

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH : JAIPUR

Date of order : 24/11/2020

O.A. No. 101/2000

Dally Gill son of late Shri A.S. Gill, resident of B-7, Vishnu Garden Pt.I, New Delhi - 110 018, last posting as Inspector, Customs & Central Excise, Jaipur.

.... Applicant.

v e r s u s

1. Union of India through Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi.
2. Commissioner of Customs Commissionerate, Jaipur, New Central Revenue Building, Jaipur (Rajasthan).
3. Additional Commissioner (P&V), Office of the Commissioner, Central Excise, Jaipur - I, Jaipur (Rajasthan).

... Respondents.

Mr. Rajendra Prasad, Adv., Brief holder for Mr. S.D. Sharma, Counsel for the applicant.

Mr. Sanjay Pareek, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman


Hon'ble Mr. N.P. Nawani, Administrative Member

: O R D E R :

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

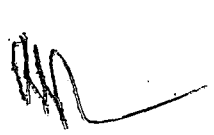
This application is filed for quashing the impugned order dated 2.2.2000 vide Annexure A/1 with a further direction to the respondents to reinstate the applicant and to pay all the arrears of salaries and allowances and other service benefits, as if the applicant was never terminated. The applicant stated that by the impugned order, the applicant has been terminated from the post of

Inspector Customs, Customs & Central Excise, Jaipur, but this order is illegal for more than one reason. The applicant stated that his appointment on the basis of Annexure A/6 dated 2.4.99 was on permanent basis and it was on a permanent post, therefore, the impugned order of termination issued under the proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 (for short, Temporary Service Rules), is illegal and without jurisdiction. The applicant further stated that he was appointed in the office of the respondent No. 2 under the sportsman quota. He was a National Basket-ball Champion and he has been awarded medals for National Basket-ball Championships and even represented for India in International Tournament in Basket-ball. Since he was a sportsman of India and International fame, he was appointed in CRPF, where he resigned, but his resignation was not accepted immediately. Thereafter, he preferred a writ petition and the said writ petition has been dismissed by the Delhi High Court, and against that order, he filed an S.L.P. before Hon'ble the Supreme Court. Later on, on the advice, he withdrew that S.L.P. Meanwhile, by accepting the offer of appointment made by the respondent Nos. 2 and 3, he joined with the respondent No. 3. He further stated that the respondents selected him after passing the written test and through a selection process, he was appointed on the post in question. Therefore, the respondents have issued an appointment order vide order dated 2.4.91 vide Annexure A/6, and his appointment was on permanent basis. He joined with the respondent No. 3 during the pendency of the writ petition filed by him before Hon'ble Delhi High Court, challenging the order of refusal to accept the resignation, hoping a favourable order at the hands of the High Court. But unfortunately, that was dismissed, and after the withdrawal of the S.L.P. filed before Hon'ble the Supreme Court, the applicant was removed from service by the CRPF on the ground of his




unauthorised absence. But the fact remains that the appointment of the applicant under the respondents Nos. 2 & 3 was on permanent basis. But on the ground that he suppressed the fact that he was still in service of CRPF, New Delhi, the Deputy Collector of Customs & Central Excise Collectorate, issued a memo dated 21.02.92 vide Annexure A/13, calling upon him to explain as to under what circumstances he joined the Customs and Central Excise department, and called upon as to why disciplinary proceedings should not be initiated against him, for which applicant gave a detailed reply. The applicant also has brought to the notice of the respondents the order of removal passed by the CRPF, New Delhi, dated 3rd October, 1992. But on receipt of that order, the respondent No. 3 issued another memorandum dated 16.03.94, stating that there was discrepancy in the order submitted by him and the order sent by the CRPF, Delhi, regarding the removal order passed by them, and in these circumstances, why disciplinary proceedings should not be initiated against the applicant for suppression of facts at the time of appointment. This position continued till 1999 and in the year 1999, the applicant was suspended with immediate effect vide order Annexure A/21 dated 01.04.99, with a further direction that he should not leave the Headquarters without obtaining the prior permission of the competent authority. Vide order dated 28.07.99, the respondents directed the applicant to intimate the latest position of the case pending before Hon'ble the Supreme Court.

