
> *(a)* a full-scale formal enquiry
>
> *(b)* into allegations involving moral turpitude or misconduct which
>
> *(c)* culminated in finding of guilt.
>
> If all three factors are present, the termination has been held to be punitive irrespective of form of termination order. Conversely, if any one of the three factors is missing, the termination has been upheld."

It is further contended by learned counsel for the respondents that in the instant case, as no full-fledged inquiry had ever taken place finding the applicant guilty of misconduct, the termination of the applicant can neither be said to be punitive nor stigmatic.

15. In this regard reliance has also been placed on the following judgments of the Hon'ble Apex Court:-

(i) ***Mathew P. Thomas vs. Kerala State Civil Supply Corpn. Ltd. and others***, reported in (2003) 3 SCC 263, in which the Hon'ble Apex Court in almost similar circumstances has held that the order of termination was simplicitor; and

(ii) ***Abhijit Gupta vs. S.N.B. National Centre, Basic Sciences and others***, reported in 2006 (SCC (L&S) 826, in which the Hon'ble Apex Court has held that the appellant was under observation during probationary period and he was given repeated opportunities to improve his performance for

which purposes his probation was extended from time to time. Therefore, Hon'ble High Court correctly found that the letter dated 7.4.1998 was not punitive in nature as it did not reflect any malice or bias. A termination order which explicitly states what is implicit in every order of termination of a probationer's appointment, does not *ipso facto* become stigmatic.

16. Learned counsel for the respondents has also placed before us the judgment of the Hon'ble Apex Court rendered in the case of ***Pradeep Kumar etc. etc. vs. Union of India & anr.*** (Civil Appeal to Appeal (C) No(s).7613-7616/2012 decided on 19.3.2012) wherein the Apex Court, while reiterating the law on the point, has dismissed the SLP as under:-

> "The petitioners here were probationers and during the probation period their services have been terminated. The High Court has observed that it would not amount to any stigma. No interference is called for. The Special Leave Petitions are dismissed."

17. We have considered the rival submissions advanced by learned counsel of both the parties and have carefully gone through the records and also the various judgments cited by them.

18. Learned counsel for the applicant, while assailing the impugned orders, has laid much stress on the difference between "motive" and "foundation" by drawing our attention

to the judgment of Hon'ble Apex Court rendered in ***Chandra Prakash Shahi vs. State of U.P. and others***, reported in (2000) 5 SCC 152, and has prayed that the court should lift the veil or should go behind the order so as to ascertain whether the alleged misconduct or unsatisfactory service, mentioned in the order of termination was the basis or "foundation" of such order or it merely was a guiding force or "motive" behind the termination. In other words, whether it was an order of termination simplicitor or it was an order passed by way of punishment.

19. Hon'ble Apex Court in the aforesaid case of ***Chandra Prakash Shahi*** (supra) has very elaborately dealt with the concepts of "motive", "foundation" and "lifting of veil" in service jurisprudence and has observed as under:-

> "whether the order by which the services were terminated was innocuous or punitive in nature had to be decided on the facts of each case after considering the relevant facts in the light of the surrounding circumstances. Benefit and protection of Article 311(2) of the Constitution is available not only to temporary servants but also to a probationer and the court in an appropriate case would be justified in lifting the veil to find out the true nature of the order by which the services were terminated. 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 pendulam; right, the order is valid; left, the order is punitive. It was urged before this Court, more than once including in Ram Chandra Trivedi's case (supra) that there was a conflict of decisions on the question of 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. 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 enquiry is held and it is on the basis of that enquiry 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 enquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that enquiry, the order would be punitive in nature as the enquiry 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". "Motive" is the moving power which impels action for a definite result, or to put it differently, "motive" is that which incites or stimulates a person to do an act. An order terminating the services of an employee is an act done by the employer. What is that factor which impelled the employer to take this action. If it was the factor of general unsuitability of the employee for the post held by him, the action would be upheld in law. If, however, there were allegations of serious misconduct against the employee and a preliminary enquiry is held behind his back to ascertain the truth of those allegations and a termination order is passed thereafter, the order, having regard to other circumstances, would be founded on the allegations of misconduct which were found to be true in the preliminary enquiry."

Applying these principles to the facts of the present case, it may be noticed that admittedly, the applicant was a probationer and was working in temporary capacity at the time when the impugned orders were passed. It is well settled legal position that during the probation period, the services of an employee can be terminated and an order of termination

during probation period without any departmental enquiry cannot be considered as punitive or stigmatic.

