

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

LUCKNOW

Lucknow this the 12<sup>th</sup> day of July, 99.

O.A. No. 38 of 1992.

HON. MR. D.C. VERMA, MEMBER(J)

HON. MR. A.K. MISRA, MEMBER(A)

Sushil Bajpai, aged about 27 years, son of Sri Ram Bilas Bajpai, resident of L-150, Sector E, L.D.A. Colony, Kanpur Road, Lucknow presently posted Information Bureau, Govt. of India, Kanpur.

Applicant.

By Advocate Shri L.P. Shukla.

versus

1. Union of India through its Secretary, Ministry of Information and Broadcasting, Govt. of India, Shastri Bhawan, New Delhi.
2. Union of India through Under Secretary, Ministry of Information Barroadcasting Govt. of India Shastri Bhawan, New Delhi.
3. Joint Secretary, Ministry of Information and Broadcasting Govt. of India Shastri Bhawan, New Delhi.
4. Assistant Information Officer Press Information Bureau, Civil Lines, Kanpur.
5. Information Officer (Incharge)Press Information Bureau Govt. of India East Central Region 12, Prem Nagar, Ashok Marg, Lucknow.
6. Administrative Officer, Press Information Bureau Govt. of India Eastern Central Region 12, Prem Nagar, Ashok Marg, Lucknow.
7. Principal Information officer (P.I.O.) Press Information Bureau, Govt. of India, Shastri Bhawan, New Delhi.
8. Director Public Relation(Administration) Press Information Bureau Govt. of India, Shastri

Bhawan, Dr. Rajendra Prasad Marg, New Delhi.

Respondents.

By Advocate Shri A.K. Chaturvedi.

ORDER

D.C. VERMA, MEMBER(J)

By this O.A. the applicant has challenged the order dated 7.2.91 (Annexure-1 to the O.A.), by which he has been discharged from service.

2. The brief facts of the case are that the applicant was selectd as Information Assistant in the Press Information Bureau in 1987 against temporary post of grade IV (non gazetted). the applicant was posted on two years' probation from 7.2.87 to 6.2.89 in the junior grade of Indian Information Service (Group B) (In short I.I.S.). The period of probation was extended for another year from 7.2.89 to 6.2.90. The period of probation was further extended from 7.2.90 to 6.2.91. Finally, by the impugned orer dated 7.2.91, the applicant was discharged from service. The applicant has challenged the impugned order on various grounds.

3. The respondents' case is that the applicant's work and conduct was found unsatisfactory during the period of probation, as such his probation period was extended onthe recommendation of the Departmental Promotion Committee. As the applicant's work and conduct remained unsatisfactory, he was discharged by the impugned order in terms of paragraph (iii) of the ~~Appointments~~ letter dated 22.1.87 (Anneuxre-2 to the O.A.) by the Joint Secretary in the Ministry of Information and Broadcasting who is the appointing authority for the grade IV Central Civil Service Group D (now known as Junior grade of the I.I.S. grade B).

4. The main ground of challenge is that the order of discharge is malafide, illegal and arbitrary and the same has not been passed after application of mind. It is also challenged on the ground that one month's notice as required under C.C.S. (Temporary Service) Rules, 1965 was not given to the applicant. Further ground is that the order of discharge is stigmatic.

5. The learned counsel for the applicant has submitted that as per para(iii) of Annexure-2 dated 22.1.87, the period of probation could have been extended but extension of the period of probation for more than one time is not permissible. To appreciate the submission of the learned counsel, the relevant paras (iii) and (iv) are reproduced below:

"(iii) You will be on probation for two years from the date of appointment. The period of probation may be extended at the discretion of the appointing authority. If your work and conduct during the period of probation is such as to show that you are unlikely to become an efficient Grade IV officer of the service, you may be discharged from the service forthwith or reverted to the substantive post, if any, on which you may hold lien. After the satisfactory completion of the probation, you will have no claim for substantive appointment to grade IV and will continue in an officiating capacity and will be confirmed as and when permanent vacancies in Grade IV become available in accordance with the rules in force. During the period of probation, you may be required to undergo such training and to pass such tests as may be prescribed from time to time, failure to qualify which may render you liable to be discharged from service."

"(iv) Your services will be terminable at any time on one month's notice on either side in accordance with the Central Civil Service(Temporary Service)Rules, 1965,

without assigning any reason. The appointing authority however, reserves the right of terminating your service forthwith or before the expiration of the stipulated period of notice by making payment to you of a sum equivalent to pay and allowances for the period of notice or the unexpired portion thereof."