2. Thereafter, vide order dated 2.2.2000, the said suspension order was revoked, and on the same date, the impugned order at Annexure A/1 was passed, terminating the services of the applicant. He stated that the order of termination in effect is an order of dismissal without holding a departmental enquiry and the same is liable to be set aside. The applicant further stated that he has

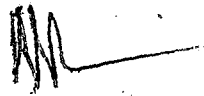


been terminated on account of the alleged misconduct, for which the memorandum has been issued in the year 1982 and 1984 and the impugned order has been passed with an object of punishing the applicant and it is a measure of punishment, and this removal order was passed without ~~without~~ following the prescribed procedure and accordingly, the same is illegal and without jurisdiction. Moreover, the impugned order was passed without affording an opportunity of hearing to the applicant and the same is in violation of natural justice and also the Article 311 of the Constitution of India. The applicant further stated that his services were taken by the respondents 3 and 4 as a sportsman and even he was sent abroad for representing the department as sportsman. He was issued congratulatory letters vide Annexures A/17 and A/18 for the achievements he made in collecting the revenue. In fact, the applicant was given 'No Objection Certificate' vide Annexure A/20, to travel abroad, stating that the applicant is a permanent employee of the department and in these circumstances, the applicant's services could not have been terminated during his service as temporary. Therefore, the impugned order is liable to be quashed. The learned counsel for the applicant also reiterated the same points urged in the application and submitted number of judgements in support of the contention that the applicant's appointment is on permanent basis, and his services could not have been terminated under the Temporary Service Rules. Since the applicant has successfully completed the probation of 2 years and at the time of passing the impugned order, he has completed 9 years of service, his services could not have been terminated as a temporary service. He submitted that his services could be deemed to have been confirmed and his appointment was permanent. Therefore, the impugned order is liable to be set aside. He also contended that the impugned order of termination, even otherwise, in effect is an order of dismissal without holding an enquiry under Article 311 of the Constitution of India. Therefore, the order of termination is a



camaflogue for an order of dismissal. By relying upon the Temporary Service Rules, the service on which the applicant was appointed, never be treated as temporary. Therefore, the impugned order of termination is highly illegal and arbitrary and the same is laible to be set aside.

3. By filing the reply, the respondents have denied the case of the applicant. They have stated that the applicant has been rightly terminated on the basis of Annexure A/1. His appointment was only on temporary basis without any confirmation. Therefore, he could be terminated under Rule 5 of the Temporary Service Rules. His appointment itself was under sportsman quota, purely on temporary basis. They stated that the applicant has not brought to their notice regarding the resignation tendered to the CRPF. However, on the basis of Annexure R/3, the department has learnt that he has tendered his resignation with effect from 2.4.91 and vide subsequent letter at Annexure R/4 dated 27.09.91, the said resignation letter was withdrawn. Thus, the applicant had got the appointment in the respondents department as Inspector under the sportsman quota, concealing the material fact of being already in service and also by giving false information. The applicant did not furnish the correct information regarding the writ petition filed before Hon'ble Delhi High Court and its dismissal and his further filing an SLP before Hon'ble the Supreme Court, inspite of several letters issued to him. But the CRPF informed the department that the writ petition filed by the applican in the Delhi High Court was dismissed and the applicant was considered as a "Deserter". Subsequently, he was removed from service. They further submitted that without the resignation bein accepted by the earlier employer, the applicant could not apply for appointment in the respondent department, nor could he be appointed




