

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

O.A. No. 83/2000

199

DATE OF DECISION 15.9.2000

Manoj Kumar Baghela

Petitioner

Mr. R.D. Rastogi

Advocate for the Petitioner (s)

Versus

Union of India and Others

Respondent

Mr. M. Rafiq

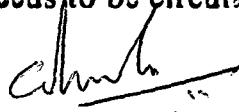
Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. JUSTICE B.S.RAIKOTE, VICE CHAIRMAN

The Hon'ble Mr. N.P.NAWANI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

  
(N.P. NAWANI)

MEMBER (A)

  
(B.S.RAIKOTE)

VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH : JAIFUR

Date of order : 15.9.2000

O.A. No. 83/2000

Manoj Kumar Baghela son of Shri Ram Singh Baghela aged about 29 years resident of Agresen Colony, Bhawa Sahai Ka Bagh, Dholpur, Last employed as Jr. Accountant in Military School, Dholpur.

... Applicant.

versus

1. Union of India through the Secretary, Ministry of Defence, South Block, Near President House, New Delhi.
2. The Major General, Training Directorate General Staff Branch, Army Headquarter, New Delhi.
3. The Principal, Military School, Kesar Bagh, Dholpur.
4. Captain Davesh Gaur, Administrative Officer, Military School, Dholpur.

... Respondents.

Mr. R.D. Rastogi, Counsel for the applicant.

Mr. Hemant Gupta, Adv., Brief holder for Mr. M. Rafiq, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice P.S. Raikote, Vice Chairman  
Hon'ble Mr. N.P. Nawani, Administrative Member

: O R D E R :

(Per Hon'ble Mr. Justice P.S. Raikote)

This application is filed being aggrieved by the impugned order dated 13.11.99 vide Annexure A/17, by which the applicant's services were terminated. The learned counsel for the applicant submitted that the impugned order of termination was passed under the proviso to sub-rule (1) of Rule 5 of the Central Civil Service (Temporary) Rules, 1965 (hereinafter referred to as "Civil Service Temporary Rules", by

is illegal. He submitted that the Civil Service Temporary Rules would not apply to the facts of the case. Since the post in question was not a temporary post, it was a permanent post and the applicant's appointment order vide Annexure A/1 stating that the post is temporary, was redundant and in fact, the applicant was appointed on a permanent post and, therefore, the impugned order applying the Civil Service Temporary Rules, was illegal.

3. Nextly contended that in the clause (e) of the appointment order of the applicant, it is specifically stated that the appointment would be subject to the conditions of service as applicable to temporary civilian Government servants paid from Defence Service Estimates. Therefore, the applicant could not be terminated under Temporary Civil Service Rules.

4. The 3rd contention was that the impugned order though states as a 'termination', but in effect, it is an order of dismissal by casting stigma on the applicant. Therefore, the same is liable to be set aside for not holding the departmental proceedings. He invited our attention to Annexures A/2, A/16 and A/18 and contended that on the basis of these correspondences between the applicant and the respondents, it is clear that the applicant in fact, dismissed from service. The respondent No. 4 was prejudiced against the applicant and he was immediate superior to the applicant, and, in these circumstances, the impugned order of termination has been passed with malafide intention. In fact, it is a dismissal order and it is a fit case to lift the veil in order to find out the nature and object of the order. In support of his arguments, he relied upon following judgements:-

- (i) 1984 (2) SCC 369 (Anoop Jaiswal vs. Union of India & Another)
- (ii) 1985 (1) SCC 56 (Nepal Singh vs. State of UP and Anr.)
- (iii) 1999 (3) SCC 60 (Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta)
- (iv) 2000 (3) JT 01 (V.P. Ahuja vs. State of Punjab & Ors.)
- (v) 1993 (1) WLC (Raj) 393