20. It may be noted that in the first impugned order dated 6.7.2015 terminating the services of the petitioner, the respondents did not attribute any specific misconduct, negligence, inefficiency or dereliction of duty on the part of the applicant. The aforesaid order is reproduced below verbatim:-

> "In pursuance of the Proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I, Ranjit Kumar, Assistant Director hereby terminated forthwith the services of Shri Parveen, LDC (PIS 141720) and direct that he shall be entitled to claim a sum equivalent to the amount of his pay *plus* allowances for the period of notice3 at the same rates at which he was drawing them immediately before the termination of his service, or, as the case may be, for the period of which such notice falls short of one month."

21. It is also noteworthy that even in the second impugned order dated 3.11.2015, passed in the departmental appeal, there is no mention of any misconduct of the applicant. The second impugned order is also reproduced below:-

> "This is with reference to the letter dated July 20, 2015 submitted by Shri Praveen for re-instatement in service.
>
> 2. The request of Shri Praveen was duly considered by the competent authority but the same could not be acceded to."

22. It was only after the applicant approached the Tribunal and brought a direction for the respondents to decide the appeal within a period of two months and the order of the

Tribunal was served on the respondents on December 1, 2015 then the respondents – department passed a detailed and speaking order dated 14.1.2016 in compliance of the order of this Tribunal, mentioning in detail the conduct of the applicant. In the last para of the order dated 14.1.2016, it is clearly mentioned that a reply in this regard has already been issued to him vide letter dated 3.11.2015.

23. Thus it is clearly evident that neither in the original order dated 6.7.2015 whereby the services of the applicant were terminated nor in the order dated 3.11.2015 passed in his appeal, there was any description of his misconduct attaching any stigma against the applicant. It was only in the third order, i.e., the speaking order dated 14.1.2016, passed in pursuance of the directions of this Tribunal that the misconducts of the applicant were mentioned. It is noteworthy that the third order dated 14.1.2016 is not the termination order. The two orders passed earlier, quoted above, are the termination orders in which not a single word is written against the applicant casting any aspersion on him. It was only on his own prayer made in OA No.3659/2015, that the respondents had to pass the speaking order dated 14.1.2016 and now the applicant is challenging this order on the ground that it is stigmatic because the allegations shown in it is the "foundation" and not merely the "motive" for terminating the services of the applicant.

24. In our considered view, the applicant cannot be permitted to do so. He cannot blow hot and blow cold at the same time. He had challenged the earlier order by means of OA No.3659/2015 seeking a direction to pass a speaking and reasoned order and this Tribunal directed the respondents to pass a speaking order within two months. When the respondents passed the speaking order, he challenged the same as punitive, stigmatic and violative of Article 311 of the Constitution of India.

25. The applicant was under probation at the time when the impugned orders were passed. The period of probation is the period of trial for a newly recruited employee and it gives an opportunity to the employer to observe the work, conduct and efficiency of the employee. During this period, the employee does not acquire any substantive right to the post and consequently cannot complain anymore than a private servant.

26. Hon'ble Apex Court in the landmark judgment of ***Purshotam Lal Dhingra vs. Union of India,*** AIR 1958 SC 36, has expressed the same view as under:-

> "....in the case of an appointment to a permanent post in a Government service on probation or on an officiating basis, the servant so appointed does not acquire any substantive right to the post and consequently cannot complain, any more than a private servant employed on proba- tion or on an officiating basis can do, if his service is terminated at any time..."

27. Almost under the similar circumstances, as in the O.A. before us, Hon'ble Apex Court, in the case of ***Krishnadevaraya Education Trust v. L.A. Balakrishn***, (2001) 9 SCC 319, has observed as under:-