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However, the applicant ultimately was appointed due to suppression of the fact of his being in service. They have also stated that he has tampered the documents for his personal gain. He further stated that in the year 1992, there was a preliminary enquiry by the CBI, SPE, Jaipur, in the matter of misuse of Draw Back Scheme, and the CBI found, prima facie, a case against the applicant and accordingly, the residential premises of the applicant were raided by the CBI and in these circumstances, the applicant was first transferred from jaipur to the Customs Division, Sriganaganagar, and thereafter, taking into account the gravity of the matter, he was placed under suspension. They further stated that the applicant being appointed only on temporary basis, his services were terminated under Temporary Service Rules, and there is no illegality. They stated that in the absence of any order confirming the service, there cannot be any deemed confirmation. The applicant's services were terminated after he was found unsuitable for retention in service. Therefore, the respondents have not committed any illegality in passing the impugned order at Annexure A/1, and this application is accordingly, liable to be dismissed. The learned counsel for the respondents reiterated what has been stated in the reply, contending that the impugned order being a termination simplicitor, cannot be faulted with. At any rate, the applicant was appointed only on temporary basis vide Annexure A/6. Therefore, his services could be terminated at any time by giving one month's notice or one month's pay in lieu thereof. Moreover, the rules do not provide any deemed confirmation. From this, it follows that the applicant is on either temporary or still on probation, and under Rule 5 of the Temporary Service Rules, such an employee could be terminated by the employer. He denied the contention of the applicant that the impugned order of termination is in effect an order of dismissal. He stated that all the developments



right from the date of his appointment in the respondent department till his termination, were simply narrated by way of history of the case as to what has happened earlier to the order of termination. But the respondents have terminated the services of the applicant ultimately being found unsuitable, and such an order cannot be termed as an order of dismissal and as such, Article 311 of the Constitution of India or even the principles of natural justice would not be applicable to the facts of the present case. As long as no automatic confirmation, the applicant continues to be on temporary basis, and accordingly, he has been terminated. Therefore, such a termination simplicitor cannot be interfered with at the hands of this Tribunal. Accordingly, he prayed for dismissal of the application. He also relied upon number of judgements in support of his contention. The judgements cited by both the sides, we will be considering in the course of order.

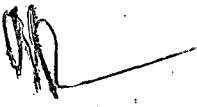
4. From the pleadings of both sides as well as the contentions raised at the Bar, we have to address ourselves on 2 points in this case. (i) Whether the appointment of the applicant was on temporary basis, and whether the impugned order of termination vide Annexure A/1 with one month's notice or pay in lieu of one month's salary, is valid or not; and (ii) whether the order of termination in substance, is an order of dismissal, therefore, contrary to 311 of the Constitution of India, being the one passed without holding an enquiry and without affording an opportunity of hearing to the applicant.

5. Taking up the first point, we notice from the appointment order dated 2.4.91 vide Annexure A/6 that the applicant was offered a temporary post of Inspector against the sportsman quota in the pay



scale of Rs. 1640-10-2600-EB-75-2900. The order of appointment further states that his retention in service is subject to his found suitable for Government service and he shall furnish full information of his previous employment, if any, in the last 3 years under the Government of India or any State Government. It further states that the applicant is appointed on probation for a period of 2 years and on completion of the period of probation, if considered fit for permanent appointment, he would be confirmed on the post of Inspector, subject to availability of permanent vacancy. The condition 14 further stated that the applicant is warned that furnishing of incorrect information on any point, will render him liable to disciplinary action. From the reading of the appointment letter, we find that this appointment was made on a temporary post and he was on probation for a period of 2 years. It is an admitted fact that there was no confirmation, till the impugned order is passed, after the period of 9 years of the appointment.