5. ~~Resumed~~ ~~rejoined~~ for the respondents by filing reply, denied respondents the case of the applicant. They have stated that the Civil Service Temporary Rules, would apply to the facts of the present case. They have denied the case of the applicant that the applicant could be dismissed only under Defence Services (Field Service Liability), Rules, 1957. They have stated that the scope of Defence Services (Field Service Liability) Rules, 1957, is entirely different, and those rules simply require the liability of the employee to serve in the field service whether in or outside India, as declared by the competent authority and nothing more. Therefore, the applicant has been rightly terminated under Civil Service Temporary Rules, since the applicant was on temporary post, and not on a permanent post. They have stated that inspite of giving number of opportunities to the applicant to improve his efficiency in discharging the duties required as an Accountant <sup>(the applicant did not improve.)</sup> Therefore, ultimately, the Board decided to discharge the services of the applicant by terminating him during probation period and accordingly his services were terminated. Therefore, there is no illegality in the order. They have stated that it is a termination simplicitor. They have also filed number of documents to show that the applicant was given ample opportunities to improve himself so as to discharge the duties properly. But, his work was very unsatisfactory. Therefore, on the recommendations of the Board, in public interest, his services were terminated. Hence, there was no irregularity or illegality in the impugned order.

6. Applicant, by filing rejoinder, denied all the allegations made by the respondents in their reply.

7. From the contentions raised by both sides, we find that the applicant was appointed vide Annexure A/1 dated 23.9.98 as Temporary Accountant in the scale of Rs. 4000-6000 in the Military School, Jodhpur, which is under the Ministry of Defence. The appointment order stated that the post is temporary and if it becomes permanent,

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his case for absorption would be considered in accordance with the Rules and the applicant would be on probation for a period of two years from the date of his appointment and in case of his failure to complete the period of probation, to the satisfaction of the competent authority, the applicant would render himself liable to be discharged from service. The condition No.(e), which was very much emphasised by the applicant, stated that the applicant would be subject to the conditions of service as applicable to temporary civilian Government servants paid from Defence Service Estimates in accordance with the orders issued by the Government of India from time to time and the applicant would be subject to Field Service Liability Rules, 1957. From the nature of his appointment, it is clear that the applicant was appointed as a temporary Accountant and the period of probation was two years from the date of his appointment. It is not in dispute that the impugned order of termination is passed before completion of two years' probation period. It is an established principle of law that the Government servant could be discharged from service during probation in case of his failure to complete the period of probation to the satisfaction of the competent authority. In this view of the matter, the question whether the applicant was appointed on temporary basis or ~~under~~ Civil Service Temporary Rules, would be applicable or not, would not be material for the consideration of this case. Even the contention of the learned counsel for the applicant that the applicant could not have been terminated under Civil Service Temporary Rules in view of the applicability of Defence Services (Field Service Liability) Rules, 1957, would not ~~detain us in any longer~~ since under those rules, an extra liability <sup>is</sup> created in a Government employee to serve in the field service, whether in or outside India and those rules are not applicable regarding termination and discharge of a Government servant during the probation period. Therefore, the short point that we have to consider in this case is to find out whether the order of termination issued against the applicant during his probation period is an order of termination ~~simply~~ or ~~simply~~ discharge ~~from service~~ or whether it is a punitive order casting stigma, without

holding an enquiry and without giving an opportunity, in view of the mandate of the Article 311 of the Constitution of India.

8. Hon'ble the Supreme Court in 1984 SCC (L&S) 256 [Anoop Jaiswal vs. Government of India & Anr.], has laid down the law that the Court can go behind the formal order of discharge in order to find out whether the order of termination is, in fact, an order of dismissal without holding an enquiry. We think it appropriate to extract the relevant part of the order as under:-

"12. It is, therefore, now well settled that where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the Court before which the order is challenged to go behind the form and ascertain the true character of the order. If the Court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the Court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee."

9. In view of the above judgement of Hon'ble the Supreme Court, we now try to analyse the case with reference to the documents filed by the applicant and the respondents to find out whether it is a discharge simplicitor or that the impugned order is camouflage for an order of dismissal for misconduct.

10. The case of the respondents is that the applicant's work as an Accountant was unsatisfactory. He did not improve his performance inspite of bringing to his notice several mistakes and lapses in maintaining the Accounts by him. In those circumstances, the Board gave him an opportunity to explain his stand and ultimately opined that the applicant is liable to be terminated and accordingly, the applicant has been terminated. They have contended that the impugned order is not an order of dismissal. The applicant himself has filed certain documents, in support of his case. Annexure A/2 dated 5.11.98, reads

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as under :-

"1. It has been observed that you are not taking proper interest in your job and your work is found unsatisfactory. This is against the instructions and reflects professional incompetence.

