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**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
CHANDIGARH**

O.A. No.060/00206/14

**Reserved on: 27.10.2014
Pronounced on: 21-11-2014**

**Coram: Hon'ble Mr. Sanjeev Kaushik, Member (J)
Hon'ble Mrs. Rajwant Sandhu, Member (A)**

Amandeep Singh aged 35 years son of S. Jang Singh, Senior System Analyst, NIELIT, Chandigarh.

.....Applicant
Versus

National Institution of Electronics and Information Technology (NIELIT), Department of Electronics and Information Technology, Ministry of Communications and Information Technology, Government of India.

.....Respondents

Present: Mr. G.P.S. Bal, counsel for the applicant
Ms. Jyoti Chaudhary, counsel for the respondents

Order

By Hon'ble Mr. Sanjeev Kaushik, Member(J)

1. Challenge herein is to order dated 09.01.2014(Annexure A-5 and 6) and the order dated 27.02.2014(Annexure A-11) whereby the applicant has been discharged from service with immediate effect in terms of the provisions contained in Govt. of India, Deptt. Of Personnel & Training O.M. dated 19.05.1993 under Rule 11 of CCS (CCA) Rules, 1965, on account of submission of false information at the time of his appointment.
2. The facts which led to the filing of the present case are as under.

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3. The applicant was selected and appointed as Senior Systems Analyst vide letter dated 23.08.2010. He was put under probation initially for a year from 09.09.2010 to 08.09.2011.
4. An FIR under Section 498, 406 IPC had been registered at Police Station, Civil Lines, Batala against the applicant in the year 2006 which was quashed by the Hon'ble High Court on 24.07.2007 in Crl. Misc. No. 31769 of 2007.
5. While working with the respondents department, the initial period of one year of probation of the applicant was further extended for another year i.e. up to 08.09.2013 which he completed. Despite completion of period of two years of probation, the respondents did not issue any confirmation order to the applicant and contrary to that, the applicant was served with a show cause notice on 04.11.2013 (Annexure A-2) and on similar lines a letter dated 05.11.2013 was issued by the Additional Director (Admn) indicating that while filling up the form of verification, he had not disclosed about a criminal case that was lodged against him in the past. He explained vide letter dated 08.11.2013 that he had not suppressed any material. He was informed vide letter dated 09.01.2014 that his case for clearance of probation will be considered after receiving the police verification report, which was still awaited. He, however, received the impugned letter dated

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27.02.2014 whereby he was discharged of his services. Hence the O.A.

6. Pursuant to notice, the respondents appeared through Ms. Jyoti Chaudhary, learned counsel and resisted the claim of the applicant by filing written statement. The respondents also filed an affidavit through MA. The respondents admitted therein that initially when the applicant joined the respondents department, he was put on probation for a year, which was extended for another year after a decision was taken that his case for confirmation would be considered on receipt of the police verification report. It is submitted therein that action to discharge him of his services has been taken because he had not given the correct information against Clause No. 15 of the Special Scrutiny questionnaire, which was submitted by him at the time of appointment. Against that clause wherein he was asked to divulge the details about "if he was ever arrested/prosecuted/charged before a Court with an offence", he answered as 'N.A.' despite the fact that an FIR was indeed filed against him and a challan had also been submitted before the Competent Court. It is also submitted therein that the Police authority, at the first instance, informed the respondents that an FIR was pending against the applicant and subsequently informed that it was quashed by the High Court vide order dated 24.07.2007. Despite there being a categoric statement by the

SSP, a letter has been written by the respondents to the SSP to inform whether the applicant is fit to be appointed against a public post or not. In response thereto, the SSP Batala sent a letter dated 14.01.2014 stating therein that a case FIR NO. 266 dated 22.09.2006 was registered against the applicant, he was arrested, challan was presented in the Court and the case is still pending. In view of the false information given by the applicant in the questionnaire, the respondents decided to dispense with his services and accordingly issued an order dated 27.02.2014 discharging him of his services with immediate effect.