6. It is not in dispute on either side that there is no provision for "~~deemed~~ confirmation" under the Rules applicable in the service in question. The appointment order prescribes for 2 years probation period, but does not prescribe for extension to any maximum period of probation. In view of this position as to Rules, it is not possible for us to hold that the instant case is the one deemed confirmation. However, the learned counsel for the applicant relied upon various judgements relating to deemed confirmation. Learned counsel for the applicant relied upon the judgement reported in 1997 (5) SLR 292 [Dayaram Dayal vs. State of M.P. and Anr.], contending that the services of the applicant shall be deemed to have been confirmed after the expiry of probation period of 2 years and, therefore, his services could not have been terminated under the Temporary Service



Rules. After going through the said judgement, we find that this judgement considered both sets of decisions of Hon'ble the Supreme Court, which decided the issue whether a person shall be deemed to have been confirmed or not. We think it appropriate to extract the relevant paras 7, 8, 9 and 14 and 15.

"7. An examination of the rulings of this Court on the question of probation and confirmation shows that in some cases this Court has held that mere continuation beyond the period of probation does not amount to confirmation unless the order of appointment or the rule contains a deeming provision while in some other cases, it has been held that in certain exceptional situations, it is permissible to hold that the services must be deemed to be confirmed. We shall show that there is no real conflict between the two sets of decisions and it depends on the conditions contained in the order of appointment and the relevant rules that are applicable.

8. On line of cases has held that if in the rule or order of appointment a period of probation is specified and a power to extend probation is also specified and the officer is continued beyond the prescribed period of probation, he cannot be deemed to be confirmed, and there is no bar on the power of termination of the officer after the expiry of the initial period of probation. In the case before a Constitution Bench of this Court in Sukhbans Singh vs. State of Punjab [1963 (1) SCR 416], Rule 22 of the relevant rules provided a period of probation and contained provision for extension of probation, Rule 23 for ~~for~~ termination during probation and Rule 24 for substantive appointment on completion of probation. It was held that "a probationer cannot.....automatically acquire the status of a permanent member of a service, unless ofcourse the rules under which he is appointed expressly provides for such a result. The rules governing the Provincial Civil Services of Punjab do not contain any provision whereby a probationer at the end of probation period is automatically absorbed as a permanent member of the Civil Service." At the end of the probation, he is merely qualified or eligible for substantive permanent appointment. Thus, termination after expiry of initial power of probation was held not invalid. Another Constitution Bench followed the above judgement (vide) G.S. Ramaswamy vs. I.G. of Police, Mysore, to say that Rule 486 of the relevant Hyderabad Rules did not provide for automatic confirmation after 2 years of probation unless the officers "have given satisfaction". Similar was the position in the case befor another Constitution Bench in State of U.P. vs. Akbar Ali Khan [1966 (3) SCR 821]. Here also the Court held that on completion of 2 years of probation as per rules, the officer continued to be a probationer until an order of confirmation was passed. Sukhbhams Singh's case was followed and it was stated that unless the order of appointment or the rule said that at the end of the probationary period, if no order was passed, the officer is to be deemed to have been confirmed, the officer continued to be on probation. We may state that the facts in Kedar Nath vs. State of Punjab [1974 (3) SCC 21] : [1972 SLR 320 (SC)] decided by a three Judge Bench are also similar and the earlier rulings set out above were followed. In Dhamjibhai Ramjibhai vs. State of Gujarat, [1985 92) SCC 51] : [1985 (1)



SLR 595 (SC)], also the period of probation fixed under the Rules was 2 years and there was also provision for extension but no maximum was prescribed. The termination was after the expiry of the period of 2 years of probation. A three Judge Bench took the view that there could be no automatic confirmation at the end of 2 years and that the termination after 2 years was valid.