2. You are on probation and violation of orders, incompetence towards work and misconduct may adversely affect your career.

3. You are hereby counselled to improve the professional competence and display enhanced sincerity to work."

Likewise, we reproduce Annexure A/3 dated 23.12.98, as under:-

"1. Further to this office letter No C/056/C dated 05 Nov 98.

2. You had been given task to despatch the Accounts letters (Monthly Pay of Service Personnel) to DCDA, Jaipur. But it is very unfortunate to inform you that you have despatched the same to CDA, SC, Fune, in place of DCDA, Jaipur, and due to this the pay of service personnel was not distributed in time for which the administration faced a great inconvenience.

3. You are hereby again warned to be more careful in performing of your duties and the work assigned to you."

Annexure A/4 dated 14th January, 1999, also states as under:-

"1. Further to this office letter No. C/056/C dated 23 Dec., 98.

2. No improvement has been seen in your work. Please explain in writing about the errors made by you in the cash book which was noticed on 13 Jan 99.

3. Your reply should reach this office by 15 Jan 99 at 1330 hrs positively."

11. From these documents, *prima facie*, it appears that the applicant as an Accountant was not maintaining the Accounts properly and caused inconvenience to administration. Vide Annexure A/2, the applicant was warned that he was on probation and violation of orders and incompetence of work may ultimately constitute to misconduct, which may effect his career. Therefore, the applicant was advised to improve the professional competence and display sincerity to work. Annexure A/3 brought to his notice an incident, showing that due to improper despatch of Accounts letters to DCDA, Jaipur, <sup>Prone of</sup> ~~on~~ there was an administrative inconvenience and accordingly, the applicant was warned to be more careful in performing his duties. In addition to the above documents, there are other documents. Vide Annexure A/4, certain mistakes were brought to the notice of the applicant and his



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explanation was sought for the errors made by him in cash book. A show cause notice was also given vide Annexure A/5, stating that the applicant was given time upto 31.3.99 to show his competence as requested by him, failing which disciplinary action could be taken against him. However, no improvement has been shown by the applicant after giving sufficient time. Annexure A/5 dated 08.04.99 further states as under :-

- (a) Though, the Principal and other senior members of staff and myself have been advising and encouraging you to take keen interest in your work, but you have not been able to show any improvement, even after providing you three senior efficient employees namely Shri Wahid Khan and Shri DK Bhatnagar, Ex Accountants and Shri DC Singh, UDC of the School.
- (b) On 03 Apr 99, you were getting the signatures of Principal in the Principal's office on GPF withdrawal documents of the three employees of this School, which were prepared wrongly by you. Your act, other than causing administrative hardships to the School, displays lack of integrity and loyalty to the institution. It is also against the professional ethics of a Government servant.
- (c) You have not prepared the bank reconciliation statements of School Fund Account and Pocket Money Accounts since Feb., 1999.
- (d) You have not closed the School fund Accounts as yet for quarterly audit board and also not prepared the list of sundry debtors of School fund account since Feb., 1999.
- (e) You have also committed lot of cuttings/overwritings in the cash books of School fund and pocket money, which is against the SOP of maintaining accounts.
- (f) Your personal behaviour/conduct is also not good with the staff and hence you have failed to maintain the office decorum.
- (g) You are dull and monotonous in your work.

5. You are, therefore, requested to explain the circumstances leading to the action and also show reasons as to why necessary disciplinary/administrative action is not to be taken against you."

In response to the above show cause notice, the applicant gave a detailed reply vide Annexure A/6. Vide Annexure A/7, it is further stated that inspite of repeated counselling under various letters, the applicant has been showing no improvement in his work as an Accountant. During the surprise check on 26.06.99, it was found that the balances of cash books for the month of May, 1999, were not brought forwarded and cash books for surprise check were not ready. Such lapses on the

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It also observed that if the applicant was willing to work at any other lower post, the authority may consider his case on humanitarian grounds. Thereafter, the Principal, agreeing to the recommendations of the Board, terminated the service of the applicant as an Accountant. Annexure B/3 also contains the statements of the applicant in the form of question and answers. The entire proceedings were in the form of questions and answers only. It appears that the Board conducted some enquiry, giving an opportunity to the applicant. On the basis of such an enquiry and the proceedings referred to above, ultimately the impugned order vide Annexure A/17 dated 13.11.99 was issued.