6. The applicant has been discharged from service in terms of para (iii) above. The order of discharge reads as under:

"NO. P.F./1689/CIS  
Government of India  
Ministry of Information and Broadcasting  
New Delhi the 7th February, 1991  
Adesh No. 29/91-CIS

Whereas on the basis of recommendations of UPSC, Shri Susheel Bajpai was appointed to Grade IV of CIS (now called as Junior Grade of Indian Information Service, Group 'B') w.e.f. 7.2.1987 and placed on probation for a period of two years;

Whereas, the work and conduct of Shri Bajpai during the probation period was not found satisfactory, his probation period was extended from 7.2.89 to 6.2.1990 vide memorandum No. A-31015/1/89-CIS dated 29th September, 1989;

Whereas the work and conduct of Shri Bajpai continued to be unsatisfactory, his probation period was further extended from 7.2.1990 to 6.2.1991 vide Memorandum No. PF/1689/CIS dated 9.10.1990; and

Whereas, the work and conduct of Shri Bajpai has remained unsatisfactory during the above period of probation (including extended period of probation);

Therefore, in terms of para (iii) of offer of appointment issued to him vide this Ministry's letter No. PF/1689/CIS dated 22nd January, 1987, Shri Susheel Bajpai, I.A, PIB on probation is hereby discharged from service forthwith.

Sd/  
S. Lakshminarayanan)  
Under Secretary to the Government of India"



7. The first ground of challenge is that the respondents could have extended the period of probation of the applicant one time only. Subsequent extension, as per submission of the learned counsel is not permissible. The learned counsel has in support of this contention drawn attention towards the wording of para (iii) of the appointment letter dated 22.1.1987 (supra), wherein it is mentioned that "the period of probation may be extended at the discretion of the appointing authority". The submission of the learned counsel is that the use of word 'may' indicates that "the extension was permissible only once and second extension is not permissible".

8. We have given our anxious considerations to the submission of the learned counsel and we are of the view that the word 'may' does not limit or extend the power of appointing authority for extending the period of probation. A reading of para (iii) of the order dated 22.1.87 (supra) shows that such an interpretation, as advanced by the learned counsel for the applicant to the word 'may', cannot be inferred. We, therefore, find no merit in this ground.

9. The further submission of the learned counsel for the applicant is that the period of probation was extended by order dated 29.9.89 (Annexure-5) for a period of one year with effect from 7.2.89 to 6.2.90. This period therefore, expired on 6.2.90. Even the subsequent order for extension of period of probation was issued on 28.9/9.10.90 (Annexure 6 also to the O.A.). By this subsequent order/ the period of probation was extended from a back date w.e.f. 7.2.90 to 6.2.91. The submission of

the learned counsel is that as the period of probation had not been extended immediately after completion of period of probation or extended period of probation, it will be deemed that the applicant had completed his probation period satisfactorily and therefore, orders extending the period of probation are invalid. The submission is that the extension of period of probation second time by an order passed in September/October 90 from back date, is also not valid, and therefore, the applicant should be deemed to have completed the probation period satisfactorily.

10. We have heard the learned counsel for the parties on the ground and we find that the orders dated 29.7.89 and 28.9/9.10.90 by which the period of probation were extended was never challenged by the applicant in any court of law. These orders (Anneuxres 5 and 6) are not under challenge even in this O.A. If the order Anneuxres 5 and 6 were invalid when it were passed in September 89 and October, 90, the same should have been challenged by the applicant within a period of limitation provided therefor. Now at this stage the applicant cannot be permitted to advance such argument as the same is not even under challenge. Further, we find from a reading of para (iii) of the order dated 22.1.87 (supra) that after satisfactory completion of probation period the applicant was to continue in an officiating capacity only and was to be confirmed on occurrence of a permanent vacancy. Once the period of probation has been extended (in the absence of any record that the applicant completed the probation period satisfactorily) he cannot be deemed to be working in officiating capacity. Thus, the submission of the learned counsel that the order

✓ by which the period of probation was extended second time, is not valid and has no merit.