9. The other line of cases are those where while there is a provision in the rules for initial probation and extension thereof a maximum period for such extension is also provided beyond which it is not permissible to extend probation. Question as to its effect arose before the Constitution Bench in State of Punjab vs. Dharam Singh, 1968 (3) SCR 1. The relevant rule there provided initially for a one year probation and then for extension thereof subject to a maximum of three years. The petitioner in that case was on probation from 1.10.57 for one year and was continued beyond the extended period of three years (in all four years) and terminated in 1963 without any departmental inquiry. A Constitution Bench of this Court referred Sukbhams Singh, G.S. Ramaswamy and Akbar Ali cases and distinguished the same as cases where the rules did not provide for a maximum period of probation but that if the rule, as in the case before them provided for a maximum, then that was an implication that the officer was not in the position of a probationer after the expiry of the maximum period. The presumption of his continuing as a probationer was negated by the fixation of a maximum time-limit for the extension of probation. The termination after expiry of four years, that is after the maximum period for which probation could be extended, was held to be invalid. This view has been consistently followed in Om Prakash Maurya vs. U.P. Co.op. Sugar Factories Federation [1987 Suppl. SCC 643] : [1988 (1) SLR 790 (SC)] and State of Gujarat vs. Akhilesh C. Bhargava [1987 (4) SCC 482] : [1987 (5) SLR 270 (SC)] which are all cases in which a maximum period for extension of probation was prescribed and termination after expiry of the said period was held to be invalid inasmuch as the officer must be deemed to have been confirmed.

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14. Thus, even though the maximum period for extension could lead to an indication that the officer is deemed to be confirmed, still special provisions in such rules could negative such an intention.

15. It is, therefore, clear that the present case is one where the Rule has prescribed an initial period of probation and then for the extension of probation subject to a maximum, and therefore, the case squarely falls within the second line of cases, namely, Dharm Singh's case and the provision for a maximum is an indication of an intention not to treat the officer as being under probation after the expiry of the maximum period of probation. It is also significant that in the case before us the effect of the rule fixing a maximum period of probation is not whittled down by any other provision in the rules such as the one contained in Samsher Singh's case or in Ashok Kumar Mishra's case. Though a plea was raised that termination of service could be effected by serving one month's notice or paying salary in lieu thereof, there is no such provision in the order of appointment nor was any rule relied upon for supporting such a contention."

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7. From the above judgement, it is clear that Hon'ble the Supreme Court has considered 2 sets of cases, involving 2 sets of rules. In one set of cases, Rule prescribes for simple probation period of either 2 years or 3 years and the persons continued on the post even after the expiry of the said period. Dealing with such a case in the above judgement, it is held that such case would not be a case of deemed confirmation. Hon'ble Supreme Court also pointed out other set of cases, where a probation period is fixed and further extension is provided, subject to the maximum period, and after completion of such maximum period, Hon'ble the Supreme Court held that, that would be a case of deemed confirmation. Hon'ble Supreme Court further pointed out that notwithstanding, prescribing even the maximum period, there may be cases in which rules may negative the inference of deemed confirmation. Even though, the learned counsel for the applicant cited number of other judgements, some of those judgements were considered in the above case. Therefore, by following the law laid down by Hon'ble the Supreme Court in Dayaram Dayal's case, we think it appropriate to hold that the instant case is the one in which 2 years probation period is fixed without prescribing any further extension for maximum period. Therefore, the case on hand is one of the cases, in which there cannot be any deemed confirmation. In other words, the persons who is continued even after the period of probation, it shall be taken that he has continued on that position as a probationer only. If that is the position of law, it cannot be disputed that the applicant continued as a probationer till he is terminated by the impugned order. It is also settled principle of law that the services of the probationer could be terminated, if he is ultimately found unsuitable. From this position of law, the question whether Temporary Service Rules would apply or not, would be highly academic, since such persons are liable



to be discharged on the ground of unsuitability. Therefore, we have to see whether it is a case of simple discharge or termination on the ground of unsuitability or the instant case is one of dismissal in substance, though couched as an order of simplicitor. This issue takes us to the second point.

