

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

T.A.No.13/99

Date of order: 23/11/2000

Budh Ram, S/o Shri Mehar Chand, R/o Vill.Pathana, P.O.Pacheri, Bari, Distt.Jhunjhunu (Rajasthan).

...Applicant.

vs.

1. Kendriya Vidyalaya Sangthan, Jaipur Region, Jaipur through its Asstt.Commissioner.
2. The Chairman, School Management Committee, Kendriya Vidyalaya No.1 Khetri Nagar, Distt.Jhunjhunu.
3. The Principal, Kendriya Vidyalaya No.1, Khetari Nagar, Distt. Jhunjhunu.

...Respondents.

Mr.R.D.Rastogi - Counsel for applicant

Mr.V.S.Gurjar - Counsel for respondents

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.Gopal Singh, Administrative Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

A writ petition was filed by the applicant before the High Court of Judicature for Rajasthan with a prayer to quash and set aside the order of termination dated 12.6.98 issued by the respondents' department and to direct the respondents to take the applicant back in service with all consequential benefits. This writ petition was transferred by the High Court to this Tribunal, which is registered as T.A No.13/99.

2. Facts of the case as stated by the applicant are that the applicant was appointed on the post of Chowkidar (Group-D) at Kendriya Vidyalaya No.1, Khetari Nagar on 3.6.95 from Ex-serviceman quota after following the regular process of selection. It is stated that as per terms of appointment, the applicant was kept on probation for a period of two years which could be extended and till he is not confirmed his services can be terminated without assigning any reason by giving one month's notice either side. The applicant joined on the post on 13.6.95

and since then he is discharging his duties to the best of his ability till his services were terminated vide the impugned order dated 12.6.98. It is stated that the Principal of the School issued letter dated 5.10.97 that due to negligence/carelessness of the applicant, 14 fans were stolen from class rooms and why costs should not be recovered from the applicant. Reply was submitted stating that some of the doors of the rooms were so defective that any body can enter and one round in the school premise takes about 45 minutes, therefore, it is not possible to one Chowkidar to keep watch over all sections. It is stated that on 20.11.97, the Principal of the School issued an order to the effect that Chowkidar will work from 4.00 PM to 9.00 AM against this order, the applicant & Shri Om Prakash, filed a civil suit before the Court of Civil Judge (Jr.Divn), Khetari and the same is pending. It is stated that the applicant submitted an application for medical leave on 25.5.98 on this application the applicant was asked to appear before the Medical Board failing which to initiate departmental proceedings. Therefore, the applicant resumed duties. It is stated that on 10.6.98, the period of probation of the applicant was further extended for one year but on 12.6.98, the services of the applicant were terminated on the ground that the services of the applicant were not satisfactory during the probation period. It is stated that the applicant was appointed after following the regular process of selection out of Ex-serviceman quota and was put on probation and the probation period was extended for one year on 10.6.98 but only after two days, the services of the applicant were terminated by the impugned order on the ground of unsatisfactory performance, which is totally unjustified. It is also stated that the impugned order of termination is not an order simplicitor but stigmatic hence punitive in nature, therefore, the same can not be issued without following the principles of natural justice/without holding a departmental enquiry. Therefore, the applicant filed this petition for the relief mentioned as above.

3. Reply was filed. It is stated that the applicant was selected after his name was sponsored by the Employment Exchange as General