7. The applicant filed a rejoinder contradicting the averments made in the written statement and the affidavit filed by the respondents. He submitted that he had already informed the respondents that the FIR filed against him under Sections 406/498A was quashed by the Hon'ble High Court vide order dated 24.07.2007. He was not arrested as he was granted pre-arrest bail and he had not been in custody of police, therefore, he did not consider it necessary to mention about the same against the clause 15 of the said questionnaire. He further submits that despite a categoric statement by the SSP, Police Station, Batala that FIR filed against the applicant had been quashed by the Hon'ble High Court, the respondents preferred to rely upon the letter dated 14.01.2014

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issued by the SSP and passed the impugned order dated 27.02.2014 discharging him of his services.

8. We have heard Mr. G.P.S. Bal, learned counsel for the applicant and Ms. Jyoti Chaudhary, learned counsel for the respondents.
9. Learned counsel for the applicant vehemently argued that action of the respondents in relying upon the letter dated 14.01.2014 written by the SSP, contrary to the order passed by the Hon'ble High Court on 24.07.2007, whereby FIR filed against the applicant had been quashed, is illegal and arbitrary and therefore, it is liable to be quashed and set aside. He further argued that even the action of the respondents in dispensing with the services of the applicant without conducting an inquiry as per rules, is liable to be quashed and set aside because the applicant had already completed the maximum period of two years of probation up to 08.09.2013, thus, he should be deemed to have been confirmed, as per the CCS (CCA) Rules. To buttress his argument, he placed reliance upon office Memorandum dated 08.09.2011 issued by the DOP&T which provides that in such cases, where no order extending the probation period has been issued and no order of confirmation is issued within one year of completion of the prescribed period of probation, the probationer would be deemed to be confirmed in the service/post. He argued that since the applicant herein had completed the maximum probation period of

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two years therefore, he should be deemed to be confirmed in service and he cannot be removed from service without conducting proper inquiry as per the CCS (CCA) Rules, 1965. In support of his claim, learned counsel has placed reliance upon the following judgments.

1. Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others 2011 (1) JCC 1

2. Oma Dutt Sharma Vs. State of Haryana 1991(2) SCT 672

3. Rameshwari Devi Vs. Maharishi Dayanand University Rohtak 1992(3) SCT 734

4. Dr. Jagdish Chander Gondley Vs. State of Haryana 1991(3) SCT 212

10. Per contra, Ms. Jyoti Chaudhary, learned counsel for the respondents vehemently argued that since the applicant had concealed the information with regard to the filing of FIR against him as he did not disclose it in the relevant clause of the questionnaire regarding verification of antecedents, therefore, he has rightly been discharged of his services as per the CCS (CCA) Rules. She further argued that his probation period of one year was extended for another year and qua completion thereof, no confirmation order was issued due to want of verification report from the Police, therefore, he cannot be deemed to, have completed his probation period.

11. We have given our thoughtful consideration to the matter and perused the pleadings on record. The main question which arises for our consideration from the conjunctive perusal of the pleadings is whether the termination order is invalid either on the ground of the same having been issued prior to the passing order of confirmation on the completion of prescribed probation or of punitive character?

12. The question whether termination of the service of a temporary employee or a probationer can be treated as punitive even though the order passed by the competent authority does not contain any stigma has been considered in a series of judgments. In **Parshotam Lal Dhingra vs. Union of India, 1958 SCR 828**, which can be considered as an important milestone in the development of one facet of service jurisprudence in the country, the Constitution Bench was called upon to decide whether the order of reversion of an official holding a higher post in an officiating capacity could be treated as punitive. After elaborate consideration of the relevant provisions of the Constitution and judicial decisions on the subject, the Constitution Bench observed:

“...In short, if the termination of service is founded on the right flowing from contract or the service rules then, *prima facie*, the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be

founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with...."