13. By lifting the veil with reference to the above documents, now we have to see whether the impugned order vide Annexure A/17 is an order of termination or discharge simplicitor or it is an order of dismissal by casting stigma on the applicant. The other issue would be whether the allegation made against the applicant as probationer was a foundation or was it only a motive for his termination. Hon'ble the Supreme Court in 1996 SCC (L&S) 596 [Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre For Basic Sciences, Calcutta & Ors.], relied upon by the applicant, extensively considered and laid down some guidelines on this issue. In that case also, the delinquent official was on probation and the impugned order of termination came to be passed during the probationary period. By referring to the earlier judgements Hon'ble the Supreme Court in paragraph 36 has observed as under:-

36. It was in this context argued for the respondent that the employer in the present case had given ample opportunity to the employee by giving him warnings, asking him to improve and even extended his probation twice and this was not a case of unfairness and this Court should not interfere. It is true that where the employee had been given suitable warnings, requested to improve, or where he was given a long rope by way of extension of probation, this Court has said that the termination orders cannot be held to be punitive [See in this connection Hindustan Paper Corporation vs. Furnendu Chakrobarty - (1996) 11 SCC 404, Oil & Natural Gas Commission vs. Dr. Md. S. Ishkender Ali - (1980) SCC (L&S) 446, Principal, Institute of Post Graduate Medical Education & Research, Pondicherry v. S. Andel - 1995 Supp (4) SCC 609, and a labour case Oswal Pressure Die Casting Industry versus

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Presiding Officer - 1998 SCC (L&S) 862]. But in all these cases, the orders were simple order of termination which did not contain any words amounting to stigma. In case we come to the conclusion that there is stigma in the impugned order, we cannot ignore the effect it will have on the practitioner's future whatever be the earlier opportunities granted by the respondent-organisation to the appellant to improve."

From the above observations of Hon'ble Supreme Court, if ample opportunity was given to the concerned employee by giving him warnings, asking him to improve and even extended his probation, that would not be a case of unfairness, and such case of giving an employee suitable warnings with a request to improve or with a long rope by way of extension of probation, would be a case of simple termination and not of punitive nature, without casting stigma. According to the said judgement, in case of punitive orders, a stigma is cast on the person concerned, and what constitutes casting stigma, it has been explained with reference to certain cases in paragraphs 26, 27, 28 and 29 of the judgment in Dipti Prakash Banarjee's case. We propose to extract those paragraphs for immediate reference, as under:-

"26. There is, however, considerable difficulty in finding out whether in a given case where the order of termination is not a simple order of termination, the words used in the order can be said to contain a "stigma". The other issue in the case before us is whether even if the words used in the order of termination are innocuous, the Court can go into the words used or language employed in other orders or proceedings referred to by the employer in the order of termination.

27. As to what amounts to stigma has been considered in Kamal Kishore Lakshman v. Pan American World Airways Inc. [1987 SCC (L&S) 25]. This Court explained the meaning of "stigma" as follows : (SCC p.150, para 8) -

"8. According to Webster's New World Dictionary, it (stigma) is something that detracts from the character or reputation of a person, a mark, sign etc. indicating that something is not considered normal or standard. The Legal Thesaurus by Burton gives the meaning of the word to be blemish, defect, disgrace, disrepute, imputation, mark of disgrace or shame. The Webster's Third New International Dictionary gives the meaning as mark or label indicating a deviation from a norm. According to yet another dictionary "stigma" is a matter for moral reproach."

Similar observations were made in Allahabad Bank Officers' Assn. vs, Allahabad Bank - 1996 SCC (L&S) 1037.

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28. At the outset, we may state that in several cases and in particular in State of Orissa vs. Ram Narayan Das, it has been held that use of the word "unsatisfactory work and conduct" in the termination order will not amount to a stigma.