11. The learned counsel for the applicant has next submitted that the applicant was posted at Kanpur and was transferred to Delhi, but due to illness, the applicant could not join at Delhi, and so his services have been terminated by the impugned order. In this connection, the learned counsel has drawn our attention towards an application sent by the wife of the applicant on 5.4.91 (copy Annexure 7 to the O.A.) by which a prayer was made to re-instate the applicant. The submission of the learned counsel is that the applicant was never confronted with any material regarding his unsatisfactory work during his period of probation. The applicant was never communicated any adverse remark. In the circumstances, it has been submitted, the order of ~~of~~ discharge without holding a proper enquiry for unauthorised absence, if any, is stigmatic and is therefore, invalid.

12. The submission of the learned counsel for the respondents, on the other hand is that the applicant was given sufficient opportunity to improve his performance by extending the period of probation. Several Office Memos were issued to the applicant against his work and conduct. Some of the Office Memos dated 12.4.90, 19.5.90, 29.5.90, 5.6.90, 13.6.90 and 26.6.90 have been enclosed as Annexure C-1 to C-6 to the Counter Affidavit.

13. We have heard the learned counsel for the parties on the submissions made before us and we have also gone through the contents of Annexures C-1 to C-6 attached to the counter affidavit. The submission of the learned counsel for the applicant is that none of the allegations made



in any of the Memos Annexures C-1 to C-6 were ever enquired by the respondents and the order of discharge passed in the light of these Annexures amount to foundation of the order and therefore, the order of discharge is invalid. In support of his submission the learned counsel has referred to several decisions. The learned counsel for the applicant has also referred to various decisions on the point that the simplicitor order of discharge is not justiciable. We however, find that in the case of Deepti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basic Sciences reported in (1999) 3, SCC, 60, the Hon. Supreme Court has, after considering various earlier decisions on the point, has laid down down the law. The cases of Purushottam Lal Dhingra vs. Union of India (AIR 1958, S.C. 36), Shamsher Singh vs. State of Punjab (1974, S.C.C (L&S), 550, Gujrat Steel Tubes Ltd. vs. Gujrat Steel Tube Mazdoor Sabha (1980), 2 SCC, 593, Madan Gopal vs. State of Punjab (AIR, 1963, S.C. 531 and Radhey Shyam Gupta vs. U.P. State Agro Industries Corp. Ltd. (1989) (2), SCC 21, and various other decisions have been discussed in detail. In the case of Deepti Banerjee (supra), the apex court framed following points:

- (i) In what circumstances, the termination of a probationer's service can be said to be founded on misconduct and in what circumstances, could it be said that the allegations were only the motive?
- (ii) When can an order of termination of a probationer be said to contain an express stigma?
- (iii) Can the stigma be gathered by referring back to proceedings referred to in the



order of termination ?

(iv) To what relief?

14. We need not discuss various decisions and reasons for the conclusions but we quote below the findings arrived at by the apex court;

15. On point No. (i) the apex <sup>Court</sup> held as below:

"21. If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as 'founded' on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was <sup>not</sup> inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid.

16. On point No. 2, the apex court held as below:

"31. Thus, it depends on the facts and circumstances of each case and the language and words employed in the order of termination of the probationer ~~and~~ to judge whether the words employed amount to a stigma or not. Point 2 is decided accordingly."

17. On point No. 3 the apex court held as below:

"37. On this point, therefore, we hold that the words amounting to 'stigma' need not be contained in the order of termination but may also be contained in an order of

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proceeding referred to in the order of termination or in an annexure thereto and would vitiate the order of termination. Point 3 is decided accordingly."

18. In the light of the principle of law laid down by the apex court, as above, we have to examine the facts of the present case, point-wise.

19. Point No. 1:

In the case before us the respondents have referred to Annexure C-1 to Annexure C-6 of varying dates about the complaints against the applicant, his work and conduct, absence from office, behaviour with colleagues etc. These documents show that the attention of the applicant was always drawn by the Department towards shortcomings of the applicant. No departmental or any type of enquiry was instituted /conducted against the applicant, though in Annexure C-1 dated 12.4.90 the applicant was asked to show cause why the disciplinary action be not started against him, but actually no proceedings were drawn. Thus, no findings were arrived at in any enquiry as to misconduct. The submission of the learned counsel is that instead of issuing the impugned order of discharge a proper enquiry should have been instituted against the applicant and only thereafter, action if any, should have been taken. We are however, of the view that it was not at all necessary for the respondents to hold a detailed enquiry. It was open to the respondents to either conduct an enquiry and thereafter to take action in the light of the findings arrived therein or not to hold enquiry and to pass order of discharge. In the present case, the department has passed the simpliciter

order of discharge without reference to any of the complaints, allegations/Memos issued against the applicant. Thus, the impugned order is not <sup>due</sup> ~~vitiated~~ <sup>It only</sup> to Annexure C-1 to C-6. It only provides motive for issuance of the impugned order.