13. Again the entire matter was reconsidered in **State of Punjab and another v. Sukh Raj Bahadur (1968)** 3 SCR 234, Mitter, J. considered several precedents and culled out the following propositions:

- "1. The services of a temporary servant or a probationer can be terminated under the rules of his employment and such termination without anything more would not attract the operation of Article 311 of the Constitution.
- 2. The circumstances preceding or attendant on the order of termination have to be examined in each case, the motive behind it being immaterial.
- 3. If the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant.
- 4. An order of termination of service in unexceptionable form preceded by an enquiry launched by the superior authorities only to ascertain whether the public servant should be retained in service does not attract the operation of Article 311 of the Constitution.
- 5. If there be a full-scale departmental enquiry envisaged by Article 311 i.e. an Enquiry Officer is appointed, a charge-sheet submitted, explanation called for and considered, any order of termination of service made thereafter will attract the operation of the said article."

Krishna Iyer, J, who agreed with the learned Chief Justice, made the following concluding observations:

"Again, could it be that if you summarily pack off a probationer, the order is judicially unscrutable and immune? If you conscientiously seek to satisfy yourself about allegations by some

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sort of enquiry you get caught in the coils of law, however harmlessly the order may be phrased? And so, this sphinx-complex has had to give way in later cases. In some cases the rule of guidance has been stated to be the substance of the matter and the foundation of the order. When does motive trespass into foundation, when do we lift the veil of form to touch the substance. When the Court says so. These Freudian frontiers obviously fail in the work-a-day world and Dr Tripathi's observations in this context are not without force."

14. In **Samsher Singh v. State of Punjab** (1974) 2 SCC 831, a seven-Judge Bench considered the legality of the discharge of two judicial officers of the Punjab Judicial Service, who were serving as probationers. A. N. Chief justice Ray, who wrote opinion for himself and five other Hon'ble Judges made the following observations:

"No abstract proposition can be laid down that where the services of a probationer are terminated without saying anything more in the order of termination than that the services are terminated it can never amount to a punishment in the facts and circumstances of the case. If a probationer is discharged on the ground of misconduct or inefficiency or for similar reason without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge it may in a given case amount to removal from service within the meaning of Article 311(2) of the Constitution."

15. In **Union of India v. Mahaveer C. Singhvi** (2010) 8 SCC 220, the three-Judge Bench of the Hon'ble Supreme Court considered the question whether termination of the respondent service who was serving as I.F.S. probationer by way of discharge in accordance with the terms of employment was punitive. The Court noted that the respondent's service was terminated because he had sought extension

to join the Mission at Madrid in Spain because of sudden deterioration in the health condition of his parents and also requested for providing medical facilities and diplomatic passports to them. The Court also noted that the Ministry of External Affairs had taken cognizance of the complaint made by one Mrs. Narinder Kaur Chadha that the respondent had been threatening her entire family and in particular her daughter which was followed by some enquiries conducted into his conduct or character by Joint Secretary, Foreign Service Institute and a memorandum was issued to the respondent alleging his unauthorized absence. The Joint Secretary found that the complaint was wholly unfounded. The Court then referred to the principles laid down in earlier judgments and approved the view taken by the Hon'ble High Court that even though the order of discharge did not contain any stigma, the same was not conclusive and the High Court had rightly termed the same as punitive. Some of the observations made in the judgment are extracted below:

"The materials on record reveal that the complaint made by Mrs Narinder Kaur Chadha to the Minister of External Affairs had been referred to the Joint Secretary and the Director (Vigilance) on 8-2-2002 with a direction that the matter be looked into at the earliest. Although, nothing adverse was found against the respondent, on 19-2-2002, the Joint Secretary (Vigilance) held further discussions with the Joint Secretary (Admn.) in this regard. What is, however, most damning is that a decision was ultimately taken by the Director, Vigilance Division, on 23-4-2002, to terminate the services of the respondent, stating that the proposal had the approval of the Minister of External Affairs. This

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case, in our view, is not covered by the decision of this Court in Dipti Prakash Banerjee case."