29. We may advert to a few cases on the question of stigma. We shall refer initially to cases where a special rule relating to termination of a probationer required a particular condition to be satisfied and where the said condition was referred to in the order of termination. In Hari Singh Mann v. State of Punjab [1974 SCC (L&S) 534] the probationer was governed by Rule 8(b) of the Punjab Service Rules, 1959, and the fact that the word "unfit" as required by the Rules was used, was held not to be a ground for quashing on the ground of "stigma", for to hold that it amounted to a "stigma" would amount to robbing the authority of the right under the Rule. Similarly, where a rule required a show-cause notice to be issued and an enquiry to be conducted before terminating probation, such as Rule 55-B of the Central Civil Services (CCA) Rules, there would be no question of characterising the simple order of termination as one founded on the allegations which were the subject of the enquiry. That was because, in such a case, the purpose of the enquiry was to find out if he was guilty (State of Orissa vs. Ram Narayan Das, Ranendra Chandra Banerjee vs. Union of India - AIR 1963 SC 1552). In State of Gujarat vs. Akhilesh C. Bhargav - 1987 SCC (L&S) 450, the termination order merely referred to Rule 12(bb) of the India Police Service (Probationer) Rules, 1959. It was contended that the reference to the said Rule 12(bb) itself amounted to a stigma but this was rejected following Ram Narayan Das case."

14. From the above judgements, it is clear that the "stigma" is something that detracts from the character or reputation of a person, a mark, sign etc. indicating that something is not considered normal or standard or it may also mean to be blemish, defect, disgrace, disrepute, imputation, mark of disgrace or shame. The Webster's Third New International Dictionary, ~~Merriam~~ also gives the meaning as a mark or label indicating a deviation from a norm or "stigma" is a matter for moral reproach. The word "unsatisfactory work and conduct" found in the order of termination would ~~not~~ not amount to a stigma. The allegations against the petitioner in that case, were as under:-

"4. (i) Your handling of the movement to the new campus was good till the good impression was spoiled by your refusal to handle the furniture in the Director's room and your statement about other administrative staff members, which were not corroborated by the academic members present. Later movement to the JD Block by the professor A. Mookerjee and the Director's office found you non-cooperative.

(ii) You have been preparing false bills; the fact that they were passed by your immediate superiors does not mitigate your

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guilt.

(iii) Your handling of quotations about cleaning agencies, xerox machines, purchases of stationery etc. were faulty and several times you were told to redo the whole job. Unfortunately, your performance has not improved even after repeated advice.

(iv) You have misbehaved with women academic staff members; one of them has even submitted a written complaint.

(v) You are rather frequently absent from the office premises and the faculty members complained about your absence. Your handling of the room allocations in the guest house, confirmatory reply to people asking for accommodation, and general supervision have been unsatisfactory. In general, your attitude to office work leaves much to be desired.

It is expected that you would rectify the faults noted above and improve your performance in the coming months, so that your confirmation could be favourably considered."

"10. (a) In pursuance of a complaint made by the petitioner against Shri P. Chakraborty, a specific enquiry was made on the following questions by a High-Level Enquiry Committee consisting of three high officials, namely, (1) Professor (Smt.) Monisha Bose -

(i) Why Shri P. Chakraborty went downstairs, whether he used unacceptable language and whether he was involved in physical assault, and

(ii) Whether Shri D.P. Banerjee used provocative language and whether he was involved in physical assault?

The petitioner was not very cooperative in the enquiry. The said Enquiry Committee, inter alia, made the following recommendation:

Shri D.P. Banerjee was involved in the scuffle and also used Mr. Pradip Bose to obtain the false signatures. As such, he should surely be punished. We recommend that a person of such dubious character should not be confirmed."

Keeping these observations in the background, the Director in that case wrote a letter stating that the applicant was a probationer and his services were terminated on the basis of these and the other allegations. It was found that his termination was in substance, an order of dismissal, casting stigma on the petitioner without enquiry.