category candidate and not as Ex-serviceman. It is stated that the work and conduct of the applicant was not satisfactory, therefore, he was given number of Memos as mentioned in para 3 of the reply. It is further stated that the applicant had tendered his resignation on 13.3.97 but on the next day he requested to withdraw the same and the Principal allowed the withdrawal on humanitarian ground. It is admitted that on account of a theft of 14 fans from class room, memo was given to the applicant to which he filed reply denying his carelessness. An FIR was also filed at Police Station Khetari Nagar regarding this incident of theft. It is stated that the suspension of the applicant was revoked because of the difficulty to manage the duties of Chowkidar for the protection of the school property. It is admitted that the probation of the applicant was extended for one year vide order dated 10.6.98 but on 3.6.98, a proposal for termination of the services of the applicant was sent to the Chairman, Kendriya Vidyalaya Management Committee, Khetari Nagar, for his approval but the approval was not received in time, therefore, the order dated 10.6.98 was issued and when the said proposal was approved, the services of the applicant were terminated vide the impugned order dated 12.6.98. It is stated that the impugned order is perfectly legal, valid and as per the terms of the appointment and in no way it is stigmatic and punitive but it is an order simplicitor. Therefore, the services of the applicant were rightly terminated during the probation period as his performance was not satisfactory and the applicant has no case for interference by this Tribunal, therefore, this petition devoid of any merit is liable to be dismissed.

4. Heard the learned counsel for the parties and also perused the whole record.

5. The Apex Court of this country consistently delivered the judgment on status of a probationer. In Parshotam Lal Dhingra Vs. UOI, AIR 1958 SC 36, which is regarded as Magna Carta of the Indian Civil Services by the Hon'ble Supreme Court and held as under:

"An appointment to a permanent post in Govt service on probation

means as in the case of a person appointed by a private employer that the servant so appointed is taken on trial. The period of probation may in some cases be for a fixed period e.g. for six months or for one year or it may be expressed simply as 'on probation' without any specification of any period. Such an employment on probation under the ordinary law of master and servant comes to an end if during or at the end of the probation the servant so appointed on trial is found unsuitable and his service is terminated by a notice."

6. In State of Bihar Vs. Gopy Kishore Prasad, AIR 1960 SC 689, it was held by Hon'ble Sinha C.J that termination without notice but after holding an enquiry into the alleged misconduct or efficient or some similar reasons would be punitive.

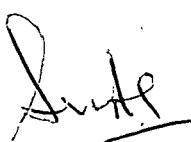
7. Hon'ble Supreme Court gave a new dimension to the legal principle on the status of probationer in the State of Orissa Vs. Ram Narain Das, AIR 1961 SC 177 and held that if the purpose of enquiry is to ascertain whether the employee is fit to be confirmed and not the enquiry into the charges of misconduct, inefficiency, or negligence, the termination of a probationer is upheld.

8. In Madan Gopal Vs. State of Punjab, AIR 1963 SC 531, it was held that if the report of enquiry is about misconduct and the termination was based on such report the order of termination was punitive.

9. This theory of 'object of enquiry' was again emphasised in Jagdish Mitter Vs. UOI, AIR 1964 SC 449, Hon'ble Gajendragadkar, J, while delivering the judgment of the Apex Court held that if the enquiry was held only for the purpose of deciding whether the temporary servant would be continued or not it could not be treated as punitive.

10. In Champaklal Chimanlal Shah Vs. UOI, AIR 1964 SC 1854, it was held by Hon'ble Wanchoo, J, that the order of termination soon passed after preliminary enquiry held not punitive as the purpose of enquiry is to find out prima facie case to start with regular departmental enquiry.

11. In Shamsher Singh Vs. State of Punjab, AIR 1974 SC 2192, Seven



Judges Bench of Hon'ble Supreme Court held that before the probationer was confirmed, the authority concerned was under the obligation to consider whether work of the probationer was satisfactory or whether he was suitable for the post. It was further held in this case that if the object of enquiry was to ascertain the truth of allegations of misconduct and the enquiry officer gave his finding on allegations of misconduct the order of termination based on such recommendations in the report is punitive. Therefore, the order of termination of services of Sri Ishwar Chand Agrawal was held clearly by way of punishment in the facts and circumstances of this case.

12. In case of Oil & Natural Gas Company Vs. Dr. Md. S. Sikandar Ali, AIR 1980 SC 1242, it was held that probationer had no right to the service. Their lordship of Supreme Court in para 7 of the judgment observed as follows:

"It is obvious that a temporary employee is appointed on probation for a particular period only in order to test whether his conduct is good and satisfactory so that he may be retained. The remarks in the assessment roll merely indicate the nature of the performance put in by the officer for the limited purpose of terminating whether or not his probation should be extended. These remarks were not intended to cast any stigma."