8. So far as the second point is concerned, on the basis of the record, we have to find out whether the respondents intended to remove the applicant from service, with certain backgrounds in this case or it was a simple termination without stigma. The learned counsel appearing for both sides relied upon the judgements reported in 1999 (2) SCC 21 [Radhey Shyam Gupta vs. UP State Agro Industries Corporation Ltd. and Another], and (2000) 5 SCC 152 [Chandra Prakash Shahi vs. State of UP and Others]. They also relied upon other judgements in support of their contentions, but most of them have been referred to in these 2 judgements of Hon'ble the Supreme Court. Therefore, we think it appropriate to rely on these 2 judgements for the purpose of appreciating the principle of law involved in this case, with reference to contentions of the respective parties.

9. The learned counsel for the applicant contended that the impugned order is not an order of termination simplicitor but it is an order of dismissal, without holding an enquiry. He contended that all the show cause notices issued to the applicant as to why disciplinary proceedings initiated against him, form the foundation of termination order, but not simply a motive for the impugned order of termination. On the other hand, the learned counsel for the respondents contended that all the earlier backgrounds and show cause notices issued, can at the most be said to be a motive for terminating the services of the applicant, but they could not be taken as the foundation for such termination.

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10. We have gone through the judgements cited supra and also the other judgements of Hon'ble the Supreme Court, regarding the principle involved in this case. In (1999) 2 SCC page 21 [Radhey Shayam Gupta vs. UP State Agro Industries Corpn. Ltd], Hon'ble the Supreme Court observed that in order to find out whether the particular case is a case of termination simplicitor or it is a case of dismissal, the Court have to lift the wheel and find out regarding the nature of the order passed and to find out whether an allegation served only as a motive or foundation for such termination. In paragraph 27, Hon'ble the Supreme Court after refering to its earlier judgements, expressing divergent views, summarised the position of law, as under:-

"In other words, it will be a case of motive if the master, after gathering some prima facie facts, does not really wish to go into their truth but decides merely not to continue a dubious employee. The master does not want to decide or direct a decision about the truth of the allegations. But if he conducts an enquiry only for the purpose of proving the misconduct and the employee is not heard, it is a case where the enquiry is the foundation and the termination will be bad."

In the latest judgement reported in (2000) 5 SCC 152 [Chandra Prakash Shahi vs. State of U.P. and Others], Hon'ble the Supreme Court further clarified the concept of motive and foundation as under:-

"28. The important principles which are deducible on the concept of "motive" and "foundation", concerning a probationer, are that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post in question. If for the determination of suitability of the probationer for the post in question or for his further retention in service or for confirmation, an inquiry is held and it is on the basis of that 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 inquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that inquiry,



the order would be punitive in nature as the inquiry was held not for assessing the general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against that employee. In this situation, the order would be founded on misconduct and it will not be a mere matter of "motive".

29. "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 inquiry 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."

Keeping the above principle enounced by Hon'ble the Supreme Court, we proceed to consider the facts of the present case. The

11. The fact that the applicant joined the services in Customs and Central Excise department as Inspector, when he was not relieved from the CRPF, is an admitted fact. The applicant also does not deny that when he was permitted to join in the Customs and Central Excise department, his resignation was not accepted by the CRPF. Therefore, he has to approach Hon'ble the Delhi High Court for getting his resignation accepted by filing a writ petition, and the High Court dismissed that Writ Petition on the ground that he suppressed some material fact. The appeal filed by the applicant before Hon'ble the Supreme Court was also withdrawn later. The resultant position of these undisputed facts would be that applicant's resignation was not accepted by the CRPF as on date, when the applicant joined the Customs and Excise Department. Therefore, the memorandum dated 21.02.92 vide Annexure A/13 was issued to him, directing the applicant "to explain as to under what circumstances he joined this department while being on the strength of C.R.P.F. and as to why disciplinary proceedings should not be initiated against him". On