16. In the latest case of **State Bank of India v. Palak Modi**, (2013) 3 SCC 607, in Para 36 of the Judgment, the Lordships of the Hon'ble Supreme Court has held -

"36. In a given case, the competent authority may, while deciding the issue of suitability of the probationer to be confirmed, ignore the act(s) of misconduct and terminate his service without casting any aspersion or stigma which may adversely affect his future prospects but, if the misconduct/misdemeanour constitutes the basis of the final decision taken by the competent authority to dispense with the service of the probationer albeit by a non-stigmatic order, the Court can lift the veil and declare that in the garb of termination simpliciter, the employer has punished the employee for an act of misconduct."

17. It is borne out from the conjunctive perusal of the pleadings that the applicant, who joined service on 09.09.2010, was put on probation for a period of one year up to 08.09.2011, which was further extended up to 08.09.2012 in terms of the clause contained in appointment letter dated 23.08.2010. After completion of maximum probation period as per the appointment letter the respondents have not issued any order of confirmation. Clause-3 of the appointment letter casts a duty upon the respondents to pass an order in writing regarding successful completion of the probation period. Clauses 2 and 3 of the appointment order, which are relevant, read as under:

"2 You will be on probation for a period of one year from the date of appointment, which may be extended at the discretion of

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the Competent Authority. During the period of probation, your services will be liable to be terminated without notice or without assigning any reason thereof.

3. After successful completion of the period of probation, you will be informed about the same in writing. Your services can be terminated at any time by giving three months' notice or by giving pay for the said period by either side in lieu of the notice period."

18. As per the law, if the rule mandates that an order of confirmation is to be passed by the authority then deeming fiction cannot be allowed. In this case, clause-3 clearly stipulates that an order to this effect in writing has to be conveyed to the applicant. Therefore, the contention of the applicant that he is deemed to have been successfully completed the period of probation on expiry of maximum period of probation cannot be accepted. As narrated above, during the probation period an employer has to keep watch on the work and conduct of the employee who is put on probation. Perusal of the impugned order, discharging the applicant from service, makes it clear that the same is based upon an enquiry, which was conducted by the respondents behind the back of the applicant on the ground that the applicant had not submitted the correct information while submitting the application form and he had concealed the fact that an FIR no.266 dated 22.09.2006 under Section 498-A/406 IPC was registered against him in police station Batala, where he was arrested, therefore, by invoking proviso to Rule 11 of the 1965 rules which is based on O.M dated 19.05.1993 the impugned order, discharging his service has been passed. The relevant part of the impugned order also reads as under:

"Sh. Amandeep Singh was appointed as Senior Systems Analyst in Pay Band 3 (Rs.15600-3900) with GP of Rs.6600 vide appointment letter No.DOACH/1-6/2010/10171 dated 23.8.2010. He had joined on 9.9.2010. He was on probation for a period of one year i.e. upto 8.9.2011. His probation case could, however, not be taken up for want of his character antecedents verification report from the Police Authorities. Consequently, his probation was kept upto 30.06.2014 vide Office Order No.NIELIT/CH/PF/AS/2013/19708 dated 17th December, 2013.

It has, now, been revealed from the police report from SSP, Batala, received vide their letter No.1074/CPRC dated 14.01.2014 that:

- i) An FIR No.266 dated 22.9.2006 under section 498-A/406 IPC was registered against Shri Amandeep Singh at Police Station, Civil Lines, Batala.
- ii) Shri Amandeep Singh was arrested.
- iii) A challan was prepared on 28.6.2007 and
- iv) Untraced report was presented in the court of JMIC, Batala on 17.9.2008, which is pending for approval in the Court of JMIC, Batala.

Whereas, Sh. Amandeep Singh, Senior Systems Analyst while filling up the Special Security Questionnaire, on 9.9.2010 at the time of his joining, had concealed the information, reported by the SSP, Batala, as above.