15. Applying the above guidelines to the facts of the case on hand, we do not find that the instant case is the one ~~which we have referred to above~~ casting any stigma on the applicant. The orders

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at Annexures A/2 to A/16 would indicate that the applicant was informed regarding number of mistakes and errors he had committed in preparation of the bills and accounts <sup>and</sup> vide Annexures R/3. Applicant also expressed sorry for the errors committed in the cash book due to oversight. Keeping all the correspondences that we have referred to above, we feel that it is a case wherein the applicant was not good and efficient in maintaining the accounts and preparing the pay bills. Ultimately, the administration found that the applicant was not suitable for the post of Accountant, which he occupied and accordingly, the management decided vide Annexure R/8 on the basis of the preliminary enquiry that the applicant was liable to be terminated "due to his incompetency for the job he was employed." As stated above, the applicant honestly admitted such errors committed by him, vide Annexure R/3. The applicant had admitted in one of his reply that his English was poor. However, his Hindi is good. Management was of the opinion that for Military School of that type, English was required for all correspondences etc. in addition to the skill in accounting and ultimately, they decided to terminate the applicant by giving him one month's salary in lieu of notice period. In these circumstances, we have to hold that this is a case of termination simplicitor without effecting the reputation or without casting any moral imputations against the applicant. Though sometime, strong language <sup>was</sup> used in some of the annexures, stating that the applicant was negligent and careless in his work and his work was very slow, would not cast any stigma on the applicant in the light of the guidelines <sup>laid down</sup> issued by Hon'ble the Supreme Court in 1999 SCC (L&S) 596, cited supra. As pointed out by Hon'ble the Supreme Court, it is very difficult to ascertain whether the impugned order is an order of simplicitor or an order casting stigma. In our opinion, the case on hand is an order of termination simplicitor for failure on the part of the applicant in improving his skill in accountancy, inspite of giving several opportunities. Though in some of the correspondences from the management side,

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strong words were used, but they only intend improving his work-performance and nothing else. For instance, Annexure A/5, by pointing out the mistake committed by him, stated that "you are requested to explain the circumstances leading to the action and also show reasons as to why necessary disciplinary/administrative action is not to be taken against you". But that was only intend to put the applicant under pressure to improve so that he would not commit any mistake. Annexure A/7 likewise, in paragraph 5 stated that the applicant was warned and he was given last chance to show satisfactory improvement in his work by 15th July, 1999, failing which the applicant's services would be terminated as per rules, ~~and~~ <sup>We may</sup> notice also the language used at Annexure A/9 with reference to the mistakes committed in the pay bill for the month of July, 1999, stated in paragraph 4 & 5 that :-

"4. Due to continuous committing of errors and your negligency in preparing such type of documents, the School authorities are facing a great inconvenience and problems to stream line the Defence Accounts Work. In the last 09 months it has also been observed that ~~perforce~~ <sup>knowingly</sup> you putting the School authorities in trouble.

5. You are hereby warned for this act of carelessness and indiscipline and explain in writing under what circumstances you have committed the above mistakes in the pay bill by 14 July 99." Though this language is strong on the part of teh management, but they intend only making the applicant to improve his performance so as to see that he does not repeat the mistakes that he has committed in the statement appended to Annexure A/9. Likewise, we also notice that the language used at Annexure A/11, as under:-

"16. Can't handle Accounts independently and blames other for his own faults.

17. The post of Accountant, which requires honesty, trust worthiness and maintenance of high sense of values for which Mr. Manoj Kumar Naghela has been appointed and he is under probation. He requires continuous guidance and supervision in maintaining accounts. He can't handle situation deliberately and can't deal with people with tact in a sober and dignified way."

Here again, the management used strong words, stating that the applicant requires continuous guidance and supervision in maintaining accounts and he he can't handle situation ~~deliberately~~.