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the basis of these allegations, the explanation was sought from the applicant. Thereafter, the Customs & Central Excise Department was communicated with the order of CRPF dated 3rd October, 1992, removing the applicant from service. Finding that there was some discrepancy in the order of removal furnished by the applicant and the order of removal communicated by the CRPF to the Customs and Central Excise Department, another memorandum dated 16.03.94 vide Annexure A/16 was issued to the applicant, asking the applicant to explain "different operative wordings" found in those 2 orders and accordingly, calling upon him as to why disciplinary proceedings against him should not be initiated "for suppression of facts at the time of appointment". Learned counsel for the respondents in the course of arguments, highlighted with reference to the application of the applicant, applying for the post in question in the Customs and Central Excise department, stating that the applicant suppressed such information. Even in para 4.6 of the reply, the respondents have stated that "Thus, the applicant concealed the material fact of being already in service and also gave false information....". In addition to that, the CRPF, New Delhi, vide their letter dated 28.04.92 (Annexure R/5), informed the Customs & Central Excise department that "A warrant of arrest has been issued under CRPF Act and Rules to arrest him. Appropriate action may kindly be taken against him by you under the Conduct Rules, under intimation to us". Thereafter, vide Annexure R/17 dated 28.09.92, the Customs and Central Excise Collectorate, Jaipur, issued a memorandum, stating as under :-

"Shri Gill is once again called upon to explain as to under what circumstances, he joined this department while being on the strength of C.R.P.F. and as to why disciplinary proceedings should not be initiated against him. His explanation must reach the undersigned within 20 days of receipt of this Memo."

The letter dated 28.07.99 (Annexure R/29) of the Central Excise Department, addressed to the Deputy Inspector General of Police,



CRPF, New Delhi, stated as under:-

"To:

The Deputy Inspector General of Police,
Central Reserve Police Force,
SPL Range, R.K. Puram,
New Delhi - 110 066.

Sir,

Sub: Action against Shri Dally Gill, former Sub Inspector,
CRPF, No. 871570134 -- supply of the copies of the
documents - request reg.

.....

Your kind attention is invited to your office letter C.No.S.IV-9/91 - Trg.-KW vide which it was informed to this office that Shri Dally Gill, No. 871570134, Sub-Inspector of 120 Bn. CRPF was "removed from service" vide order C.No. P.VIII.9/92-Ec.III dated, the 3rd Oct., 92 of the DIGP, SPL Range, CRPF, New Delhi.

It was further informed to this office by the Deputy Director (Trg), CRPF, New Delhi, vide his D.O. letter No. S-IV-9/91-Trg.-KW dated that C.W.P. No. 3565/91 filed by Shri Dally Gill in the High Court of New Delhi against the said order of removal was dismissed by the said Court vide the order dated 03.04.92 on the grounds of suppression of facts by him.

Thereafter, Shri Dally Gill (presently posted as the Inspector, Customs and Central Excise, under the charge of the Commissioner, Customs, Jaipur, and is placed under suspension in an another case booked by the CBI against him) vide his letter dated 31.12.92, informed this office about filing an appeal before the Supreme Court of India against the said order of the High Court of New Delhi, but despite repeated reminders, he has not provided the copies of the CWP No. 3565/91 and the appeal filed by him before the Hon'ble Supreme Court of India against the order of the High Court, New Delhi.

The Assistant Director (Sports), CRPF, New Delhi, vide this office letter dated 21.07.98 as well as subsequent reminder dated 25.08.98 was requested to provide the copies of the said CWP and the appeal filed by Shri Gill, but till date nothing has been heard from his end.

Since the matter regarding initiation of disciplinary proceedings against Shri Dally Gill, Inspector of Customs and Central Excise is in process, it is, therefore, requested to make suitable arrangements to provide the copies of the above mentioned documents at the earliest possible to enable this office to proceed further in the matter.