13. In Anoop Jaiswal Vs. Govt of India, (1984) 2 SCC 369, Hon'ble Supreme Court held that if the real foundation for the order of discharge of the probationer was his alleged act of misconduct such an order is punitive in nature and was therefore held as bad in law if issued without following Article 311 of the Constitution of India.

14. In High Court of Judicature at Patna Vs. Pandey Madan Mohan Prasad Sinha & Ors, 1997 SCC(L&S) 1703(II) their lordship of Hon'ble Supreme Court of India was pleased to observe as follows:

"There is no obligation to communicate the adverse remarks to the petitioner before taking decision to terminate his services on the basis of the adverse material. But uncommunicated adverse material



can be taken into consideration for assessment of suitability of the probationer and forming decision to terminate his services. Such consideration shows non-arbitrariness of the decision. Consideration of complaints regarding integrity, character and morality of the probationer and his alleged indulgence in drinking and gambling in taking decision to terminate his services does not show that the decision is punitive."

15. In Dipti Prakash Banerjee Vs. Satvendra Nath Bose, Hon'ble Supreme Court of India held that if findings were arrived at 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 of misconduct and will be bad but if the enquiry was not held, no finding were arrived at and the employer was not inclined to conduct 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 inquire 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. In Radhey Shyam Gupta Vs. U.P.State Agro Industries Corpn.Ltd & Anr., 1999 SCC (L&S) 439, Hon'ble Supreme Court held that the termination of the services of a temporary servant or one on probation on the basis of adverse entries or on the basis of an assessment that his work is not satisfactory will not be punitive inasmuch as the above facts are merely the motive and not the foundation. The reason why they are the motive is that the assessment is not done with the object of finding out any misconduct on the part of the officer. It is done only with a view to decide whether he is to be retained or continued in service.

17. In Chandra Prakash Sahi Vs. State of U.P & Ors, 2000 SCC(L&S) 613,

it was held that probationer has no right to post. Therefore his services can be terminated during and at the end of probation on misconduct. If however there are allegation of serious misconduct for which DE conducted behind the back to ascertain the truth, such termination is to be treated as punitive but if the enquiry was for determining the suitability of a person for retention in the service/ confirmation.

18. In Karnataka State Road Transport Corpn & Anr. Vs. S. Manjunath etc., 2000 SCC(L&S) 629, the Hon'ble Supreme Court has laid down that services of a temporary Govt servant can be terminated by an order simplicitor. The order is simplicitor when the motive has only to assess the suitability of a person concerned for continuance of his service further more. But if the foundation of such termination is misconduct, the order is stigmatic and cannot be passed without following the provisions given in Article 311(2) of the Constitution.

19. The learned counsel for the applicant has argued that the applicant was appointed after following regular process of selection and he was kept on probation for two years which could be extended. It is also argued that probation of the applicant was extended for another one year on 10.6.98 but only after two days, the services of the applicant were terminated by the impugned order arbitrarily and without any justification which cast stigma on the applicant, therefore, the order is stigmatic and liable to be quashed.

20. In support of his contention, he has referred the following judgments:

- i) Anoop Jaiswal Vs. Govt. of India & Anr, (1984) 2 SCC 369
- ii) Dipti Prakash Banerjee Vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta & Ors, (1999) 3 SCC 60
- iii) Chandra Prakash Sahi Vs. State of UP & Ors, 2000 SCC(L&S) 613
- iv) Karnataka State Road Transport Corpn & Anr. Vs. S. Manjunath etc., 2000(4) Supreme 651

21. On the other hand, the learned counsel for the respondents has

argued that the applicant was appointed as General category candidate and he was kept on probation for two years but his performance during the period of probation has not been found satisfactory, therefore, his services were terminated vide the impugned order which is neither stigmatic nor punitive but it is an order simplicitor, therefore the impugned order is perfectly legal and valid. In support of his contention he has referred the following judgments:

- i) M.Venugopal Vs. Divisional Manager, Life Insurance Corp of India, Machilipatnam, A.P & Anr, (1994) 2 SCC 323
- ii) State of Maharashtra Vs. Gurappa Hirojirao & Ors, (1994) 2 SCC 331.
- iii) Satya Narayan Athya Vs. High Court of M.P & Anr, (1996) 1 SCC 560
- iv) State of Rajasthan Vs. Fateh Chand Soni. (1996) 1 SCC 562
- v) Ganganagar Zila Dughd Utpadak Sahakari Sangh Ltd & Anr. Vs. Priyanka Joshi & Anr, (1999) 6 SCC 214 and
- vi) Kunwar Arun Kumar Vs. UP Hill Electronics Corp Ltd & Ors, (1997) 2 SCC 191

22. We have given anxious consideration to the rival contentions of both the parties and also perused the whole record.

23. An employee in the service is kept on probation with a view to assess his suitability and competency for the post with a view to retain him further in service. If the performance during the period on probation remains satisfactory, the employee can be confirmed on the post. If his performance is required to give him some more time to judge his suitability and competency, the period of probation can be extended or the employer can refuse to extend any further period of his probation. But once the employer decides after perusal of the performance during the probation period, it is incumbent upon the employer to see his performance during the extended period and thereafter the employer could reach to the conclusion whether the employee is required to be confirmed on the post or if the rules/regulation permits his probation can be further extended or the employer



can refuse to extend the period of his probation and his services can be terminated henceforth.

24. In the instant case, it is an admitted fact that initially the applicant was kept on probation for a period of two years but vide order dated 10.6.98, the period of probation was extended for one year. But after two days of the order of extention of probation period, the services of the applicant were terminated on the ground that his performance was not found satisfactory during the probation period. In the reply, the respondents' department have tried to give an explanation that the case of the applicant for termination of his services was sent to the Managing Committee of the Kendriya Vidyalaya, Khetari Nagar, for approval but the approval was not received in time, therefore, the period of probation was extended for another year and when approval was received, the impugned order of termination was issued. On the basis of the reply given by the respondents, it is very much evident that the impugned order of termination was issued after the approval received from the Management Committee, Kendriya Vidyalaya, Khetri Nagar, but the impugned order of termination under the circumstances as mentioned above cannot be said to be an order simplicitor. It is unjustified, arbitrary and punitive in nature in the sense that on 10.6.98, the probation of the applicant was extended for one year meaning thereby the applicant was given a further one year period to improve his conduct and behaviour. But it is very strange that the respondents' department had terminated the services of the applicant only after two days of the extention of probation order dated 10.6.98 without giving any show cause/opportunity of hearing. Therefore, the order dated 12.10.98 in no way can be said to be an order simplicitor but it is definitely a punitive order which is liable to be quashed.

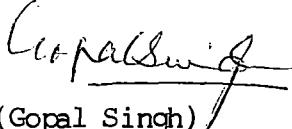
25. In a leading case, V.P.Ahuja Vs. State of Punjab, JT 2000(3) SC 1, the controversy regarding probation of a civil servant came before Hon'ble Supreme Court. In this case, the services of the appellant were terminated during the probation period on the ground that he had failed in the performance of his duties administratively and technically.



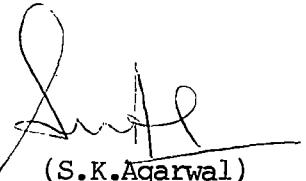
Neither any enquiry nor any opportunity of hearing was given to the appellant. The impugned order of termination was set aside and quashed. In this case, the Hon'ble Supreme Court has also taken into consideration the judgment of Deepti Prakash Banerjee (supra).

26. We, therefore, allow the O.A and quash and set aside the impugned order of termination dated 12.6.98 and direct the respondents to reinstate the applicant in service forthwith with all consequential benefits.

27. No order as to costs.


(Gopal Singh)

Member (A).


(S.K. Agarwal)

Member (J).