> *"There can be no manner of doubt that the employer is entitled to engage the services of a person on probation. During the period of probation, the suitability of the recruit/appointee has to be seen. If his services are not satisfactory which means that he is not suitable for the job, then the employer has a right to terminate the services as a reason thereof. If the termination during probationary period is without any reason, perhaps such an order would be sought to be challenged on the ground of being arbitrary. Therefore, naturally services of an employee on probation would be terminated, when he is found not to be suitable for the job for which he was engaged, without assigning any reason. If the order on the face of it states that his services are being terminated because his performance is not satisfactory, the employer runs the risk of the allegation being made that the order itself casts a stigma. We do not say that such a contention will succeed. Normally, therefore, it is preferred that the order itself does not mention the reason why the services are being terminated.*
>
> *If such an order is challenged, the employer will have to indicate the grounds on which the services of a probationer were terminated. Mere fact that in response to the challenge the employer states that the services were not satisfactory would not ipso facto mean that the services of the probationer were being terminated by way of punishment. The probationer is on test and if the services are found not to be satisfactory, the employer has, in terms of the letter of appointment, the right to terminate the services.*
>
> *In the instant case, the second order which was passed terminating the services of the respondent was innocuously worded. Even if we take into consideration the first order which was passed which mentioned that a Committee which had been constituted came to the conclusion that the job proficiency of the respondent was not up to the mark, that would be a valid reason for terminating the services of the respondent. That reason cannot be cited and relied upon by contending that the termination was by way of punishment."*

28. Hon'ble Delhi High Court, in the case of ***Suresh Chand Jain vs. Director General & another*** (W.P. (C) No.5603/2013 decided on 11.2.2015, under almost similar circumstances, while dismissing the Writ Petition, has held as under:-

> ***"..In the case at hand, two memos dated 05.03.2009 and 20.03.2009 were issued against the petitioner, which reflect that the Petitioner was neither diligent nor was performing his duties satisfactorily. The speaking order dated 08.02.2011, passed by Respondent No.1, in compliance of the directions given by the Tribunal, amply demonstrates that the petitioner was in the habit of absenting himself from the office very often and had failed to improve despite many verbal warnings. The reasons disclosed in the speaking order were sufficient for the respondent to have taken a decision to terminate the services of the petitioner. If the contentions raised by the learned counsel for the petitioner are accepted, then in every case of unsatisfactory performance or lack of interest in the discharge of duties by a probationer, setting up of an enquiry would be required, which will defeat the very purpose and the concept of probation as the period of probation furnishes a valuable opportunity to the employer to closely observe and monitor the work and efficiency of the probationer for the job.***
>
> ***27. In the light of the legal position and factual matrix discussed above, we do not find any merit in the contentions raised by the learned counsel for the petitioner. The order passed by learned CAT is upheld.***
>
> ***28. Finding no merit in the present writ petition, the same is hereby dismissed."***
>
> (emphasis added)

29. In the case of ***Union of India and another vs. Parvesh Malik*** in W.P. (C) No.8120/2011 and other connected cases,

decided by the Hon'ble Delhi High Court vide common judgment dated 28.11.2011, the petitioners therein too had misbehaved during the training and the Hon'ble High Court while quashing the orders of CAT clearly observed as under:-

> *"9. Another Division Bench of this Court (speaking through one of us i.e. Hon'ble the Acting Chief Justice) in* ***Gautam Kant Nimaan v. GNCTD*** *174 (2010) DLT 135 has also exhaustively dealt with the said aspect.*
>
> *10. It may also be noticed that the enquiry, which appears to have influenced the Tribunal, was not an enquiry against the respondents but an enquiry into the complaint of the respondents and others. The Tribunal failed to appreciate that the inquiry was into the complaint against the Instructor and not into the complaint against the respondents. In fact there was no complaint against the respondents. There was thus no question of any inquiry behind the back of the respondents.*
>
> *11. In so far as the Tribunal has relied on* ***Mahavir C Singhvi*** *(supra), in that case it was established that the real intention was to remove from service for misconduct and the termination was punitive; though camouflage of termination of probation was used.*
>
> *12. However there is no such finding in the present case. Neither was any inquiry conducted into any complaint against the respondents nor were any findings returned. However the team sent to investigate the complaint made by the respondents having had occasion to appraise the conduct of the respondents did not find the same to be befitting as required from an employee. The same is nothing but an appraisal by the employing authority of a probationer and which the employer is entitled to do.*
>
> *13. The petition thus succeeds. The Rule is made absolute. The common order dated 11th August, 2011 of the Tribunal is quashed/set aside and the orders, all dated 22nd November, 2010 of termination of probation/services of the respondents are upheld."*

30. The cases referred to by learned counsel for the applicant cannot give him any benefit as the facts in these cases are entirely different from the facts of present case.

31. Testing the facts of the present OA on the touchstone of the well settled legal position, as cited above, we are of the considered view that OA is devoid of any merit and is liable to be dismissed. Accordingly, it is dismissed. No costs.

(Aradhana Johri)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

/ravi/