Yours faithfully,

Sd/-

Additional Commissioner (P&V) "



From the above letter also, it is further clear that the Customs and Central Excise Department, was ^{processing of} ~~pressing~~ the papers for initiation of the disciplinary proceedings against the applicant, and the applicant was under suspension in another case booked by the CBI against him. From all these materials, it is crystal clear that the Customs & Central Excise department, wanted to initiate disciplinary proceedings against the applicant. But instead of initiating the disciplinary proceedings for the alleged misconduct, the department abruptly vide order Annexure A/3 dated 02.02.2000, revoked the order of suspension and on the very date, a separate order was passed vide Annexure A/1, terminating the services of the applicant under proviso to sub-rule (1) of Rule 5 of Temporary Service Rules, by stating that the applicant was entitled to claim a sum equal to the amount of his pay plus allowances for the period of notice. In these back grounds, we have to hold that the impugned order of termination is not an order of termination simplicitor, but in effect it is an order of dismissal without holding an enquiry, as required under Article 311 of the Constitution of India. Moreover, it has never been the case of the respondents in their reply that they have terminated the applicant on the basis of preliminary enquiry as to his suitability, except stating that they have terminated him under Temporary Service Rules, and they have got powers. No material also placed on record to show that the unsuitability of the applicant was an issue before the respondents at any point of time. On the other hand, vide letter Annexure A/17 dated 01.04.92, the applicant was congratulated for achieving the revised budget estimate for the year 1991-92, and it is further stated vide Annexure A/18 dated 02.04.92, that "the untiring and immense efforts put in by you and entire team in the anti-evasion activities throughout the year have helped in maximisation of collections of revenue during the year." From this also, it is clear

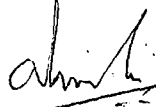



that the unsuitability was not the motive in passing the impugned order of termination. The order of termination has preceded with a letter by the CRPF, to take appropriate action against the applicant vide Annexure R/5 dated 28.04.92, stating that a warrant of arrest has been issued under CRPF Act and Rules to arrest him and, therefore, appropriate action is required against him. Even the memorandum issued to the applicant from time to time from the Customs and Central Excise Department, asking his explanations as to why disciplinary proceedings should not be initiated against him vide Annexure R/17 dated 28.09.92, and another letter dated 28.07.99 vide Annexure R/29 addressed to the Deputy Inspector General of Police, CRPF, New Delhi, clearly indicate that the department intended to initiate disciplinary proceedings against the applicant. From all these materials, it is clear that the impugned order stands "founded" on the allegation of such misconduct, for which no enquiry was held. In addition to them, the applicant was suspended on the basis of a CBI enquiry vide Annexure A/21 dated 01.04.99, alleging grave misconduct against the applicant, as stated in the reply. It is not stated that the CBI enquiry is already over. But from the fact, it appears that the CBI enquiry is still pending, and on the basis of the said CBI enquiry only, the applicant was suspended and the suspension order was revoked vide Annexure A/23 dated 02.02.2000, and on the very date, the impugned order of termination was passed. From this fact, it is clear that there were certain allegations of misconduct against the applicant, and those allegations only have impelled the employer to terminate the applicant from service, not on the factors of any general unsuitability of the employee for the post held by him. In view of the law declared by Hon'ble the Supreme Court in Chandra Prakash Shahi's case (supra), we have to hold that the impugned termination is a ^{camouflage} ~~camouflage~~ for an order of dismissal and the

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allegations made against the applicant in the Customs & Central Excise Department as well as in the CBI enquiry are very serious, and the impugned order passed on such allegations, would definitely cast stigma on the applicant. Thus, in our view, the impugned order is an order without holding an enquiry, is violative of Article 311 of the Constitution of India. Accordingly, we pass the order as under:-

"The application is allowed. The impugned order of termination vide Annexure A/1 dated 02.02.2000, is hereby set aside with a direction to the respondents to reinstate the applicant forthwith, treating that the applicant is in continuous service notwithstanding such termination now quashed, and the applicant shall be entitled to all consequential benefits. However, it is open to the respondents to initiate the departmental proceedings against the applicant, if they think it appropriate. No costs."


(N.P. NAWANI)
Adm. Member


(JUSTICE B.S. RAIKOTE)
Vice Chairman

CVR.