We are, therefore, of the view that the impugned order of discharge is not invalid on this ground.

20. Point No. 2.

The impugned order of discharge does not contain any express words to indicate stigma. In the impugned order the reference is only to the effect that "the work and conduct of Shri Bajpai during the probation period was not found satisfactory....." With reference to subsequent <sup>of extension</sup> order/it is mentioned "the work and conduct of Shri Bajpai continued to be unsatisfactory...." and finally it is mentioned "whereas the work and conduct of Shri Bajpai has remained unsatisfactory during the above period of probation (including the extended period of probation)." Thus, in the whole order of discharge the only point indicated <sup>is</sup> that the work and conduct of the applicant was not found satisfactory and remained unsatisfactory during the period of probation and the extended period of probation. Such words are not stigmatic as has been held by the apex court in the case of Kunwar Arun Kumar vs. U.P. Hill Electricals Corporation Ltd. reported in (1997) SCC (L&S) 558. Thus, the facts and circumstances of the present case and the words used in the order of termination are not stigmatic. On this point, therefore, the impugned order of discharge is not invalid.

21. Point No. 3:

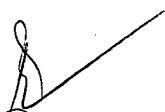
The question at point No. 3 is, can the stigma be gathered by referring back to

proceedings referred to in the order of termination? In the impugned order before this Bench, the reference is only of the orders dated 29.9.89 (Annexure-5) and of order dated 9.10.90 (Annexure 6). Both these orders are in respect of extension of period of probation. We have also examined the contents of Annexures 5 and 6 referred to in the impugned order. In these referred orders also no stigmatic word has been used. The word used in Annexure-5 dated 19.9.89 is "found unsatisfactory" for extending the period of probation and in the second order, Annexure 6 dated 9.10.90, again the word used is "found unsatisfactory", for further extending the period of probation. Thus, none of the two orders referred to in the impugned order contain any stigmatic word or sentence.

22. The only other reference in the impugned order is para (iii) of the Offer of Appointment dated 22.1.89 issued to the applicant. This para (iii) gives the power to discharge applicant from service. Thus, we find that no word amounting to stigma is contained in the order of discharge dated 7.2.91. On this ground too the order of discharge is not vitiated.

**23. Point No. 4:**

Under this point the apex court in the cited case, Dipti Prakash Banerjee (supra), examined the facts of that case to find whether the order impugned in the said case was founded on any conclusions arrived at by the employer as to the misconduct of the applicant therein or whether the termination was passed because the employer did not want to continue an employee against whom there was some complaints. With reference to a letter referred to in the impugned order of that case, the apex court held that



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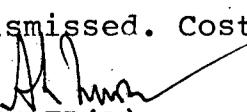
there was a definite conclusion of misconduct. The apex court further held that in a complaint dated 28.5.96 an enquiry was held and the enquiry committee found the appellant's "behaviour reprehensible" and also confirmed that the appellant was "involved in a scuffle and did misdeeds like obtaining false signatures" and the appellant was further found "guilty of inefficient performance or duty, irregular attendance without permission, rude and disorderly behaviour and wilful insubordination". The apex court held that "finding of the enquiry committee about the scuffle and about the appellant obtaining false signature was stigmatic". In the above circumstances that the apex court allowed the appeal of Dipti Prakash Banerjee.

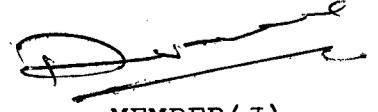
24. In the case before us we have examined the wordings of the order of discharge and the contents of orders and para referred to in the impugned order of discharge and we have found that none of them contain any stigma.

25. In view of our findings, on the three points in the preceding paragraphs, we are of the view the applicant is not entitled to any relief.

25. The learned counsel for the applicant has next submitted that no notice as required under C.C.S.(Temporary Service)Rules, 1965 was given to the applicant before the impugned order was passed. This ground has no merit as the order of discharge has been issued to the applicant in view of para (iii) of order dated 22.1.87 and not under para (iv) of the said order.

25. In view of the discussions made above, we find no merit in the O.A. The same is therefore, dismissed. Costs easy.

 MEMBER (A)

 MEMBER (J)

Lucknow; Dated: 12.7.99