Therefore, in terms of provisions contained in Govt. of India, Deptt. Of Per. & Trg., O.M. No.11012/7/91-Estt. (A), dated 19th May, 1993 under Rule 11 of CCS (CCA) Rules, 1965, Shri Amandeep Singh, Senior Systems Analyst is, hereby, discharged from service of this Centre with immediate effect."

19. Perusal of the above leaves no doubt that his services having been dispensed with on the ground that his work and conduct during the probation period was not satisfactory. Rather, an enquiry about his conduct prior to joining his service influenced the respondents while

passing the impugned order. Thus, this order cannot be termed as a simpliciter order of discharging a probationer from service, because there is a motive behind this order, i.e., a complaint which was gone into by the respondents and based upon a report by the SSP, Batala the respondents decided to discharge his service. The arbitrariness and non-application of mind of the respondents can be seen from the fact that they have relied upon an information provided by the SSP, Batala and did not give weightage to an order dated 24.7.2007 passed by the Hon'ble High Court in Criminal Misc. no.31769 of 2007 where the above FIR no.266 dated 22.09.2006 was quashed. The order of the Hon'ble High Court reads as under:-

"This is petition for quashing of FIR NO.266 dated 22.09.2006 for offence under Sections 406/498-A-IPC on the basis of compromise. This FIR was registered at the instance of Charanjit Singh, respondent No. 2, who happens to be father of Anupinder Kaur, respondent No. 3.

Respondents No. 2 and 3 have no objection if the FIR is quashed since the matter has been compromised and some petition for divorce with mutual consent has been filed.

On behalf of the petitioners, it is stated that Amandeep Singh petitioner No. 1 shall appear in the Court where petition for divorce with mutual consent has been filed.

On behalf of the petitioners, it is stated that Amandeep Singh, petitioner No. 1 shall appear in the Court where petition for

divorce with mutual consent is pending and will not back out from the compromise

Since parties have effected compromise and the offence was basically of matrimonial nature, continuing with the FIR and proceedings shall be just a futile exercise and shall not be in the interest of justice.

Under these circumstances, this petition is allowed. FIR No. 266 dated 22.9.2006 for offence under Sections 406/498-A-IPC registered at Police Station Civil Lines, Batala and all subsequent proceedings arising therefrom shall stand quashed"

20. We are surprised that the respondents decided to go by the information provided by SSP, Batala instead of the order of the Hon'ble High Court, which was supplied by the applicant to the respondents. It is not the case of the respondents that the order of the Hon'ble High Court was not in their knowledge. Therefore, we have no hesitation on recording here that the impugned order is also arbitrary and shows colourable exercise of power at the behest of the respondents. Therefore, in view of the above dictum, which we have narrated above by their Lordships of the Hon'ble Supreme Court to go behind the cause if a probationer is discharged from service by not a simpliciter order rather it casts stigma over his conduct. Therefore, we are of the considered view that the impugned order does not sustain in the eye of law. Accordingly, the same is quashed and set aside.

21. The applicant also tried to argue the matter on merit that even the opinion formed by the respondents that he misled the respondents by not submitting the correct narration of facts in the application form is also bad in law and he relied upon a judgment of the Jaipur Bench of this Tribunal in the case of Narendra Kumar Chandel v. UOI & Ors. OA No.97/2012 decided on 27.08.2012 and the judgment of the Hon'ble Supreme Court in the case of Ram Kumar v. State of U.P. & Ors. Civil Appeal No.7106 of 2011, decided on 19.08.2011. Since, we are called upon only to adjudge the validity of the impugned order, discharging a probationer, therefore we are not touching the other issues raised by the applicant. In the above backdrop of the matter the applicant succeeds on the first issue. Accordingly, the impugned order is hereby quashed and set aside. The matter is remitted back to the respondents and if they believe to proceed further then they have to go according to the procedure laid down under the 1965 rules by giving an opportunity to the applicant to stake his claim and thereafter the respondents shall pass order according to law. With these directions the OA stands disposed of. No costs.

(RAJWANT SANDHU)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

PLACE: Chandigarh
Dated: 21.11.2014

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