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and can't deal with people with tact in a sober and dignified way. These letters would indicate motive for order of termination, but such a practice cannot be said to be basis for such termination in terms of the law laid down in 1999 SCC (LAS) 596, referred to above. The applicant has been working in a Military School, therefore, the authorities expect <sup>a</sup> ~~the~~ sort of Military discipline to see that rises he improves and ~~lives~~ <sup>if</sup> to the occasion. Even <sup>if</sup> these letters are taken as a sort of threat against the applicant in case of his failure to improve, they only intend, as we have already stated above, to put the applicant under pressure so that he improves and nothing more. Military discipline requires that one should be efficient so that system works and in Military, as one of the Poets puts it, "there is no question why and there is no reason why and there is do and die." Therefore, in our considered opinion, the words of this type used ~~were~~ in different letters were never intended to cast ~~any~~ stigma on the applicant. These were the words never used to detract from the character or reputation of the applicant indicating that there was something immoral on the part of the applicant. They cannot also be considered as a sort of moral reprobation to the applicant. Therefore, the order of termination vide Annexure A/17 cannot be termed as one of dismissal.

16. The summary enquiry conducted by the Board vide Annexure R/8 was in the nature of summary proceedings, giving an opportunity to the applicant to explain certain irregularities committed by him in maintaining the accounts. In such circumstances, Hon'ble the Supreme Court in AIR 1978 SC 363 [Eishan Lal Gupta vs. The State of Haryana & Ors.], held that where a summary enquiry was conducted only to determine the suitability to continue in service of the <sup>him</sup> probationer by giving <sup>him</sup> an opportunity to answer with reference to ~~such~~ questions would only be an indication of intention of the employer to terminate the services of the delinquent official only on the ground of unsuitability to the post and such a summary

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enquiry could not be taken as to hold a departmental enquiry to punish the person. Hon'ble Supreme Court in this case held that the order passed therein was an order of termination and not a case of punishment and accordingly, dismissed the petition. The ratio of this judgement would apply even to the present case in which also similar enquiry was conducted, as we have noticed above, to give an opportunity to the applicant to explain and ultimately, to come to the conclusion whether the applicant is suitable to the post or not. The Hon'ble Supreme Court in 1997 SCC (L&S) 1703 = (1997) 10 SCC 409 [High Court of Judicature at Patna v. Pandey Madan Mohan Prasad Sinha] held that even uncommunicated adverse remarks would be basis of such termination of probationer. But in the instant case, adverse remarks were communicated to the applicant and the applicant ~~had~~ was given detailed reply to those adverse remarks. In another case, 1997 (1) SLR 136 [Funwar Arun Kumar vs. U.P. Hill Electronics Corporation Ltd. & Ors.], Hon'ble the Supreme Court observed that the authorities are entitled to look into the performance of the probationer during probation period and if such performance were unsatisfactory, such authorities are entitled to terminate the services of such persons. The impugned order simply stated that the petitioner being a temporary servant is terminated, and hence, it does not per se, cast any stigma on the applicant. If the services of any employee is found unsatisfactory during probation period, his services can be terminated and such order of termination is only a termination simplicitor, but not punitive, attracting 312 of the Constitution of India (Please see 1996 (5) SCC 29 and (1996) 1 SCC 560). In another case, Hon'ble Supreme Court in 1998 (1) SLR 96 [Rajasthan Adult Education Association vs. Kumari Ashoka Bhattacharya] has pointed out that if the work of an employee/probationer was not upto the mark and such an employee is told to show improvement and thereafter, such an employee is terminated on the ground of his non-improvement, such order cannot be considered as one by way of punishment.

17. Keeping in view of the law declared by the Apex Court from time to time, we are of the opinion that the instant case is one of a termination simplicitor, without casting any stigma.

18. The applicant alleged mala fides against respondent No.4 stating that respondent No.4 was prejudiced against him and at his instance the applicant is being terminated from service. Respondent No.4 by filing an affidavit has denied those allegations. Except the statement of the applicant in his application, there is no material to come to the conclusion that there was any mala fides on the part of respondent No.4. We have already stated above that respondent No.4 has filed an affidavit controverting these allegations, in such case no positive finding can be given. In the circumstances, we have to hold that the applicant has not proved any mala fides against respondent No.4.

19. For the above reasons, we do not find any merit in this application. Accordingly, we pass the order as under :-

"Application is dismissed. However, it is open to the respondents to consider the applicant for appointment on a lower post as recommended by the Board provided the applicant is willing and makes an application to that effect. No costs."

  
(N.F. NAWANI)

MEMBER (A)

  
(B.S. RAIKOTE)

VICE CHAIRMAN